# ****REASONS FOR DECISION OF THE****

# ****TORONTO LICENSING TRIBUNAL****

## **Date of Hearing:** March 28, 2019

## **Panel:** Victoria Romero, Hearing Panel Chair;

## Melina Laverty and Moira Calderwood, Panel Members

## **Re:** Raja Sinnaraja (Report No. 7108) Applicant for the Renewal of Tow Truck Driver Licence No. D09-4739639

## **Counsel for Municipal Licensing and Standards:** Brennagh Smith

## **Counsel for Applicant:** Unrepresented

## **Tamil Interpreter:** Naga Ramalingam

### **INTRODUCTION**

On October 5, 2018, Mr. Sinnaraja applied to the City of Toronto for the renewal of his Tow Truck Driver’s Licence. Municipal Licensing and Standards (MLS) denied the renewal. Mr. Sinnaraja requested a hearing before the Toronto Licensing Tribunal to determine whether the licence should be renewed.

The matter proceeded to a hearing on March 28, 2019. The Tribunal renewed Mr. Sinnaraja’s Tow Truck Driver’s Licence and imposed conditions on the licence. The Tribunal issued its decision orally at the hearing and these are the written reasons for the decision.

### **CITY'S EVIDENCE**

Mr. Jamil Elannan, Supervisor with MLS, and his staff prepared MLS Report No. 7108, which relates to Mr. Sinnaraja’s application for the renewal of his Tow Truck Driver’s Licence. This 47-page report, plus three ICON updates, was admitted in the hearing as Exhibit 1.

Mr. Elannan was the only witness for MLS. He highlighted documentation in Exhibit 1 relating to Mr. Sinnaraja’s licensing history, including his driving record and his history of charges and convictions under Town of Markham bylaws and the Highway Traffic Act (HTA).

Mr. Sinnaraja did not cross-examine Mr. Elannan.

### **APPLICANT'S EVIDENCE**

The Applicant was affirmed and testified.

In testimony, in cross-examination, and in response to questions from the Panel, Mr. Sinnaraja provided information about his driving record and his personal circumstances, including the following:

Driving Offences;

* Mr. Sinnaraja obtained his Ontario provincial driving licence in May 2015 and his City of Toronto Tow Truck Driver’s Licence on October 4, 2017.
* Regarding the March 2, 2018 voluntary conviction for “Liquor Illegal Place”, related to conduct which took place on February 17, 2018, he explained that friends had alcohol in his personal vehicle. Police notes taken at the time of the incident confirmed that Mr. Sinnaraja was not impaired. Mr. Sinnaraja confirms he does not drink. He is now aware that he cannot have open alcohol bottles in a vehicle.
* Regarding the March 23, 2018 Town of Markham bylaw charge, he had stopped for dinner at a restaurant in the Markham region with his tow truck at the end of his shift. His tow truck only displayed a Toronto plate and the bylaw officer ticketed him in the parking lot. This matter is scheduled to be heard in April 2019.
* Regarding the February 6, 2019 HTA conviction arising out of an April 6, 2018 charge of Operation of a Motor Vehicle while performing a stunt, he was driving a rented vehicle for a trip to Montreal with his friends. He acknowledges driving fast on this occasion. His driving licence was suspended for a week. It was very challenging to go to work as he had no personal vehicle and he worked far away.
* Regarding the August 21, 2018 HTA conviction arising out of the Careless Driving charge laid on June 24, 2018, Mr. Sinnaraja explained that he was driving his tow truck when a vehicle stopped suddenly in front of him. This vehicle was attempting to make a left turn, but stopped to allow a bicycle to proceed through the intersection. As his flat-bed was loaded, he was unable to stop in time and rear ended the vehicle. As his English skills were very poor at the time, he was unable to explain what happened to the police officer. He was sentenced in absentia as he was not aware that he could ask for a trial. He paid the $485 fine as he did not want his licence to be suspended.
* Regarding the September 27, 2018 HTA speeding charge, he was driving at 74 km/hr in a 50 km/hr zone. At the time, his flat-bed was loaded and he was going downhill. He could not control his speed due to the weight. This matter is yet to be tried.
* Regarding the January 8, 2019 HTA speeding charge, his understanding was that he was driving in an 80 km/hr zone. He was charged with driving 91 km/hr in a 60 km/hr zone. He intends to fight this ticket.
* Regarding the February 22, 2019 HTA disobey sign charge, he was delivering machines. The sign said no entry for heavy vehicles, but he had to deliver the item and there was no other way to access the address. This matter has yet to be tried.

Personal Circumstances:

* Mr. Sinnaraja is 25 years old. His highest level of education is Grade 11.
* He is not married and has no children. However, he supports his mother and his sister’s children in Sri Lanka as his sister passed away.
* He came to Canada in December 2014 with the objective to work, make money and support them.
* He has no other family here in Canada.
* He was able to secure part-time employment at a supermarket 10 hours per week at $14 per hour stocking shelves. There are no full-time opportunities at this supermarket. He has also been working at the tow truck workshop of his employer assisting the mechanics in order to earn some money.
* He is aware that his Tow Truck Driver’s Licence is not suspended, but he has chosen not to drive as he was afraid that his licence would be suspended and he needed to find other work.
* As a tow truck driver, he works full-time earning $800 base per week plus commissions.

### **ANALYSIS**

In order to keep his job, Mr. Sinnaraja must continue to hold a valid Tow Truck Driver’s Licence.

This is Mr. Sinnaraja’s first appearance before the Tribunal.

The Municipal Code provides in part:

§ 545-4.C Grounds for denial of licence.

A. An applicant for a licence or for the renewal of a licence, is, subject to the provisions of this chapter, entitled to the licence or renewal, except where:

(a) The conduct of the applicant affords reasonable grounds to believe that the applicant has not carried on, or will not carry on, the business in accordance with law and with integrity and honesty; or

(b) There are reasonable grounds to belief [sic] that the carrying on of the business by the applicant has resulted, or will result, in a breach of this chapter or any law;

or

[...]

(e) 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, their health or safety.

The Tribunal was entirely satisfied on the evidence at the hearing that it has reasonable grounds to believe that the Applicant has not carried on his business in accordance with the law and with integrity and honesty, that his carrying on the business has resulted in a breach of this chapter or any law, and that his carrying on the business has infringed the rights of members of the public and has endangered their health or safety.

In making its decision, the Tribunal relied on the Applicant’s history of driving charges and convictions. The nature of these convictions raises concerns about his ability to drive safely. He has a concerning record of infractions of provincial traffic laws.

It is very important that all Tow Truck Driver’s Licence holders understand that they have to obey the law and that there are consequences for failure to follow them.

However, it appeared to us that Mr. Sinnaraja has shown insight into and remorse for his behaviour. He expressed understanding that he needs to be more aware of the laws and provided reasonable context for the charges that were laid against him. Mr. Sinnaraja testified in a straightforward manner and the Panel found him to be a credible witness. He was afraid about losing his licence. He self-imposed a suspension of his licence by not driving until the attendance at this hearing. He has therefore suffered financial consequences arising out of his actions. It appeared to us that, given his financial situation and the people depending on him, he was very motivated to ensure that his driving record is clean so that he does not put his Tow Truck Driver’s Licence in jeopardy.

We were reassured that this was a case where conditions would help to ensure the Applicant’s compliance with the law and the safety of the public. We also concluded that it was appropriate to impose a 30-day period of suspension as a means of emphasizing to the Applicant the Tribunal’s concerns with his record of driving offences, particularly with those that occurred since he first obtained a municipal licence in October 2017. We would have considered a longer period of suspension had it not been for the Applicant’s self-imposed period of refraining from driving a tow truck, until his Tribunal hearing.

In reaching our decision, we applied the Tribunal’s mandate, set out in part in the Toronto Municipal Code, § 545-3 (3):

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

Given Mr. Sinnaraja’s as-yet developing English language skills and limited working experience, it is unlikely that he would be able to obtain other employment with similar remuneration. His Tow Truck Driver’s Licence is essential for him to earn income and support his dependents back home.

### **DECISION**

The Tow Truck Driver's Licence will be renewed, subject to the following conditions:

(1) All fees, documents and/or any outstanding requirements must be submitted to the satisfaction of MLS within 30 days of the Tribunal hearing, failing which the licence may be cancelled;

(2) Immediately upon being renewed, the Tow Truck Driver's Licence will be suspended for a period of thirty (30) days until April 27, 2019;

(3) Mr. Sinnaraja must provide to the satisfaction of MLS, proof of successful completion of a Ministry-approved driving improvement course. This course must be a minimum of 8 hours duration of which some component must be in-vehicle training. The 30-day suspension (condition 2) will not be lifted if this condition is not met;

(4) Immediately upon being renewed, the Tow Truck Driver's Licence will be placed on probation for a period of four (4) years. During the probationary period, MLS may make additional checks of any driving, criminal, and by-law charges and convictions against Mr. Sinnaraja and conduct other investigations, as appropriate, to assess Mr. Sinnaraja's compliance with the requirements of Chapter 545 of the Municipal Code and other applicable laws;

(5) Prior to each of the next four (4) renewals, Mr. Sinnaraja must provide to MLS an original up-to-date abstract of his driving record;

(6) During the probationary period, if MLS has concerns with any new charges or convictions against Mr. Sinnaraja or any other concerns with respect to the conduct of the licensee, those matters and report no. 7108 and any updating material may be brought back before the Tribunal for a full hearing;

(7) Mr. Sinnaraja must surrender his Tow Truck Driver's Licence and photo ID to MLS by March 29, 2019 by 4:00 pm.

Originally Signed

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Victoria Romero, Hearing Panel Chair

Panel Members, Melina Laverty and Moira Calderwood concurring

Reference: Minute No. 59/19

#### Date Signed: \_\_\_May 15, 2019\_\_\_\_\_