

## REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

---

**Date of Hearing:** February 15, 2018  
**Panel:** Moira Calderwood, Chair, Aly Alibhai and Keith Cooper, Members  
**Re:** Muhammad Asif (Report No. 6977)  
Applicant for a Vehicle-For-Hire Driver's Licence Application No. B748515

**Counsel for Municipal Licensing and Standards:** Ms Penelope Ma

### INTRODUCTION

In 2003, Municipal Licensing and Standards (MLS) of the City of Toronto issued Mr. Asif a Taxicab Driver's licence.

In March 2007, Mr. Asif was charged under the *Criminal Code of Canada* with sexual assault. In April 2007, the Tribunal suspended Mr. Asif's Taxicab Driver's licence, pending the outcome of the criminal proceedings. In October 2007, Mr. Asif's Taxicab Driver's licence expired, and he did not submit a renewal fee. In November 2007, Mr. Asif was convicted on the charge of sexual assault.

In November 2017, Mr. Asif submitted an application to MLS for a Vehicle-For-Hire Driver's Licence. MLS denied the application. Mr. Asif requested a hearing before the Toronto Licensing Tribunal. The Tribunal held a hearing on this matter on February 15, 2018.

After the hearing, the Tribunal delivered an oral decision denying Mr. Asif's application for a Vehicle-For-Hire Driver's licence. These are the written reasons for that decision.

The issue before the Tribunal was whether Mr. Asif's application should be granted, given his criminal record.

Mr. Asif appeared on his own behalf. The Tribunal advised him of his right to have legal representation and he chose to proceed without such representation.

### MLS'S EVIDENCE

Ms Alice Xu, Manager of Licensing and Administration Services with MLS, and her MLS colleagues prepared MLS Report No. 6977. The report relates to Mr. Asif's application for a Vehicle-For-Hire Driver's Licence. This 42-page report was admitted in the hearing as Exhibit 1.

February 15, 2018

Ms Xu was the only witness for MLS. She highlighted documentation in the above Exhibit showing:

- The Crown Brief for the charge of sexual assault documents that the victim was a passenger in Mr. Asif's taxicab. The passenger was a 49 year old woman, described in the Crown Brief as "mentally handicapped." The sexual assault consisted of Mr. Asif touching the victim's breasts and vaginal area over her clothes.
- In 2017, the Parole Board of Canada issued a Record Suspension under the *Criminal Records Act* related to Mr. Asif's sexual assault conviction.

## **APPLICANT'S EVIDENCE**

Mr. Asif submitted:

- He served the 90-day sentence imposed on conviction intermittently, on weekends.
- The 2007 incident involved accidental touching when he was helping the victim put on her seatbelt.
- His lawyer advised him to plead guilty to the charge, to save time.
- He has had a gas technician's licence since 2011 and has also worked as a handyman/renovator since 2008. Both of these occupations require him to attend in homes where women are alone. There have been no incidents over the past ten years.
- He is hardworking and wants this licence to drive a taxi during times when he is not working at his other jobs.
- He has four children. Three are in university and one is working. His wife also works, part-time. He has supported his family by working the two jobs.

Mr. Asif provided a letter dated February 6, 2018, from Milan Mechanical System Inc., attesting to his good work habits as a gas technician. The Tribunal marked this document as Exhibit 2. Mr. Asif also provided a copy of his provincial driver's abstract, dated February 14, 2018. The Tribunal marked this document as Exhibit 3. The abstract showed that Mr. Asif had no record of convictions on his driving record.

## **SUBMISSIONS**

Ms Ma submitted that the Tribunal should not issue a Vehicle-For-Hire Driver's licence to Mr. Asif. She stated Mr. Asif's conduct affords reasonable grounds to believe that he has not carried on, or will not carry on, the business of a taxi cab driver in accordance with law and with integrity and honesty; or that the carrying on of the business has resulted, or will result, in a breach of the by-law or any law; or that his carrying on of business has infringed, or would infringe, the rights of other members of the public, or has endangered, or would endanger, their health or safety, all as set out in § 546-4.A.(1) of the *Municipal Code*.

Ms Ma noted that the circumstances of the offence involved a sexual assault on a mentally challenged woman in a cab, and asserted that people who are vulnerable – old,

February 15, 2018

or young, or mentally or physically challenged, or inebriated – often rely on taxis. Ms Ma stated that taxi passengers could find themselves alone in secluded areas, with their taxi driver. She submitted that safety of the public is paramount. Ms Ma asserted that no conditions are available which could protect the public, in this case.

With respect to the Record Suspension, Ms Ma referred to a previous decision of the Tribunal (*Re Anwar*, February 14, 2013) in which former Chair Miskin wrote, regarding a “pardon”:

... the Tribunal concluded that it should not treat the conviction as having been erased by the pardon. Indeed the statute has since been amended, and the term “pardon” has been removed. The Tribunal interpreted the statute to mean that the record of conviction was not deleted by the Pardon, but rather the Pardon merely effected a separation of the record of the pardoned offence from any other criminal record which might pertain to the Applicant. In any event the Tribunal addresses the conduct of an applicant, of which the conviction is merely some indication.

Ms Ma pointed out that Mr. Asif has not shown a need to make a livelihood, given his testimony that he currently has two jobs and has been able to support his family.

In his submission, Mr. Asif stated that he needs this licence so that he can pick up shifts driving cab during down time from his other jobs, when work is sporadic. He stated that ten years is enough punishment and he wants a licence. He noted that he has had no problems over the past ten years, even although he has worked in approximately 500-600 houses over that time, including situations when he has been alone with women. If the licence is granted, he promises there will be no problems.

## **DECISION**

The Tribunal denied Mr. Asif’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 of the view that Mr. Asif had not established his need to make a livelihood through the licensed activity. On the contrary, Mr. Asif testified that he had obtained a gas technician’s licence, and worked full time in that field, while also doing some handyman work on the side, and that through these two activities, he was able to support his family. Thus, Mr. Asif has alternative means of making a living.

The protection of the public interest was the key issue in this hearing. In his favour, we acknowledge that Mr. Asif has a clear driving record, and the only criminal record is Mr. Asif’s 2007 conviction for sexual assault; he has gone for approximately ten years without any further criminal charges or convictions.

February 15, 2018

The Tribunal considered whether the fact of the Record Suspension contributed to public protection. We concluded that it did not. We recognize that we are not bound by prior Tribunal decisions. Nevertheless, we agree with former Chair Miskin who said that while the record regarding the offences in question is separated from any other criminal record which might pertain to the applicant (which in this case is none), the Tribunal is still entitled to consider the underlying conduct of an applicant that led to the charges and/or convictions, regardless of whether the convictions are still registered on an applicant's record. The particular facts of the underlying conduct form the source of our reasonable grounds to believe that licensing Mr. Asif may infringe the rights of members of the public, or endanger members of the public. For a taxi driver, "the public" includes vulnerable members of the public, such as those with mental or physical disabilities, the elderly, children, and others who may rely on taxis for transportation, and who are not in control of their destination once they are in the cab.

Mr. Asif attempted to provide an alternative explanation for the 2007 incident, but the Tribunal relies on the fact of the conviction and that the conviction was for sexual assault, not for an inadvertent "brushing" related to fastening a seatbelt. The victim was (and Mr. Asif did not dispute this) a woman with a mental disability. The events occurred while Mr. Asif was driving under contract to Wheel-Trans, i.e., the branch of the Toronto Transit Commission which transports passengers with physical or mental challenges. We noted that Mr. Asif did not express any remorse over the events for which he was convicted. While the lack of remorse is not necessarily an aggravating factor, some evidence of remorse could have helped to show rehabilitation and much less likelihood of reoffending.

The circumstances of the 2007 offence are directly related to the licensed activity of operating a taxicab. In these serious circumstances, without evidence of rehabilitation or anything other than the mere passage of time, it is difficult for us to conclude there is enough evidence to support a finding that there are no reasonable grounds to believe that the rights of the public would be infringed or that the safety of the public would be endangered, if we granted Mr. Asif a licence to drive a vehicle-for-hire.

To sum up, public safety concerns, coupled with a lack of evidence that Mr. Asif needed this licence to earn a livelihood, were the grounds for our decision to deny Mr. Asif's application for a Vehicle-For-Hire Driver's Licence.

Originally Signed

---

Moira Calderwood, Chair  
Panel Members, Aly Alibhai and Keith Cooper, concurring

Reference: Minute No. 36/18

**Date Signed:** March 11, 2018