

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: May 24, 2018

Panel:

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

Re:

Philip Wai Tung Tsui (Report No. 6989)
Applicant for an Entertainer's Licence (Application No B802274)

Counsel for Municipal Licensing and Standards: David Gourlay

Counsel for Applicant: Unrepresented

INTRODUCTION

Mr. Tsui has requested to appear before the Toronto Licensing Tribunal ("Tribunal") to determine whether or not an Entertainer's Licence should be issued after the Municipal Licensing and Standards Division ("MLS") denied his application on January 15, 2018.

Mr. Tsui chose to represent himself in this matter. The hearing proceeded on May 24, 2018.

The Tribunal considered the evidence and submissions presented during the hearing. It was determined that Mr. Tsui's application for an Entertainer's Licence should be denied.

ISSUES

The Tribunal needed to determine:

- whether Mr. Tsui's conduct and criminal history justifies denying an Entertainer's Licence on public safety grounds
- whether Mr. Tsui's conduct and criminal history provide reasonable grounds to believe that, he will not act in accordance with the law and with honesty and integrity, if given an Entertainer's Licence.

CITY'S EVIDENCE

The MLS presented evidence through one witness, Ms. Janet Stoeckl, Manager, Licensing Administrative Services, MLS. Ms. Stoeckl was affirmed prior to giving her testimony. A summary of the relevant evidence presented follows.

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Ms. Stoeckl referred to the MLS Report 6989 (Report). She confirmed that she had reviewed its preparation and can attest to its contents and accuracy. The Report was marked as Exhibit 1.

Mr. Tsui applied for an Entertainer's Licence on January 12, 2018. He submitted a police background check from the Royal Canadian Mounted Police. On January 15, 2018, 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.

In 2010, Mr. Tsui was convicted of two counts of "Theft Under \$5000" and one count of "Fail to Stop at Scene of Accident Involving Bodily Harm." This was the result of an incident that took place in St. Catharines, Ontario in March 2007. Although MLS made a request to the Niagara Regional Police for information, none was forthcoming that could provide the details of the charges and convictions.

In 2015, Mr. Tsui was convicted of a number of offences involving a firearm, for which he also received a custodial sentence. The convictions were for:

- one count "Possession of a Loaded Firearm;"
- one count "Possession of a Firearm Knowing Serial Number has Been Tampered;" and
- two counts of "Careless Storage of a Firearm, Weapon, Prohibited Device or Ammunition."

He was also charged with a number of drug-related offences, and two counts of "Possession of a Schedule 1 Substance," which were ultimately withdrawn in 2015.

These charges and convictions arose out of an incident that took place on February 25, 2013. Ms Stoeckl, referring to the Report, summarized the incident as follows:

Mr. Tsui boarded a Beck Taxi and asked the driver to take him to Billy Bishop Airport. He then left the taxi without paying the full fare. Once at the airport, Mr. Tsui is alleged to have entered into the men's washroom, on the 2nd floor of the terminal, where he hid a .45 calibre Colt automatic handgun, which had been concealed on his person. He then is alleged to have fled on foot, boarded the ferry and hidden amongst parked cars in the parking lot. He was apprehended by police shortly thereafter on the same day. His suitcase was found to have contained a 10 round magazine, containing nine rounds of .45 calibre ammunition and a bag of marijuana. When the firearm was seized from the 2nd floor bathroom, it was found to have the serial numbers removed.

A search warrant of Mr. Tsui's home was then executed. As a result of the search, police found a large cache of weapons. They found an Electroshock Weapon (Taser), brass knuckles, a butterfly knife, pepper spray, plastic explosive devices, a handgun, a large capacity magazine for an assault rifle and a variety of loose ammunition (for a handgun and assault rifle). Crystal methamphetamine and GHB [Gamma Hydroxybutyrate] were also found. Mr. Tsui was detained and, upon conviction, was incarcerated.

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APPLICANT'S EVIDENCE

Mr. Tsui told the panel that he regrets his past so much it has caused him to turn his life around. Regarding the events that took place on February 25, 2013, he admits that he was under the influence of drugs and doesn't remember why he behaved as he did. He remembers being in fear from something and thinking he had to get away but he couldn't explain it any further. He couldn't understand what he did that day. He hadn't slept in days leading up to the incident. He did say that the handgun he had on his person was not loaded, and that the police were mistaken in their report. He also said that there was only water, not GHB, in the vials that police seized at his home.

Mr. Tsui was detained and then incarcerated for 2 years and 8 months. He was released in January 2016. During his incarceration, Mr. Tsui said that he turned his life around. He told the panel that he completed treatment programs for addiction and is now clean and free from drug use. He told the panel that, during his incarceration, he found Christ, read the Bible, and took a lot of programs and courses to better himself.

Since his release from the correctional centre, he completed his GED high school equivalency, took a bartending training course and received his Smart Serve licence. He has been working as a bartender for catered events and earning about \$600 a month. He is still clean and told the panel he doesn't even smoke cigarettes. He is currently on probation until January 2019 and reports periodically to his probation officer. He goes to the gym regularly and is devoted to pursuing a healthy lifestyle.

In answering questions from Mr. Gourlay and the panel members, Mr. Tsui gave the following additional evidence.

On the day of the incident at the airport, he did not have an airline ticket to go anywhere. He admitted his memory is very spotty about the events of that day. He stated that he never usually carried a gun on his person. He did not remove the serial number off the gun. That is how it was when he purchased it.

When asked about the weapons he owned, he stated he had an obsession with the military and that is why he started to collect weapons. He admitted that he obtained the weapons through illegal channels. He said that he didn't intend to use the weapons, only collect them. He told the panel that the plastic explosive device was only dangerous if used with a blasting cap, otherwise it's not dangerous on its own. He said he started collecting weapons around the age of 16 or 17. His first weapon that he owned was a butterfly knife. He told the panel that he has no more weapons in his possession, as they were confiscated and he will never go back to collecting them, as he is under a lifetime ban due to the convictions.

Regarding his charges of possessing drugs, he denied that he had GHB or cocaine at his home, but admitted to having the bag of marijuana in his suitcase and methamphetamine at home. Mr. Tsui stated that it was water, not GHB, in the vials. He admitted to having taken GHB before. He couldn't explain why he put water into the two vials. He told the panel that he was addicted to methamphetamine for about two years but has been clean for five years. The effect of the addiction and the drug use caused him to act as he did on February 25, 2013. He remembers being afraid and fearing that

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he had to get away from something. The last day he used drugs was the date of his arrest.

When asked about the specifics of the family issue that lead him to start using drugs, he told the panel that it started when his grandmother, a mother figure to him, became ill and he thought she was going to die. He said that she is still alive today.

Mr. Tsui was asked about convictions from 2010 stemming from charges in 2006 and 2007 in St. Catharines. He was convicted of two counts of "Theft Under \$5000." He told the panel that he stole some posters. He could not explain the "Fail to Stop at an Accident" conviction. He told the panel that the owner of the posters must have tried to open the car door while he was driving away from the scene. He didn't remember too much about this incident only to say that he was hanging around with friends that were a bad influence on him and he does not see that friend anymore. In 2006, he was convicted of one count of Theft related to shoplifting from Canadian Tire.

When asked about the different name on the criminal abstract, he said that last year he changed his first name from Leslie to Philip.

When asked about a support system in the community, he told the panel that he did not and does not attend any group support meetings for drug addiction. He also does not currently attend church or belong to a religious group or community. He stated he does not have the same friends he had prior to his incarceration. He has new friends now. He likes working out at the gym every day and living a healthy lifestyle. He is adamant that he will never be tempted to use drugs again. He wants to move forward in his life not backward.

Mr. Tsui was asked why he wanted to obtain an Entertainer's Licence and whether he had plans or a job offer to work as an adult entertainer if a licence were granted. He stated that he didn't have a job offer and that basically he wanted to try it out to see if he liked it. He wasn't concerned about working in an environment that may tempt him to use drugs. He said that if he saw some illegal activity taking place at the nightclub while working as an entertainer, he would inform the manager

SUBMISSIONS

Mr. Gourlay for MLS

Mr. Gourlay submitted that the MLS is relying on section 545-4 of the *Toronto Municipal Code*, which sets out the grounds for denying a licence. He submitted that there is a reasonable belief that the applicant will not conduct himself with honesty and integrity and would endanger the public safety if he was granted a licence.

Mr. Gourlay submitted that the incident that took place at the Billy Bishop Airport showed reckless and dangerous conduct on the part of Mr. Tsui and was a significant risk to the public safety. A search of Mr. Tsui's home, at the time of his arrest, revealed that he had access to a large amount of dangerous weapons.

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Mr. Tsui's sentence included a lifetime weapons prohibition order. This provides some assurance that he won't own them again but the issue of drug use is one that remains a concern. Mr. Gourlay submitted that it is admirable that Mr. Tsui was able to quit his drug addiction while incarcerated. However, he noted that Mr. Tsui does not currently have a support system in place or any therapeutic structure to ensure that he will not relapse his use of drugs. He will be on probation until January 2019 but once he stops meeting with his probation officer, there will be one less check on him for signs of drug use. Mr. Tsui says he has embraced religion but Mr. Gourlay submitted that there is no support system, such as regular church attendance or being a part of a religious community, to provide additional support to Mr. Tsui.

Mr. Gourlay submitted that Mr. Tsui's descriptions of the events in St. Catharines in 2006 and 2007 don't add up. Though somewhat dated, these honesty offences are still of concern. There are significant gaps in Mr. Tsui's memory and he was unable to explain why he was convicted of failing to stop at the scene of an accident.

With regard to the Entertainer's Licence, Mr. Gourlay submitted that this type of licence would put him in contact with the public in a different way than his current job working catered events. He would be working well past 1:00 am in a night club which may likely present the type of environment or temptation that would not be a good fit with his history of drug addiction.

In short, not enough time has passed since Mr. Tsui's release from incarceration to give an assurance that Mr. Tsui won't go back to his old ways and pose a danger to the public. As such, the application for an Entertainer's Licence should be denied.

Mr. Tsui

Mr. Tsui told the panel that he has been clean since he was put in jail and has not gone back to using drugs since he was released. He is certain that he will not be tempted to go back to his old ways no matter the environment as he knows other people who went right back to using soon after leaving jail. He doesn't need drugs anymore. He enjoys a healthy lifestyle of working out every day. He doesn't even smoke cigarettes anymore and he drinks alcohol infrequently. If a cigarette can't tempt him, he is confident nothing else can. He wants to give working as an adult entertainer a try, to see if he will like it.

DECISION

The Tribunal considered the evidence as presented in the MLS Report, the testimony of the MLS witness and Mr. Tsui's testimony, including answers to the questions posed to him by MLS counsel and the panel members.

In considering whether to grant Mr. Tsui an Entertainer's Licence, the panel had to consider section 545-4 of the *Municipal Code* (See *Appendix A*). Briefly paraphrased, this section states that a person is entitled to a renewal of their license except under three scenarios. MLS can refuse to renew a license where there are "reasonable grounds for belief":

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- (a) That the applicant has not, or will not, carry on their business in accordance with the law and “with integrity and honesty”;
- (b) That the applicant has breached or will breach the Code or any other law; or
- (c) That the applicant has endangered or will endanger “the health or safety” of the public.

MLS submitted that the Tribunal should refuse to grant Mr. Tsui’s licence on all three grounds. The panel agreed that the circumstances surrounding Mr. Tsui’s convictions provide reasonable grounds to believe that granting a licence, at this time, may pose a danger to public safety and that there is a reasonable belief that Mr. Tsui may not act with honesty and integrity or within the confines of the law, if granted an Entertainer’s Licence.

The panel had many factors to consider. On the one hand, Mr. Tsui showed remorse for his past actions and a determination to change his life. Mr. Tsui explained that, having served his custodial sentence, he has emerged a changed man. He no longer uses drugs, has quit smoking and embraces a healthy lifestyle. He has taken courses to better himself. He received his high school diploma equivalent, his Smart Serve licence, and participated in several treatment programs while in the correctional centre. He also underwent a religious conversion while incarcerated and reads the Bible. These are somewhat reassuring factors and show that Mr. Tsui is on the right track to turning his life around.

On the other hand, the events for which he was convicted in 2015 are extremely concerning. To show up at an airport with a gun and ammunition is alarming behavior, to say the least.

His vague explanation and lapsed memory of this incident, saying only that he was under the influence of crystal methamphetamine, is also difficult to grasp. The type and amount of weapons and drugs found in Mr. Tsui’s home, on his person and in his suitcase is indeed very disturbing. The panel recognized that the scene at the airport could have led to a very different outcome had Mr. Tsui not been apprehended so quickly. The circumstances could have resulted in a situation that seriously endangered the lives and safety of the public.

The panel also looked at the circumstances surrounding the criminal convictions from events that took place in 2006 and 2007. We were unable to reconcile Mr. Tsui’s explanations of those events. He could not explain the “Failing to Stop at an Accident” charge and his explanation regarding the Theft charges was vague. The 2007 offence and subsequent convictions were not minor, in the panel’s view, given that Mr. Tsui received a custodial sentence. His version of the events left the panel questioning what really happened. The panel had concerns that Mr. Tsui was not being completely candid as at times his explanations were vague and evasive. On the whole, his description of events just didn’t add up. Unfortunately, we did not have the Niagara Regional Police report for reference.

We noted that the environment where an adult entertainer works involves late nights at a nightclub and Mr. Tsui could be exposed to excessive alcohol consumption and/or drug use. Mr. Tsui said that nothing would tempt him to use drugs again. He said that if he saw any illegal activity at the club he would immediately report it to the Manager. This is

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either an extremely naïve approach or Mr. Tsui is simply telling the panel what he thinks we want to hear.

In fact, much of what Mr. Tsui described was hard to believe. The panel did not feel that he was always being straightforward. For example, when asked about the large assortment of weapons found in his home, he said that he never intended to use them but that it was simply a collection as he had an obsession with the military. However, brass knuckles, pepper spray, and a butterfly knife are not typically associated with the military. We questioned whether there was another reason that he had a need for these weapons - a reason he did not want to share with the panel.

The panel noted that Mr. Tsui did not have a job offer to work in a specific night club, nor did he provide any reason for wanting to pursue a career as an entertainer. In fact, he didn't know much about the industry, had not researched it and wasn't even sure if it was right for him.

How would Mr. Tsui avoid returning to his old ways if he came across illicit drugs while working as an entertainer? Did he have enough supports in place to provide an assurance that he would stay out of legal trouble? The panel was not reassured that Mr. Tsui would be able to maintain his changed ways while working in such an environment and without a strong support system in place.

Given Mr. Tsui's behaviour in February 2013 while under the influence of drugs and the risk his conduct posed to public safety, the panel agreed with the MLS submission that not enough time had passed since his 2016 release to provide an assurance into how Mr. Tsui will conduct himself in an environment that may not be best suited for him.

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 to:

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

The panel formed the view that there was a very real risk that Mr. Tsui may not be able to maintain his sobriety and lawful lifestyle, given his lack of supports, and we were very concerned that when under the influence of drugs, Mr. Tsui's behaviour was extreme and dangerous. Thus, we determined that the risk to the public, should Mr. Tsui revert to his old ways, far outweighed his need to earn a livelihood. Mr. Tsui is currently employed and earning a wage. He is a young man with his whole future ahead of him. He is determined to stay clean and move forward putting his past behind him. In that vein, there are other more suitable employment opportunities that would not bring him into contact with temptations that could hamper the progress he has made so far.

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The panel decided that, in all the circumstances, an Entertainer's Licence should be denied.

Originally Signed

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

Reference: Minute No. 90/18

Date Signed: June 20, 2018