

## **REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL**

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**Date of**

**Hearing:** September 21, 2017

**Panel:** Moira Calderwood, Chair, Keith Cooper and Melina Laverty, Members

**Re:** Ibrar Javed (Report No. 6899)  
Applicant for a Vehicle-for-Hire Driver's Licence (Application No. B720064)

**Counsel for Municipal Licensing and Standards:** Mr. David Gourlay

### **INTRODUCTION**

In May 2017, Mr. Javed applied to Municipal Licensing and Standards (MLS) for a Vehicle-for-Hire Driver's Licence.

MLS reviewed Mr. Javed's driving record, including his history of charges and convictions under the Highway Traffic Act. MLS denied Mr. Javed's application for a licence. Mr. Javed appealed that denial, and the Toronto Licensing Tribunal held a hearing on this matter on September 21, 2017. After that hearing, the Tribunal delivered an oral decision to deny the application for a licence. These are the written reasons for that decision.

The issue before the Tribunal was whether Mr. Javed should be issued a Vehicle-For-Hire Driver's licence, given his driving record.

### **CITY'S EVIDENCE**

Ms Olga Kuszelska, MLS Supervisor, testified. Ms Kuszelska and her staff prepared report No. 6899, which has 105 pages. The report relates to Mr. Javed's application for a Vehicle-For-Hire Driver's Licence. The Tribunal admitted the report in the hearing, and marked it as Exhibit 1.

Through Ms Kuszelska, Mr. Gourlay drew the Tribunal's attention to the following:

- A criminal record check from York Regional Police, dated May 10, 2017, showed that Mr. Javed has a clear criminal record. (Exhibit 1, page 4). Information in the report showed that Mr. Javed had incurred criminal charges in 2009 and 2010, but that all charges were withdrawn. (Exhibit 1, page 11).
- Driver's records pertaining to Mr. Javed from the Ministry of Transportation showed a number of charges and convictions, from June 2011 through to May 2017 (Exhibit 1, pages 5 and 104).

September 21, 2017

- Ms Kusztelska and her staff summarized into a chart (Exhibit 1, pages 25-26) information respecting Mr. Javed's charges and convictions under the Highway Traffic Act.
- Ms Kusztelska testified that she performed a search the day before the Tribunal hearing, and confirmed that Mr. Javed currently holds an Ontario driver's licence, valid until March 2022.

## **APPLICANT'S EVIDENCE**

Mr. Javed testified that he had a Quebec driver's licence. He works driving vehicles from Quebec to Ontario. He incurred tickets in Quebec and had to pay. He therefore did not have enough money to pay his Ontario fines.

Mr. Javed stated that after he moved from Quebec to Ontario in 2016, he paid his Ontario fines. Mr. Javed submitted an ICON printout dated September 20, 2017, titled "Trial Date List," which the Tribunal marked as Exhibit 2 in the hearing. This printout showed that Mr. Javed has an upcoming trial date (September 29, 2017) on three charges, related to ownership and insurance of a vehicle.

Mr. Javed also provided an updated copy of his provincial driver's record, dated September 20, 2017. The Tribunal marked this as Exhibit 3 in the hearing.

Mr. Javed stated that he did not use to take things seriously, but that he now has a one-year-old son, and he has improved and now takes things seriously.

On cross-examination, Mr. Gourlay elicited:

- Mr. Javed works for a company run by a friend from high school. The business buys cars from Ottawa or Montreal. Mr. Javed delivers the vehicles to Toronto. The vehicles are equipped with dealer plates. Each plate carries insurance, and plates are movable from vehicle to vehicle. Mr. Javed earns \$70 per run (plus the employer pays for his food and gas). He does this about three days a week. Mr. Javed has been doing this work for about three years.
- Mr. Javed lived in Quebec from 2014 to 2016, and now lives in Toronto. He no longer has a Quebec driver's licence. When Mr. Gourlay pointed out that the record shows offences from 2014, 2015 and 2016 attached to an Ontario licence, Mr. Javed responded that these were regarding unpaid fines.
- Mr. Javed acknowledged that the contents of Exhibit 1 are accurate.
- Regarding specific charges, Mr. Javed testified:
  - The May 4, 2012 charge of driving while under suspension (line 21 at page 26 of Exhibit 1) was eventually withdrawn because he paid off his fines.

September 21, 2017

- The July 11, 2015 charge of driving while under suspension (line 8 at page 25 of Exhibit 1), which led to a conviction, occurred while he was living in Quebec and therefore was not receiving letters regarding the Ontario charge. He did tell the officer at the time that he had a Quebec driver's licence. Mr. Gourlay noted that the full text of the offence (at page 49 of Exhibit 1) reads, "Driving while under licence of other jurisdiction while suspended in Ontario, contrary to section 36 of the Highway Traffic Act." Mr. Javed stated that he did not find out until later that his Ontario driver's licence had been suspended.
  - The October 19, 2015 charge of driving while under suspension (line 7 at page 25 of Exhibit 1) occurred just a few months later, and led to a conviction. Mr. Javed stated that he was not making enough money at that time to pay his Ontario fines.
  - The August 6, 2016 charge of driving while licence suspended in Ontario (line 6 at page 25 of Exhibit 1) occurred less than a year later.
  - The January 9, 2017 charge of driving a motor vehicle with no/improper licence (line 3 at page 25 of Exhibit 1), which led to a conviction, occurred because although Mr. Javed did have a licence, he did not have it with him when pulled over for speeding.
  - The charges currently outstanding are similar.
  - The record shows numerous other similar instances.
- Mr. Gourlay asked Mr. Javed in cross-examination, "Why does this keep happening?" Mr. Javed had no response. There was a long silence. Mr. Gourlay eventually stated, "It's a pattern." Mr. Javed responded, "I have no answer."
  - Returning to the January 9, 2017 charge of driving a motor vehicle with no/improper licence (line 3 at page 25 of Exhibit 1), Mr. Javed acknowledged that he was driving with a suspended licence. He stated that he missed a court date and his licence was suspended for six months (to March 2017). Mr. Javed asserted he was not aware of this. He was in Ontario delivering a vehicle on a dealer's plate. He stated that he did not have enough money to pay the Ontario fines.
  - Mr. Javed acknowledged that he has a number of convictions for speeding, most if not all of which occurred while he was driving vehicles equipped with dealer plates. He does not own a personal vehicle.

In response to questioning from the panel, Mr. Javed stated that he has a one-year-old child, who lives in Pakistan with his mother. Mr. Javed supports the son and the child's mother via remittances. Mr. Javed also supports his own mother, father and sister. His father occasionally drives for Uber. His mother has a heart condition and is unable to work. His sister is a student. Mr. Javed provides her with bus money and lunch money.

Mr. Javed stated he does not have experience with or prospects of any other work, apart from driving work.

September 21, 2017

## **SUBMISSIONS**

Mr. Gourlay submitted, for MLS, that the Tribunal should deny Mr. Javed's application for a Vehicle-for-Hire Driver's Licence.

Mr. Gourlay asserted that Mr. Javed's driving record raises significant concerns about public safety and being able to operate a vehicle-for-hire within the confines of the law.

Mr. Gourlay highlighted the pattern of suspensions, compounded by driving while under suspension. Mr. Gourlay stated that Mr. Javed disregards the requirement that a professional driver in Ontario hold a valid provincial driver's licence. He stated that Mr. Javed knew or should have known that a person driving professionally in Ontario with an Ontario plate cannot do so with a suspended Ontario driver's licence. Mr. Gourlay stated that, even if the first time (the May 2012 charge of driving while under suspension, later withdrawn), Mr. Javed was not aware of this requirement, it is hard to accept that Mr. Javed would not have known of it on the many subsequent occasions he was charged with the same offence.

Mr. Gourlay summarized that Mr. Javed has shown repeated failures related to licensing, permits and having insurance cards in place, and that this pattern continues, and includes the charges pending before the court.

Mr. Gourlay reviewed Mr. Javed's history of speeding. Mr. Javed was charged with speeding three times while driving professionally, with speeds 38, 32 and 24 kilometres, respectively, over the posted limit. Mr. Gourlay submitted that Mr. Javed's history of speeding shows a consistent or worsening pattern.

Mr. Gourlay submitted that the Tribunal cannot be certain that the public will be adequately protected, if Mr. Javed holds a Vehicle-For-Hire Driver's licence, given Mr. Javed's disregard for suspensions and his history under the Highway Traffic Act of moving offences. He noted that the driver's record which Mr. Javed submitted at the hearing (Exhibit 3) documents that Mr. Javed currently has seven demerit points. He pointed out that the municipal licence in question involves driving and his offences relate to driving.

Turning to Mr. Javed's need to make a livelihood, Mr. Gourlay stated that Mr. Javed is currently employed. He asserted there is nothing to suggest that taxi driving is Mr. Javed's only option, or that he is trained for this line of employment. Mr. Gourlay commented that there are other types of driving work available that do not involve carrying passengers.

In his submissions, Mr. Javed stated that although he does have a job now, he does not make enough money to support all those dependent on him. He is trying to improve his driving record. He would appreciate it if the Tribunal grants his application for a licence that would let him drive a taxi.

September 21, 2017

## **DECISION**

The Tribunal denied Mr. Javed's application for a Vehicle-For-Hire Driver's licence.

In reaching our decision, we applied the Tribunal's mandate, set out in part in the Toronto Municipal Code, § 546-8.A(3)(c):

Have regard for the need to balance the protection of the public interest with the need for licensees to make a livelihood.

We were satisfied that Mr. Javed established his need to make a livelihood, given that he has family both overseas and in Canada who rely on him for support. There was no evidence whatsoever before the Tribunal to suggest that Mr. Javed was trained and qualified for, or experienced in, any line of work other than driving.

Turning to the other part of the test, we considered the protection of the public interest, if the Tribunal were to issue Mr. Javed a Vehicle-for-Hire Driver's Licence.

In Mr. Javed's favour, we noted that he has no criminal record, and although he incurred some criminal charges, these were in the distant past, and the charges were withdrawn.

Mr. Javed's need to make a livelihood, and the factor in his favour, however, could not outweigh the Tribunal's serious concern about protection of the public interest.

Section 546-4. A. of the Municipal Code provides:

An applicant for a licence or for the renewal of a licence, is, subject to the provisions of this chapter, entitled to the licence or renewal, except where:

(1) The conduct of the applicant affords reasonable grounds to believe that the applicant has not carried on, or will not carry on, the business in accordance with law and with integrity and honesty; or

(2) There are reasonable grounds to belief that the carrying on of the business by the applicant has resulted, or will result, in a breach of this chapter or any law; or

...

(5) The conduct of the applicant or other circumstances afford reasonable grounds to believe that the carrying on of the business by the applicant has infringed, or would infringe, the rights of other members of the public, or has endangered, or would endanger, their health or safety.

The information in Exhibit 1 showed the following timeline:

- May 4, 2012 (offence date) – Mr. Javed was charged with driving while under suspension. This charge was later withdrawn.
- November 13, 2013 (offence date) – Mr. Javed was charged with, and later convicted of, driving a motor vehicle with no/improper licence.
- January 23, 2014 (offence date) – Mr. Javed was charged with, and later convicted of, driving a motor vehicle with no/improper licence and failure to surrender a driver's licence.

September 21, 2017

- May 23, 2015 (offence date) – Mr. Javed was charged with, and later convicted of, driving a motor vehicle with no permit.
- July 11, 2015 (offence date) – Mr. Javed was charged with, and later convicted of, driving while under suspension. On the same date, he was charged with driving while his licence was suspended in Ontario and failing to surrender permit, vehicle. These two charges were later withdrawn.
- August 26, 2015 to February 26, 2016 – Mr. Javed's Ontario driver's licence was suspended for six months, due to driving while licence suspended
- October 19, 2015 (offence date) – Mr. Javed was charged with, and later convicted of, driving while under suspension.
- September 21, 2016 to March 21, 2017 – Mr. Javed's Ontario driver's licence was suspended for six months, due to driving while licence suspended.
- August 6, 2016 (offence date) – Mr. Javed was charged with, and later convicted of, driving while his licence was suspended in Ontario.
- January 9, 2017 (offence date) – Mr. Javed was charged with, and later convicted of, driving a motor vehicle with no/improper licence.
- May 25, 2017 (offence date) – Mr. Javed was charged with driving a motor vehicle with no permit and failing to surrender permit, vehicle. Mr. Javed testified there is a third charge, related to a missing insurance card. These charges are still before the court.

In our view, it is beyond dispute that Mr. Javed shows a very concerning pattern of engaging in unlicensed driving. We were struck at the hearing by the fact that Mr. Javed never took responsibility for this pattern of driving while unlicensed. Rather, he offered excuses. He stated at one point that he did not receive notification of licence suspension, as he did not have an Ontario address. At several other points, he commented that his licence was suspended due to unpaid fines, because he could not afford to pay the fines. He never once stated that he acknowledged his own responsibility, as a professional driver, to ensure that relevant licences are up to date and valid. He did not appear to be aware of any issue of public safety that might arise from having an unlicensed driver working in a professional capacity on Ontario's highways.

Also woven through the record are many charges and convictions for speeding. Mr. Gourlay elicited that these were mostly incurred while Mr. Javed was driving commercially. This also raises a concern for the Tribunal. Again, Mr. Javed did not acknowledge the potential danger to the public associated with his speeding, or any responsibility on his part to comply with posted speed limits.

We were left with the impression that public protection would not be a priority for Mr. Javed, if granted a municipal licence.

We also had some concerns about Mr. Javed's carrying on a business in accordance with law and with integrity and honesty, and without breaching the Municipal Code or any other law. Again, our concerns on this point were grounded in Mr. Javed's extensive record of repeatedly flouting law related to licensing requirements. His long silence when asked, "Why does this keep happening?" spoke volumes to us. Mr. Javed's propensity for speeding also factored into our concerns on this point.

September 21, 2017

To sum up, the Tribunal has concerns about all three of the grounds for non-issuance quoted from § 546-4, above. In particular, we cannot conclude that the public interest would be protected if we issued Mr. Javed a licence.

We make this order without prejudice to Mr. Javed's right to apply anew for a Vehicle-For-Hire Driver's licence. It may be that if Mr. Javed applies for a licence at some point in the future, and is able to demonstrate that a period of time has elapsed in which he has not incurred any further charges for driving while suspended or for speeding, or any other serious charges, that application might succeed (although this Tribunal cannot predict with certainty what MLS or a future Tribunal panel may decide). Mr. Javed was not able to demonstrate such factors today and therefore we deny his application for a Vehicle-For-Hire Driver's licence.

Originally Signed

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Moira Calderwood, Chair

Panel Members, Keith Cooper and Melina Lavery concurring

Reference: Minute No. 263/17

**Date Signed:** November 23, 2017