

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

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**Date of Hearing:** July 26, 2018

**Panel:** Melina Laverty, Hearing Panel Chair; Keith Cooper and Daphne Simon, Members

**Re:** Imran Malik (Report No. 7012)  
Applicant for a Vehicle-For-Hire Driver's Licence (Application No. B812614)

**Counsel for Municipal Licensing and Standards:** Mr. Matthew Cornett

**Counsel for Applicant:** Unrepresented

**Urdu Interpreter:** Ms. Zaheda Khan

### **SUMMARY**

On March 1, 2018, Mr. Malik submitted an application for a Vehicle-For-Hire Driver's Licence. On March 7, Municipal Licensing and Standards (MLS) sent Mr. Malik a letter outlining the grounds for denial of a licence. On March 22, Mr. Malik requested a hearing before the Toronto Licensing Tribunal (the Tribunal or TLT).

After hearing the evidence and submissions of the parties, the Tribunal denied to issue a Vehicle-For-Hire Driver's Licence to Mr. Malik.

### **INTRODUCTION**

1. On May 27, 2004, Mr. Malik was before the Tribunal regarding his application for a Taxicab Driver's Licence. At that time, the Tribunal denied to issue a licence. Subsequently, on February 23, 2006, MLS issued a Taxicab Driver's Licence to Mr. Malik.
2. On October 10, 2013, the Tribunal renewed Mr. Malik's Taxicab Driver's Licence with conditions, including a four-day suspension, and a three-year probation.
3. On July 21, 2016, the Tribunal held a hearing and revoked Mr. Malik's Taxicab Driver's Licence.
4. On March 1, 2018, Mr. Malik submitted an application for a Vehicle-For-Hire Driver's Licence. On March 7, MLS sent Mr. Malik a letter outlining the grounds for denial of a licence. On March 22, Mr. Malik requested a Tribunal hearing.
5. According to MLS records, since the last Tribunal hearing on July 21, 2016, Mr. Malik has incurred new charges and convictions under the Highway Traffic Act (HTA), and has a new conviction under the Controlled Drugs and Substances Act (CDSA).

July 26, 2018

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## ISSUE

6. The issue before the Tribunal is whether Mr. Malik's conduct (as evidenced by his record of charges and/or convictions under the HTA, CDSA, Criminal Code of Canada [CC], and the City of Toronto bylaw) provides reasonable grounds to believe that:
  - i. Mr. Malik will not operate a Vehicle-For-Hire in accordance with law, and with honesty and integrity; or
  - ii. his operation of a Vehicle-For-Hire has resulted or will result in a breach of the law; or
  - iii. his operation of a Vehicle-For-Hire would infringe the rights of other members of the public or endanger public health and safety.

## CITY'S EVIDENCE

Mr. Cornett called Ms Andrea DiMatteo, Acting Supervisor MLS, as a witness. Ms DiMatteo was affirmed and testified as follows:

7. She is familiar with MLS Report No. 7012, which was entered as Exhibit 1 ("the report"). MLS ordered a three-year driver record for Mr. Malik, on July 11, 2018, and it was marked as Exhibit 2 ("2018 driver's abstract").
8. On May 27, 2004, the TLT denied to issue a Taxicab Driver's Licence to Mr. Malik, noting that he had been charged with three bylaw offences (operating a taxi without a licence, without a photo identification, and with no trip record), even though MLS had never issued him a licence.
9. On February 23, 2006, MLS issued him a Taxicab Driver's Licence. Subsequently, MLS had concerns as Mr. Malik had incurred numerous HTA and bylaw charges and 14 of them were in a taxi, and requested a TLT hearing. The TLT imposed conditions on that licence on October 10, 2013, as a result of a proposed resolution. The TLT revoked Mr. Malik's licence on July 21, 2016. The TLT reasons show that Mr. Malik did not notify MLS of charges or convictions in writing as required by the conditions of his licence. Mr. Malik had also incurred additional HTA and CC charges, and HTA convictions.
10. Since the July 2016 hearing, Mr. Malik has had two charges under the HTA, leading to one conviction. He was driving a taxi when charged and after his licence was revoked (p. 20 of the report).
11. Before the May 2004 TLT hearing, Mr. Malik had three bylaw charges, and one conviction (p. 27 of the report).
12. Before the October 2013 TLT hearing, Mr. Malik had 22 charges under the HTA, and 16 convictions (p. 28-29 of the report). Nineteen of these charges occurred when he was driving a taxi. Mr. Malik also had 12 bylaw and two CC charges. Thirteen of these charges were associated with driving a taxi. Mr. Malik was convicted of four offences (p. 30-31 of the report).

July 26, 2018

13. Before the July 2016 TLT hearing, there were 19 charges; three under the CDSA, one under the CC, 12 under the HTA, two under the bylaw, and one under the Compulsory Automobile Insurance Act (CAIA) (p. 32-33 of the report).
14. It came to the attention of MLS that information on p. 32 of the report, lines #3 to 6, related to an incident on July 24, 2015, was incorrect. MLS staff contacted the officer in charge, who informed them that Mr. Malik pled guilty to one offence. She explained the chart is created from ICON (Integrated Courts Offences Network) data, which is not updated when matters proceed at the Superior Court of Justice. The ICON data shows a conviction on count #5 but the information is incomplete. Superior Court staff emailed MLS a copy of Mr. Malik's election for a guilty plea which shows that he was not guilty of trafficking a controlled substance, but pled guilty to the lesser included offence of possession of a controlled substance on count #5. The document shows Mr. Malik was fined \$500, issued a forfeiture order, and counts #1, 4, and 6 were withdrawn.
15. She reviewed the details outlined in the occurrence report for the charges on July 24, 2015. An undercover officer arranged to purchase crack cocaine. The person said they would contact the supplier who would arrive in a taxi driven by an associate. Shortly after the call to the supplier, a Beck taxi arrived, the undercover officer gave \$40, which was attended to the person in the front passenger seat of the taxi. The front passenger handed the person the crack cocaine (0.21 g), which was then given to the undercover officer. After the transaction, the police surveillance team arrested the front passenger. During the arrest, Mr. Malik reversed the taxi striking the two undercover officers attempting the arrest. Mr. Malik was also arrested, and during the arrest discarded a large quantity of cocaine (1.77 g) onto the ground. Additional cocaine was found in the centre console of the taxi (0.1 g).
16. She noted that Mr. Malik's 2018 driver's abstract show three convictions: November 2015 conviction for speeding 69 km/h in a 50 km/h zone; March 2016 conviction for speeding 105 km/h in 90 km/h zone, and April 2016 conviction for no driver's licence or improper class of licence.

Mr. Cornett did not call any other witnesses.

## **APPLICANT'S EVIDENCE**

Mr. Malik was asked if he had any witnesses. Mr. Malik then asked the Tribunal if his employer could testify on his behalf by telephone. When asked why his employer could not attend today given Mr. Malik's awareness of the hearing date and time, Mr. Malik explained that his employer "was a very busy man." The Panel members explained that witnesses are expected to attend in person, so that members may observe their behaviour during their testimony and cross-examination, unless there are exceptional circumstances as to why the witness could not attend. The Panel members determined that the witness could not testify by telephone, as requested. The Panel members queried if his employer provided any written supporting letter, to which Mr. Malik stated he did not have such a letter.

Mr. Malik was affirmed and testified as follows:

17. Since his licence was revoked in 2016, he has only been able to work a few days here and there.

July 26, 2018

18. He promises that he will not get any more tickets. He was driving a taxi 12 hours a day and so he did get tickets, but they were for "little things," like not wearing a seat belt. He now realizes he has received many tickets for things like not wearing his seatbelt, but now sitting at home, he realizes he should not do that.
19. In 2013, when his licence was put on probation, he was reporting tickets to MLS. At the time, he had been told to report the tickets within three business days. He knew this, but sometimes three days was not enough time. He reported the tickets either by calling or leaving a letter in the mailbox for MLS.
20. Regarding the drug charges, he is just a cab driver, and how is he to know if the person who gets into the taxi is a drug dealer. On July 24, when the police charged him, he could not see what the passenger gave or received because of the window's position. He brought the passenger to the grocery store and waited while they went inside. The passenger returned and a girl appeared. Another car was in front of the taxi and moving towards it, and blocked the way. A person got out of that car. The passenger didn't know the person, and that person started hitting them hard. There was blood coming out of his face and nose, and so he started to back up the taxi to make the person stop hitting the passenger. He believed that it was an enemy.
21. He didn't know that the person was an undercover police officer. It was the first time he saw the police hit someone like that. He has never seen something like that since coming to Canada when he was 15 years old. He would not have backed the taxi up had he known it was the police. He wanted the person to stop hitting the passenger. He tried to move the car back, and several police came with guns, and yelled, "Don't move, we are the cops." He was arrested. This is what happened. He was charged for many things. He did not know the person with the drugs.
22. He said that everyone knows when the police arrive the drug dealer is going to drop the drugs. They don't keep the drugs with them.
23. Police asked him to get out of the car, and the police held him down with a gun to his head. Another officer hit him. They hit him badly because they did not like that he had moved the car back. When he requested the police obtain the camera footage from the mall, they never got it. The police knew he was not at fault, and they did not want him to be a witness.
24. The passenger was charged, and went to jail. He had four charges, yet received no jail sentence. If he was also at fault, he would not have had the charges dropped.
25. Since 2006, he has been supporting his family (his mother, wife and five children). He is honest and wants to earn money honestly for his family. Sometimes customers forget items in his taxi, and he returns them. Once a customer left clothes, shoes and money in his trunk. The customer was so happy when he returned the items, he gave him \$100. He also told police about some things, and when he did the police told him, why are you telling us this, as that person might kill you.
26. Staying at home too long causes physical problems. He has gained weight from sitting at home. It is difficult for him to do any other job as he has shoulder and back pain.
27. Before he was licensed in 2006, he delivered pizza. He does not know how to do any other type of job [aside from driving].

July 26, 2018

28. He has been married 15 years. He needs this licence to bring his mother to the doctor, and to help his wife with the children. If he is given the licence, he would do his best and not do anything wrong as he needs to support his family.

Mr. Cornett cross-examined Mr. Malik and he testified as follows:

29. Over the last two and a half years, he has only worked for a few weeks. He would pick up cars and bring them to the garage at Warden and Danforth. This was occasional work. He mostly picked up personal vehicles and some taxis.

30. Currently they rely on the child tax benefit, money from his brother and credit cards to survive. His family lives at his brother's house and he pays rent (\$1,300 per month) as well as hydro and gas.

31. Before 2006, he delivered pizza. Since losing his licence he worked one day at a pizzeria, delivering pizzas and making dough. But he could not do the job as he needed to go up and down the stairs, and could not do this, because of his weight and the pain in his shoulder and back. Wherever he has looked for a job delivering pizza, he has been asked to make pizza as well, and this is too difficult for him.

32. He has also tried for a truck driver's licence, but could not afford to pay for it (it would have cost \$7,000). He currently has a "G" and "Z" licence but requires an "A" licence to drive a truck. He failed the road test, and so he did not get the "A" licence. He now has to pay \$7,000 to do the test again.

33. Regarding the September 2016 charge in a taxi of "improper use turn signal," he was not driving the taxi. He went to pick up a car. The roof light was not working. Regarding the January 2017 charge in a taxi of "fail to use seatbelt," it was the same thing. He was also picking up a car and not driving the taxi. The roof light was not working.

34. When asked about the July 2015 incident leading to the drug charges and asked if he knew the passenger, Mr. Malik responded that "he doesn't recall his name." Some passengers sit in the front seat, and he has no control over where they sit. He did not ask the passenger to pay for the ride, when they said they were going to the store. If the passenger tells him they are going to the store, why ask for payment. He sat in the car. He saw the passenger holding a CD, and did not know what he was given. When a person approached the car with money, he didn't do anything. He saw the person was holding a \$100 bill, but did not know where they got it from. When the police came and started to hit the passenger, he thought that it was his enemies coming to rob him.

35. His charges were dropped. If he had 1.7 g (of crack cocaine), the police wouldn't have dropped the charge. He asked the police to take his taxi's camera to show he did not put cocaine in the console, but they never got the footage. The police charged him as they did not want him to be a witness to the beating of the passenger. It was the drug dealer that dropped the cocaine in the car.

July 26, 2018

Panel members questioned Mr. Malik and he testified as follows:

36. When asked about the September 2016 and January 2017 bylaw charges and where they occurred, Mr. Malik remembered the 2016 charge was in the morning and he was on King St. When asked why he was in the same taxi both times, he said he didn't realize it. There was no light on the taxi either time.
37. In terms of the number of weeks he worked, he works occasionally, whenever he needs someone to pick up a car. It can be for a week, and then again for 10 days. He has not had steady work.

Mr. Malik also called his wife as a witness. She testified that:

38. She would like the Tribunal to give her husband the licence because they have five children to support and the child benefits are not enough.

Mr. Malik also requested to call a friend as a witness at this time. The Tribunal denied the request as the witness had been present for the whole hearing, and had we recognized he intended to call this person earlier, we would have excluded them from the hearing room. Though the nature of the relationship between the proposed witness and the friend was not identified, it appeared they would provide evidence as to Mr. Malik's good character.

## **CITY'S SUBMISSIONS**

In his closing submissions, Mr. Cornett, on behalf of MLS, submitted that:

39. The Tribunal should deny the licence. In 2004, the TLT denied to issue a licence based on three bylaw charges and when Mr. Malik was charged he produced a photocopied licence, yet when MLS searched its record Mr. Malik had never been licensed before.
40. MLS requested a hearing when Mr. Malik renewed his licence, due to multiple HTA and bylaw charges and convictions; 14 of which occurred in taxis. In October 2013, the TLT accepted a proposed resolution between MLS and Mr. Malik, that included his licence be suspended for four days, put on probation for three years, and during the probation, Mr. Malik had to report any new charges and convictions within three days.
41. Mr. Malik was before the TLT again in July 2016, and that day the Tribunal revoked his licence, noting that there was compelling evidence Mr. Malik has not carried on his business of driving a taxi with honesty and integrity, and that Mr. Malik had other means of support, including having worked in a pizzeria and a factory.
42. MLS believes all its concerns with Mr. Malik raised at the prior three appearances before the Tribunal continue to apply today. In addition, as reviewed at today's hearing in detail, MLS has concerns about two new HTA charges, one of which led to a conviction, and the four charges under the CDSA which led to one conviction.
43. The two new HTA charges incurred by Mr. Malik both occurred in the same taxi. Though Mr. Malik testified that he was picking up taxis to be repaired at a garage, in MLS's view, Mr. Malik's story is not truthful and he was more likely driving a taxi and transporting passengers. This behaviour would be consistent with what occurred back in 2003, when Mr. Malik was driving a taxi without a valid MLS licence.

July 26, 2018

44. Regarding the charges under the CDSA, MLS notes that the quantities of crack-cocaine involved were large enough to support charges of possession for the purposes of trafficking. Though Mr. Malik pled guilty to the lesser included offence of possession under the CDSA, there was an obligation on the Crown as part of accepting a guilty plea, to ensure that Mr. Malik's actions and intent had constituted the offence for which he pled guilty.
45. MLS stated that Mr. Malik's explanation for what occurred that day with regard to the passenger and the drug dealing is not plausible. He told the Tribunal he had no idea what was happening, when money and packages were exchanged through the front passenger window of the taxi. Mr. Malik's claims that the passenger had planted drugs in his taxi console are not believable.
46. MLS's position is that the TLT should accept Mr. Malik's conviction under the CDSA as fact.
47. MLS submits that the TLT should deny to issue Mr. Malik a licence. The same concerns that led the TLT to revoke Mr. Malik's licence in July 2016 continue today, but now there is added evidence of ongoing concerns about Mr. Malik's ability to conduct himself in accordance with the law, and with honesty and integrity. MLS notes that it is clear Mr. Malik will not obey the law, based on his prior charges and convictions under the HTA, and bylaw, many of which occurred in a taxi. In addition, Mr. Malik was charged and convicted under the CDSA, and Mr. Malik used his taxi to facilitate a crime.
48. Mr. Malik has also told the Tribunal that he has other means to make a living. Mr. Malik worked at a garage picking up and delivering cars between September 2016 and January 2017. Mr. Malik has also delivered pizzas.

## **APPLICANT'S SUBMISSIONS**

Mr. Malik submitted that:

49. What MLS is saying is not true. He never said he worked for several weeks. He initially worked straight for one week at the garage and then did not work for a long time, and was called again to work a few days here and there. He may have worked 15 to 20 days in the last two years. He never worked for three months in a row at the garage.
50. The two times that he got a ticket in the same taxi, he did not know he got the tickets in the same car. He was pulled over twice when he was picking up 'foam' that he uses for his back when driving. In the last two years, he has picked up a car to deliver to the garage 10 to 15 times.
51. He was not convicted for drug trafficking. The criminal charges were his bad luck. He did not do anything that day. He saw the police beat up the person, and that is why he did not go to jail.
52. He really needs the licence to support his family. He can hardly survive and has many debts to his brother, friends and credit cards.

July 26, 2018

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## ANALYSIS

53. Section 546-4 A of the Toronto Municipal Code sets out the grounds for denying renewal of a licence. Having weighed the evidence, the Tribunal is satisfied that those grounds have been met, and there are reasonable grounds to believe that Mr. Malik will not operate his business in accordance with the law, or with honesty and integrity; that the carrying on of his business has resulted, or will result, in a breach of this chapter or any other law; and that Mr. Malik's operation of his business has infringed or would infringe the rights of the public, and has or would endanger the health and safety of public.
54. Mr. Malik was licensed by MLS to drive a taxi for approximately 10 years. Not only has Mr. Malik incurred many charges and convictions in a relatively short time, the majority of them have occurred in a taxi. Mr. Malik also incurred bylaw charges in a taxi before being licensed by MLS, and HTA charges in a taxi after his Taxicab Driver's Licence was revoked.
55. Since October 2003, Mr. Malik has had:
- a. 17 charges and five convictions under the bylaw;
  - b. 36 charges and 24 convictions under the HTA;
  - c. three charges and one conviction under the CDSA;
  - d. one charge under the CAIA; and
  - e. three CC charges.
56. While Mr. Malik maintained in his testimony that he has had many charges and/or convictions for minor things while driving, like not wearing a seatbelt, the record shows otherwise. Among the more serious driving charges incurred by Mr. Malik are a 2008 dangerous operation of a motor vehicle charge under the CC, and a 2010 charge of careless driving under the HTA. Though neither resulted in a conviction, these are not minor charges.
57. In addition, Mr. Malik has numerous speeding charges, almost all of which occurred in a taxi, and in several cases he was driving 30-50 km/h over the posted limit. This concerning record of charges and convictions, many of which were connected to the operation of a taxi, satisfied the Tribunal that there are reasonable grounds to belief that Mr. Malik will not operate his taxi in accordance with the law, and that his operation of a taxi has resulted in a breach of the law, and that Mr. Malik's operating of a taxi would endanger the public.
58. The Tribunal observed that Mr. Malik did not seem to recognize that he has a poor driving record that goes well beyond "not wearing his seatbelt," and thus in our view, he failed to take full responsibility for his past conduct. This is consistent with the findings at the 2016 Tribunal hearing, where Mr. Malik testified that his convictions were minor, that he never hit a pedestrian and does not keep his eye on the speedometer.
59. The Tribunal also had concerns about Mr. Malik's honesty and integrity. Even before obtaining an MLS licence, Mr. Malik was charged for bylaw offences in 2003 while driving a taxi, at the time, producing a false photocopied MLS licence. Most recently, in September 2016 and January 2017, after his taxi driver's licence was revoked, Mr. Malik was charged with HTA offences in a taxi. Under cross-examination, Mr. Malik told the Tribunal he hadn't realized he was in the same taxi, when he was charged on these



July 26, 2018

occasions. Both times he claimed he was picking up the taxi to bring to the garage, and both times the roof light on the taxi was not working. The Tribunal found his explanation to lack credibility, both in the fact he didn't remember it was the same taxi, and the similarity of his stories. On both occasions he was in a different part of the city than where the garage was located.

60. In our view, the circumstances of the 2003 bylaw charges and conviction raise questions not only about Mr. Malik's ability to abide by the law, but also his honesty and integrity, in that he produced a fake taxi licence. Mr. Malik's similar explanation for the HTA charges in a taxi in 2016 and 2017 did not seem credible, and left the Tribunal with the impression that Mr. Malik continued to drive a taxi occasionally in spite of his licence being revoked.
61. The Tribunal had concerns about Mr. Malik's testimony, with respect to the July 2015 incident of drug dealing in the taxi, and whether his recollection of events was credible or reliable. We agree, as submitted by Mr. Cornett, that the Tribunal must accept Mr. Malik's conviction for possession of a Schedule 1 substance under the CDSA as fact. To support a conviction for possession, one must have knowledge of the substance (in this case, crack cocaine) possessed. Yet in his testimony to the Tribunal, Mr. Malik's story was that he had no idea what was going on, and the only reason he was found in possession of any substance was because the drug dealer dropped the drugs when the police appeared (even though Mr. Malik also told the Tribunal the police were undercover). Mr. Malik also claims he was charged because he saw the police beating the passenger, and they did not want him to act as a witness.
62. Overall, the Tribunal found aspects of Mr. Malik's version of events lacked plausibility. It seemed inconceivable that he had no knowledge that the passenger was exchanging drugs for money when it occurred in the front seat through the window next to him. Mr. Malik claims he saw the \$100 bill, but could not see what was given because of the position of the window. Mr. Malik's story that the drug dealer dropped the drugs and that is why he was found to have them, does not fit with the fact some drugs were also found in the taxi central console, or that the plain clothes officers were not immediately recognizable as a police officer. It is hard to believe a passenger could conceal something in the central console without the driver noticing, and it also does not fit with Mr. Malik's story that the passenger only dropped the drugs when the police arrived; certainly there was no opportunity to stow something in a compartment. As noted earlier, ultimately Mr. Malik pled guilty to the offence of possession under the CDSA, and the Tribunal accepts that as fact that Mr. Malik's intent and actions were such to support a conviction.
63. Mr. Malik also told the Tribunal that he did not know it was the police initially, that when the passenger left the car and was being hit he thought it was their enemy. Mr. Malik was concerned, and reversed the taxi. Mr. Malik told the Tribunal he would not have done this if he knew it was the police. The Tribunal had some concern that Mr. Malik thought it appropriate to reverse a car toward people, which is dangerous. Under cross-examination, when asked if he knew the passenger, Mr. Malik replied that he could not recall his name, which seemed an unusual response, and suggests he may in fact have known the passenger. Mr. Malik testified that he knew the passenger went to jail.

July 26, 2018

64. In considering whether to renew, grant or deny a licence, and whether to do so with or without conditions, the Tribunal must balance the protection of the public interest with the need of the applicant or licensee to earn a living, as set out in section 545-3 B (3)(c) of the Toronto Municipal Code.
65. Mr. Malik told the Tribunal that he supports his wife, mother and five children. Mr. Malik's wife also testified that they rely on the Universal Child Tax Benefit to support their five children and it is not enough.
66. Mr. Malik said he did not have skills in any other area. Since losing his taxi licence in July 2016, he had only worked a few weeks here and there, delivering cars to a garage. He worked one day at a pizza parlour, and could not do the work as he had to make dough as well as deliver pizzas. To make dough, he had to climb up and down stairs, and his back and shoulder pain prevented him from doing this kind of work. Mr. Malik did not provide any medical records or a physician's letter to support his claim of ongoing pain. The Tribunal questioned if he had debilitating back pain that interfered with a job making pizza dough, whether he would also encounter difficulty driving a taxi. However, without any supporting medical evidence, the Tribunal had no way of knowing the extent to which his back and shoulder pain would impact his ability to work at a particular job. To date, Mr. Malik was unsuccessful in passing the tests so that he could drive a commercial truck.
67. There is no doubt that Mr. Malik is unable to make ends meet with his current unstable work; however, the Tribunal questioned how much effort Mr. Malik had made to find other work since his taxi licence was revoked. The Tribunal did not accept his testimony that all pizza places require delivery people to make dough. In addition, Mr. Malik is 37 years old, which is relatively young and should he desire he is capable to retrain for other jobs. To that end, Mr. Malik told the Tribunal he was seeking a licence to drive a commercial truck. The 2016 Tribunal decision also noted that Mr. Malik has worked in a factory in the past. Overall the Tribunal concluded that Mr. Malik's livelihood needs did not outweigh our concerns about his conduct and the protection of the public interest.

## **DECISION**

For the reasons set out above:

The Tribunal denies to issue a Vehicle-For-Hire Driver's Licence to Mr. Malik.

Originally Signed

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Melina Laverty, Hearing Panel Chair  
Panel Members, Keith Cooper and Daphne Simon concurring

Reference: Minute No. 132/18

**Date Signed:** August 23, 2018