

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: November 14, 2019

Panel: Melina Laverty, Panel Chair;
Edgar-André Montigny and Daphne Simon, Members

Re: Hassan Khalid (Report No. 7276)
Applicant for a Vehicle-For-Hire Driver's Licence
(Application No. B935220)

Counsel for Municipal Licensing and Standards: Lauren Elliott

Counsel for Applicant: Unrepresented

SUMMARY

On May 8, 2019, Mr. Khalid submitted an application for a Vehicle-For-Hire Driver's Licence. On May 22, Municipal Licensing and Standards (MLS) sent Mr. Khalid a letter outlining the grounds for denial of a licence. On June 4, Mr. Khalid 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. Khalid with conditions.

INTRODUCTION

1. Mr. Khalid applied for a Vehicle-For-Hire Driver's Licence, and MLS denied to issue a licence as records of the Ministry of the Attorney General's Integrated Court Offences Network (ICON) reveal multiple charges and convictions registered against Mr. Khalid under the Highway Traffic Act (HTA), the Criminal Code of Canada (CCC), the Municipal Bylaw (the Bylaw), the Trespass to Property Act (TPA), and Liquor Licence Act (LLA).

ISSUE

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

November 14, 2019

- iii. Mr. Khalid'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 OF TORONTO'S EVIDENCE

Ms Andrea Di Matteo, Supervisor, MLS, was the only witness for the City. Ms Di Matteo was affirmed and testified regarding Mr. Khalid's charges and convictions as set out in MLS Report No. 7276 (Exhibit 1 or the report), and the update to the report dated November 13, 2019 (Exhibit 2). She noted that:

3. Since April 2016, Mr. Khalid has been charged or convicted as follows:
 - a. 14 charges under the HTA, with 11 convictions, one charge withdrawn and two charges still before the courts;
 - b. one charge under the Bylaw that was withdrawn;
 - c. one charge under the CCC of "break and enter to commit an indictable offence" that was withdrawn;
 - d. two convictions under the TPA; and
 - e. two convictions under the LLA.
4. Mr. Khalid was driving a taxi (plate #1711 or plate #708) when he committed offences on January 3, 2018, and May 26, and September 9, 2019.
5. Mr. Khalid was criminally charged with "break and enter and commit indictable offence" on October 10, 2016, but the charge was withdrawn on January 10, 2017.
6. Mr. Khalid's convictions under the Trespass Property Act ("fail to leave premises" and "engage in prohibited activity") and under the Liquor Licence Act ("intoxicated in public place" and "liquor illegal place") all relate to offences on April 6, 2016.
7. On May 22, 2016, Mr. Khalid was charged with "careless driving" and two counts of "open liquor in vehicle" and was later convicted of these three offences. As set out in the police report, he was driving a "green/orange 2011 Toyota 4-door car [that] looked like a Beck Taxi." According to two witnesses, Mr. Khalid sped around a corner so the tires squealed near where kids were playing basketball on the street. Police later found Mr. Khalid and his friends at a park by the Scarborough Bluffs and one of them was holding an open bottle of rum, and after searching the car they found an open beer in a gym bag.
8. MLS ordered a three-year driver record for Mr. Khalid, on November 13, 2019, which shows that after being convicted for careless driving on April 7, 2017, his licence was suspended until May 23, 2017.

Mr. Khalid did not cross-examine Ms Di Matteo.

November 14, 2019

APPLICANT'S EVIDENCE

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

9. He moved to Pakistan in 2011 when he was 15 years old, and that is when he learned to drive. When he came back to Ontario in 2013, it took time to adjust to driving in Ontario as the rules of the road are different.
10. The taxi has always been the family car, and that is why the HTA charges are all in a taxi. Taxi #708 is his Mom's car, and the new taxi. Taxi #1711 is the previous taxi that his Dad used to drive. When he was charged in September 2019 of disobeying a sign, he was driving a taxi, but not taking passengers, he was just using the car.

May 2016 HTA "careless driving" and Liquor Licence Act "open liquor in vehicle" charges

11. When he was young and in high school, he was rebellious. He took the taxi out with friends in May 2016. He did make a sharp turn and the brakes screeched. There were kids playing in the area as it is near a park, but he was not close to them, but he agrees now he should not have driven like that, and it was reckless.
12. He was not drinking or intoxicated. When the police came to the Bluffs, he was not charged with drinking and driving, and was allowed to drive the car home. Neither he nor his friends had drank any alcohol and that is why no breathalyzer was done. The police watched as they poured the full bottle of rum down a drain.
13. He did not know or think of the consequences of having those convictions at the time. He did not go to trial and was convicted. He paid his dues for those mistakes, including a large fine. His licence was also suspended for not paying many outstanding parking tickets.
14. When he lived in Flemington Park, he fraternized with the wrong group of people.

April 2016 Liquor Licence Act and Trespass to Property Act charges

15. He was hanging out with the wrong crowd when this happened; it was the same group as the May 2016 incident. They were drinking alcohol in a retirement home in the neighbourhood and should not have been there.
16. He does not hang out with any of those people anymore. The prosecutor told him that you need to be aware of the people you hang around with. After this conviction he took steps to stay away from this group of friends. He does not have many friends. His focus now is to better himself and improve his life.

November 14, 2019

August 2016 HTA “drive motor vehicle no validation on plate” charges

17. He explained that he really wanted to have a car when he was taking civil engineering at York University. He ended up buying a used car for \$1,500 and was driving with a temporary sticker. The car had many problems, and it did not pass the emissions test. He got rid of the car in the end but in the meantime ended up with several charges due to not having a valid permit, and that set of charges all relate to this car.

October 2016 CCC “break and enter to commit indictable offence” charge

18. He was told about a hatch on the roof of a hardware store that you could climb into the store when it was closed and take candy. He went with friends to return the candy, and climbed through the hatch and into the store. They were caught by the police, they had put on security vests, and taken some candy. He should not have done it, it was a mistake.

January 2018 HTA “Improper use turn signals” and “fail to notify change of address” and Bylaw “taxicab operator no licence” charges

19. He drove his brother to school downtown, and on the way home he decided to pick up a passenger. At the time, he thought it was a good chance to make extra money. He was then stopped for not using his turn signal, and then also charged with not having a taxi licence. He realizes he should not have done it. He agrees he used poor judgement that day. His dad always advised him never to take passengers or drive without a licence. This was the only time he ever did it.

Livelihood

20. His parents are unable to work and currently receive government support. His siblings are studying at university. His family moved around a lot and had many challenges and difficulties, and it is time for him to step up and support himself and his family. He also has large debts to OSAP (\$23,000), to family and for outstanding fines.
21. He left the engineering program as he did not like it and preferred business and finance. He is currently in a one-year program to get his securities licence. He has held many different jobs (dishwasher, line cook, insurance sales, concierge and in security and loss prevention). He explained why none of those options were possible at the moment; for example, insurance sales is commission-based requiring long hours and extensive travel, and so it would be difficult to have that job while being a student. Security guard work puts his safety in jeopardy while the pay is low.
22. He obtained his G-1 driver's licence in 2013, his G-2 the following year, and now has the full G licence. The family has a taxi which just sits in the driveway, and he knows he can make a decent income from it. He plans to contract with “Beck” or “Flash.” The job is flexible so he can continue in school.

November 14, 2019

23. He explained that in October 2017 he stopped drinking. When he drank alcohol he got into fights, and then in October 2017, he hit and seriously injured a family member, who ended up needing surgery. After that he never had a drink again. He changed his ways, and also sought religion. He knew he had crossed a line. It was a traumatic, life-changing experience.

CITY OF TORONTO'S SUBMISSIONS

In her closing submissions, Ms Elliott, on behalf of MLS, submitted that:

24. The Tribunal should refuse to issue a Vehicle-For-Hire Driver's Licence to Mr. Khalid, as there are reasonable grounds to believe that Mr. Khalid 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. Khalid'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 the public.
25. As a result of the conviction for careless driving, Mr. Khalid met the administrative threshold for denial, which is any conviction for careless driving in the last five years.
26. Mr. Khalid is nearly 23 years old. He is a relatively new driver and has been licenced in Ontario only six years. In this short time, he has had 14 convictions under the HTA, with two pending charges before the courts. The incident leading to the careless driving charge and conviction put people at risk, and Mr. Khalid admits that when he was driving in this manner there were children on the road.
27. Mr. Khalid has been convicted three times for driving a motor vehicle with no validation on the plate, which shows a pattern of disregard of the law. On one occasion, Mr. Khalid picked up a passenger in a taxi even though he had no taxi licence. In April 2016, he was also charged with intoxicated in a public place and liquor in a public place.
28. In balancing the public interest and public safety, the Tribunal should take into account that Mr. Khalid is qualified to do other jobs, and this is not a case where he would be unable to find a job other than driving a taxi.
29. In considering his short driving history, and the number of charges and convictions in that time period, as well as his age, in the MLS's view, Mr. Khalid is not ready to take on the responsibility of being a taxi driver. However, if the Tribunal is inclined to grant a licence to Mr. Khalid rather than deny one, MLS would recommend there be three years' probation.

November 14, 2019

APPLICANT'S SUBMISSIONS

Mr. Khalid submitted that:

30. He knows he has done bad things in the past. He was younger, hung around with the wrong crowd, and did not think about the consequences. He asks the Tribunal to consider the person he is now, not who he used to be. He would like to provide for his family and feels he has a duty to his parents. He is trying to do something good with his life, and this is an opportunity to earn income and turn his life around.
31. He has been trying to find a job, but it has been difficult to find one. He has always been good at customer service and believes he would provide good service as a taxi driver. He is willing to abide by any conditions, or take any programs that the Tribunal orders.

ANALYSIS

32. Section 546-4 A of the Toronto Municipal Code sets out the grounds for denying issuance of a licence. Having weighed the evidence, the Tribunal is satisfied that those grounds have not been met, and there are not reasonable grounds to believe that Mr. Khalid 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. Khalid'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 the public.
33. That said, the record before us raises some concerns about Mr. Khalid's ability to follow the law and drive safely, but not enough to justify refusing to issue a licence. The Tribunal may impose conditions it considers appropriate. Any concerns we have about Mr. Khalid's ability to follow the law and drive safely, could be satisfied with conditions on his taxicab licence.
34. In April 2016, Mr. Khalid was charged with "intoxicated in public place" and "liquor in illegal place" along with trespassing, the Tribunal was satisfied with Mr. Khalid's explanation that he was only 19 years old at the time, and he no longer hangs out with this group of friends.
35. In May 2016, Mr. Khalid was charged with "careless driving," and "open liquor in vehicle." Mr. Khalid told the Tribunal that he did drive recklessly that day but had not been drinking and driving. Overall, the Tribunal found Mr. Khalid's testimony to be straightforward and credible. Mr. Khalid's testimony was consistent with the police report, we note that there were no alcohol-related driving charges that day. This was not a case where he was initially charged with a drinking and driving offence that was reduced to "careless driving."
36. While the "careless driving" offence on its own raises concerns, particularly as he was driving carelessly with children nearby, it appears to be an isolated incident.

November 14, 2019

37. The Panel was also persuaded by Mr. Khalid's testimony that he is aware of the issues that arise after he drinks alcohol. Mr. Khalid said he has not had a drink since October 2017 after a traumatic incident.
38. The Tribunal noted the majority of charges and convictions before us occurred in one year (2016) when Mr. Khalid was 19 years old. Mr. Khalid testified that he was hanging around with the wrong crowd then and is no longer friends with this group of young people. We add that though he is still a young man, Mr. Khalid is no longer a teenager, and it appears he recognizes the mistakes he has made and the impact they have had on his life.
39. We disagreed with MLS that the series of three charges for "drive motor vehicle no validation on plate" showed a pattern of disregard of the law. We accepted Mr. Khalid's explanation that this involved the same car. As all the charges occurred between August 3 and 22, 2016, it appears to have been a continuing offence rather than a repeat pattern, though it does show Mr. Khalid failed to take responsibility and comply with the law in a timely manner.
40. The Tribunal did have some concerns about Mr. Khalid's ability to follow the law and drive safely. In particular, there were several recent incidents, including that he drove a taxi without a licence in January 2018, and incurred two HTA charges in 2019 ("disobey sign" and "speeding 86 km/h in a 50 km zone") though these latter charges are still before the courts.
41. 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. Khalid is taking steps in the right direction, he is still a young man and it is hard to be certain he has made a break with his past. While the most concerning driving offence occurred more than three years ago, the recent driving offences and recent bylaw offence raise concern about his ability to follow the law and drive in a safe manner. In our view conditions on his licence would help alleviate the Tribunal's concerns, reduce the risk and protect the public.
42. In considering whether to renew, grant or deny a licence, and whether to do so with or without conditions, the Tribunal must also 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.
43. Overall the Tribunal concluded that Mr. Khalid's livelihood needs further tipped the balance in this case. Mr. Khalid lives at home with his parents, who both are unable to work and rely on government support, as does Mr. Khalid. The family has difficulty making ends meet. Mr. Khalid also had large outstanding debts and OSAP loans. Though Mr. Khalid has done many other types of jobs, the Tribunal found his explanation as to why some of those job options are not feasible currently to be reasonable. As Mr. Khalid is in school, he is unable to make enough income with a job that depends on sales commissions and requires long hours and he has found security work to be too risky for the pay.

November 14, 2019

Driving a taxi is a flexible job in which he can earn a decent income and continue with school. The family owns a taxi that is unused and thus to set up as a taxi driver is a convenient option for him to earn money for himself and his family.

DECISION

For the reasons set out above:

Mr. Khalid'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 MLS within 30 days of the Tribunal hearing, failing which the licence may be cancelled;
- 2) Immediately upon being issued, the licence will be placed on probation for a period of three (3) years to commence on the date of issuance. Mr. Khalid is advised that during the probationary period, MLS may make additional checks of any driving, criminal, and by-law charges and convictions against Mr. Khalid, and conduct other investigations as appropriate to assess Mr. Khalid's compliance with the requirements of Chapter 546 of the Municipal Code and other applicable laws;
- 3) During the probationary period, if MLS has concerns with any new charges or convictions against Mr. Khalid, or any other concerns with respect to the conduct of the licensee, those matters and Report No. 7276, and any updating material, may be brought back before the Tribunal for a full hearing.

Originally Signed

Melina Laverty, Panel Chair
Panel Members, Edgar-André Montigny and Daphne Simon concurring

Reference: Minute No. 202/19

Date Signed: December 10, 2019