

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: April 12, 2018

Panel:

Daphne Simon, Hearing Panel Chair;
Moira Calderwood and Melina Lavery, Members

Re:

James Frederick Hussey (Report No. 6982)
Applicant for a Tow Truck Driver's Licence (Application No. B755706)

Counsel for Municipal Licensing and Standards:

Ms Lauren Elliott

Counsel for Applicant:

Unrepresented

INTRODUCTION

Mr. Hussey has requested to appear before the Toronto Licensing Tribunal ("Tribunal") to determine whether or not a Tow Truck Driver's Licence should be issued after the Municipal Licensing and Standards Division ("MLS") denied his application on December 20, 2017.

Mr. Hussey chose to represent himself in this matter. The hearing proceeded on April 12, 2018.

The Tribunal considered the evidence and submissions presented during the hearing and determined that Mr. Hussey should be issued a Tow Truck Driver's Licence with conditions.

ISSUE

Does the conduct of Mr. Hussey afford reasonable grounds to believe that he will not carry on his business in accordance with the law and with honesty and integrity if granted a licence?

CITY'S EVIDENCE

MLS presented evidence through one witness, Olga Kuztelska, Supervisor, MLS. Ms Kuztelska was affirmed prior to giving her testimony. A summary of the relevant evidence she presented follows:

Mr. Hussey applied for a Tow Truck Driver's Licence on December 13, 2017. He has not previously been licensed with the City of Toronto to drive a tow truck. This was his first application.

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On December 20, 2017, MLS denied his application on the grounds that his record of convictions under the Criminal Code of Canada (CCC) poses a concern to MLS and breaches the Business Licensing Thresholds under the Toronto Municipal Code.

Ms Kuztelska, who oversees the preparation of MLS reports in these matters, referred to MLS Report 6982 (Report). The Report, along with two updates, was marked as Exhibit 1.

The Tribunal was referred to pages 11-13 of the Report, which contained a chart summarizing the criminal charges and convictions against James Frederick Hussey, formerly James Edward Shaw, under the CCC. There were 27 charges and 9 convictions. Most of the offences took place in 2010 and 2011. One offence took place in July 2015.

The Tribunal was referred to pages 77-79 of the Report, which contained a chart summarizing a list of charges and convictions under the Highway Traffic Act (HTA) and the Compulsory Automobile Insurance Act (CAIA). There were 15 convictions under the HTA and 1 conviction under the CAIA. Five charges from the last two years remain pending with court dates scheduled.

Ms Kuztelska provided evidence through reference to the police occurrence reports and the guilty plea synopses for several of the criminal matters. A summary of her evidence is recapped below, starting from the most recent criminal conviction:

On or about December 2015, Mr. Hussey was charged with assault that involved a domestic altercation with a former romantic/domestic partner and was alleged to have taken place in July 2015. Both parties were in the midst of terminating their relationship, a dispute ensued and Mr. Hussey is alleged to have grabbed the complainant's arm. The assault charge was withdrawn when Mr. Hussey entered into a peace bond.

On or about October 2011, Mr. Hussey was charged with several counts of assault, choking, sexual assault and mischief under \$5,000 related to an altercation that took place with his former romantic/domestic partner. The general elements of this matter involve both parties being intoxicated in the early hours of Sunday morning while in Mr. Hussey's basement apartment. A physical altercation ensued where Mr. Hussey is alleged to have assaulted, sexually assaulted and choked the victim. Mr. Hussey plead guilty and was convicted of one count of assault as related to this matter.

On July 24, 2011, Mr. Hussey was charged with assault causing bodily harm, assault, causing a disturbance by fighting, and mischief to property under \$5,000. This was a physical altercation that took place outside of a bar in Whitby involving a number of young males. Mr. Hussey is alleged to have punched the victim numerous times and pushed him through a glass window store front, causing lacerations to the victim as well property damage. Mr. Hussey plead guilty and was convicted of causing a disturbance by fighting and mischief to property under \$5,000.

On October 13, 2010, Mr. Hussey is alleged to have stolen a screen protector (\$9.83 value) from Walmart in Oshawa. Mr. Hussey was charged with and pled guilty to theft under \$5,000.

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On May 29, 2010, Mr. Hussey borrowed a friend's tow truck purportedly to do some cash tows. This involved Mr. Hussey and his friend towing four scrap motor vehicles from two mechanic shops to a wrecking yard at night. They were to be paid \$100 cash for each car in the morning. Mr. Hussey was charged with and pled guilty to two counts of theft under \$5,000.

The remaining two criminal convictions were fail to comply with probation order on and criminal harassment in September and October of 2011, respectively.

The Tribunal was also referred to two recent HTA convictions of speeding 85 km. in a 70 km. zone and drive motor vehicle with no and/or improper licence – which took place on October 15, 2012 and January 6, 2015, respectively.

APPLICANT'S EVIDENCE

Mr. Hussey admitted to the convictions and took responsibility for them. He stated that the period between 2010 and 2011 was one of the lowest of his life. He was on social assistance at the time and he described his behavior as being on a 'reckless rampage'. Mr. Hussey stated that everything changed when his daughter was born in November 2013. He changed his name from James Edward Shaw upon taking on this new role as a father. He described the birth of his daughter as an incentive to get a fresh start on life. Mr. Hussey and the mother of his daughter separated in September 2015. He reported that the child's mother subsequently laid charges against him, alleging a historical assault. He believes that the woman charged him with assault in order to gain the upper hand in the custody dispute. He entered into a common law peace bond in relation to this charge which he described as far less severe than a criminal peace bond and has not breached it to date. In July 2016, the same woman had him charged again but he was acquitted of those charges.

Mr. Hussey explained that he grew up in the foster care system, not knowing who his real father was. He was determined to turn his life around so that his daughter would not have the same fate. He has shared custody of his daughter with unsupervised access. He adheres to a regular access schedule of every other weekend and one overnight during the week. Mr. Hussey has been working as a tow truck driver in the Durham Region for eight years. For the last six years, he has worked for the same company, namely Wreckamended Recovery and Towing (formerly Hookers Towing) in Durham. He produced a letter from his employer at Wreckamended (marked as Exhibit 2) which stated that his employment will be terminated if he does not receive his Toronto Tow Truck Driver's Licence as they need him to be able to pick up and tow vehicles in the Toronto area.

Mr. Hussey explained the start of his towing career began in May 2010 when he decided to do the cash tows on unused scrap vehicles. He was on social assistance and needed some extra money. At the time, he thought it was a good idea. He admitted now that it was definitely not a good idea.

In regard to the other criminal charges and convictions, in particular the assault in October 2011, he conveyed that the complainant fabricated a lot of the details and that the arresting officer wrote a letter stating this to be the case. He does not have a copy of this letter. He

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disclosed that he plead guilty, on the advice of his lawyer, in order to expedite the process. He was sentenced to serve 90 days in custody on the weekends.

Mr. Hussey revealed that in 2012 he was diagnosed with a mental health illness. He is now being treated for this illness with medication and this has greatly stabilized his moods. He stated that he doesn't drink anymore and hasn't had a drink in 4.5 years.

Mr. Hussey lives and works in Durham. He owns a truck, two cars and a motorcycle. He was trained as an electrician many years ago but could not work as one today, as much has changed since he was an apprentice and he would have to re-qualify.

Mr. Hussey enjoys towing and the flexible hours it provides so that he can spend time with his daughter. He currently pays child support of \$300 a month and half of all costs related to his daughter's needs.

With regard to his HTA convictions, some of the speeding charges were in his personal vehicle or motorcycle. The most recent charge was for driving without proper insurance, Mr. Hussey explained that he had moved addresses and failed to notify the insurance company, thereby not receiving the expiry notice in the mail. He also indicated that some of the other HTA offences stem from being targeted by the Durham Regional Police.

SUBMISSIONS

Ms Elliott, City Legal for MLS

Ms Elliott submitted that MLS is relying on section 545-4 of the Toronto Municipal Code, which sets out the grounds for denying a licence:

C. Grounds for denial of a license

- a. The conduct of the applicant affords reasonable grounds for belief that the applicant has not carried on, or will not carry on, his or her trade, business or occupation in accordance with law and with integrity and honesty; or
- b. There are reasonable grounds for belief that the carrying on of the trade, business or occupation by the applicant has resulted, or will result, in a breach of this chapter or any other law; or
- c. The conduct of the applicant or other circumstances afford reasonable grounds for belief 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, the health or safety of other members of the public.

And MLS relies on the Business Licensing Thresholds section in Appendix K to Chapter 545, which states:

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The Municipal Licensing and Standards Division shall not issue or renew a licence but may recommend that the Toronto Licensing Tribunal issue or renew a licence on conditions if, at the time of the application for a licence or renewal, an applicant has:

- v) two or more restriction code 04 convictions that are more than five years old, but not more than 10 years old.

Ms Elliott submitted that MLS denied to issue a licence to Mr. Hussey as he had exceeded the threshold requirements in Appendix K of c. 545 of the Code. She cited his record of HTA offenses and convictions, including his speeding offences and his pending charges yet to be adjudicated by a court. Also of concern is his record of criminal convictions. In her submission, driving a tow truck is a high stress vocation with a lot of interaction with the public. She submitted that given the violent nature of his criminal record history, Mr. Hussey was not well equipped to handle such stressful situations as may be presented while working as a tow truck driver.

MLS submitted that we cannot be assured that Mr Hussey's criminal behavior is over even though there was a four year gap between the date of Mr. Hussey's last criminal offence in 2011 and his recent charge in 2015. MLS is concerned that granting him a licence which will involve interaction with the vulnerable members of the public as a tow truck driver is not in the public interest. She submitted that the public is better served if he were to find employment as an electrician, for which he has been trained and would not pose the same safety risk to the public.

While Ms Elliott did acknowledge that the steps Mr. Hussey took to turn his life around are commendable, MLS is most concerned with protecting the public interest and submits that a Tow Truck Driver's Licence should be denied.

Mr. Hussey

Mr. Hussey submitted that he does not enjoy electrician work. He likes driving a tow truck and he enjoys the flexibility that it offers so that he can spend the most amount of time with this daughter possible.

Mr. Hussey submits that he has been driving a tow truck for the last eight years in Durham and that he has had no issues with his employment or encounters with the criminal law as related to his work. He provided some explanations regarding the HTA offences. In part, he stated that he drives approximately 100,000 kilometers a year so that should be a consideration in looking at his record. He re-iterated that some of those offences took place in his personal vehicle, while some other charges stemmed from being targeted by some members of the Durham Regional Police.

Mr. Hussey submitted that he has taken responsibility for his past behavior, has not re-offended and is committed to living a clean life for the benefit of his daughter. He stated that he has not had a City of Toronto Tow Truck Driver's Licence previously and that he would like to be given a second chance. Further, he feared he would lose his employment with his Durham tow truck company, if he were denied a licence (as set out in the letter at Exhibit 2). Finally, Mr. Hussey acknowledged that a licence is a privilege, not a right, and that should he be granted a licence he would not abuse that privilege.

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DECISION

The Tribunal considered all of the evidence as presented in the MLS Report, the testimony of the MLS witness, Mr. Hussey's testimony and the submissions from both MLS and Mr. Hussey. The Tribunal accepted Mr. Hussey's submissions and testimony.

The Tribunal found Mr. Hussey to be forthcoming and straightforward in describing, and taking responsibility for, his previous behavior and criminal convictions. The Tribunal found him to be mature, credible and extremely committed to starting a new chapter in his life. He clearly wants to make a better life for himself and his daughter. His explanation of the events with his daughter's mother, his diagnosis of a mental health illness and subsequent treatment of same, his avoidance of alcohol over the last 4.5 years and the birth of his daughter are factors that persuaded the Tribunal that he has in fact changed his ways. In addition, his narrative and explanation of events align, and are supported by, the timeline of his criminal record of behaviour.

Apart from the July 2015 charge, the events of 2010 and 2011 took place during a time where he himself admitted he was struggling and acting recklessly. Once diagnosed and treated in 2012 and with the birth of his daughter in 2013, his record showed no further criminal convictions until 2015. He explained the 2015 charge as something his daughter's mother used against him to gain leverage in a custody battle, and that the charge was withdrawn when he entered into a common law peace bond, which he since abided by. This too aligned with his explanation that they began their separation proceedings in late 2015.

With regard to Mr. Hussey's convictions and offences under the HTA, while not initially cited as a ground for denial by MLS in their denial letter, the Tribunal accepted the explanations provided by Mr. Hussey that most were relatively minor and occurred in his personal vehicle. The Tribunal is of the view that conditions placed on his licence will be sufficient to protect the public interest.

The Tribunal was of the view that Mr. Hussey will carry on his work as a tow truck driver with honesty and integrity and will not breach the law in so doing. We were satisfied that he has very compelling reasons to do so. The Tribunal was of the view that there do not exist reasonable grounds to believe that Mr. Hussey's carrying on of his business or trade will result in a breach of the law. The test in section 545 4 C has therefore not been met.

His good record of employment as a tow truck driver with the same company in Durham for the last six years demonstrates his ability to conduct himself within the confines of the law and with honesty and integrity. The Tribunal also accepts his stated intention and determination to continue to do so.

In reaching our decision, we also applied the Tribunal's mandate, as set out in the Toronto Municipal Code, § 545-3.B.(3)(c), which requires that the Tribunal:

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

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Mr. Hussey has a need to earn a livelihood in order to support himself and his daughter. He has not worked in any other capacity other than a tow truck driver for the last 8 years. Though trained as an electrician, he would have to requalify in order to work in that capacity today. The Tribunal decided that, in all the circumstances, the protection of the public interest could be met with a probationary period and conditions on his licence.

For the foregoing reasons, the Tribunal has determined that a Tow Truck Driver's Licence shall be issued to Mr. Hussey, with the following conditions:

- (1) Immediately upon being issued, the licence will be placed on probation for a period of four (4) years;
- (2) Prior to each of the next four (4) renewals of the licence, James Frederick Hussey must provide to Municipal Licensing and Standards, at his own expense, an original up-to-date abstract of his driving record and Criminal Record Check;
- (3) During the probationary period, if James Frederick Hussey incurs any new charges under the Criminal Code or Highway Traffic Act, he must notify Municipal Licensing and Standards, in writing, within three (3) business days. James Frederick Hussey can notify Municipal Licensing and Standards in one of the following ways:
 - in person at 850 Coxwell Ave, Toronto, Ontario M4C 5R1;
 - via regular mail to: 850 Coxwell Ave, Toronto, Ontario M4C 5R1;
 - via email to mlsconditionreporting@toronto.ca; or
 - via fax at 416-392-3102
- (4) During the probationary period, if Municipal Licensing and Standards has concerns with any new charges or convictions against James Frederick Hussey, those matters and report no. 6982, and any updating material, may be brought back before the Tribunal for a full hearing.

Originally Signed

Daphne Simon, Hearing Panel Chair
Panel Members, Moira Calderwood and Melina Lavery concurring

Reference: Minute No. 71/18

Date Signed: April 23, 2018