

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: March 14, 2019

Panel:

Moira Calderwood, Panel Chair;
Melina Laverty and Daphne Simon, Panel Members

Re:

Navdeep Bajwa (Report No. 7098)
Applicant for a Vehicle-For-Hire Driver's Licence
(Application No. B861628)

Counsel for Municipal Licensing and Standards: Matthew Cornett

Counsel for Applicant: Unrepresented

Support person for Applicant: Saleem Irshad

INTRODUCTION

In September 2018, Mr. Bajwa applied to Municipal Licensing and Standards (MLS) for a City of Toronto for a Vehicle-For-Hire Driver's Licence. MLS denied the application. Mr. Bajwa requested a hearing before the Toronto Licensing Tribunal to determine whether the licence should be issued.

The matter proceeded to a hearing on March 14, 2019. The Tribunal denied Mr. Bajwa's application for a Vehicle-For-Hire Driver's Licence. The Tribunal issued its decision orally at the hearing and these are the written reasons for the decision.

MLS EVIDENCE

Ms Andrea DiMatteo, Supervisor with MLS, and her staff prepared MLS Report No. 7098, which relates to Mr. Bajwa's application for a Vehicle-For-Hire Driver's Licence. This 139-page report, with two updates, was admitted in the hearing as Exhibit 1.

Ms DiMatteo was the only witness for MLS. She highlighted documentation in Exhibit 1 relating to Mr. Bajwa's licensing history, his previous applications, municipal licences, and appearances before the Tribunal, his driving record and his history of charges and convictions under bylaws of various municipalities, and under the Compulsory Automobile Insurance Act (CAIA) and the Highway Traffic Act (HTA).

Mr. Bajwa did not cross-examine Ms DiMatteo.

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APPLICANT'S EVIDENCE

The Applicant was affirmed, and testified.

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

Driving offences

- Certain of the convictions on his record are not his. He has an identical twin brother with a similar name (Navjot Bajwa) and their driving records have become intermingled. Some of the charges or convictions and associated fines under his name were actually for acts done by his twin. They have tried with both the City and the Ministry of Transportation to straighten matters out but have not been able to.
- In particular, a July 5, 2016 licence suspension for contest or stunt driving related to an offence actually committed by his twin brother.
- His twin brother was not able to be present at the Tribunal hearing, as he was working.
- For certain other offences on his driving record, he did not recall the events and/or did not receive notification of the charges or convictions. For one of the red light camera offences, he had leased the car out to a driver, whose name might be Iqbal. It may have been Iqbal or Mr. Bajwa's twin brother driving the car at the time. He does not have any documentation with him to show whether the taxi was leased out when the offence occurred. He can check.
- He did not know his provincial driving licence had been suspended in November 2018 until after the fact. He did not receive any notification. He went to court and paid his fines but does not know why his licence is still suspended.
- He has taken steps to re-open some of the convictions. A Ministry of the Attorney General document showing an upcoming court date was entered as Exhibit 2. A package of documentation relating to an extension of time to file an appeal of certain convictions was entered as Exhibit 3.

Personal circumstances

- He is 40 years old. He has a high school diploma.
- He is not married and has no children.
- He works in the family business, which is running a taxi fleet. He is paid for this work. Business is worse since Uber has come into the city. They used to have 80 cars in the fleet and now only have 20.
- He owns one taxi. He paid \$300,000 for the plate, which is now worth only \$80,000. He rents the taxi out for either 12 or 24-hour shifts. He charges \$65 a day to lease the taxi.
- He has no other sources of income.
- The Brampton bylaw offences relate to a house he co-owns with his mother. The person who lives there might pay rent to his mother, he is not sure, but could check. He does not derive income from the house. He is not sure how much the house is worth.

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DECISION

Mr. Bajwa currently holds a valid Taxicab Owner's Licence. He rents out his taxi. In order to drive the taxi himself, he would need a Vehicle-For-Hire Driver's Licence. His provincial driver's licence is currently suspended for unpaid fines.

In 2006, the Toronto Licensing Tribunal denied Mr. Bajwa's application for what was then called a Taxicab Driver's Licence. The Tribunal stated in its decision:

The Tribunal has taken into account the evidence, particularly Mr. Bajwa's driving record which it finds just simply terrible. The Tribunal finds it extremely disconcerting that Mr. Bajwa has been convicted of speeding 149 in a 100 zone; 90 in a 50 zone; 92 in a 60 zone and 111 in a 50 zone. We are not at all convinced that, if Mr. Bajwa is given a taxicab driver's licence, he would be able to operate a taxi cab while respecting the law and while taking into account the public's right to safety.

In March 2013, the Tribunal granted Mr. Bajwa's application for a Taxicab Driver's Licence, with conditions including a requirement that he submit a copy of his provincial driver's abstract to MLS every six months, and that he report certain charges or convictions to MLS. In 2015, the Tribunal made an order transferring the existing conditions from Mr. Bajwa's Taxicab Driver's Licence over to his Taxicab Owner's Licence. The probationary period lasted until March 21, 2017. Ms DiMatteo testified, and Mr. Bajwa did not question or contradict this, or provide any documentation to the contrary, that MLS records show he submitted his driver's abstract annually rather than every six months, and that he failed to report charges or convictions throughout this period, although the documentation in Exhibit 1 shows that charges and convictions occurred. Mr. Bajwa provided no explanation for his failure to abide by the Tribunal's conditions.

Since his last appearance before the Tribunal in April 2015, Mr. Bajwa has incurred many new charges and convictions under the CAIA (failure to have/surrender insurance card), under bylaws in Brampton and King City, and under the HTA. The most concerning convictions under the HTA are a March 2016 offence of speeding 119 in a 90 zone, an October 2016 offence of speeding 129 in a 100 zone and a June 2017 offence of improper use of turn signals. He incurred two suspensions in 2016 for racing, contest or stunt driving.

In November 2018, Mr. Bajwa's provincial driver's licence was suspended due to unpaid fines, and it remained suspended at the time of the Tribunal hearing. Mr. Bajwa asserted that there was some mix-up with respect to the fines as he has paid them. He provided Exhibits 2 and 3 in support of this statement but, as noted, Exhibit 2 simply provides notice of an upcoming court date and Exhibit 3 is the notice of motion to extend time to appeal several convictions, but does not confirm payment of any fines, nor does it show if reopening was allowed or endorsed by the court on the hearing of the motion. The MTO documentation before the Tribunal (including the March 13, 2019 three-year driver's record) shows outstanding fines and a suspended provincial driver's licence. We were not persuaded on the evidence available at the Tribunal hearing that this was in error.

On December 18, 2018, Mr. Bajwa incurred a charge under the HTA for failing to stop a taxi at a red light. We note that in December 2018, Mr. Bajwa had no Vehicle-For-Hire

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Driver's Licence, and his provincial driver's licence was suspended. Similarly, Mr. Bajwa was charged in November 2018 for failing to stop a taxi at a red light, and again he had neither a valid provincial nor municipal driver's licence. Mr. Bajwa offered no explanation about the circumstances of these charges (which are yet to go to trial) other than to suggest that it may have been his twin brother who was driving.

Mr. Bajwa also said that one of the 2016 suspensions for racing, contest or stunt driving was actually the fault of his twin brother. He did not bring his brother, or any other witness or documentation to prove the brother's existence, his appearance, or the similarity of his name, to the Tribunal. It is difficult to believe that a driving infraction registered to a person's driving licence number could result from mistaken identity; driver's licence numbers are individual and specific to the holder, regardless of whether the holder has a twin. Further, we note that Mr. Bajwa did not deny responsibility for the second racing, contest or stunt driving suspension; he only claimed that his twin was responsible for one of those occurrences.

Exhibit 3 contained documentation showing that Mr. Bajwa has applied to extend the time in which to file an appeal from certain of his recent convictions, but as noted we did not see in the documentation that his appeal relates to either of the serious 2016 speeding convictions that led to suspensions for racing, contest or stunt driving. In the Affidavit accompanying his application to challenge the convictions he gave as a reason for not appealing within the prescribed time, "I totally forgot about it" and his grounds "I have all the documents to prove it." He did not assert, in that application, that there was any mistaken identity. He did not bring the referenced documents to the Tribunal hearing.

Mr. Bajwa's testimony about the offences failed to convince us that the MTO documentation before us was in error. At the date of the Tribunal hearing, Mr. Bajwa continued to have (as he had in 2006) a "simply terrible" driving record.

The Municipal Code provides in part:

§ 546-4. Grounds and administrative thresholds 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:

(1) 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

(2) 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

[...]

(5) The conduct of the applicant or other circumstances afford reasonable grounds to believe 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.

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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 and will not carry on his business in accordance with the law and with integrity and honesty, that his carrying on the business has resulted and will result in a breach of this chapter or any law, and that his carrying on the business has infringed or would infringe the rights of members of the public and has endangered or would endanger their health or safety.

In making its decision, the Tribunal relied on the Applicant's very long and substantial history of driving and administrative charges and convictions. Concerns about his driving go back at least as far as 2006 when the Tribunal first denied his application for a Taxicab Driver's Licence. His driving charges and convictions display an ongoing and concerning pattern of excessive speeding which remains unchanged since 2006. The nature of these convictions raises concerns about his ability to drive safely. He has a concerning record of infractions of provincial insurance laws, and of municipal laws.

Mr. Bajwa's evidence at times lacked credibility. For example, only when asked what the Brampton bylaw offences related to, did he very reluctantly acknowledge that he co-owns a home in that municipality. It seemed unlikely to us that he would not know whether the occupant of that home pays rent to his mother, or that he would not know the value of a home of which he is part owner. Rather, it seemed he was attempting to evade providing full answers about his financial situation. We had concerns about Mr. Bajwa's honesty and integrity.

Mr. Bajwa first became involved with the MLS system in 2006, has appeared before the Tribunal on previous occasions, and is the holder of another municipal licence. Yet, when asked if he could provide documentation or a witness to support his assertions, such as bringing his twin brother, his brother's driver's abstract or documentation related to efforts made to correct the MTO record which he claims is erroneous, he said he could do so (in the future), and seemed surprised when reminded that the day of the hearing was the time to bring forth all the information he intended to rely on. The Tribunal questioned him and established that he did receive adequate notice of the March 14, 2019 hearing date. Even so, apart from Exhibits 2 and 3, he brought no documentation to support various claims he made.

It appeared to us that Mr. Bajwa has shown no positive change in his behavior. He expressed no understanding of how a bad driving record could be of concern in a person seeking to drive a taxi. He told the Tribunal that he has caused "no accident, no death, no injury", but has only incurred fines. He described no plan to improve other than promising to comply with conditions which, as noted, he failed to do in the past.

Mr. Bajwa provided absolutely no explanation for or comment on his failure to comply with conditions which the Tribunal imposed in the past. Although he asserted that he would comply with any conditions imposed, we were not reassured that this was a case where conditions would likely help to ensure the Applicant's compliance with the law or the safety of the public.

In reaching our decision, we applied the Tribunal's mandate, set out in part in the Toronto Municipal Code, § 546-8.A(3)(c):

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

We were not of the view that Mr. Bajwa had established his need to make a livelihood by driving a taxi. He acknowledged working for pay in his family business and making money by renting out his taxi. He is also part-owner of a home.

We echo the words of the Tribunal from 2006: We are not at all convinced that, if Mr. Bajwa is given a Vehicle-For-Hire Driver's Licence, he would be able to operate a taxi cab while respecting the law and while taking into account the public's right to safety.

Originally Signed

Moira Calderwood, Panel Chair
Panel Members, Melina Laverty and Daphne Simon concurring

Reference: Minute No. 51/19

Date Signed: April 10, 2019