

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

**Date of
Hearing:**

February 28, 2019

Panel:

Melina Laverty, Hearing Panel Chair;
Moira Calderwood and Victoria Romero, Members

Re:

Mohammad Shah Jahan (Report No. 7150)
Applicant for a Vehicle-For-Hire Driver's Licence
(Application No. B878755)

Counsel for Municipal Licensing and Standards:

David Gourlay

Counsel for Applicant:

Unrepresented

SUMMARY

On October 29, 2018, Mr. Jahan submitted an application for a Vehicle-For-Hire Driver's Licence. On November 2, Municipal Licensing and Standards (MLS) sent Mr. Jahan a letter outlining the grounds for denial of a licence. On November 21, Mr. Jahan requested a hearing before the Toronto Licensing Tribunal (the Tribunal or TLT).

After hearing the evidence and submissions of the parties, the Tribunal issued a Vehicle-For-Hire Driver's Licence to Mr. Jahan with conditions.

INTRODUCTION

1. Mr. Jahan held a Taxicab (now Vehicle-For-Hire) Driver's Licence from September 29, 2009 to September 29, 2016. On December 1, 2016, the Tribunal denied the renewal of his licence.
2. Records of the Ministry of the Attorney General's Integrated Court Offences Network (ICON) did not reveal any new charges and convictions registered against Mr. Jahan under the Highway Traffic Act (HTA), the Criminal Code of Canada (CCC), and the Municipal Bylaw (the Bylaw) since the December 1, 2016 hearing.

ISSUE

3. The issue before the Tribunal is whether Mr. Jahan's conduct (as evidenced by his record of charges and/or convictions under the HTA, the CCC and the Bylaw) provides reasonable grounds to believe that:
 - i. Mr. Jahan will not operate a Vehicle-For-Hire in accordance with law, and with integrity and honesty; or

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- ii. Mr. Jahan's operation of a Vehicle-For-Hire has resulted or will result in a breach of the law; or
- iii. Mr. Jahan's operation of a Vehicle-For-Hire has infringed or would infringe the rights of other members of the public, or has endangered or would endanger public health or safety.

CITY'S EVIDENCE

Mr. Gourlay called Ms Olga Kuztelska, Supervisor, MLS, as a witness. Ms Kuztelska was affirmed and testified as follows:

- 7. She is familiar with MLS Report No. 7150, which was entered as Exhibit 1 ("the report").
- 8. Mr. Jahan previously held a Vehicle-For-Hire (then Taxicab) Driver's Licence for seven years beginning on September 29, 2009. There was a Tribunal hearing on December 1, 2016, and the renewal of his licence was denied.
- 9. She noted that Report No. 6492 dated October 23 2015 is included as part of the current report, and was relied on for the 2016 TLT hearing.
- 10. An MLS chart is found on page 4 of the report. It shows that on July 22, 2015, Mr. Jahan was charged with impaired driving under section 253 of the CCC and refuse to provide breath sample under section 254 of the CCC. The chart also shows five convictions under the Bylaw; and two convictions under the HTA.
- 11. An email from PC TriCan Truong of the Toronto Police Service to Mr. Kevin Lurkhur, MLS Bylaw Officer (p. 9 of the report) describes the circumstances leading to the July 2015 charges. On July 22, 2015 at 1:20 am someone called "911" regarding a motorist driving westbound on the Gardiner near Spadina, possibly impaired, weaving on the road, and driving a Beck Taxi. There was a car travelling westbound on the Gardiner and weaving on the roadway.
- 12. Report #6492 (p. 31 of the Report) has an updated MLS chart showing a conviction for impairing driving under section 253 of the CCC with a fine of \$1,950 and that the charge of refuse to provide breath sample was withdrawn.
- 13. Pages 51 to 53 of the report is the Tribunal decision of December 1, 2016 in which the TLT denied to renew Mr. Jahan's licence. In that hearing, several people testified:
 - a. PC Truong gave evidence that he was dispatched on July 22 and caught up with the taxi on the ramp to Hwy #427 from the Gardiner Expressway. He describes trying to stop Mr. Jahan's vehicle in several ways. First, by putting on his emergency lights. Then, by pulling up beside the taxi, and that finally he was able to stop the taxi by pulling in front of it. When Mr. Jahan got out of the car he stumbled and swayed, and almost fell to the ground.

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- b. MLS Officer Lurkhur testified that the day after the arrest, the police notified him, and he attended Mr. Jahan's residence and took his taxi licence away.
 - c. Mr. Jahan testified that he drank two beers, and then was on his way home after an 11-hour shift, and was very tired. He admits he never should have been driving.
14. The December 2016 TLT panel was persuaded by the evidence of the officers and concluded that Mr. Jahan was severely impaired and had consumed more than two beers, noting that PC Truong observed Mr. Jahan stumbling, unsteady on his feet, and very confused when he was transported to the police station.
15. Mr. Jahan submitted a new application to MLS in October 2018. With it, he included a criminal record check showing the August 2016 conviction for impaired driving with the sentence of \$1,500 fine, three-month probation and one-year driving suspension. His three-year driver's abstract also shows a one-year suspension from August 2, 2016 to August 2, 2017.
16. The MLS chart on p. 66-67 of the report was created in December 2016 from ICON data and information from MLS. It includes two convictions under the HTA:
 - a. "improper use of turn signals" with an offence date of May 14, 2016 and conviction registered on November 24, 2016; and
 - b. a charge of "fail to yield to passenger" with an offence date of January 28, 2016, which was withdrawn July 19, 2016.
17. In some cases, the ICON information did not show a taxi plate for charges in the MLS chart on p. 66 and 67 of the report. PC Truong testified at the December 2016 TLT hearing (p. 54 of the report) that Mr. Jahan was driving a taxi on July 22, 2015. Also, in his "will say" statement, Mr. Singh says he rented a taxi to Mr. Jahan (#1346) for the night shift on July 22, 2015 (p. 15 of the report).
18. MLS ordered a three-year driver record for Mr. Jahan, on February 27, 2019, and it was marked as Exhibit 2 ("2019 driver's abstract"). It is the same as the abstract on page 89 of the report that was ordered on December 4, 2018.

Mr. Gourlay did not call any other witnesses.

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APPLICANT'S EVIDENCE

Mr. Jahan was affirmed and testified as follows:

19. He has had bad moments. He regrets them. He has had many hardships since his driver's licence was suspended and after losing his taxicab licence. He is asking for forgiveness and another chance.
20. He has been working odd jobs, including in a pizzeria, construction, and for "Skip the Dishes" meal delivery service.
21. He has three children (an eight-year-old boy and 18-month-old twins), a wife and an 80-year-old father to support.
22. He has no other experience or education than driving. He does not have the money or ability right now to learn a new skill as he needs to support his family.
23. The drinking incident was a "wake-up call." He stopped drinking "cold turkey." He no longer drinks at all. He asks for forgiveness.

Mr. Gourlay cross-examined Mr. Jahan and he testified as follows:

24. He was licensed as a taxi driver from 2009 to 2016. He confirmed that the drinking and driving charge was in July 2015 and he was convicted in August 2016. TLT denied the renewal of his taxi driving licence after a hearing in December 2016.
25. When he was arrested in July 2015, he was driving a taxi. He was going home at the end of his shift. He had bought two beers, parked his car near the Steam Whistle Brewery (Spadina/Bremner) and drank them. He then entered the Gardiner Expressway Westbound at Spadina and was driving toward Kipling.
26. He was tired after having worked all day, but he was able to function. He knew he was in the "risk zone" but did not think he was too drunk to drive. He does not know why the police described his level of drunkenness as "10/10."
27. He last had a drink about three years ago. It was not difficult to stop when he decided to stop drinking alcohol.
28. At the time of the incident, he drank regularly about twice a week. But he did not drink and drive often. He admits he drank and drove a couple of times. (Upon further questioning he then stated he drank and drove a car twice before, and one of those times was the time he was caught.)
29. After he was convicted, he took the Ministry-approved course about drinking and driving. He learned that it is not safe to drink and drive, not for anyone, and it is totally wrong.
30. He knew someone called the police before he got on the highway (in July 2015). That happened about 15 minutes before he was pulled over by the police.

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31. He did not pull over immediately when the police approached him because he was confused, nervous and overwhelmed. In the moment, he forgot that someone had called the police.
32. Yes, he was intoxicated. He refused the sample because he was so nervous. He did not know what was going on. He did fall, but he was tired and had worked a long day. He really does have arthritis in his knees.
33. MLS came to his house the next day and took his licence.
34. After his licence was suspended, he got another ticket. (When shown items #1 and 2 on p. 66 of the report, he later stated that he got two more tickets but understood one was withdrawn.) He says both those incidents were in a taxi. In May 2016 he was turning right from Richmond to Church Street. He did not have a passenger, and he stopped for a second and the police were there and charged him with "improper use of turn signals." In January 2016, he was driving the taxi with a passenger. He did not fail to yield. He was in the intersection making a right turn, when the pedestrian rushed across in front of him. No one was harmed. Someone called the police, but even the pedestrian was not concerned. He believes that is the reason the charge was withdrawn.
35. His licence was reinstated in August 2017. He had an interlock device installed for 1.5 years, but is no longer required to have one. He has a car and drives every day for work delivering meals.
36. He drove a taxi until the day he pled guilty and lost his licence. When his licence was first suspended for three months, he worked in construction (doing labour and roofing). It was tough work. It was difficult to lift heavy objects and he experienced pain in his legs from his arthritis. He has also worked as a cook at a pizza parlour for about one year. He has had various delivery jobs and been a cashier.
37. His current delivery job for "Skip the Dishes" is designed as a part time job. He works four hours a day. There is no option to do it full time. It is not enough money to support his family. The other odd jobs he has done have also not paid enough. With a delivery job, he makes about \$1,500 a month, but driving a taxi he makes about \$3,500 monthly.
38. His wife has not worked since the twins were born. It is unlikely she will take on a job until they are 4.5 years old and start school.
39. When the police pulled him over he was on the ramp to the 427, so he was driving the speed limit on that ramp as you have to slow down. When the police 'gestured to him' at the window, he was not sure why they were doing that. He doesn't remember the police asking him three times to put the car in park.
40. After he was convicted, he may have had one drink and then he stopped drinking completely.

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41. Since losing his taxi licence he has incurred debt of about \$60,000 to \$70,000 which he owes to various financial institutions.

In response to questions from the Tribunal members, Mr. Jahan testified that:

42. He has been in Canada 10 years and has mainly had delivery jobs.
43. He is in debt about \$60,000 to \$70,000, but did not bring credit card or financial statements to show his debts. He owns a house and has a mortgage.
44. He has arthritis, and pain in his bones, but does not take medication for it. He did not bring any medical information to confirm it, but this is what the doctor told him.

CITY'S SUBMISSIONS

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

45. The Tribunal should deny to issue the licence to Mr. Jahan. MLS's main concern is the intoxicated driving incident and that there is still a risk of a similar incident.
46. Mr. Jahan claims he only had two beers that day, but the police who arrested him found him to be severely impaired. Mr. Jahan's story does not make sense. If someone said they were going to call the police when he was driving away, he should not have been surprised when the police pulled him over. When we consider the evidence of the police officer who stopped him as well, the degree of intoxication that day must have been higher than what would occur if he only drank two beers.
47. Mr. Jahan now has a clean record; however, MLS notes that he did get two additional tickets after the drinking and driving incident. He has only been driving without an interlock device for a short time. In MLS's view not enough time has passed yet to assure us that Mr. Jahan will not drink and drive again.
48. This was a very serious offence, and it was only a few years ago. Mr. Jahan was driving while intoxicated on a highway. In MLS's view, the public interest and concerns about public safety should override any livelihood needs. Mr. Jahan's testimony, that he only ever drove a car after drinking twice and one of those times he was caught, strains credibility. There is certainly still concern that this could happen again.
49. Mr. Jahan does have other ways to make a living, and they could also arrange for childcare and his wife could work and also help support the family. In MLS's view, there are other ways they could structure their family life. Mr. Jahan has experience doing deliveries and there are other job prospects with fewer risks than driving a taxi which involves transporting passengers.

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50. It might be with more time and a continued clean record, it will be appropriate to issue Mr. Jahan a licence, as there will be greater assurance that he will not re-offend.

APPLICANT'S SUBMISSIONS

Mr. Jahan submitted that:

51. He made a mistake. He deserves a second chance. If the same thing were to happen again, he would have to be insane. It would be wrong to let this happen again. If the TLT would like, he would write this down and sign it.
52. He would like to have enough income to provide for his family.

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. Jahan will not operate his business in accordance with the law; 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. Jahan'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. The Tribunal takes any drinking and driving conviction seriously. The TLT was troubled that Mr. Jahan was driving a taxi when he was charged with impaired driving. It was concerning that the police officer who arrested him considered him to be extremely intoxicated, and observed his driving to be erratic. However, we also noted that Mr. Jahan was at the end of his shift, had no passenger, and the incident occurred in the early morning hours when there is less traffic on the road.
55. While there is no question drinking and driving is a serious public safety concern, the Panel was persuaded by Mr. Jahan's testimony that he is now aware of the risks of drinking and driving, and realizes it is wrong. Mr. Jahan said he no longer drinks alcohol, and has not had a drink for about three years, and indicated it would be "insane" for him to make the same mistake again. Overall, the Tribunal found Mr. Jahan's testimony to be straightforward and credible. The strength of his testimony alleviated some of our concerns that he would reoffend, and about the risk to public safety.
56. Under s. 546-9 (C)(2), the Tribunal may impose such conditions upon a licence as it considers appropriate and as are authorized by law. Although Mr. Jahan also had two HTA charges in 2016 prior to his conviction and a one-year licence suspension for impaired driving, since his licence was reinstated in August 2017, Mr. Jahan has not incurred any new offences, and has been driving regularly delivering meals. This provides some support that Mr. Jahan has taken the conviction to heart, and now ensures his driving is in accordance with the law. We recognize that not much time has passed since the interlock device was

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removed, and there are still risks that he might make the same mistake again, but in our view conditions on his licence would help reduce this risk.

57. 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 546-8(A)(3)(c) of the Toronto Municipal Code.

58. Overall the Tribunal concluded that Mr. Jahan's livelihood needs tipped the balance in this case. Mr. Jahan currently works part time making deliveries for "Skip the Dishes." He is the sole breadwinner for his wife, three young children and his elderly father. Since losing his taxicab licence, he has been unable to find a reliable job with sufficient pay to support the family; as a result he has gone into debt to make ends meet. The Tribunal recognized that at this stage in life with a young family to support, it would be difficult for Mr. Jahan to take time from working to retrain. Mr. Jahan may also have difficulty doing physical labour work, such as construction, due to his arthritis. It was evident from his testimony that Mr. Jahan requires this licence to provide support for his family who depend on him, and would take this opportunity seriously. We questioned whether it was realistic to think it would be financially advantageous for the family to pay for childcare for two infants plus before and after school care for the older child, so as to allow his wife to work.

59. In the Tribunal's view, any concerns we have about public safety could be satisfied with conditions on Mr. Jahan's taxicab licence.

DECISION

For the reasons set out above:

Mr. Jahan's application is granted and a Vehicle-For-Hire Driver's Licence will be issued, subject to the following conditions:

- (1) All fees, documents and/or any outstanding requirements must be submitted to the satisfaction of Municipal Licensing and Standards within 30 days of the Tribunal hearing, failing which the application may be cancelled;
- (2) Immediately upon being issued, Vehicle-For-Hire Driver's Licence will be placed on probation for a period of three (3) years. Mr. Jahan is advised that during the probationary period, MLS may make additional checks of any driving, criminal, and by-law charges and convictions against Mr. Jahan and conduct other investigations, as appropriate, to assess Mr. Jahan's compliance with the requirements of Chapter 546 of the Municipal Code and other applicable laws;
- (3) Prior to each of the next three (3) renewals of the licence, Mr. Jahan must provide to Municipal Licensing and Standards, at his own expense, an original up-to-date abstract of his Criminal Record and Judicial Matters Check and Driver's Record Abstract;

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- (4) During the probationary period, if Mr. Jahan incurs any alcohol-related charges and/or convictions, he must notify Municipal Licensing and Standards, in writing, within three (3) business days. The notification shall include his MLS licence number and the ticket number(s). Mr. Jahan can notify Municipal Licensing and Standards in one of the following ways:
- a. in person at 850 Coxwell Ave, Toronto, Ontario M4C 5R1;
 - b. via regular mail to: 850 Coxwell Ave, Toronto, Ontario M4C 5R1;
 - c. via email to mlsconditionreporting@toronto.ca or
 - d. via fax at 416-392-3102
- (5) During the probationary period, if Municipal Licensing and Standards has concerns with any new charges or convictions against Mr. Jahan or any other concerns with respect to the conduct of the licensee, those matters and report No. 7150 and any updating material, may be brought back before the Tribunal for a full hearing.

Originally Signed

Melina Lavery, Panel Chair
Panel Members, Moira Calderwood and Victoria Romero concurring

Reference: Minute No. 39/19

Date Signed: March 22, 2019