

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: March 29, 2018

Panel: Keith Cooper, Hearing Panel Chair; Aly N. Alibhai and Daphne Simon, Members

Re: Harvinder Singh (Report No. 6963)
Applicant for a Vehicle-For-Hire Driver's Licence (Application No. B745781)

Counsel for Municipal Licensing and Standards: Mr. David Gourlay

Paralegal for Applicant: Mr. Mohamed Hussein

INTRODUCTION

Mr. Singh applied for a Vehicle-for-Hire (formerly Taxicab) Driver's Licence on October 31, 2017. Records of the Ministry of the Attorney General's Integrated Court Offences Network indicated Highway Traffic Act charges and convictions registered against Mr. Singh. On January 12, 2018 MLS received information from Toronto Police Services (TPS) that Mr. Singh had been charged with the operation of a vehicle with blood alcohol content (BAC) in excess of 80 mg. On February 2 and 8, 2018 MLS received additional information that Mr. Singh had been convicted of Careless Driving.

MLS reviewed the foregoing and denied issuance of a Vehicle-for-Hire Driver's Licence. Mr. Singh then requested a hearing before the Toronto Licensing Tribunal and a hearing on this matter was held on March 29, 2018.

The issue before the Tribunal was whether Mr. Singh's Vehicle-For-Hire Driver's Licence should be issued, suspended, or have conditions placed upon it.

After the hearing, the Tribunal gave an oral decision to grant the licence, with conditions. These are the written reasons for that decision.

CITY'S EVIDENCE

Ms. O. Kuztelska, Supervisor with MLS, was the sole witness called by Ms. Ma. She was questioned on the documentary evidence found in Report No. 6963. This report was entered into the record as Exhibit #1. She also testified with respect to the documentary evidence contained in an update of Mr. Singh's record which was entered into the record as Exhibit #2.

The report indicated that Mr. Singh had been charged with a BAC over 80 mg on June 20, 2017 and Ms. Kuztelska stated that this charge was apparently the subject of a plea bargain which resulted in Mr. Singh being convicted of Careless Driving. The witness

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also noted that Mr. Singh had a Disobey Lane Light charge with an offence date of April 21, 2015 and a 90 day licence suspension from June 20, 2017.

Mr. Hussein cross-examined Ms. Kuztelska. On cross-examination she confirmed that the applicant did not have a record of criminal charges, nor was she aware of any other disciplinary issues with the applicant when he was previously licensed as a Vehicle-for-Hire driver.

Mr. Hussein then conducted a direct examination of Mr. Singh. Ms. Ma followed with a cross-examination of Mr. Singh. Mr. Hussein also submitted a letter from the applicant's doctor which was marked as Exhibit #3; and a letter from the applicant's Temple which was marked as Exhibit #4.

APPLICANT'S EVIDENCE

Mr. Singh testified that he had been a licensed taxicab driver in the City of Toronto since 1984, as well as having been an owner of a taxicab. This was his only employment since arriving in Canada in 1984. He stated that the red light camera charges noted on his record were incurred in a family car used by other members of his family. He explained that the disobey lane signal charge was a result of a right hand turn on a red light at which he did not come to a complete stop. He indicated that this was from a right turn only lane.

Mr. Singh noted that his 90 day suspension was automatic upon being charged with a BAC over 80 mg. He stated that he does not drink much, and believed that on the evening in question his diabetic medication, combined with a glass of wine, resulted in impairment beyond what he himself believed to be the case at that time.

During cross-examination, Mr. Singh stated that on the night in question he had been at a friend's garage and borrowed his Toronto taxicab to drive himself home, but that he was not seeking customers and that the light on the taxi was off. He was unable to explain why the police report had indicated his roof light was on.

He stated that he was presently living from his line of credit which was being used to pay all of his expenses. He stated that he is 65 years of age, and supporting children enrolled in post-secondary education. Mr. Singh confirmed that as a result of his charge and subsequent plea bargain he attended an impaired driving seminar.

Mr. Hussein then called Mr. S. Sharma, a friend of Mr. Singh, to provide testimony in support of Mr. Singh's character. Mr. Sharma was subsequently cross-examined by Ms. Ma. Mr. Sharma spoke highly of Mr. Singh's character and stated that he rarely saw Mr. Singh drink at any event.

SUBMISSIONS

Ms. Ma submitted that the applicant should not be issued a licence as his conduct was in violation of the *Toronto Municipal Code*, Chapter 546 sections 546-4, subsection A (1), (2), and (5); and subsection B. She submitted that the charge and conviction against the applicant was significant and recent. She submitted that at some point the applicant

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could again re-apply for a Vehicle-For-Hire Driver's Licence, but that given how recent the incident giving rise to the conviction was, being allowed to drive again at this point in time would not be in the interest of public safety.

Mr. Hussein submitted that the applicant had a long and exemplary driving record as a taxicab driver in Toronto, but for this one serious incident. He submitted that the applicant was of good character, and that he did not have a record of complaints with the City of Toronto or with his previous employers.

DECISION

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.

The Panel also had regard to the *Toronto Municipal Code*, Chapter 546 sections 546-4, subsection A (1), (2), and (5); and subsection B, noting the submission of Ms. Ma.

The Panel, after deliberation, allowed Mr. Singh's application for a Vehicle-for-Hire Driver's Licence with conditions attached and rendered an oral ruling as noted above.

The Panel noted that the applicant's charge of driving with a BAC over 80 mg was serious, and that his eventual conviction on Careless Driving was indicative of a serious incident. We also noted that the incident was relatively recent. As submitted by Ms. Ma, it was the fact that the charge was recent that weighed heavily in the decision by MLS to deny the applicant's request. Beyond its seriousness, she argued that less than a year after the charge was too soon to allow Mr. Singh to resume working as a Vehicle-For-Hire driver. She submitted that at some unspecified point in the future Mr. Singh could again reapply for a licence, as the charge in and of itself did not permanently render the applicant unable to obtain such a licence in the future.

Balancing the submissions of Ms. Ma regarding the protection of the public interest with the need for Mr. Singh to make a livelihood led the Panel to decide that his application for a Vehicle-for-Hire Driver's Licence should be granted. In particular, the Panel noted that the applicant had been an active taxicab driver in Toronto since 1984, and that the record indicated that Mr. Singh's driving and disciplinary record appeared to be relatively clean over his 30 years of driving a taxi. We noted that the red light camera charges attach to a vehicle's licence plate, and not the driver. We accepted Mr. Singh's testimony that he was not driving the vehicle at these times. Mr. Singh acknowledged his Disobey Lane Light charge, as well as the seriousness of his June 20, 2017 incident.

Although we do not accept his statement that his intoxication was a result of a mixture of medication and alcohol, we noted that he understood that he should not have been drinking and driving. We also accepted his testimony that he has not done so since, nor would he again. The Panel also noted that the applicant had been using a line of credit to pay his expenses, and that he had to provide for his family, including university age children.

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Thus, with but one serious incident in a driving career spanning 30 years, and the submissions of MLS that the applicant could re-apply at some unspecified point in the future, the Panel concluded that on balance the public interest could be protected with the imposition of certain conditions on Mr. Singh's licence. The Panel considered that in this instance, given the particular facts of this situation, if the conviction was not sufficient to render the applicant permanently unable to qualify for a licence, it would be an unfair result to leave the timing of his potential re-application to an unknown and undefined date in the future.

Thus, the Panel orders that:

1. The applicant's Vehicle-For-Hire Driver's Licence shall be issued, with an immediate suspension taking place and lasting until June 20, 2018 – being one year from the date of his criminal charge giving rise to his eventual conviction for careless driving.
2. As of June 20, 2018 Mr. Singh shall be subject to a two year probationary order requiring him to submit annually to the MLS, at his own cost, a copy of his Driver's Abstract and Criminal Background Check.
3. Should Mr. Singh incur new Municipal Code, Criminal Code of Canada or Highway Traffic Act charges of any kind during his period of probation, he will provide immediate notice of same to MLS, and that any new offence(s) could result in this matter being brought back before the Tribunal and considered together with MLS Report 6963.

Originally Signed _____

Keith Cooper, Hearing Panel Chair
Panel Members, Aly N. Alibhai and Daphne Simon concurring

Reference: Minute No. 58/18

Date Signed: May 7, 2018