

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

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**Date of Hearing:** September 12, 2019

**Panel:** Verlyn Francis, Panel Chair;  
Mary Lee and Melina Laverty, Panel Members

**Re:** Asad Ayub (Report No. 7162)  
Application for Renewal of Vehicle-For-Hire Driver's Licence  
No. D01-4540569

**Counsel for Municipal Licensing and Standards:** Amy Murakami

**Counsel for Applicant:** Unrepresented

**Somali Interpreter:** Mahdi Ahmed

### **INTRODUCTION**

Asad Ayub was first issued Vehicle-For-Hire Driver's Licence No. D01-4540569 on November 3, 2015. This licence expired on November 3, 2018 but a renewal payment was received so the licence is deemed to continue. Mr. Ayub's request for renewal was denied by the Municipal Licensing and Standards Division of Toronto (MLS) by letter dated November 5, 2018.

On November 7, 2018, Mr. Ayub submitted to MLS a Request for Hearing before this Tribunal.

The issue before the Tribunal was whether or not this Vehicle-For-Hire Driver's Licence should be renewed and, if renewed, whether conditions should be placed on it.

On September 12, 2019 the Tribunal issued an oral decision to renew Mr. Ayub's Vehicle-For-Hire Driver's Licence with conditions. These are the written reasons for that decision.

### **MLS EVIDENCE**

Ms Andrea DiMatteo, Supervisor, Municipal Licensing and Standards, testified on behalf of MLS. She indicated that MLS refused to renew Mr. Ayub's Vehicle-For-Hire Driver's Licence because, as set out in the screening criteria, he had been convicted of careless driving under the Highway Traffic Act in the preceding five years.

Ms DiMatteo, referring to MLS Report No. 7162 (Report), provided a background of Mr. Ayub's history of charges and convictions from the Ministry of the Attorney General's Integrated Court Offences Network (ICON) under the Highway Traffic Act (HTA), Toronto Municipal Code, and the Compulsory Automobile Insurance Act (CAIA). The Report was marked as Exhibit No.1.

In her evidence, Ms DiMatteo highlighted portions of the Report and updates indicating that pages 8, 9 and 10 of Exhibit 1 summarize 24 charges and 7 convictions registered against Mr. Ayub under HTA and CAIA between June 24, 2015 and August 2, 2018. There were 12 charges under the Toronto Municipal Code and one conviction for the period December 21, 2015 and August 23, 2018.

September 12, 2019

Page 9, line 13 of Exhibit 1, indicates that Mr. Ayub was convicted of careless driving on January 22, 2018 as a result of an incident on September 2, 2016 and fined \$485 payable by December 31, 2019. Ms DiMatteo read from pages 96-97 the Toronto Police Service synopsis for a guilty plea regarding the circumstances surrounding this charge. The synopsis indicates that Mr. Ayub was driving a taxicab when he rear-ended another vehicle which had stopped for traffic. When the complainant exited her vehicle to examine the damage from the collision, Mr. Ayub's car started moving forward, ran over her foot, knocked her to the ground, and had contact with the other vehicle a second time. Mr. Ayub appealed his conviction but his appeal was lost on September 4, 2018.

Four charges, including a second charge of careless driving, were laid against Mr. Ayub relating to an incident with a bicyclist on April 30, 2018. Ms DiMatteo read into the record the Toronto Police Service's synopsis of the allegations regarding this incident. All these charges were withdrawn on March 1, 2019.

Ms DiMatteo also referred to a four-page updated Charges and Convictions Report date-stamped September 11, 2019 which was marked Exhibit 2. She testified that two of the offences on page 8 of Exhibit 1 were incorrect and Exhibit 2 corrects that information as follows: the line 9 offence dated January 24, 2018 should show a conviction for 50 km in a 40 km zone, and the March 11, 2017 conviction at line 10 was for disobey sign and not 98 km in a 60 km zone.

In addition, Ms DiMatteo indicated that Exhibit 3 is an updated Toronto Municipal Code Charges and Convictions Report date-stamped July 3, 2019 was created using ICON and the licensing system information. There were five items on this chart and she highlighted the two convictions: Item 2, vehicle-for-hire overcrowding/interfere with public taxi stand, convicted on June 3, 2019 and the outstanding fine of \$120; Item 5 vehicle-for-hire driver obstruct authorized inspection also resulted in conviction and the fine of \$1,125 is still outstanding.

Ms DiMatteo also testified that page 87 of Exhibit 1 is the 3-year driving record of Mr. Ayub from the Ministry of Transportation dated 29 March 2019 which shows his status as licensed on that date.

## **APPLICANT'S EVIDENCE**

Mr. Ayub testified on his own behalf. He indicated that he came to Canada in 2008 and he has worked every day since that time to provide for his family of eight children ranging in ages from 1.5 to 14 years, and his wife. He was working in the oil fields of Alberta and he was laid off because of the economic downturn, so he came to Toronto, took the taxi licence exam, passed and became a taxi driver.

He disputed the accuracy of the synopsis on page 100 which purports to set out the circumstances relating to the four offences, including careless driving, on lines 2 to 5 on page 8. He indicated that he did not meet the police officer who laid the charges. Mr. Ayub indicated that he was parked on one of the three bike lanes of the road in High Park, when a bicyclist ran into the front right side of his car while he was in the process of assisting passengers to enter his taxicab. He explained that since there was no damage or injuries, he gave the complainant his information (first name, last name, plate number and phone number) and told her to call him, the police or his insurance, but the complainant never contacted him. The police were not called to the scene. He testified that the next time he heard about this incident was when he found out that he had been charged. He indicated that while the time of day is

September 12, 2019

correct, this incident took place on May 1<sup>st</sup> and not on April 30, 2018 as set out in the synopsis and on page 8. He went to court but neither the complainant nor the police officer attended and the charges were withdrawn. He told the Tribunal if what happened was serious why did no one attend the court.

When challenged in cross-examination as to the accuracy of his version of the incident, Mr. Ayub produced Exhibit 4, a Wheel-Trans Service Order, corroborating that he did pick up passengers in High Park on May 1, 2018 at 17:37:16. Much was made of the fact that the synopsis at page 100 indicates that the incident happened on West Road in the City of Toronto but Mr. Ayub did not know that road. The confusion was cleared up when MLS introduced Exhibit 5, a Google Street map showing that West Road is a street in High Park and Mr. Ayub confirmed that was the road where the incident happened. He insisted he was not going the wrong way when the incident happened. He was picking up four individuals and, at the time the accident happened, there was only one passenger in the vehicle in the front passenger seat and the other three were entering the back seat. Mr. Ayub testified that after he was hit, he came out of his car and spoke to the cyclist. The bicycle touched his car but there was no damage to the bicycle and no damage to his car. The cyclist fell down but no ambulance attended.

With regard to the careless driving charge set out on page 9, item 13, and described on page 97 of Exhibit 1, Mr. Ayub testified that this hearing is his first opportunity to clarify and give his side of how it happened. He tried to appeal but he did not have an interpreter and the judge decided to continue. The time and date are correct. He was driving on Roselawn Avenue when the car in front of him stopped suddenly at the intersection with Danesbury Avenue. He tried to stop but the collision happened. The back of the other car and his front bumper were damaged. The two people from the other car got out of their car and were trying to see the damages. Mr. Ayub indicated that when he got out of his car to look at the damage, his car continued to move forward and hit the other car again. The driver of that specific car was in shock at that time but he did not see any injury to her. Both he and the other driver called the police and when the police officer came, he charged him with careless driving. Mr. Ayub indicated that when he asked why he was charged, the police officer said if there is any accident, they give careless driving charge and he has to go to court to give his side of the story. He tried to appeal his conviction but that appeal did not work.

In cross-examination, Mr. Ayub indicated that he was driving a taxicab that day but there was no customer in his taxicab. He was using it as his personal vehicle, and although the roof sign is always there, he was not actively accepting customers and did not have a customer in his vehicle. He confirmed that the vehicles collided twice but testified that there was no damage to the other vehicle from the two collisions. When asked about the estimation of approximately \$5,000 damage set out on page 97, he indicated that his estimate was \$500. He indicated that the second impact happened because he came out of his car to speak to the two people in the other vehicle and he did not switch off his car. Even though the synopsis indicates that there was injury to the foot of the other driver, the first time he heard about this was when he went to court the first day. At the time of the collision, he did not see any injury to the other two individuals. At the time his vehicle hit the other car a second time, the car was already moving so he jumped back into his car at that time.

Referring to the page 8, line 12 offence on January 29, 2017, when he was convicted of speeding 65 km in a 50 km zone on Jane Street, he was driving a taxi and was going home. It was in morning and he had just finished his shift and had no passengers. There was no collision as a result. March 11, 2017, line 10 on page 8, he admitted he was convicted of 98

September 12, 2019

km in a 60 km zone on southbound Allen Road near Eglinton. He indicated that prior to the construction the speed limit was 80 km and it was reduced to 60 km for construction so it might have been changed that day and he was just following the other cars doing the same. He was driving his personal car, not a taxicab. Page 8, line 9, January 24, 2018, it indicates speeding 60 km in a 50 km zone but that should be 50 km in a 40 km zone, he had finished his night shift, was driving a taxi in the morning was going home and had no passengers. There was no accident. Line 7, convicted of disobeying lane light at Brant Street, there were no passengers and no collision. Line 6, February 20, 2018, 71 km in a 40 km zone, that charge was withdrawn and Mr. Ayub cannot recall going to court for this matter.

Mr. Ayub testified that regarding the charge at page 8, line 1, speeding 86 km in a 50 km zone on Lakeshore Blvd. in a taxi, there were no passengers in the vehicle. There was no substantial evidence in the case and the police officer did not attend on the court date and that was the reason they were withdrawn.

Ex 3, Line 2, overcrowd/interfere with public taxi stand, Mr. Ayub testified he left his taxi unattended because he was taking some coins for change from a friend and when he came back, he was charged with two offences because only three taxicabs are allowed on that stand and he was the fourth. Line 5, July 26, 2018, obstruct authorized inspection, he indicated he did not know the reason why. He was told by MLS that he ran away from the car and he left his vehicle unattended. He was called and he went after one hour. He got three tickets on that day: the emergency light system, left my taxi, and obstruct authorized inspection. It was recommended that he accept one charge and they will withdraw the others. He indicated that he left in his car because he wanted to go to the washroom and he came back after one hour and this is when he got the ticket. The fine is still outstanding but he has one year to pay this and the fine in line 2 so he still has time.

Mr. Ayub testified that his wife does not work because they do not have daycare support. The only job he has is driving a taxi. In the oil fields of Alberta, he worked for five years as a driver, a technician supporting the trucks, and flagging the trucks. Now, he drives six days straight, 12-hour shifts, but he also has to take out his family to do things as well so he goes back and forth to his home during his shift.

## **MLS SUBMISSIONS**

Ms Murakami submits that, based on the evidence heard today, the City is requesting the licence be renewed and immediately be suspended for five days and Mr. Ayub be placed on probation for two years. In support of this submission, she points out that Mr. Ayub has been licensed for three years and has been charged with numerous moving violations. Ex 1 shows that he has incurred 21 charges under the HTA and the CAIA. In the under 4 years that he has been licensed, he has had 15 charges with four of those resulting in convictions. The oldest careless driving refers to 2016 when he was operating a taxicab and there were two collisions with a motor vehicle and he ran over the complainant's foot. He admitted that his vehicle was not stopped. This resulted in a conviction which he appealed and lost.

The second collision was on either April 30 or May 1 in the area of High Park. The police information indicates that Mr. Ayub was proceeding the wrong way on the bicycle lane. Mr. Ayub admits the vehicle was blocking one of the bicycle lanes. The cyclist was proceeding in the bicycle lane and fell off the bicycle and sustained personal injury and damage to the cycle.

September 12, 2019

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She also draws to the Tribunal's attention that Mr. Ayub has incurred numerous Municipal Code charges on pages 10 and 11 of Exhibit 1, and Exhibit 3 which provides an update to those Municipal Code charges. They show that Mr. Ayub has received 12 charges under the Municipal Code with three of those resulting in convictions. This entire record raises concerns about his ability to act in accordance with the law as well as endangering public health and safety. MLS is mindful that Mr. Ayub is the sole provider of his family with eight children under his care. However, given the length of time he has held his licence, the types and number of charges, Ms Murakami submits that the appropriate remedy is five days suspension and two years probation. During that probationary period MLS may make additional checks of any driving or bylaw charges and conduct. If MLS has any concerns during the probationary period. It reserves the right to bring Mr. Ayub back before the Tribunal along with Report No. 7162.

## **APPLICANT'S SUBMISSIONS**

Mr. Ayub submits that he is the only breadwinner of his family. He indicates that most of the charges he incurred happened during the four years as a licensee occurred because he was new to the City. He submits that he now understands all the rules of the road and what those charges can bring. He, therefore, requests that the Tribunal show him some mercy. On the two careless driving offences, he explained that one person suddenly stopped, and he was of the view that the other person (the cyclist) just wanted to talk to the insurance or gain something out of it. He asks that the Panel consider that he was new to Toronto and working 12 hours which leaves him visible to police officers whenever he makes a simple mistake. I drive taxicab almost 12 hours and 3 hours that I do my personal things, so that is 15 hours. He finished his submissions by asking forgiveness for what he has already done, and indicating that he will do his best not to incur any further charges.

## **REPLY**

In response to the Applicant's submission, Ms Murakami points out that, although Mr. Ayub said that most of his charges occurred because he was new to the City, there were charges and convictions in 2015, 2016, and 2017. In regard to the High Park incident, she points out that there is no evidence that the complainant was trying to get something from filing the complaint with the police.

## **DECISION**

In arriving at a decision in this matter, the Tribunal has carefully considered all the evidence before it, along with the submissions of MLS and the Applicant. It was also guided by its mandate set out in part in the Toronto Municipal Code § 545-3.B(3)(c):

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

Mr. Ayub was issued his Vehicle-For-Hire Driver's Licence on November 3, 2015 and it expired on November 3, 2018. Between the issuance of the licence and the hearing before the Tribunal, Mr. Ayub had incurred 24 Highway Traffic Act and Compulsory Automobile Insurance Act charges and was convicted of seven of those charges. The most serious of those were two careless driving charges and his conviction on January 22, 2018. In the same period, he had 12 charges under the Toronto Municipal Code and was convicted of three. MLS refused

September 12, 2019

to renew his Vehicle-For-Hire Driver's Licence and he has applied to this Tribunal review that decision.

This record of charges and convictions is concerning to the Tribunal, especially charges of careless driving. The Tribunal does note, however, that Mr. Ayub readily admits that he was at fault in the September 2016 accident and accepted responsibility for it. He showed poor judgment in failing to securely park before leaving his motor vehicle after the initial accident, hereby causing a second impact. He appealed his conviction but testified he did so in order to explain to the court the circumstances surrounding the accident.

On the second careless driving charge which is shown in Exhibit 1 as occurring on April 30, 2019, Mr. Ayub emphatically denied that he was the cause of accident. He indicated that a cyclist collided with the right front of his car while he was stopped to allow passengers to get into his taxicab. When challenged by counsel on the facts of the case, Mr. Ayub kept a calm demeanor and was able to produce documentation to corroborate his version of some of the facts. He insisted that, while the cyclist fell off her bicycle, there was no personal injury or property damage and he never heard from the cyclist even though he had given her his personal information. The Tribunal agrees with Ms Murakami that it is not appropriate for Mr. Ayub to ascribe spurious motives to the cyclist for eventually complaining to the police. We do, however, accept his evidence that neither the police nor the complainant appeared in court, the four charges that were laid as a result of that incident were withdrawn, and this suggests that the incident was less serious in nature in spite of the initial charge of careless driving.

The standard of review for the administrative threshold for denial of a licence is "reasonable grounds to believe" which is not as high an onus as "beyond a reasonable doubt" required for a criminal conviction. The Tribunal finds Mr. Ayub to be a credible witness and we accept that he is genuinely sorry for the number of charges that he incurred since July 2015. He has apologized and indicates that his early pattern will not continue. Indeed, the Tribunal notes that he has not been charged with any offences since August 2018. Nevertheless, the gravity of the charges and convictions must be impressed upon Mr. Ayub.

MLS correctly refused to renew Mr. Ayub's licence on the basis of Screening Criteria (k) of Chapter 546 that he was convicted of careless driving in the preceding five years. Having reviewed all the evidence and submissions before it, and in accordance with the provisions of §546.9.C (2), the Tribunal considers the circumstances surrounding the September 2016 careless driving charge and conviction, and the numerous charges under the Highway Traffic Act and Compulsory Automobile Insurance Act and the Toronto Municipal Code to be sufficient grounds to impose conditions on the licence of Mr. Ayub on the basis that, pursuant to §546.4.A (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.

The Tribunal finds that it is in the public's interest to place some conditions on the renewal of Mr. Ayub's licence. While MLS suggested a five-day suspension of Mr. Ayub's licence along with a probation of two years, the Tribunal has determined that a suspension in this case is not warranted. Mr. Ayub is the sole breadwinner for his family of eight children and, by December 31, 2019, he will have to pay the outstanding fines that resulted from his convictions.

September 12, 2019

Balancing the protection of the public interest with the need of the licensee to make a livelihood, the Tribunal is satisfied from his evidence that Mr. Ayub is now keenly aware that it is a privilege to have a Vehicle-For-Hire Driver's Licence and that privilege is accompanied by the heavy responsibility to abide by all the laws and regulations.

The decision of the Tribunal is that Vehicle-for-Hire Driver's Licence No. D01-4540569 will be renewed, effective immediately, 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 licence will be cancelled;
- (2) Immediately upon being renewed, the licence will be placed on probation for a period of two (2) years to commence on September 12, 2019;
- (3) Prior to each of the next two (2) renewals of the licence, Mr. Ayub must provide to Municipal Licensing and Standards, at his own expense, an original updated abstract of his driving record;
- (4) During the probationary period, if Municipal Licensing and Standards has concerns with any charges or convictions, those matters and Report No. 7162, and any updating material, shall be brought back before the Tribunal for a full hearing.

Originally Signed

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Verlyn Francis, Panel Chair  
Panel Members, Mary Lee and Melina Laverty concurring

Reference: Minute No. 162/19

**Date Signed: October 23, 2019**