

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: November 28, 2019

Panel: Edgar-Andre Montigny, Panel Chair;
Maureen Carter-Whitney and Melina Laverty, Members

Re: Pirasanth Loganathan (Report No. 7313)
Applicant for a Tow Truck Driver's License (Application No. B929814)

Counsel for Municipal Licensing and Standards: Amy Murakami

Counsel for Applicant: Unrepresented

SUMMARY

On April 18, 2019, Mr. Loganathan submitted application No. B92814 for a Tow Truck Driver's Licence. On June 11, 2019, Municipal Licensing and Standards (MLS) sent Mr. Loganathan a letter outlining the grounds for denial of a licence. On July 4, 2019, Mr. Loganathan requested a hearing before the Toronto Licensing Tribunal (the Tribunal).

After hearing the evidence and submissions of the parties, the Tribunal issued a Tow Truck Drivers Licence, with conditions, to Mr. Loganathan.

INTRODUCTION

MLS denied Mr. Loganathan's application for a Tow Truck Driver's Licence as records of the Ministry of the Attorney General's Integrated Court Offences Network (ICON) reveal multiple charges and convictions registered against Mr. Loganathan under the *Highway Traffic Act* (HTA) the *Compulsory Automobile Insurance Act* (CAIA) the *Criminal Code of Canada* (CCA) and the Toronto Municipal Code.

ISSUE

The issue before the Tribunal is whether Mr. Loganathan's conduct (as evidenced by his record of charges and/or convictions under the *Highway Traffic Act*, the *Criminal Code of Canada* and the Toronto Municipal Code, provides reasonable grounds to believe that:

- i. Mr. Loganathan will not operate a tow truck in accordance with law, and with integrity and honesty; or
- ii. Mr. Loganathan's operation of a tow truck has resulted or will result in a breach of the law; or
- iii. Mr. Loganathan's operation of a tow truck has infringed or would infringe the rights of other members of the public, or has endangered or would endanger public health or safety.

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PROCEDURAL HISTORY

On October 22, 2019, Mr. Loganathan participated in a pre-hearing interview with Jamil Elannan, Supervisor MLS. This meeting resulted in a Proposed Resolution being presented to the Tribunal on November 14, 2019. The Proposed Resolution signed on October 22, 2019 was not approved by the Tribunal. MLS raised concerns that they could no longer agree to the Proposed Resolution as presented. MLS requested additional time to further investigate information contained in Report No. 7313 and additional charges that were laid against Mr. Loganathan following the pre-hearing conference on October 22, 2019. The Tribunal adjourned the matter to November 28, 2019 and ordered the parties to meet prior to that date to determine whether a new or amended Proposed Agreement could be negotiated or if a hearing would be required.

As no new proposed agreement was produced, this matter proceeded to a hearing on November 28, 2019.

CITY'S EVIDENCE

Mr. Jamil Elannan, Supervisor MLS, was the only witness for the City. Mr. Elannan was affirmed and testified regarding Mr. Loganathan's charges and convictions as set out in MLS Report No. 7313 (Exhibit 1 or "the report"), and the updates to the report dated October 21, 2019 (Exhibit #2), November 13, 2019 (Exhibit #3) and November 27, 2019 (Exhibit #4). Mr. Elannan provided a summary of the various charges and convictions on Mr. Loganathan's record. In particular, he noted that Mr. Loganathan had:

- *Criminal Code of Canada* charges for "Fraud", which were withdrawn, and a conviction for "Fail to Comply with Bail Condition," dating back to 2013. The initial charges stemmed from Mr. Loganathan's use of counterfeit TTC tickets. He incurred further charges when he was found driving in violation of the conditions allowed under his bail conditions.
- Several charges and convictions under the *Highway Traffic Act* between 2013 and 2019. The most recent convictions (September & November 2019) were for "unsafe turn/lane change" and "disobey lane lights". There is also an April 17, 2018 conviction for careless driving, stemming from an incident in September 2017, as well as an earlier conviction for speeding in 2016. There are several charges currently before the courts. There were also a number of charges withdrawn.
- Incurred four new charges (three stemming from the same incident) under the Toronto Municipal Code related to operating a tow truck without a license during November 2019, shortly after the date he signed the Proposed Resolution with MLS.

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

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APPLICANT'S EVIDENCE

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

- Mr. Loganathan is 24 years old. He obtained a Toronto Tow Truck Driver's license in 2016. He allowed the license to lapse in 2018 since he was working as a security guard at that time and felt that he did not need the license to earn a living.
- Mr. Loganathan now lives on his own. He currently works as a tow truck driver in Oshawa, but he does not earn enough to support himself. A Toronto license would allow him to increase his income. Mr. Loganathan submitted a letter from Prime Towing commenting on his employment (entered as Exhibit #5)
- In relation to the *Criminal Code of Canada* charges, Mr. Loganathan explained that he did not know that the TTC tickets he used in 2013 were forgeries. He also outlined that when he was charged with breaching his bail conditions, he was actually on his way to work, and his conditions allowed him to travel to and from work, but the officer did not accept his explanation. He said that he pleaded guilty to the charge since it seemed the fastest way to resolve the matter. He did not realise the impact doing so might have in the future.
- Mr. Loganathan acknowledged that his driving record was not good. He offered explanations for his actions in some instances.
- He also pointed out that his most recent charges, those that arose after he signed the Proposed Resolution in October, were incurred when he was simply driving the tow truck he uses for work in Oshawa back to a garage in Toronto. He stated that he was not engaging in work at the time. The charges are still before the court. Mr. Loganathan also submitted a Case Status Summary (entered as Exhibit #6).

CITY'S SUBMISSIONS

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

The Tribunal should refuse to issue a Tow Truck Driver's Licence to Mr. Loganathan as there are reasonable grounds to believe that Mr. Loganathan 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. Loganathan'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 public.

As a result of the conviction for careless driving, Mr. Loganathan met the administrative threshold for denial, which is any conviction for careless driving in the last five years.

Mr. Loganathan is 24 years old. He is a relatively new driver and has been licensed in Ontario only a few years. In this short time, he has accumulated a number of

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convictions under the *Highway Traffic Act* & Toronto Municipal Code and the *Criminal Code of Canada*, which demonstrate a history of unsafe driving and a blatant disregard for the law and the licensing regime.

Ms Murakami also pointed out that Mr. Loganathan has options for alternative employment. He has experience working as a security guard.

In balancing the public interest and public safety, the Tribunal should take into account that this is not a case where Mr. Loganathan would be unable to find a job other than driving a tow truck.

Considering Mr. Loganathan's short driving history and the number of charges and convictions accumulated in that short time, it is MLS's view that Mr. Loganathan is not ready to take on the responsibility of being a tow truck driver. In this case, Ms Murakami asserted, the risk to public safety outweighs Mr. Loganathan's need to earn a living using a City of Toronto Tow Truck Driver's license.

APPLICANT'S SUBMISSIONS

Mr. Loganathan acknowledged he had accumulated a number of charges in a short time. He argued that despite the charges he was not an unsafe driver. He asked to be given a chance to prove that he could operate his business safely.

He asserted that the license was necessary for him to earn a living since his other sources of income were not secure.

ANALYSIS

Section 546-4 A of the Toronto Municipal Code sets out the grounds for denying renewal of a licence. An applicant is entitled to a licence or a renewal of a license unless MLS can demonstrate that there are reasonable grounds to believe that Mr. Loganathan 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. Loganathan'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 public.

Having weighed the evidence, the Tribunal is satisfied that those grounds have not been met.

Mr. Loganathan's record of charges is concerning, particularly given his age and the short time he has been driving. However, the Tribunal concluded that any concerns about public safety could be satisfied with conditions placed on Mr. Loganathan's tow truck driver's license licence.

Mr. Loganathan was charged with fraud under \$5000 under the *Criminal Code of Canada*, and related to that offence was convicted of not complying with his bail conditions. While the fraud charge is concerning, we note that this involved using forged TTC tickets while he was in high school and only 18 years old. Mr.

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Loganathan told the Tribunal he bought and used the fake tickets but did not make them. This charge was also ultimately withdrawn. As to the conviction for failing to comply with bail conditions, we note this occurred more than five years ago. Mr. Loganathan has had no further *Criminal Code of Canada* charges and convictions since then.

Mr. Loganathan has a lengthy record of charges under the *Highway Traffic Act* and *Compulsory Automobile Insurance Act* in a relatively short period of time, which raises concern about his ability to drive a tow truck in accordance with the law. At the same time, the facts underlying the most serious charge of “careless driving” are of less concern, in that apparently Mr. Loganathan drove into an HOV lane on the highway when he should not have to avoid stopped traffic and an accident. While a careless driving conviction is always troubling, this was less serious in nature, there were no injuries or accidents as a result of his poor decision. Mr. Loganathan recognizes his driving record is poor and told the Tribunal he is committed to improving his driving. Mr. Loganathan explained that he incurred the charge relating to driving without insurance, because he did not realize he had to wait before driving a newly insured vehicle.

The Tribunal also noted that the most recent Municipal Code charges against Mr. Loganathan related to his not having a Toronto tow truck license. He stated that the charges were incurred while he was returning the tow truck he used outside of Toronto to the garage in Toronto (though these charges are still before the courts). Granting him a license would eliminate any such charges in the future, and better allow Mr. Loganathan to operate his business in accordance with the law.

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. In considering whether to renew, grant or deny a licence, and whether to do so with or without conditions, the Tribunal must 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.

As noted, Mr. Loganathan’s youth is a cause for concern when one calculates the number of charges he has accumulated in only a few years of driving. However, Mr. Loganathan’s youth is also a factor in giving Mr. Loganathan an opportunity to prove that he has matured and is now able to operate his business in accordance with the law. In our view, conditions on his licence would help reduce any potential risk and protect the public.

Overall, the Tribunal concluded that Mr. Loganathan’s livelihood needs further tipped the balance in this case. None of Mr. Loganathan’s sources of income are secure, and he testified that he had difficulty making ends meet. Again, the Tribunal took note of Mr. Loganathan’s youth. The Tribunal did not want to take action that would have the potential to unduly restrict Mr. Loganathan’s future opportunities at this early point in his career, without providing him an opportunity to demonstrate his ability to prove himself capable of conducting himself in a proper and responsible manner.

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DECISION

For the reasons set out above:

Mr. Loganathan's application is granted and a Tow Truck 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 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. Loganathan is advised that during the probationary period, MLS may make additional checks of any driving, criminal, and by-law charges and convictions against Mr. Loganathan, and conduct other investigations as appropriate to assess Mr. Loganathan's compliance with the requirements of Chapter 545 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. Loganathan, or any other concerns with respect to the conduct of the licensee, those matters and Report No. 7313, and any updating material, may be brought back before the Tribunal for a full hearing.

Originally Signed

Edgar-André Montigny, Chair

Panel Members: Melina Laverty and Maureen Carter-Whitney concurring

Reference: Minute No. 210/19

Date Signed: December 30, 2019