

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

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**Date of Hearing:** November 12, 2020 (Videoconference Hearing)

**Panel:** Daphne Simon, Panel Chair;  
Anu Bakshi and Edgar Montigny, Members

**Re:** Zahirulo Jumakhon (Report No. 7319)  
Holder of Tow Truck Driver's Licence D09-4875951

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

**Counsel for Applicant:** Unrepresented

### **INTRODUCTION**

Mr. Jumakhon was requested to appear before the Toronto Licensing Tribunal based on a routine review conducted by Municipal, Licensing and Standards ("MLS") in June 2019. MLS sought to revoke Mr. Jumakhon's licence based on his recent driving record which posed concerns.

This matter was before the Tribunal on November 12, 2020 and a hearing took place. Due to physical distancing measures caused by COVID-19, the hearing took place electronically via video conference.

### **MLS's EVIDENCE**

MLS's evidence was presented through Andrea Di Matteo, Supervisor, MLS. The relevant evidence presented is as follows:

Ms Di Matteo presented MLS Report 7319 ('Report' marked as Exhibit 1). Ms Di Matteo stated that Mr. Jumakhon had been issued a Tow Truck Driver's Licence on October 19, 2018 which was renewed on October 2019 and is deemed to continue.

Ms Di Matteo outlined Mr. Jumakhon's recent driving history and recent criminal charges and convictions which gives rise to the concern of public safety and compliance with the law on the part of MLS.

The Report included information taken from police records received by MLS and information obtained from the provincial ICON database system.

Ms Di Matteo referred to a chart within the report and summarized the list of charges and convictions under Highway Traffic Act. Most notably, the following convictions and charges since Mr. Jumakhon was licenced as a Tow Truck Driver:

- Careless Driving on October 10, 2019 – Court date pending

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- Speeding 109 km in 60km zone on July 10, 2020 – Court date pending
- Speeding 82km in 60km zone on August 4, 2019 – Convicted
- Disobey Sign on July 19, 2019 – Convicted
- Park/Stand Highway Interfere on February 15, 2019 – Convicted
- Improper Means of Attachment/Commercial Vehicle on December 1, 2019 – Convicted
- Careless Driving to Pass Off Roadway on January 11, 2019- Convicted of Pass Off Roadway

Mr. Jumakhon has a criminal record which poses a serious concern. Ms Di Matteo referred to a police report received by MLS in summarizing the events leading to the following charges:

- Assault, August 3, 2018 – Convicted on November 5, 2019
- Assault Causing Bodily Harm, August 3, 2018 – Withdrawn on November 5, 2019
- Theft Under \$5000, August 3, 2018 – Withdrawn on November 5, 2019

### **August 3, 2018 incident which lead to criminal charges and conviction**

On Friday August 3, 2018 at around 8:30 pm, a white Audi Sedan entered the Woodbine Hotel parking lot where the victim and friends were smoking. Mr. Jumakhon is alleged to have exited the Audi, approached the victim and began to assault him brass knuckles. Three males exited the vehicle to join in on the assault. As the victim ran towards the hotel, the unknown males followed him and cornered him while the main perpetrator (allegedly Zabirulo Jumakhon) proceeded to assault him repeatedly in the head with brass knuckles causing it to bleed severely.

While the assault was taking place, the victim stated that three gold chains were taken from him. The unknown males fled the scene in the Audi before police arrived. The main perpetrator was identified by witnesses as Mr. Jumakhon.

On August 8, 2018, police obtained a search warrant for Mr. Jumakhon's apartment and the white Audi bearing the same licence plate as the one used in the commission of the offense (redacted from the police report provided to MLS). Police located Mr. Jumakhon's clothes he was alleged to have worn on the day of the incident in his apartment and they found brass knuckles in the white Audi.

### **October 10, 2019 Careless Driving charge**

Ms Di Matteo summarized the details of a Careless Driving charge from last year. The general occurrence report stated that at approximately 11:30 pm, Mr. Jumakhon was observed driving through a construction site on Highway 401. Police observed a GMC Sierra Tow Truck driving on the left shoulder through a construction zone. Mr. Jumakhon was identified and charged with Careless Driving.

## **APPLICANT'S EVIDENCE**

Mr. Jumakhon testified on his own behalf. His relevant evidence is as follows:

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Mr. Jumakhon testified that he was born in Afghanistan and his family came to Canada to avoid the war. Mr. Jumakhon didn't finish college. His father passed away and Mr. Jumakhon began to frequent with the 'wrong crowd', as he described it. He provided an explanation for the driving charges on his record.

Regarding the January 11, 2019 incident, which was originally a Careless Driving charge, Mr. Jumakhon explained that there were six or seven dump trucks approaching him and he veered off the road to avoid them. He was also concerned that a rock caused by the dump trucks might hit his windshield and crack it. He explained that windshield cracks are very expensive to repair. He missed his court date on June 18, 2019 as he overslept. He had to re-open the charge and had no choice but to plead guilty to Pass Off Roadway.

Regarding the October 10, 2019 Careless Driving charge, he explained that it was an honest mistake. He had picked up a disabled car 20 minutes before. He was on the shoulder/construction zone and had placed his cell phone down as he was working. After dropping off the car, he realized he left his phone by the side of the road and drove back to find it. He was driving 5km slowly on the shoulder to see if he could find his phone. He eventually found it. It was cracked. He explained this to the officer and showed him his cracked cell phone. He stated that he has since bought a new phone but has kept the cracked one as evidence for when his court date for this matter scheduled.

Regarding the July 19, 2019 Disobey Sign, he had to pull over because there was a big piece of metal on his tire. The OPP told him he couldn't park there and gave him a ticket. He missed the court date which is why he was found guilty.

Regarding the July 10, 2020 Speeding 109km in a 60km zone, Mr. Jumakhon explained that he was driving to see his girlfriend in Aurora. It was 2am and she was having anxiety. He admitted he was speeding but denied he was going 109km. He stated he was probably going 85-89km. He also testified that the police officer that pulled him over did not have a radar gun or other device to show he was going 109km.

Under cross-examination, Mr. Gourlay asked Mr. Jumakhon about the January 11, 2019 Pass Off Roadway conviction. He asked Mr. Jumakhon if he drove on the shoulder. Mr. Jumakhon denied it; stated that he only changed lanes to avoid the dump truck. Mr. Gourlay again asked whether that meant he veered on to the shoulder of the road. After several denials by Mr. Jumakhon, he did finally admit that he drove onto the shoulder.

Mr. Gourlay asked Mr. Jumakhon about the Assault conviction and other charges from the incident in the Woodbine Hotel parking lot with the other unknown males. Mr. Jumakhon said that the brass knuckles were not his and it was not his car identified by police. He said that everybody was throwing fists and since he had fists coming at his head, he had to defend himself. He denied that anyone took any gold chains. He said that police found brass knuckles but he didn't know who they belonged to. He admitted that he arrived in the Audi but denied it was his car. He stated that he's never robbed anyone in his life. After some other questions from Mr. Gourlay and vague answers from Mr. Jumakhon, Mr. Jumakhon stated that he didn't want to think about the incident nor does he like to talk about it. He stated it was in his past; it won't happen again and he wants to focus on the future. He said he's not comfortable saying who he was with on the day of the assault. He added that if he could change one thing in his life, he would change that day.

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Mr. Jumakhon also testified that his last job was in 2012 working in construction. He finished high school but needs one more credit for science and that he would like to eventually go to York University. He sometimes works 12 hours a day as a Tow Truck driver. He is living with his girlfriend and her three-year-old child lives with them part-time. He provides financial assistance to his elderly mother.

## **SUBMISSIONS**

In opening submissions, Mr. Gourlay stated that MLS was seeking revocation of Mr. Jumakhon's licence, but reserved its position until all the evidence was heard. At the end of the hearing, Mr. Gourlay submitted that while the circumstances in this case are serious and a cause for concern, MLS submits that the licence be issued but with conditions. Mr. Gourlay submitted that Mr. Jumakhon has a serious record in the short time that he has been licenced as a Tow Truck driver. Further that his charges touch on his Tow Truck driving profession in his ability to adhere to the law and to deal with members of the public. The driving record and criminal charges pose concerns about his ability to adhere to the law and raises public safety concerns in dealings with the public.

Mr. Gourlay submitted that this was an appropriate case for sanctions. MLS proposed a 10-day suspension of his licence. The suspension is a penalty for Mr. Jumakhon's serious charges. It also serves as both individual and general deterrence that this is not appropriate conduct for a licenced Tow Truck driver. In addition, Mr. Gourlay requested a 4-year probationary period in order to protect the public. The probation provides an opportunity for Mr. Jumakhon to be monitored in case such that there is a recurrence of these serious offenses. The probation comes with the usual MLS conditions that require Mr. Jumakhon to submit criminal and judicial matters checks upon each annual renewal of his licence.

Mr. Jumakhon submitted that he has put the past behind him and wants to look toward the future. He submitted he would respect the 4-year probationary period. He asked if the 10-day suspension could be removed since business is already slow since the COVID-19 pandemic. Regardless, he assured the Tribunal that he wants to improve his driving record and would respect whatever the Tribunal ordered.

## **REASONS FOR DECISION**

**Issue: Does Mr. Jumakhon's recent criminal and driving history and related allegations provide reasonable grounds to believe that he has not carried on his business in accordance with the law; or is a risk to public safety?**

**Decision: The Tribunal found reasonable grounds to believe that Mr. Jumakhon did not carry on his business in accordance with the law. However, the Tribunal is satisfied that Mr. Jumakhon has shown insight and motivation to ensure he does not jeopardize his Tow Truck Driver's Licence in the future by accumulating further charges and convictions. In this case, placing conditions on his licence will mitigate any additional risk to public safety and provide assurances that he comply with the law in future.**

The Municipal Code provides in part:

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§ 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. Jumakhon's conduct will be a risk to public safety if his licence is issued. If MLS cannot demonstrate this, Mr. Jumakhon is entitled to the issuance of his licence.

The Municipal Code requires that MLS must demonstrate that there are reasonable grounds to believe that Mr. Jumakhon's conduct indicates that he will not carry on his Tow Truck business in accordance with the law.

In order to decide this, Mr. Jumakhon's past conduct and driving and criminal charges are to be considered. In presenting evidence of Mr. Jumakhon's conduct, MLS relied on a police report which provided details of the events of August 3, 2018 criminal charge leading to Mr. Jumakhon's criminal charges and conviction.

Mr. Jumakhon disputed many of the allegations in the police report. He denied owning brass knuckles; he denied using brass knuckles; he denied stealing gold chains from the victim and he denied that he owned the Audi vehicle, identified in the report. When asked about what did in fact occur on the night in question, Mr. Jumakhon gave some information about needing to defend himself as he was being punched. However, he was quite vague on providing further details. He did not explain who he was with; how he found himself in the parking lot of the Woodbine Hotel or indeed how he became engaged in this fist fight involving several males.

Mr. Jumakhon reiterated a number of times that he did not wish to talk about the incident and wanted to put the whole thing behind him. It was clear that he regretted being involved, even though he continued to deny certain allegations. Unfortunately, he now has criminal conviction of assault on his record. Mr. Jumakhon expressed that if he could go back and change one thing, it would be what occurred on August 3, 2018.

These are recent and serious allegations. While we did not receive a full explanation from Mr. Jumakhon of what took place, we did believe Mr. Jumakhon when he stated that he is

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committed to putting this incident behind him and the acknowledgement that he found himself with the wrong crowd.

The Tribunal accepted Mr. Jumakhon's account of the Careless Driving charge. He described how he drove slowly on the shoulder of the highway in order to retrieve his cell phone that he had left behind while assisting a disabled vehicle 20 minutes earlier. This seemed like a plausible explanation and one that Mr. Jumakhon will provide when his matter is brought back to court.

That being said, we noted Mr. Gourlay's submission that on the Pass Off Roadway conviction, persistent questioning from Mr. Gourlay was required for Mr. Jumakhon to admit that he did in fact drive on the shoulder of the road. The Tribunal is concerned with a pattern here. Twice in 2019, Mr. Jumakhon is alleged to have driven on the shoulder of the road. While we accepted his explanation for the Careless Driving charge the Tribunal wishes to underscore that Tow Truck drivers are not exempt from highway traffic laws. They are required to comply with the rules of the road the same as all other drivers. Mr. Jumakhon is no exception.

In the Tribunal's view, placing a condition such as a 4-year probation on Mr. Jumakhon's Tow Truck Driver's Licence provides assurance to the public that he will continue to be monitored over a period of time for any future driving or criminal charges or convictions. This mitigates any further risks to the public should Mr. Jumakhon not conduct himself in accordance with the law. Mr. Jumakhon has shown insight and motivation to ensure his driving record is clean and he does not put his Tow Truck Driver's Licence in jeopardy in the future. In this case, placing conditions on his licence will mitigate any additional risk to public safety.

In addition, the Tribunal is of the view that a sanction of suspension of the licence is appropriate in the circumstances given the serious nature of the charges and convictions, the recentness in which they occurred and to act as a general and specific deterrence to other City of Toronto licensees and to the public that this conduct shall not be condoned by this Tribunal.

We therefore order that Mr. Jumakhon's Tow Truck Driver's Licence be issued, with the following conditions:

- (1) Immediately upon being issued, Mr. Jumakhon's Tow Truck Driver Licence will be placed on probation for a period of Four ( 4 ) year(s). Mr. Jumakhon is advised that during the probationary period, MLS may make additional checks of any driving, criminal, and by-law charges and convictions against Mr. Jumakhon and conduct other investigations, as appropriate, to assess the licensee's compliance with the requirements of the Municipal Code and other applicable laws;
- (2) Prior to each of the next Four ( 4 ) renewal(s) of the licence, Mr. Jumakhon must provide to Municipal Licensing and Standards, at his own expense, an original up-to-date abstract of his Criminal Record and Judicial Matters Check; and,
- (3) During the probationary period, if Municipal Licensing and Standards has concerns with any new charges or convictions against Mr. Jumakhon or any other concerns

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with respect to his conduct, those matters and Report No. 7319 and any updating material, may be brought back before the Tribunal for a full hearing;

- (4) Mr. Jumakhon's Tow Truck Driver's Licence shall be suspended for a period of Five (5) days from Monday November 16, 2020 until midnight on Friday November 20, 2020.

Originally Signed

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Daphne Simon, Panel Chair

Panel Members: Anu Bakshi and Edgar Montigny, concurring

Reference: Minute No. 135/20

**Date Signed: November 25, 2020**