

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

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**Date of**

**Hearing:** January 28, 2021 (Videoconference Hearing)

**Panel:**

Verlyn Francis, Panel Chair;  
Anu Bakshi Francis and Melina Laverty, Members

**Re:**

Jeffrey J. Williams (Report No. 7429)  
Holder of Tow Truck Driver's Licence No. D09-5006721

**Counsel for Municipal Licensing and Standards:** Graham Thomson

**Counsel for Applicant:** Unrepresented

### **INTRODUCTION**

On January 27, 2020, Mr. Jeffrey J. Williams submitted to Municipal Licensing and Standards (MLS) Application No. C006721 for a Tow Truck Driver's Licence, along with the required fee; a Criminal Record and Judicial Matters check from Toronto Police Service dated October 25, 2019; and a three-year driver's record search from the Ministry of Transportation dated January 24, 2020. On the basis of the materials submitted, Mr. Williams was issued Tow Truck Driver's Licence No. D09-5006721 on January 27, 2020, which expired on January 27, 2021.

The next day, January 28, 2020, MLS conducted a routine check of Mr. Williams' driving record and obtained a three-year driver's record which revealed that Mr. Williams had six demerit points and a conviction for careless driving under the Highway Traffic Act. This information was not on the three-year driving record dated January 24, 2020 submitted by Mr. Williams.

On January 29, 2020, MLS sent a letter to Mr. Williams advising him that his Tow Truck Driver's Licence would be subject to review by the Toronto Licensing Tribunal (Tribunal) because the record of his convictions under the Highway Traffic Act and Toronto Municipal Code (the Code) were in breach of the screening criteria under Chapter 545 of the Code. A hearing on this matter was held on January 28, 2021.

The issue before the Tribunal was whether Mr. Williams' licence should be revoked, suspended, or have conditions placed upon it.

After the hearing, the Tribunal gave an oral decision to revoke the Tow Truck Driver's Licence. These are the written reasons for that decision.

### **MLS EVIDENCE**

Ms Andrea Di Matteo, Supervisor with MLS, was the sole witness for MLS.

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Ms Di Matteo testified that a Tow Truck Driver's Licence was first issued to Mr. Williams on January 27, 2020 and it expired on January 27, 2021. She indicates that the renewal fee has been paid and the licence was due to continue at the time of the hearing.

Ms Di Matteo testified that the main concern for MLS was the careless driving conviction registered against Mr. Williams according to the three-year driver's abstract obtained by MLS the day after Mr. Williams submitted his application and obtained a Tow Truck Driver's Licence with a three-year driver's record which did not show this conviction.

The 41-page report and updates were introduced as Exhibit 1.

Ms Di Matteo referred to Mr. Williams' application, submitted on January 27, 2020 at 2:11 p.m., at page 4. She pointed out the section entitled "Statement of Fact" which asked the applicant to make several statements of fact including that the Screening Criteria of Chapter 545 of the Code had been provided and explained. A copy of the screening criteria is set out at pages 40-41 of Exhibit 1. On page 41, section (k) (1) indicates that MLS is prohibited from issuing a licence to anyone convicted of careless driving in the preceding five years. In the Statement of Fact, Mr. Williams initialed Statement 1 "The information set forth in this application is true, accurate and in all material respects complete". Statement 5 indicates, "I am aware that a false Statement of Fact may result in the application for a licence being refused". Mr. Williams signed the Statement of Fact and his signature was witnessed.

As part of his application, Mr. Williams submitted a three-year driver record purportedly from the Ministry of Transportation and dated January 24, 2020. This abstract is at page 6 of Exhibit 1. The only conviction set out in this document is dated October 18, 2016 for speeding, 65 km in a 50 km zone. The other items required as part of the application are two pieces of identification, including a provincial driver's licence, and photograph which is taken in the MLS office. Mr. Williams provided all the required information to MLS for the issue of a Tow Truck Driver's Licence.

Ms Di Matteo testified that Mr. Williams never advised MLS of his careless driving conviction. MLS did not conduct a search of the applicant's driving record and criminal record prior to issuing the licence. However, they do conduct random audits of applicants up to seven days after the licence is issued.

Page 7 of Exhibit 1 shows the result of the three-year driver record check on Mr. Williams that MLS obtained from the Ministry of Transportation on January 28, 2020, the day after his licence was issued. This record bears the same name, date of birth, driver's licence number, earliest licence date, and expiry dates as that provided by Mr. Williams. Under the section "Convictions, Discharges and Other Actions", it shows two convictions: October 16, 2018 – speeding 65 km in 50 km zone; and April 17, 2019 – careless driving. It also indicates that Mr. Williams had six (6) demerit points.

The record provided by Mr. Williams did not contain the careless driving conviction and the demerit points.

As a result of discovering this information, MLS sent the letter dated January 29, 2020 to Mr. Williams informing him that his Tow Truck Driver's Licence would be subject to review by the Tribunal.

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Ms Di Matteo testified that Mr. Williams was driving a tow truck on Ellesmere Road in Toronto when he was convicted of careless driving on April 17, 2019. He was also charged on April 21, 2019 with driving Tow Truck 5759 without a licence and driving while under suspension. On June 8, 2019, he was convicted of improper tire/drawn vehicle and tow truck exterior not clean, and both of those offences were again in Tow Truck 5759.

## **APPLICANT'S EVIDENCE**

In examination-in-chief, cross-examination, and in response to questions from the Tribunal, Mr. Williams testified that he is almost 38 years of age, unmarried and has three children, ages 12, 5 and 3, with a previous partner who is on social assistance. Prior to 2020, he worked in landscaping which included snow removal in the winter. He also worked as a forklift driver in a warehouse and on the production line. Currently, driving a tow truck is his only source of income. He has a Grade 10 education because his father died when he started Grade 9 and he "sort of lost life".

On the day he applied for his licence, he went to MLS directly by bus from Service Ontario located at Cedarbrae Mall where he obtained his driver's abstract. He did not review the abstract. He also took in his criminal background check. He admitted that he signed the Statement of Fact in the application indicating that all the material facts were true, that he was given the screening criteria and it was explained to him that, if there was a material change, it would result in his licence not being valid.

Mr. Williams testified that he knew he had the speeding ticket because he missed the court date and was convicted. The charges and convictions on page 10 accurately show the charges and convictions registered against him, except for line 8, the liquor charge, he does not recall because he does not drink liquor.

On the carry concealed weapon charge, an officer pulled him over at Main subway station and he was found with a set of brass knuckles which he carried for his protection because that was a dangerous area.

With regard to the charge of driving a tow truck, he was working as a landscaper with the son of the tow truck owner, and he was driving the tow truck to the son. For the careless driving charge, he was delivering the tow truck travelling in the eastbound lanes and a bus was stopped to let off passengers. A car moved from behind the bus and, since he was going at 75 km in a 50 km zone, Mr. Williams indicated that he had to swerve around the car to avoid an accident. An officer going westbound and saw him move to the left turn lane and then back into the driving lane. The officer did not see the other car's maneuver so Mr. Williams said he was charged with careless driving. At that time, he was taking the tow truck to the owner's son and he did not have a tow but he did have a co-worker from the landscaping company in the truck.

Mr. Williams testified that he assumes his licence was suspended when he was convicted of careless driving but he did not know that and he did not know how long his licence was suspended when he was charged in April 2019. As soon as he knew, he indicated he paid the fine because he needs his licence for his landscaping job. He was driving the same tow truck as before and he was delivering it from his boss's house to the shop for a

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new driver. There was no one in the truck with him at that time and there was no vehicle hooked up.

The charges at lines 1 and 2 on page 10 on June 18, 2019 were because he was delivering the tow truck for his boss. He came upon an accident and he called asking for someone to come to the scene but no one was available so his boss told him to take the car involved in the accident to the collision reporting centre. The tow truck was not involved in the accident. He got out of the vehicle to see if anyone was hurt and the officer at the scene asked him to tow the car to the reporting centre. It was at the reporting centre that he received the charges at lines 1 and 2.

He left the towing business for a few months because he felt unsafe with what was happening in the towing industry. He has a new boss who has assured him that he would be safe working on the Scarborough Police contract and that is why he wants his licence back. He enjoys the job helping people and it is a better source of income than landscaping.

## **SUBMISSIONS**

### MLS

Mr. Thomson submits on behalf of MLS that, while Mr. Williams was forthright in his testimony and his circumstances, the licence should be revoked. He asks the Tribunal to consider whether, in accordance with §545-4 A, Mr. Williams will carry on business in accordance with law and with integrity and honesty. Mr. Thomson says that the record and testimony readily meet the test to revoke this licence.

In support of his submission, he submits that Mr. Williams admitted driving 75 km in a 50 km zone in a bus drop-off zone. Mr. Williams said he did a maneuver to avoid a car but he only had to do so because he was driving recklessly. He asks the Tribunal not to give credence to Mr. Williams' testimony that he was only driving the tow truck from one place to another. He points out that four days after being convicted of careless driving in a tow truck in April 2019, Mr. Williams was charged with driving a tow truck without a licence. He knew he needed an Ontario driver's licence and a tow truck driver's licence and he had neither. Within months, he was again caught driving a tow truck when he hooked up vehicle and drove it to the collision reporting centre.

When he applied for a Tow Truck Driver's Licence in January 2020, Mr. Williams knew he had been convicted of careless driving but he submitted his application with an incomplete Ministry of Transportation abstract. It was only by checking that MLS found this out. Mr. Thomson says this is deeply troubling and calls into question Mr. Williams' willingness to abide by the rules.

As far as balancing his right to make a living against the protection of the public, he has had a number of other jobs. Even though tow truck driving might be more lucrative, he has never relied on it because one day after the licence was issued, he was advised that it would be subject to review. He has children but he has other means of support. His desire to drive a tow truck is not sufficient to override the need to protect the public.

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This case is not one in which the licence should be granted with conditions. Mr. Williams was convicted of careless driving in a tow truck in April 2019 and he admitted he was driving a tow truck in Toronto without a licence.

### Applicant

Mr. Williams submits that, on the public record, it looks like he does not have any regard for public safety but that is not the case. He indicates that he has had his driver's licence since he was 16 years old and he is now 38 and he has only had a few infractions. He indicates that he missed a court date because he had a lot going on at the time.

Mr. Williams indicates it is hard to find a job and he did not know he needed a licence to drive the tow truck from one place to another. He admits that he should not have driven the tow truck to the collision reporting centre when his employer asked him to do so. If the Tribunal is prepared to impose severe conditions on his licence, he will abide by them.

## **DECISION**

Section 545-4 A of the Toronto Municipal Code sets out the reasons for granting a licence, including the following:

- (1) The conduct of the applicant affords reasonable grounds for belief that the applicant has not carried on, or will not carry on, his or her trade, business or occupation in accordance with law and with integrity and honesty; or
- (2) There are reasonable grounds for belief that the carrying on of the trade, business or occupation by the applicant has resulted, or will result, in a breach of this chapter or any other law; or
- (5) The conduct of the applicant or other circumstances afford reasonable grounds for belief 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, the health or safety of other members of the public.

In addition §545-4 B provides that,

In addition to the grounds set out in Subsection A, Municipal Licensing and Standards Division shall refuse to issue or renew a licence where an applicant has not met the screening criteria.

One of the screening criteria set out for tow truck drivers in Appendix K to Chapter 545 is k) I, "careless driving".

The Municipal Code requires that MLS prove the reasons to deny a licence based on reasonable grounds to believe that the applicant has acted or will act in a manner that is contrary to the requirements set out in the Municipal Code. Reasonable grounds for belief is a lower standard of proof than "balance of probabilities".

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In most cases, the conduct of the applicant is presented in order to determine how the applicant may reasonably conduct him or herself if they are granted a licence. In this case, the conduct in question occurred in the recent past and at the time of the application.

In deciding whether Mr. Williams should be granted a Tow Truck Driver's Licence, the Tribunal considered three groups of incidents as depicted in Exhibit 1, the testimony given at the hearing and the submissions.

First, as a result of an incident on November 15, 2018, Mr. Williams was convicted under the Highway Traffic Act of careless driving on April 17, 2019. The unrefuted evidence is that the vehicle involved was Tow Truck 5759. He was not licensed to drive a tow truck at that time. In his evidence, Mr. Williams indicated that the charge arose because he was driving 75 km in a 50 km zone and had to swerve out of his lane to avoid hitting a car that was going around a bus which had stopped for passengers. The police officer's notes indicate that it was 8:24 a.m. and there was heavy rush hour traffic. Mr. Williams' driving was sufficiently concerning that the police cruiser going in the opposite direction turned around and charged him with careless driving.

The Tribunal finds that Mr. Williams' driving during in this incident endangered the safety of other users of the road. In addition, he showed a disregard for the law by driving a tow truck when he was not licensed to do so.

Second, on April 21, 2019, four days after he was convicted for careless driving, Mr. Williams was charged with driving the same tow truck, No. 5759, without a Tow Truck Driver's Licence and driving while under suspension. The Tribunal does not accept Mr. Williams' explanation that he did not know that he could not move a tow truck from place to place without a Tow Truck Driver's Licence. This does not accord with his evidence that, even though he worked in the landscaping side of the business with his boss's son, they were also in the tow truck business and it was one of their tow trucks that he was driving when he was charged.

In his explanation regarding the driving while under suspension charge on April 21, 2019, Mr. Williams indicated that he assumed that arose out of the careless driving conviction, but he did not know his licence was suspended. While his candor in testifying is acknowledged, his laissez faire attitude about being in breach of the law leaves the Tribunal with reasonable grounds to believe that, if granted a licence, Mr. Williams would not drive a tow truck in accordance with the law.

This belief is confirmed by Items 1 and 2 on page 10 of Exhibit 1, two convictions on September 25, 2019 for tow truck exterior not clean and improper tire/drawn vehicle. Again, the vehicle in question was Tow Truck 5759. By this time, Mr. Williams knew without any doubt that he was not licensed to drive a tow truck because he had been charged with that offence on April 21, 2019. In this incident, he hooked up a tow from an accident scene and drove it to the collision reporting centre. His explanation that his boss told him to do it because no other tow trucks were available only bolsters the belief that he will not comply with the law if given a Tow Truck Driver's Licence.

The third and final matter that the Tribunal considered is Mr. Williams' application for a Tow Truck Driver's Licence on January 27, 2020. As part of his application, he

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submitted a police record check and a three-year driving abstract from the Ministry of Transportation dated January 24, 2020. The only item under convictions, discharges and other actions on the abstract was a conviction on October 16, 2018 for speeding 65 km in 50 km zone. The application form at page 4 of Exhibit 1 required Mr. Williams to make a Statement of Fact that “the information set forth in this application is true, accurate and in all material respects complete.” Item 4 indicates that the screening criteria of Chapter 545 of the Code was explained to him and he was provided with a copy. Mr. Williams initialed this Statement of Fact and signed the application. He did not disclose that he had been convicted of careless driving less than a year earlier. He was issued a Tow Truck Driver’s Licence on January 27, 2020.

In a random audit the following day, MLS conducted a driving abstract search on Mr. Williams which disclosed that, in addition to the speeding charge, he had 6 demerit points and a conviction on April 17, 2019 for careless driving. In accordance with the Screening Criteria k) I, this is a conviction for which requires that MLS deny an application. By letter dated January 29, 2020, MLS advised Mr. Williams that his licence would be subject to review by the Tribunal.

Mr. Williams explained these discrepancies by testifying that, after receiving the driving abstract, he went straight from the Service Centre to the MLS office and he did not review the document he submitted. His testimony on this point is not supported by the documents which show that the MTO abstract he submitted was dated January 24, 2020 and the application is dated January 27, 2020. Even if his testimony on that point is accepted, the Tribunal finds that Mr. Williams had the opportunity to disclose his very recent careless driving conviction while he was in the MLS office. He did not. Instead, he deliberately omitted a conviction which, if disclosed to MLS, would have resulted in the denial of his Tow Truck Driver’s Licence application.

Balancing the protection of the public interest with the need of the licensee to make a livelihood, the Tribunal is not satisfied that Mr. Williams established his need to make a livelihood from driving a tow truck. Two days after receiving his licence, MLS sent Mr. Williams a letter informing him that it would be subject to review by the Tribunal due to the careless driving conviction, and so it was not reasonable for him to expect to be able to rely on it. Mr. Williams has also been able to earn a living working as a forklift driver in a warehouse, on a production line, and in landscaping. Prior to 2020, he had not worked as a tow truck driver but he indicates he wants to move into that field because he would make more than he does in landscaping. The Tribunal finds that, in the circumstances of this case, the need to protect the public interest outweighs Mr. Williams’ need to drive a tow truck.

With the passage of time and the benefit of a clean criminal, driving and by-law record, Mr. Williams may be in a better position in the future to apply for a Tow Truck Driver’s Licence.

Taking into consideration all of the evidence and the submissions, the Tribunal orders that Tow Truck Driver’s Licence No. D09-5006721 be revoked on the grounds that:

- (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;

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- (2) There are reasonable grounds to believe that the issuing of a Tow Truck Driver's Licence to the applicant has resulted or would result, in a breach of this chapter or any law; and
- (3) The conduct of the applicant afford reasonable grounds to believe that the granting of the Tow Truck Driver's Licence would infringe the rights of other members of the public or would endanger their health or safety.

Originally Signed

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Verlyn Francis, Panel Chair

Panel Members: Anu Bakshi and Melina Laverty, concurring

Reference: Minute No. 16/21

**Date Signed: February 10, 2021**