

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

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**Date of**

**Hearing:** April 25, August 15 and September 16, 2019

**Panel:**

Anu Bakshi, Panel Chair;  
Daphne Simon and Verlyn Francis, Members

**Re:**

Mohammad Shafiq (Report No. 7119)  
Holder of Vehicle-For-Hire Driver's Licence No. D01-4758013

**Counsel for Municipal Licensing and Standards:** David Gourlay

**Counsel for Applicant:** Unrepresented

**Pashto Interpreters:** Abdul Kobari and Abdul Hadi

### **INTRODUCTION**

Mr. Shafiq was first before this Tribunal on April 5, 2018. At that time, he was granted a Vehicle-For-Hire Driver's Licence with conditions, including a three year probationary period ("Licence"). On July 28, 2018, Mr. Shafiq was charged under the Highway Traffic Act with stunt driving, and he was convicted on September 27, 2018 ("Stunt Conviction"). On October 16, 2018, Municipal Licensing and Standards (MLS) sent him a letter stating that the Licence would be the subject of a review by this Tribunal under the City of Toronto Municipal Code, Chapter 546, Section 546-7.

The Tribunal hearing was held on April 25, August 15 (adjourned) and September 16, 2019.

The issue before the Tribunal was whether Mr. Shafiq's Vehicle-For-Hire Driver's Licence should be revoked, suspended, or have conditions placed upon it given his driving record after April 5, 2018.

Mr. Shafiq appeared on his own behalf and made use of the interpreters. The Tribunal advised him of his right to have legal representation and he chose to proceed without such representation.

After the hearing, the Tribunal gave an oral decision to revoke the Licence. These are the written reasons for that decision.

### **MLS EVIDENCE**

Mr. Jamil Elannan, Supervisor with MLS, was the sole witness for MLS. He was questioned on the documentary evidence found in Report No. 7119 ("the Report" -Exhibit 1). There were also four updates that were marked as Exhibits 2 to 5.

April 25, August 15 and September 16, 2019

The Licence was issued on April 5, 2018 when this Tribunal approved a joint proposed resolution. The Licence conditions included three years' probation (Exhibit 1, page 30). The Licence conditions were proposed because there was a concern with Mr. Shafiq's driving record. At that time, his driving record included a criminal conviction of failing/refusing to provide a breath sample and driving while impaired on July 10, 2012, a conviction for failing to surrender driver's licence on December 18, 2014 and a speeding conviction (149 km/h in 100 km/h zone) on June 8, 2016. Mr. Shafiq was also charged with speeding and driving without a permit on March 27, 2018, but those charges were later withdrawn.

After the Licence was issued on April 5, 2018, Mr. Shafiq was charged with stunt driving on July 28, 2018. The Crown Brief Synopsis at page 58 of the Report indicated that Mr. Shafiq drove his vehicle at 157 km/h in a posted 100 km/h zone. That same day, his vehicle was seized. The Stunt Conviction was entered on September 27, 2018.

On November 15, 2018, according to Exhibit 3 -the update of charges and convictions date stamped March 20, 2019, Mr. Shafiq was charged with failing to stop at a red light under the Highway Traffic Act. He was ultimately convicted of this charge on March 15, 2019 ("Red Light Conviction").

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

## **APPLICANT'S EVIDENCE**

In testimony, in cross-examination, and in response to questions from the Panel, Mr. Shafiq provided evidence about his driving record and his personal circumstances.

Mr. Shafiq was a licensed taxicab driver in the City of Toronto since April 5, 2018. He admitted that when he got his Licence, he knew that there were conditions attached to it. The Licence conditions included a three year probationary period, and a requirement to report any new charges or convictions to MLS. He agreed that the three year probation was because of his past driving record which included a criminal conviction of failing/refusing to provide a breath sample, driving while impaired in 2012 and a speeding conviction of 149 km/h in 100 km/h zone.

Since obtaining his Licence, Mr. Shafiq testified that he has never used it. He has never driven a taxi. Mr. Shafiq did not report the charge and the Stunt Conviction to MLS because he was not using his Licence. He felt there was no obligation to report any charges or convictions if he was not driving a taxi. When asked why he did not make use of his taxi licence, he responded that he was ill during that time.

Mr. Shafiq did not dispute the facts surrounding the Stunt Conviction or the Red Light Conviction. With respect to the withdrawn charge of speeding on March 27, 2018, he admitted that he was speeding, but he disagreed that he was travelling 73 km/h in 50 km/h zone. He testified that he was likely travelling about 60 km/h.

Before coming to Canada in September 2008, Mr. Shafiq had a small business selling electronics, fans and air conditioners in his home country.

Since coming to Canada, he worked on a farm near Kitchener for a short period. He also worked in a restaurant as a cashier and cook, as a cleaner, and as a pizza delivery driver.

April 25, August 15 and September 16, 2019

He worked in both Toronto and Kitchener. As a result of a shoulder injury, Mr. Shafiq testified he cannot work in a restaurant, but he is able to drive. He would be able to work in pizza delivery if he found a job.

Mr. Shafiq stated that he has not worked for over two years. He was not able to find a job due to his poor English skills. His financial circumstances are poor, and he wants to have his Licence so he can make a living. He is 50 years old and lives with his wife, his mother and two young children. No one works in his household. He collects social assistance and it is not enough money. He attended English classes in 2018 for 8-9 months to improve his English language skills.

He testified that he had a very bad experience in relation to the stunt driving incident and he would never repeat it, speed, or violate the law again.

## **SUBMISSIONS**

Mr. Gourlay submitted that Mr. Shafiq's Licence should be revoked.

He pointed out that Mr. Shafiq's Licence was issued on April 5, 2018 with conditions including probation. The probation was appropriate because there was a pattern of driving that causes concern, including a speeding conviction in 2016 and a criminal conviction for impaired driving in 2012 that caused concern.

Mr. Gourlay argued that when the Tribunal approved the proposed resolution in April 2018 and issued the Licence with conditions, the Tribunal gave Mr. Shafiq a second chance. The expectation was that his driving record would improve. He argued that Mr. Shafiq's driving record did not improve, but instead the poor driving behavior continued. He submitted that there are reasonable grounds to believe that Mr. Shafiq has endangered, or would endanger, safety of other members of the public contrary to the law.

Mr. Gourlay stated that within three months of receiving the Licence with conditions, on July 28, 2018, Mr. Shafiq was charged with stunt driving. The Stunt Conviction was serious because Mr. Shafiq was driving 157 km/h in 100 km/h zone. Although Mr. Shafiq confirmed that he understood the requirement to report charges and convictions to MLS, he chose not to report it. He chose not to report it because he was not driving his taxi. In fact, during the one year that he had his Licence he did not drive his taxi even once.

Mr. Gourlay argued that since Mr. Shafiq did not use his Licence during the one year he had it, it was evident that he did not need it to earn a living. He has other means, if he chooses, such as his work history as a cleaner, cook and pizza delivery driver.

In his submissions, Mr. Shafiq admitted that he made mistakes in the past. He requested that he be given his Licence so he can support his family and earn a living.

## **DECISION**

Section 546-4 of the Toronto Municipal Code sets out the reasons for denying a licence, including the following:

April 25, August 15 and September 16, 2019

- a. The conduct of the applicant affords reasonable grounds for belief that the applicant has not carried on, or will not carry on, his or her trade, business or occupation in accordance with law and with integrity and honesty; or
- b. There are reasonable grounds for belief that the carrying on of the trade, business or occupation by the applicant has resulted, or will result, in a breach of this chapter or any other law; or
- c. 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, the health or safety of other members of the public.

Having weighed the evidence, the Tribunal was satisfied that MLS has demonstrated sufficient grounds to revoke Mr. Shafiq's Licence because there are reasonable grounds to believe that Mr. Shafiq's driving has or would endanger the safety of members of the public and would breach the law.

The Tribunal noted that Mr. Shafiq's pattern of speeding is dangerous. The Stunt Conviction was the most alarming. Mr. Shafiq conceded that he was driving at a remarkable speed-157 km/h in 100 km/h zone on the 401 highway on July 28, 2018. Mr. Shafiq also admitted to speeding 60 km/h in 50 km/h zone with respect to the withdrawn speeding charge on March 27, 2018. He was convicted of speeding travelling 149 km/h in 100 km/h zone in 2016.

The Tribunal noted that since obtaining his Licence with conditions, Mr. Shafiq's driving record has not improved. In a short time, Mr. Shafiq was charged and convicted of two serious driving offences. On April 6, 2018, Mr. Shafiq was granted his Licence with conditions. The Licence conditions included three year probation because of concerns with Mr. Shafiq's driving record, which included a criminal conviction of failing/refusing to provide a breath sample and driving while impaired on July 10, 2012, a conviction for failing to surrender driver's licence on December 18, 2014 and a speeding conviction (149 km/h in 100 km/h zone) on June 8, 2016. Less than four months after receiving his Licence, Mr. Shafiq was charged with stunt driving on July 28, 2018, and later convicted. A few months later, Mr. Shafiq was charged with failing to stop at a red light on November 15, 2018, and convicted on March 15, 2019. The Tribunal was concerned about Mr. Shafiq's clear pattern of concerning conduct in such a short time frame and the threat to public safety should Mr. Shafiq drive a taxi.

We had no concerns about Mr. Shafiq's honesty and integrity. Mr. Shafiq testified in a forthright and respectful manner. He did not try to minimize his responsibility and his driving record. He was mostly up front about past mistakes. That said, he did not appear to be aware of the potential public safety concerns associated with speeding and the seriousness of the Stunt Conviction.

The mandate of this Tribunal is set out in part in the Toronto Municipal Code, § 546-8 (A)(3)(c). The Tribunal must balance the protection of the public interest with the need for licensees to make a livelihood.

April 25, August 15 and September 16, 2019

There is no question that Mr. Shafiq's financial circumstances are difficult. He is fifty years old and he has a shoulder injury. He is struggling to make ends meet for his wife, mother and two young children. However, Mr. Shafiq did not establish that he required his Licence in order to earn a living.

Mr. Shafiq had his Licence for about a year, but he testified that he did not use it even once. He never drove a taxi. It is difficult to understand why Mr. Shafiq did not use his Licence if he requires it to make a living. The only explanation he gave the Tribunal for not driving a taxi was because he was ill in 2018. This is difficult to reconcile since he also stated that he took English language courses for about 8-9 months in that time period. The Tribunal was of the view that Mr. Shafiq has alternative means to make a living. In his past, he worked in jobs such as pizza delivery, cleaning and restaurant work in both Toronto and Kitchener. This line of work is still available to him, especially given he has worked to improve his English language skills.

In all these circumstances and taking into account the Tribunal's mandate to protect the public interest and Mr. Shafiq's need to earn a livelihood, we are satisfied, in this case, that the public interest outweighs Mr. Shafiq's need to earn a livelihood.

The Tribunal orders the Vehicle-For-Hire Driver's Licence to be revoked.

Originally Signed

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Anu Bakshi, Panel Chair  
Panel Members, Daphne Simon and Verlyn Francis concurring

Reference: Minute Nos. 78/19, 142/19 & 163/19

**Date Signed:** October 16, 2019