

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: December 5, 2019

Panel: Daphne Simon, Panel Chair;
Anu Bakshi and Mary Lee, Members

Re: Sarbjit Singh Sahota (Report No. 7212)
Applicant for a Vehicle-For-Hire Driver's Licence
(Application No. B910320)

Counsel for Municipal Licensing and Standards: Amy Murakami

Counsel for Applicant: Unrepresented

Punjabi Interpreter: Simerpreet Kaur

INTRODUCTION

Mr. Sahota is applying for a Vehicle-For-Hire Driver's Licence. He has driven a taxi in the City of Toronto since 1995. However, in September 2017 his Vehicle-For-Hire Driver's Licence expired due to failing to pay the renewal fee. As a result, his licence was cancelled in December 2017. He submitted a new application in February 2019. Municipal, Licensing and Standards ("MLS") denied his application based on a conviction of Careless Driving stemming from an incident in November 2015. Mr. Sahota requested a hearing before the Toronto Licensing Tribunal to determine if his licence should be granted.

This matter was before the Tribunal on June 13, 2019 at which time an adjournment request to December 5, 2019, made by the Applicant, was granted. The matter proceeded to hearing on December 5, 2019. The Tribunal made an order excluding witnesses.

The Tribunal decided to grant Mr. Sahota's Vehicle-For-Hire Driver's Licence, on certain conditions.

MLS'S EVIDENCE

MLS's evidence was presented through two witnesses.

The first witness, Andrea Di Matteo, Supervisor, MLS, testified to the following:

Ms Di Matteo took the panel through MLS Report 7212. She noted that the denial of the application was based on his Careless Driving conviction from an incident on November 15, 2015. This was in breach of Screening Criteria by-laws used for Vehicle-For-Hire Driver's Licence.

Ms Di Matteo reviewed his driving history. She noted that Mr. Sahota was licensed as a taxi driver since September 1995. He was before the Tribunal on a matter in January of 2008 at which time he received a three-day suspension and was placed on probation for two years.

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This was due to a Highway Traffic Act conviction directly related to a breach of the Toronto Municipal Code licensing thresholds (at that time).

Ms Di Matteo referred the panel to a chart prepared by MLS of the applicant's driving charges and convictions under the Highway Traffic Act (HTA), the Criminal Code of Canada (CCC), Municipal by-laws and the Liquor Licence Act (LLA).

On November 15, 2015 Mr. Sahota was charged with Impaired Operation by Alcohol or Drug and Fail/Refuse to Provide a Sample. Both of those charges were withdrawn on November 16, 2017. Mr. Sahota was convicted of Careless Driving on November 16, 2017. He paid the fine.

On September 26, 2015, Mr. Sahota was charged with and convicted of Drive Motor Vehicle Using Hand Held Device. He paid the fine.

In May 2013, Mr. Sahota was charged with and convicted of Drive Wrong Way Divided Highway. He paid the fine.

In February 2013, Mr. Sahota was charged with Fail/Refuse to Provide Sample and Assault Resist Arrest. He was acquitted of those charges.

The Report 7212 was marked as Exhibit 1 along with an updated Driver's Abstract which was marked as Exhibit 2.

MLS's second witness was Officer Andre West from York Regional Police. Officer West testified that he has worked for York Regional Police for ten years. He is currently a first-class police constable. He testified about the events that occurred on November 15, 2015, using his notes to refresh his memory. No changes or additions were made to the notes of November 15, 2015. A copy of the notes was also provided to Mr. Sahota. The Tribunal allowed Officer West to use his notes to refresh his memory. The notes were not provided to the Tribunal.

Officer West testified that he was on uniform patrol on November 15, 2015. At approximately 1800h, he was dispatched to a motor vehicle collision centre as a result of a hit and run accident involving a Volvo. Mr. Sahota was in the custody of another officer for impaired operation. Officer West took custody of Mr. Sahota. He testified that Mr. Sahota was extremely impaired. He testified that he was unable to walk on his own and needed assistance to be put in the police cruiser. A water bottle was found in his vehicle. It contained brown liquid that smelled like beer.

Officer West transported Mr. Sahota to 5 District in Markham. According to Officer West, Mr. Sahota did not appear to appreciate the seriousness of the matter for which he was being detained. He was laughing and had difficulty standing and walking.

A breath technician was unable to obtain a suitable breath sample from Mr. Sahota, either because Mr. Sahota was physically unable to provide one or unwilling. The sample that was taken showed 350mg of alcohol for every 100ml of blood. Anything over 300mg is considered a medical emergency by the York Regional Police. Therefore, an ambulance was called and Mr. Sahota was taken to a hospital. He was accompanied by Officer West.

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Officer West stated that Mr. Sahota went unconscious at the hospital. When he woke up and was cleared medically, he still had quite a bit of difficulty functioning and Officer West noticed that he had urinated in his pants.

Mr. Sahota's charges of Impaired Operation by Alcohol or Drug and Fail/Refuse to Provide Sample were both withdrawn. Officer West did not know the reason for the withdrawal. Mr. Sahota was convicted of Careless Driving as a result of this incident.

Mr. Sahota did not cross-examine any of MLS witnesses.

APPLICANT'S EVIDENCE

Mr. Sahota provided the following information, in testimony and in cross-examination:

- He claimed he has already lost one million dollars.
- He wants to drive a taxi 2 -3 days a week to get out of the house for a while.
- He's been driving a taxi for 20 years and has never had any complaints.
- He has a clean record.
- His brother already has a private plate. He is willing to give it to Mr. Sahota so that he can drive on a part time basis.
- He paid to get his brother the plate. At the time he bought it was valued at 100,000 dollars. Now it is worth about 10,000 dollars.
- He doesn't have much income. He wants to drive a taxi to escape all the family arguments at home.
- He lives with his elderly parents and his wife. His two adult children are at University outside of Toronto.
- His wife currently works in a factory.
- He hasn't had a drink since 2013. He started drinking when he was 14 years old but now has liver health issues and does not drink.
- On November 15, 2015 he was driving his son's Volvo, which is an old car. He stated that a car came towards him. There were light scratches as a result of the accident. People were honking behind him so he had to move. He parked on a residential street around the corner.
- The police came within three minutes. He tried to describe his version of the events but they did not listen to him.
- He denies drinking on the day of the collision.
- He does not recall any type of water bottle in the car. He remembers everything that happened that day.
- His home was only 50 feet away. He doesn't know why he was taken to the hospital.
- He described having been admitted to the hospital several times over recent years.
- He stated that he was admitted for mental health issues in 2016 and 2017. On one occasion he was admitted for more than 2 months.
- He stated that he prefers to stay in the hospital to escape what is happening at home.
- He takes medication for his liver and goes every six months to get checked by a doctor.
- When asked about what type of employment he has been doing, he replied that he drove a truck for about a month. He got his AZ licence in June 2019 so he could drive a truck and be away from his family.
- He realized that he is too old to do truck driving work.
- In the last six months, he spent some time in the United States with relatives.

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- He really wants to drive a taxi and has no other type of employment experience.

SUBMISSIONS

MLS submitted that the Tribunal should not grant the Applicant's licence. MLS summarized the evidence and specifically asked the Tribunal to prefer Officer West's evidence of that the contradictory and inconsistent evidence of Mr. Sahota. MLS submitted that Officer West provided credible and direct evidence of Mr. Sahota's extremely intoxicated state at the time of the collision. This is in direct contradiction to Mr. Sahota's evidence who claims that he did not drink that day, and had not had an alcoholic drink since 2013. MLS noted that Mr. Sahota's evidence about when, and for how long, he was employed as a truck driver kept changing each time he was asked about it. Regardless, MLS submits that there are other forms of employment that Mr. Sahota may pursue and that he is not being forthcoming about what they are. MLS also submits that Mr. Sahota does not have a great deal of want for this licence, or a sense of urgency to obtain the licence, based on his request for a six-month adjournment in this matter.

MLS submits that alcohol-related incidents involving operation of motor vehicle are extremely serious and should not be treated lightly. MLS submitted that there are reasonable grounds to believe that the Applicant will endanger public safety if granted a Vehicle-for-Hire Driver's Licence.

Mr. Sahota, the Applicant, submitted that he has been driving a taxi for 22 years. He would like to obtain his taxi licence to earn an income and drive 2-3 days a week to get him out of the house. He is willing to submit any conditions on his licence.

DECISION

Issue: Does Mr. Sahota's conduct on November 15, 2015, resulting in a Careless Driving conviction, afford reasonable grounds to believe that he will be a risk to public safety if his licence is granted?

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

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infringe, the rights of other members of the public, or has endangered, or would endanger, their health or safety.
[...]

The Municipal Code requires that MLS demonstrate that the applicant will be a risk to public safety if allowed a taxi licence. If MLS cannot demonstrate this, the applicant is entitled to a licence or renewal of a licence. Similarly, MLS must demonstrate that the applicant will not carry on business with honesty and integrity or will be in breach of the law, if allowed a licence. If MLS cannot demonstrate this, the applicant is entitled to a licence or renewal of a licence.

The onus is on MLS to prove this. It must prove it based on the standard that there exists reasonable grounds to believe that the applicant will act in a certain way in order to deny a licence or a renewal of a licence. In most cases, past conduct of the applicant is presented in order to determine how the applicant may reasonably conduct him or herself in the future.

The Tribunal was satisfied on the evidence at the hearing that it did not have reasonable grounds to believe that the Licensee has not carried on and will not carry on his business in accordance with the law and with honesty and integrity, 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 this matter the events of November 15, 2015, that lead to the Careless Driving conviction, were presented to the Tribunal through MLS' witness, Officer West. Officer West presented direct evidence of his interactions with Mr. Sahota, while in his custody, both at the collision centre and while at the hospital. He testified that Mr. Sahota was so intoxicated that he was unable to walk, stand or control his bodily functions. He also stated that Mr. Sahota was laughing and did not seem to appreciate the seriousness of why he was being detained. He also testified that Mr. Sahota at some period was unconscious.

Mr. Sahota denied this description. He stated he remembered all the events of that day. He denied having a drink at all that day and he denied being heavily intoxicated. He could not explain the brown water in the water bottle found in his son's car. Mr. Sahota denied much of the events as described by Officer West.

The Tribunal accepted Officer West's evidence over Mr. Sahota's evidence, as it related to November 15, 2015. We considered this to be a very serious incident. We know it involved an impaired Mr. Sahota, some amount of alcohol consumption and the operation of a vehicle. This is not a matter we viewed lightly. We heard evidence that EMS was called to transport Mr. Sahota to the hospital to rule out any medical emergency. We determined that Mr. Sahota must have been severely impaired. However, we wondered why the charges against Mr. Sahota of Impaired Operation by Alcohol or Drug and Fail/Refuse to Provide Sample were both withdrawn. We did not have an explanation for the reasons why they were withdrawn. This left us with many unanswered questions.

The Tribunal considered Mr. Sahota's evidence. He was adamant that he had not had a drink since 2013. He stated that he has severe liver damage as a result of drinking starting at a young age. He states no longer consumes alcohol. He is on medication for his liver issues and has blood work done regularly in order to monitor his health.

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The Tribunal was not able to reconcile the differing versions of events described as it relates to November 15, 2015. We were unsure how even small amounts of alcohol when consumed with medication and a compromised liver could have had a detrimental effect on Mr. Sahota than an average person. Perhaps this could explain the reason for the extreme intoxication and even perhaps why the charges were withdrawn. Mr. Sahota seemed to honestly believe in his version of events, but at the same time accepted the careless driving conviction.

In any event, as stated, we preferred the direct evidence of Officer West. We did not understand why Mr. Sahota chose not to acknowledge his actions in this very serious incident. His failure to take responsibility was of concern to the Tribunal. We did not feel, however, that this incident alone was enough to provide us reasonable grounds to deny Mr. Sahota's licence.

We reviewed Mr. Sahota's driving history and his Driver's Abstract. The panel concluded that he had a relatively clean driving record over the last 22 years. No other incident such as the one that took place in November 2015 was evident from his driving history. We were of the view that since the concerning incident took place more than four years ago and that there have been no charges or convictions after that time, that we could not deny Mr. Sahota's right to earn a livelihood based on this Careless Driving conviction.

The Tribunal's mandate is set out in part in set out in part in the Toronto Municipal Code, § 546-8.A.(3)(c):

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

The Tribunal noted that Mr. Sahota made attempts to find other employment. He obtained an AZ licence in order to explore driving a truck. He ultimately decided that type of work was not for him. We believed that he has no other means to earn a livelihood.

The Tribunal found that Mr. Sahota has a need to earn a livelihood and no other means to do so other than driving a taxi. We determined that imposing conditions on Mr. Sahota's licence would provide additional protections to the public interest.

The Tribunal was of the view that addressing the seriousness of alcohol consumption while driving could be further emphasized to Mr. Sahota so that he may recognize the grave consequences that could result.

Therefore, we have ordered that Mr. Sahota participate in an Alcohol and Drug Awareness Program. Upon completion of this program, his licence will be placed on probation so that MLS can monitor him, accordingly.

The Tribunal orders that Mr. Sahota's application for a Vehicle-For-Hire Driver's Licence be granted subject to the following conditions:

1. That Mr. Sahota complete, on his own expense, The Salvation Army Alcohol and Drug Awareness program. The program takes place at 77 River Street in Toronto. Information about registration may be made by phone 416-304-1974 or online www.salvationarmyjustice.ca.
2. A Certificate of Completion of the above-noted program must be provided to MLS in order to be granted his licence.

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3. Upon completion of 1. and 2., the licence will be granted and will be subject to the following conditions:
 - A) Immediately upon being issued, Vehicle-For-Hire Driver's Licence will be placed on probation for a period of three (3) years. Mr. Sahota is advised that during the probationary period, MLS may make additional checks of any driving, criminal, and by-law charges and convictions against Mr. Sahota and conduct other investigations, as appropriate, to assess Mr. Sahota's compliance with the requirements of Chapter 546 of the Municipal Code and other applicable laws;
 - B) During the probationary period, if Mr. Sahota incurs any new charges and/or convictions, he must notify Municipal Licensing and Standards, in writing, within two (2) business days. The notification to MLS shall include his ML&S licence number and the ticket number(s). Mr. Sahota can notify Municipal Licensing and Standards in one of the following ways:
 - in person at 850 Coxwell Ave, Toronto, Ontario M4C 5R1;
 - via regular mail to: 850 Coxwell Ave, Toronto, Ontario M4C 5R1;
 - via email to mlsconditionreporting@toronto.ca or
 - via fax at 416-392-3102.
4. During the probationary period, if Municipal Licensing and Standards has concerns with any new charges or convictions against Mr. Sahota or any other concerns with respect to the conduct of the licensee, those matters and Report No. 7212 and any updating material, may be brought back before the Tribunal for a full hearing.

Originally Signed

Daphne Simon, Panel Chair
Panel Members, Anu Bakshi and Mary Lee, concurring

Reference: Minute No. 217/19

Date Signed: December 23, 2019