

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: Faisal Ashraf (Report No. 7144)
Applicant for a Vehicle-For-Hire Driver's Licence
(Application No. B879698)

Counsel for Municipal Licensing and Standards: David Gourlay

Counsel for Applicant: Unrepresented

SUMMARY

On October 31, 2018, Mr. Ashraf submitted an application for a Vehicle-For-Hire Driver's Licence. On November 2, Municipal Licensing and Standards (MLS) sent Mr. Ashraf a letter outlining the grounds for denial of a licence. On November 13, Mr. Ashraf requested a hearing before the Toronto Licensing Tribunal (the Tribunal or TLT).

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

INTRODUCTION

1. Mr. Ashraf held a Taxicab (now Vehicle-For-Hire) Driver's Licence from October 7, 2014 to October 7, 2016. Mr. Ashraf did not submit the renewal payment and the licence expired.
2. Records of the Ministry of the Attorney General's Integrated Court Offences Network (ICON) revealed charges and convictions registered against Mr. Ashraf under the Highway Traffic Act (HTA) and the Criminal Code of Canada (CCC).

ISSUE

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

February 28, 2019

- iii. Mr. Ashraf'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. 7144, which was entered as Exhibit 1 ("the report").
8. Mr. Ashraf applied for a Vehicle-For-Hire Driver's Licence in October 2018 and at that time submitted a police record. The police record showed on August 9, 2016, Mr. Ashraf was convicted under s. 253(1)b of the CCC of driving with a blood alcohol concentration (BAC) over 80 mg (p. 6 of the report) in 100 ml of blood. He was fined \$1,200 and his driver's licence was suspended for one year. Mr. Ashraf was still licensed as a Taxicab Driver with the City when he was convicted. He did not inform MLS of the conviction or the driver's licence suspension.
9. She noted that Mr. Ashraf's driver's abstract ordered on October 31, 2018 (p. 7 and 8 of the report) also shows that he was convicted, under the HTA, of driving holding or using a handheld device on March 21, 2017, and the offence date was May 31, 2016. It shows a further suspension of Mr. Ashraf's driver's licence beginning on August 8, 2017 for failing to complete a remedial program. His licence was reinstated on October 18, 2018.
10. His driver's abstract shows that his licence was suspended from August 9, 2016 to October 18, 2018 or a little over two years. Mr. Ashraf applied for a Vehicle-For-Hire Driver's licence soon after his provincial driver's licence was reinstated.
11. The MLS chart (p. 12 of the report) is based on ICON data (p. 13-19 of the report). It shows that the two convictions (driving with over 80 mg BAC and driving holding a handheld device) on his record occurred while Mr. Ashraf was driving a taxi with a municipal plate.
12. MLS obtained the arrest report from Peel Regional Police (p. 21-22 of the report) which shows the police were called to Century Billiards at 252 Queen Street East in Brampton at 4:11 pm. They pulled over a taxi driving westbound, at Queen and Beech Street. The police detected the odour of alcohol on the driver's breath. Mr. Ashraf, who was the driver, gave a sample which registered fail. He was arrested for "driving over 80." He was taken to the police station and gave two breathalyzer samples; at 5:05 pm, his sample registered 167 mg per 100 ml of blood and at 5:27 pm, his sample registered 155 mg per 200 ml of blood.
13. MLS ordered a three-year driver record for Mr. Ashraf, on February 27, 2019, and it was marked as Exhibit 2 ("2019 driver's abstract"). It is the same as the abstract on pages 7 and 8 of the report. The abstract shows that Mr. Ashraf is required to have an ignition interlock device if he is to drive.

February 28, 2019

Mr. Gourlay did not call any other witnesses.

APPLICANT'S EVIDENCE

Mr. Ashraf was affirmed and testified as follows:

14. His driver's licence has been suspended since 2015. He drove as his father's taxi, as his father owns a taxi plate.
15. When he was arrested, he was taking a friend to a job interview. He went with her to play pool and had drinks with her. As soon as he left the pool hall and the parking lot, he was pulled over and arrested. It was a big mistake.
16. He got married a few months ago. He lives with his father, and currently works part-time at an auto garage doing repairs.

The panel asked Mr. Ashraf some questions and he testified as follows:

17. After his conviction, he completed the first class (Back on Track remedial program) for the court-ordered remediation in 2017. The second part was over the phone, and he finished it about six months ago. He has paid all the fines.
18. He currently works part time only.
19. He has no children.

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

20. The incident/arrest happened in the afternoon around 4:00 pm. It went to trial and he was convicted. The record is correct that his BAC was 167 mg/100ml and then 155 mg/100 ml.
21. That day he did not eat much for breakfast. He had a beer or two. He had two bottles of Heineken. He did not drink anything else. When he was first tested, he might have had beer in his mouth that affected the reading.
22. He drove and left with the same friend he came with. The roof light was not on the roof; it was in the trunk.
23. The first class he did (for the court-ordered remediation) was in person in Aurora. Then six months later they called him and interviewed him.
24. He did not complete the class in time as he did not realize it was mandatory.
25. His provincial driver's licence was initially suspended, after he was charged, then it was reinstated three months later, and he could drive while awaiting his trial. His licence was suspended again after he was convicted.
26. He did not report the initial suspension in August 2015 to MLS.

February 28, 2019

27. He went back to driving a taxi when the first three-month suspension was lifted. He acknowledges that he was charged with driving a handheld device during that time.
28. He is required to have the ignition interlock if he is driving for nine months, and the nine-month requirement starts once he installs the device. He has not installed it yet.
29. He got his licence back in October 2018 but has not been driving since then.
30. He works part time as an auto mechanic and has done so for five to six years. He started around 2011, did the training on the job.
31. He started driving the taxi in 2014 when he was 24 years old.
32. After he was suspended in 2015, he did not have a job but depended on his parents.
33. When his licence was suspended in August 2016, he was unemployed for seven months and eventually got a job at a car wash.
34. He has been working part time for two and a half months at the garage helping a mechanic. He is not a licensed auto mechanic. Before that, he was away for three months to get married abroad. His wife has not yet come to Canada but he still supports her.
35. He currently lives with his parents. His dad drives a taxi and is willing to install the interlock device in the taxi. It is installed on the left side of the steering wheel and you blow in a tube and then can start the car. He is not concerned about the public's view of it. He plans to leave the car running so he only has to blow into the device when he starts the car.
36. He knows that when he was charged with "driving over 80," it was the bartender who called the police that day. He did not think he was visibly intoxicated. He thought he was okay to drive. It was a big mistake. When asked how much he had drunk and replied "one or two beers", he meant "two," but he did not drink more than that. He was in the pool hall about 20 minutes to a half-hour. He did play pool and his friend had a drink too. She was going to a job interview but she did have drinks too.
37. He is aware it is illegal to idle the car under the City bylaw. He can turn off the car and blow into the device again to start it but he won't have to turn the car off very much during a shift.
38. He is unable to get full time hours now as a mechanic as he is not licensed. If he wants to continue in that line of work he would have to pursue further training and education and is considering it.
39. He used to drink a lot before, when he was younger. Now he only drinks once or twice a month. He has realized the major mistake he made over these four years.

February 28, 2019

40. His older brother lives at home too and works. His Dad works but is getting older. His dad would like to pass on the taxi plate to him. His mother does not work.

CITY'S SUBMISSIONS

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

41. The Tribunal should deny the licence. MLS is concerned that Mr. Ashraf was convicted of driving with over 80 BAC while driving a taxi and with a passenger. This reflects Mr. Ashraf's poor judgement.
42. Mr. Ashraf testified he had "two beers," "one or two beers," and "two bottles of beer" and this conflicting testimony about the number of beers he drank that day goes to his credibility. Mr. Ashraf blew twice the legal limit. He was driving on a Sunday afternoon (4:00 pm) in an area where many drivers would be out on the road.
43. Even if we accept that Mr. Ashraf only had two beers, the bartender was concerned enough about Mr. Ashraf's ability to drive that he took the step of calling the police.
44. Mr. Ashraf says he is married now and wants to get his life straight. However, the drinking and driving incident occurred only three and a half years ago, and during much of this time his driving licence was suspended. MLS submits the Tribunal should not give Mr. Ashraf credit for having a clean driving record, as most of the time his licence was suspended. Mr. Ashraf also testified that he has not been driving regularly since his licence was reinstated in October 2018.
45. MLS was also concerned that Mr. Ashraf was charged with a cell phone offence in May 2016 after his charge and licence suspension for drinking and driving.
46. When we consider Mr. Ashraf's personal life he does not have many dependents. There are others in his household who are working, and he has no children to support.
47. This is a situation where concerns about public safety and Mr. Ashraf's compliance with the law outweigh any need to make a living. He has a job, and can make some living without a taxi licence. It seems his desire to drive a taxi is more about convenience since his Dad owns a taxi. Mr. Ashraf is also a young man, and could succeed in other careers by completing further training. Mr. Ashraf only drove a taxi for a short time, and the drinking and driving incident occurred less than a year after he started driving a taxi.
48. MLS was also concerned about public perception in issuing a taxi licence to someone who is required, as part of their driver's licence, to have an interlock device. This may impact public confidence in the licensing system.
49. There are not clear indicators that Mr. Ashraf has moved on and taken responsibility. Though he has a relatively "clean" driving record, aside from the

February 28, 2019

“over 80 BAC” conviction, he does have one other conviction (driving with a handheld device) and most of the time his licence has been suspended.

50. MLS questions whether Mr. Ashraf has taken full responsibility for what he did in that he was driving and blew about double the legal limit. Mr. Ashraf’s testimony that he only drank a small amount (one or two beers) does not fit with the amount he was over the limit. It also does not fit with his testimony that he now doesn’t drink much alcohol but used to drink a lot.
51. Though he is now married, this was very recently (2.5 months ago) and not enough time has passed to show his outlook on life has changed or he has matured. With the passage of time, he may be able to show his life has changed.
52. MLS was also concerned that Mr. Ashraf failed to take the steps required to end his licence suspensions, he should have known what he needed to do and this shows he failed to take responsibility for what he needed to do if he wanted to pursue a driving career.
53. He has a job and could pursue being an auto mechanic full time.

APPLICANT'S SUBMISSIONS

Mr. Ashraf submitted that:

54. He is truly sorry. It was a big mistake. He was young at the time. It has been four years and he has learned a lot.
55. His father is old and hopes that he will be able to transfer the taxi plate to him one day, and be able to drive the taxi now. He would like to provide for his wife and family.
56. He would like to drive a taxi and not for Uber.

ANALYSIS

57. 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. Ashraf will not operate his business in accordance with the law, or with integrity and honesty; 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. Ashraf’s operation of his business has infringed or would infringe the rights of the public, and has or would endanger the health or safety of public.
58. In August 2015, less than a year after Mr. Ashraf was licensed by MLS to drive a taxi, Mr. Ashraf was charged with a serious drinking and driving offence. After being taken to the station, Mr. Ashraf blew twice the legal limit and was recorded as having a BAC of 167 mg/100ml less than an hour after he was stopped. The

February 28, 2019

police were aware that Mr. Ashraf was too intoxicated to drive after the bartender at the pool hall called them.

59. Overall, the Tribunal found aspects of Mr. Ashraf's version of events lacked plausibility. The Tribunal found it hard to believe that a bartender would call the police if Mr. Ashraf had only consumed "two beers" as he testified. We questioned if a bartender would call the police if he had only served Mr. Ashraf two beers, or if Mr. Ashraf was not visibly drunk. In our view, the bartender would have had to believe that Mr. Ashraf was clearly too drunk to drive and appeared visibly intoxicated, such that he was concerned enough to call the police about a patron.
60. Even if we accept that he only drank two beers, Mr. Ashraf still testified that he thought he was okay to drive that day, which calls into question his judgement and whether he has taken full responsibility for what occurred. Mr. Ashraf also drove the taxi with a friend in the car. This raised further questions about his judgement at the time. Not only did he place others on the road at risk by drinking and driving he put the passenger at risk as well. This was a serious drinking and driving offence that occurred on a Sunday afternoon on a busy commercial street that placed the public at risk and occurred in a taxi. In our view, there are reasonable grounds to believe that that Mr. Ashraf will not operate his business in accordance with the law, or with integrity and honesty; 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. Ashraf's operation of his business has infringed or would infringe the rights of the public, and has or would endanger the health or safety of public.
61. Also, concerning to the Tribunal was that after his conviction Mr. Ashraf did not complete the court-ordered remediation (e.g. the Back on Track remedial program) when required and as a result his licence was suspended for another year. His explanation that he had not realized it was mandatory calls into question Mr. Ashraf's commitment to pursuing a career that involves driving and his ability to understand conditions. In our view, Mr. Ashraf should have been well aware of what steps he needed to take to get his driver's licence back, and ensured he completed them on time. This showed to us that Mr. Ashraf did not take the conviction or what happened seriously.
62. By not completing the remediation on time, Mr. Ashraf's driver's licence has now been suspended for a significant amount of time (two years and three months). His licence was only reinstated in October 2018, some five months ago. Mr. Ashraf testified he has not been driving at all since October 2018. Given this extended period of time without a licence, it is difficult for us to be assured that Mr. Ashraf will be able to resume driving without any concerns. In fact, when his licence was reinstated for a short time in 2015/2016 while he awaited trial, he was charged with driving holding a handheld device; this also occurred in a taxi. While a less serious driving offence, this type of distracted driving offence is also a risk to public safety.
63. Finally, the Tribunal also noted Mr. Ashraf has not fulfilled all the requirements stemming from his CCC conviction, in particular the requirement to drive for nine

February 28, 2019

months with an interlock device in place. The Panel was somewhat concerned, as raised by MLS, of the public perception of having a licensed taxi driver still subject to interlock restrictions. While it would minimize the risk of him drinking and driving taxi, the presence of an interlock device could well raise questions in the minds of his taxi-taking passengers as to whether it is appropriate to license a person who holds a restricted driver's licence.

64. As raised in his testimony, we were also concerned that Mr. Ashraf's solution to driving a taxi with an interlock device would be to simply avoid turning off the car on his shift. We agree with MLS that were he to do this there would be a risk he would break the "no idling" by-law, and this raised some questions of his ability to comply with the law.
65. 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.
66. Mr. Ashraf currently works part-time in a garage. He told the Tribunal that he supports his wife, who he married a few months ago, but has not yet brought her to Canada. He lives with his father, mother and older brother; both his brother and father work. In addition, Mr. Ashraf is 28 years old, which is young and should he desire he is capable to retrain for other jobs. To that end, Mr. Ashraf indicated he would consider further training as a mechanic.
67. Overall the Tribunal concluded that Mr. Ashraf's livelihood needs did not outweigh our concerns about his conduct and the protection of the public interest.
68. In our view, while Mr. Ashraf appears to be taking steps in the right direction, insufficient time has passed to assure us he has made a clear life change and this could not happen again. He is only recently married about 2.5 months, and his wife has not yet moved to Canada. Mr. Ashraf was vague in his testimony about his drinking habits; only indicating that he used to drink a lot and now only drinks once or twice a month. The TLT would have been more reassured that Mr. Ashraf had fully realized the concerns about his prior CCC and HTA convictions, if he had been able to show he was able to drive consistently without incurring new charges or convictions, as it was in the brief time he has licensed to drive in the last 3.5 years, he incurred an HTA charge in a taxi.
69. We make this order without prejudice to Mr. Ashraf's right to apply again for a Vehicle-For-Hire Driver's licence. It may be that if Mr. Ashraf applies for a licence at some point in the future, and is able to demonstrate that a period of time has elapsed in which he has not incurred any further charges for driving after drinking, or any other serious charges, that application might succeed (although this Tribunal cannot predict with certainty what MLS or a future Tribunal panel may decide). Mr. Ashraf was not able to demonstrate such factors today and therefore we deny his application for a Vehicle-For-Hire Driver's licence.

February 28, 2019

DECISION

For the reasons set out above:

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

Originally Signed

Melina Laverty, Chair

Panel Members: Moira Calderwood and Victoria Romero concurring

Reference: Minute No. 36/19

Date Signed: March 13, 2019