

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

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**Date of Hearing:** March 12, 2020

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

**Re:** Abdul Ghafar Shah Hussaini (Report No. 7345)  
Applicant for a Tow Truck Driver's Licence (Application No. B964233)

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

**Counsel for Applicant:** Unrepresented

### **BACKGROUND**

Mr Hussaini is applying for a Tow Truck Driver's Licence. He previously drove a tow truck in the City of Toronto from October 2013 to January 2018 when his licence was cancelled due to non-payment of the renewal fee.

Mr Hussaini submitted a new application in August 2019. Municipal Licensing and Standards ("MLS") denied his application based his three-year driver's record with the Ministry of Transportation. He requested a hearing before the Toronto Licensing Tribunal to determine if his licence should be granted.

This matter was before the Tribunal for a hearing on March 12, 2020.

The Tribunal denied Mr Hussaini's Tow Truck Driver's Licence based on his driving history of stunt driving and speeding charges and convictions.

### **MLS'S EVIDENCE**

MLS's evidence was presented through Jamil Elannan, Supervisor, MLS.

Mr Elannan referred to MLS's Report 7345 ('Report' marked as Exhibit 1) which he was involved in preparing. He noted that Mr Hussaini did not have any criminal charges or convictions based on the judicial matters record check that was provided on August 26, 2019.

MLS's denial of his application was based on Mr Hussaini's driving record and, primarily, on the following Highway Traffic Act charges and convictions, (full driving history summarized at page 15 of the Report):

December 6, 2017 Offence Date,  
Speeding (original charge Stunt Driving) – convicted May 28, 2018

July 4, 2017 Offence Date,  
Operating Motor Vehicle while Performing Stunt – convicted August 14,  
2017

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June 15, 2015 Offence Date,  
Speeding 125 km/80km zone (Original charge was Stunt Driving) – convicted September 21, 2015

Mr Elannan noted that for the June 15, 2015 offence, Mr Hussaini was determined to be driving 138 km/80km zone, in keeping with the original charge of stunt driving. His vehicle was towed at the scene of the offence. The charge was reduced to a speeding charge and conviction resulted.

For the December 6, 2017 offence, Mr Elannan noted that Mr Hussaini was driving 165 km/100km zone. His driver's licence was seized at the scene of the offence and his vehicle was impounded for seven days.

For the July 4, 2017 offence, the occurrence summary at page 47 of the Report did not provide many details except to note that the offence occurred while driving on Highway 400 in Vaughan. He was convicted of operating a motor vehicle while performing a stunt.

Mr Elannan referred to Mr Hussaini's updated Driver's Abstract date stamped March 11, 2020 (marked as Exhibit 2). He noted that offence of December 6, 2017 and the offence of July 4, 2017 each resulted in a 7-day administrative suspension of Mr Hussaini's Driver's Licence (also known as a roadside suspension).

Mr Hussaini's most recent offence was in April 7 2018 when he was charged and convicted with Speeding 93 km/60km zone while driving a tow truck.

## **APPLICANT'S EVIDENCE**

Mr Hussaini testified on his own behalf. He told the Tribunal that he was living through a very stressful period at the time he was charged with those offences. His father fell suddenly ill and his marriage began to break down. Ultimately, he separated from his wife. This further affected his emotional state. He said that this was in no way an excuse for speeding. He realizes now that it was dangerous behavior. He acknowledged that he made poor choices driving in this way.

He said that he is more settled down now. He has reunited with his wife and has come to terms with his father's illness. He said he will not be driving at this rate of speed ever again. He has learned his lesson.

He explained that he was working as a tow truck driver in Shelburne, Ontario and driving back and forth from his Toronto home each day. He worked in Shelburne until December 2018. He stopped working in Shelburne as he could no longer be insured as a tow truck driver. His father became ill in July 2015 which caused stress in his marriage. He started drinking and ultimately separated from his wife and child. He reunited with his wife in December 2018 and his marriage remains intact.

Prior to working as a tow truck driver, he worked as a security guard. Since December 2018, he has done a few small construction jobs and has applied (with little success) for Ontario Works. His brothers, who are also tow truck drivers, have been helping him financially.

He said that if he could get his tow truck licence, he would easily find work with one or more companies who have assured him that he would be hired.

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Mr Hussaini said that he has had a clean driving record, with no speeding tickets, for almost two years, since April 2018. He presented a good character letter from a friend as additional evidence (marked as Exhibit 3).

Mr Hussaini's wife, Nazia Saraj, also testified. She stated that he is making a change in his life to become a better person for himself and for his family. She said that even if he is a fast driver, he is cautious. She said that she is not working currently but is looking for a job now that her son is in school.

Cross-examination from Mr Gourlay and questions from the panel revealed the following additional evidence:

- Mr Hussaini drove his personal vehicle to and from Shelburne.
- The last speeding ticket he received was on April 7, 2018.
- Mr Hussaini gave up his personal vehicle on December 25, 2018.
- He stopped driving to and from Shelburne on December 25, 2018
- He does not currently own a personal vehicle and seldom drives.
- From April 8, 2018 to December 2018, he received no speeding tickets.
- He borrows his brother's car to buy groceries, from time to time.
- He has not been driving on the highways since December 25, 2018.
- He has Grade 10 education.
- His only dependents are his wife and son.

## **SUBMISSIONS**

MLS submitted that the Tribunal should deny the application for a licence. MLS's position is that there is a significant pattern of stunt driving, each charge being over 50km of the speed limit. MLS states that Mr Hussaini continued to drive well over the speed limit even after each roadside suspension.

MLS stated that Mr Hussaini's circumstances are sympathetic. He was going through a stressful period. However, one cannot resort to speeding each time one faces stress in our lives. It is a danger to public safety.

The fact that Mr Hussaini has admitted to making changes in his life is reassuring, according to MLS's position. But the impact of his two-year clean driving record is lessened because he has only been driving for 8 months during the two years since he got rid of his personal vehicle. MLS indicated that this is not enough time to determine whether there has been a true change in his conduct or the pattern of speed/stunt driving. Perhaps with more time and a clean driving record over a longer period of time, the City can be assured that there will be no risk to public safety by granting Mr Hussaini a licence, but that was not evident today.

Mr Hussaini's submission is that he needs this licence. Tow truck driving is all he knows. He requires the income that towing will provide in order to meet his expenses. He is a changed person now and will never speed again.

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## DECISION

Issue: The Tribunal must determine whether the denial of Mr Hussaini's application for a Tow Truck Driver's Licence is reasonable to protect public safety?

Summary of Decision: The Tribunal determined that denying Mr Hussaini's application for a Tow Truck Driver's Licence was reasonable based on his recent driving history.

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 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 there are reasonable grounds to believe that Mr Hussaini will be a risk to public safety if allowed a tow truck driver's licence. If MLS cannot demonstrate this, Mr Hussaini is entitled to a licence. Mr Hussaini's recent driving history was presented in order to determine how he may reasonably act in the future.

In carefully considering his driving history, the Tribunal noted that the speeding charges and convictions took place over a one year and a half period between 2015 to 2017. This is a relatively short period. During that time, he received 3 separate suspensions of his licence. These offences were serious; he was speeding 50km/h over the legal limit. It is of concern to the Tribunal that he did not correct his reckless behavior after the first suspension.

Mr Hussaini described his emotional state during this time. He was open and honest about what he was going through. One can understand how his father's illness and the breakdown of his marriage could have caused him a lot of stress. He took responsibility for his actions. He told the Tribunal that he has now changed his ways. He is reunited with his wife and has come to terms with his father's illness. He told the Tribunal he will never speed again.

Even so, the Tribunal noted that one of the speeding offences took place in June 2015, a month before his father became ill. We didn't receive a satisfactory explanation for this inconsistency in his explanation.

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We also considered his clean driving record of almost two years (since April 2018). Upon closer examination, it was noted that Mr Hussaini did not own a personal vehicle during much of this time. He was driving his own car from April to December 2018. He got rid of his car in 2019. Therefore, the clean driving record for 2019 does not provide as much assurance as it otherwise would have if he been driving throughout the past two years.

The Tribunal carefully considered all the factors in this case. Mr Hussaini is sympathetic, articulate and forthright. He is 30 years old and most of his work experience is in the tow truck driving industry. His brothers work as tow truck drivers. Moreover, he needs the income to support his family that the tow truck industry can provide.

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 weighed Mr Hussaini's need to earn a livelihood against the protection of the public interest. Mr Hussaini said that if he did not receive a tow truck licence he would have to work at two jobs in order to make a decent income. He would have to work as a security guard and in construction. His wife was also in the process of looking for work as their five year old son is in school.

The Tribunal determined that there were other means for Mr Hussaini to earn an income. We had to balance this against the risk to public safety should Mr Hussaini be granted a licence and continue his pattern of speeding. We decided that the risk to public safety outweighed the need to earn a livelihood in these circumstances. The speeding offences were of concern to the Tribunal and pose a risk to public safety. While we did acknowledge Mr Hussaini's assurances that he has changed his ways, we did not feel we had enough evidence to support this assertion.

With the passage of time and the benefit of a clean driving record when Mr Hussaini can demonstrate a longer period of time with no speeding offences, he may be in a better position to apply for his licence in the future.

We therefore denied Mr Hussaini's application for a Tow Truck Driver's Licence.

Originally Signed

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

Reference: Minute No. 43/20

**Date Signed:** April 10, 2020