

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: July 22, 2021 (Videoconference Hearing)

Panel: Verlyn Francis, Panel Chair;
Anu Bakshi and Paula Turtle, Members

Re: Sivarajah Kanapathipillai (Report No. 7571)
Applicant for the Renewal of Vehicle-For-Hire Driver's Licence No. D01-3610552

Counsel for Municipal Licensing and Standards: Graham Thomson

Counsel for Applicant: Unrepresented

Tamil Interpreter: Kandiah Pathmanathan

INTRODUCTION

Mr. Sivarajah Kanapathipillai was first issued Vehicle-for-Hire Driver (Taxicab Driver) Licence No. D01-2012619 on March 29, 1993. There was no renewal payment received on the expiry date, September 30, 2001, and the licence was cancelled on that date.

The matter under consideration in this hearing is Vehicle-for-Hire Driver Licence No. D01-3610552 which was issued to Mr. Kanapathipillai on August 23, 2006 and expired on August 23, 2020. The renewal payment was submitted on August 27, 2020.

Municipal Licensing and Standards (MLS) conducted an investigation of its records and the Ministry of the Attorney General's Integrated Court Offences Network (ICON) which indicated multiple charges and convictions registered against Mr. Kanapathipillai. MLS informed Mr. Kanapathipillai by letter dated September 3, 2020 that his request for renewal of his Vehicle-for-Hire Driver Licence was denied because he was in breach of the licensing screening criteria under §546 of the Toronto Municipal Code.

On September 22, 2020 Mr. Kanapathipillai requested a hearing before the Toronto Licensing Tribunal (Tribunal). A hearing in this matter was held on July 22, 2021.

The issue before the Tribunal was whether Mr. Kanapathipillai's Vehicle-for-Hire Driver's licence should be revoked, suspended, or have conditions placed upon it.

After the hearing, the Tribunal reserved its decision. These are its reasons for decision. For the reasons set out below, the Tribunal has decided that the Vehicle-for-Hire Driver's licence of Mr. Kanapathipillai should be revoked.

July 22, 2021

CITY'S EVIDENCE

Mr. Jamil Elannan was the sole witness for MLS.

He testified that he has been a supervisor with MLS for approximately three years. His duties include supervising the vehicle for hire unit, front counter, as well as the tribunal unit. His duties for the tribunal unit include preparing Report No. 7571 (the report). He is familiar with the report as updated, and can attest to its correctness.

Report No. 7571 (175 pages) was entered as Exhibit 1.

Mr. Elannan continued his testimony in-chief as follows: Mr. Kanapathipillai's licensing history, as set out on pages 1-2, indicates that he was originally licensed with MLS on March 29, 1993 and that licence was cancelled on September 30, 2001 for non-payment. Mr. Kanapathipillai applied again for another licence on 23 August 2006 and that licence is still active as MLS received the payment.

By letter dated September 3, 2020, MLS informed Mr. Kanapathipillai that his licence would not be renewed because, at the time of the renewal, he had incurred five or more convictions in the previous three years.

Mr. Kanapathipillai requested a hearing before the tribunal. Following this request, MLS conducted a search of its records and the Ministry of the Attorney General's ICON database. This search revealed a number of serious charges against Mr. Kanapathipillai which involved significant physical violence. Those charges span the period from September 1998 to November 2017. Mr. Kanapathipillai was not convicted of most of these charges. Mr. Elannan testified that MLS did not know about the extent of Mr. Kanapathipillai's record before March of 2021.

On pages 8 and 9 of the report is a chart created by MLS staff using the ICON system indicating "charges and convictions" under the Criminal Code for Mr. Kanapathipillai. Mr. Elannan testified that when MLS issued the current vehicle-for-hire driver's licence in 2006, Mr. Kanapathipillai would have submitted his criminal record to MLS as part of his application. Based on the notes Mr. Elannan reviewed, the charges reflected in the chart on pages 8 and 9 were not noted on the record. Mr. Elannan does not know if MLS conducted a search of the ICON at that time.

MLS requires criminal record checks every four years. Based on Mr. Elannan's review of his file, he testified that Mr. Kanapathipillai submitted a criminal background check on August 18, 2010 which showed a police record with a peace bond and no new convictions. The notes did not indicate a specific charge relating to the peace bond.

The next criminal background check was submitted by Mr. Kanapathipillai in August 2015. It showed, based on the notes in the system, that he had a driving while impaired charge from 1989 which was approximately 26 years old.

The next criminal background check was due in February 2020. However, the requirement to submit such checks was suspended by MLS during that time because individuals were having difficulties obtaining them due to pandemic-related administrative issues.

July 22, 2021

Therefore, based on MLS records, the full extent of Mr. Kanapathipillai's criminal record was not known prior to 2021.

Pages 125 to 171 of the report include all the police reports that MLS received after Mr. Kanapathipillai filed his request for a hearing before the Tribunal. It appears that the documents from 125 to 171 were produced pursuant to Freedom of Information (FOI) requests made by MLS to the Toronto Police Service.

As part of its evidence, counsel for MLS asked Mr. Elannan to review the allegations against Mr. Kanapathipillai in the police records. Before permitting the referral to the records, the Tribunal confirmed with Mr. Kanapathipillai that he had the police records with him. Mr. Elannan then testified as to the contents of the police records, including records of arrest which summarized the police version of events related to the serious charges against Mr. Kanapathipillai. An enumeration of the police record include the following:

- (1) Mr. Kanapathipillai was charged with murder on or about September 25, 1998. He was found not guilty by a jury.
- (2) Mr. Kanapathipillai was charged with assault with a weapon on or about July 8, 2002 and the charge was later withdrawn.
- (3) Mr. Kanapathipillai was charged with possession of a dangerous weapon and assault on or about February 24, 2003. Those charges were later withdrawn.
- (4) On or about February 3, 2004, Mr. Kanapathipillai was charged with assault with weapon, possession of dangerous weapon, carrying concealed weapon. The matter was resolved by peace bond.
- (5) On or about April 4, 2010 Mr. Kanapathipillai was charged with threaten death bodily harm. The charges were later withdrawn.
- (6) On or about July 5, 2011 Mr. Kanapathipillai was charged with two counts of threaten death, bodily harm. The chart indicates he was convicted of one charge of threaten death, and the other charge was withdrawn.
- (7) On or about February 24, 2014 Mr. Kanapathipillai was charged with assault, assault with weapon, and forcible confinement. The charges were withdrawn.
- (8) On or about November 24, 2017 Mr. Kanapathipillai was charged with fraud. The synopsis at page 170 indicated that Mr. Kanapathipillai had driven two clients in his taxi that day. One of the clients left her purse in the taxi when she left. That client made a report to police that an unauthorized purchase had been made using her credit card. During their investigation, the police searched the taxi Mr. Kanapathipillai had been driving and found the client's credit card in his backpack. The charge was withdrawn.

Mr. Kanapathipillai was invited to cross-examine Mr. Elannan. He stated to Mr. Elannan that "all of these charges" were withdrawn. The tribunal reminded Mr. Kanapathipillai that he would have an opportunity to testify on his own behalf. He had no questions for Mr. Elannan.

July 22, 2021

On questioning from the panel, Mr. Elannan testified that the information contained in criminal record checks has changed over the years. Background checks produced before 2016 only showed convictions and not charges. ICON came into existence in 2018 and, at that time, they did not show peace bond dispositions.

The report identified by Mr. Elannan also showed three *Highway Traffic Act* convictions (including speeding) while Mr. Kanapathipillai was driving his taxi in 2015 and 2016. Three Highway Traffic Act charges (one recorded as “withdrawn/no officer”) were brought against Mr. Kanapathipillai in 2016 and 2017 also while he was driving his taxi. The latter three were all withdrawn.

The record shows 30 charges under the Toronto Municipal Code between July 4, 1997 and continuing until November 30, 2019. Mr. Kanapathipillai was convicted of about two-thirds of those charges, most recently on March 5, 2020 (for no fully functioning camera and ELS and fail to keep complete operator log).

The record also shows Mr. Kanapathipillai was convicted of four offences under the Trespass to Property act between May 13, 2015 and August 13, 2018.

APPLICANT'S EVIDENCE

Mr. Kanapathipillai testified on his own behalf through a Tamil interpreter.

He indicated that all the charges had been dealt with. He testified about the carrying concealed weapon, possession dangerous weapon, and assault weapon charges that occurred on or about February 3, 2004. He stated that when he was playing cards with colleagues from his country, there was a dispute and they gave false allegations to the police. The charges were resolved by a peace bond.

Mr. Kanapathipillai testified that he went to the advanced level of high school in Sri Lanka. When he came to Canada, he worked in a factory environment and after that he has been driving taxis.

He is married and has a son who lives in Sri Lanka. He has no dependants.

In cross-examination by Mr. Thomson, Mr. Kanapathipillai could not recall whether he was licensed to drive a taxi between 2001 and 2006 but he knows that he drove a taxi immediately after he was released from jail where he was held pending the disposition of the murder charge against him. After he was released from jail, he worked in construction in order to get some money so he could get a licence.

In response to a question by the tribunal, Mr. Kanapathipillai testified that he has not had any new charges in the last three years.

SUBMISSIONS

MLS

July 22, 2021

Mr. Thomson submits that the Vehicle-for-Hire licence should be revoked.

Under §545-4 (A) the tribunal is required to consider whether Mr. Kanapathipillai's conduct raises reasonable grounds to believe that he has not or will not carry on the business in accordance with law and with integrity and honesty, that his carrying on of business will result in breach of §546 or any other law; he has infringed or would infringe or has endangered or would endanger the public's health and safety. Mr. Thomson submitted that Mr. Kanapathipillai's criminal record easily meets that test. Mr. Thomson argued the allegations made against Mr. Kanapathipillai are not isolated and they speak to a pattern of violent behaviour over 23 years that have killed, injured and affected the safety of the public. While conceding that Mr. Kanapathipillai was found not guilty of murder and most of the criminal charges against him were withdrawn, Mr. Thomson submitted that, despite prompting, Mr. Kanapathipillai did not address those concerns at all before the tribunal.

Mr. Thomson argues that, in any event, Mr. Kanapathipillai's testimony that in the past three years he has not had any further charges laid against him is not strictly true. That testimony is refuted by the fact that Mr. Kanapathipillai was convicted on August 13, 2018 of entering premises when entry prohibited, and *Municipal Code* convictions between August 14, 2018 and March 5, 2020.

Mr. Thomson submits it was "regrettable" that Mr. Kanapathipillai's record was not known to MLS earlier and the full extent of it was not known until 2021, but this factor does not change Mr. Kanapathipillai's history. The allegations span a significant amount of time and they involve disputes with strangers and people who know Mr. Kanapathipillai. They result in violent altercations with weapons or threats of bodily harm. All those allegations were put before the tribunal while Mr. Kanapathipillai listened. He did not deny them, and he provided no explanation whatsoever about that extensive criminal record. The passage of time can be a challenge because it can affect memories of what happened or the urgency of what happened in the first instance, but the best evidence before the tribunal is the police records which are contemporaneous and there is nothing to suggest those records are not correct.

Mr. Thomson also submits that, in addition to the test under §546, the tribunal is mandated under §546-8 to balance Mr. Kanapathipillai's need to make a livelihood with protection of the public. Mr. Kanapathipillai indicated that he has no dependants, that he also has worked other jobs other than driving taxi, including work in factories and, following release from jail following the murder charge, he worked in construction. It is regrettable that Mr. Kanapathipillai's criminal record has only come to MLS's attention in 2021, but that does not change the fact that someone with a history of the type of conduct alleged should not be dealing with vulnerable members of the public in a taxi.

On the question of how the tribunal should interpret the Code when charges are withdrawn or the person is found not guilty, MLS submits that the test in the *Municipal Code* is not the test in the Criminal Code which is proof beyond a reasonable doubt and goes to the severity of the penalty which includes incarceration. When an accused is found not guilty or the charge is withdrawn, that does not mean the charges did not happen. The test under the *Municipal Code* is a lower test. It is whether Mr. Kanapathipillai's conduct raises reasonable grounds to believe he will not carry on business in accordance with law and with integrity and honesty.

July 22, 2021

In the circumstances, MLS submits the licence should be revoked. In the alternative, if the Tribunal is considering renewing the licence, there should be significant conditions, including updated criminal records check. Being conscious of the time, if that is the route the Tribunal proposes to take, MLS asks to reserve the right to make further submissions.

The Applicant

Mr. Kanapathipillai submits that the criminal charges were withdrawn. He further argued they occurred when he was young. He has matured and now he is 61 years old and they won't happen again. He is no longer involved in any activities; he now just goes from work to home.

The panel asked Mr. Kanapathipillai to respond to Mr. Thomson's submission that he was not being truthful when he told the tribunal he did not have any new charges in the last three years, when in reality he has convictions under the Trespass to Property Act and three *Municipal Code* convictions during that period. Mr. Kanapathipillai responded that he is living 50 feet from that building and he knows people who live there and that's why he has been going there.

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 to believe 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 to believe 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 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, the health or safety of other members of the public.

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 to believe is a lower standard of proof than "balance of probabilities".

Mr. Kanapathipillai represented himself at this proceeding, even after the Tribunal advised him of his right to be represented. He heard Mr. Elannan's testimony, which described the facts relied on by the police in laying all the criminal charges against him. Aside from a general statement that the charges happened when he was young and that all the charges were withdrawn, Mr. Kanapathipillai did not respond to Mr. Elannan's testimony about the

July 22, 2021

background to the charges. He did not offer his own version of events. MLS counsel did not ask Mr. Kanapathipillai about any of the facts.

Mr. Kanapathipillai's criminal record discloses multiple serious charges, many of which were withdrawn. Mr. Kanapathipillai was found not guilty of murder more than 20 years ago, in December 1999. He was convicted of the criminal offence of threaten death/ bodily harm in August of 2011 and charges of assault with weapon, possession dangerous weapon, carrying concealed weapon were withdrawn with peace bond in June 2004. Mr. Kanapathipillai did not adequately explain and acknowledge his convictions.

The convictions under the Trespass to Property Act, are as follows:

Offence Date	Offence	Disposition
June 4, 2018	Enter premises when entry prohibited	Convicted: August 13, 2018
January 5, 2017	Enter premises when entry prohibited	Voluntary Conviction (through payment of fine) January 10, 2017
April 26 2016	Enter premises when entry prohibited	Voluntary Conviction (through payment of fine) May 2, 2016
December 22, 2014	Enter premises when entry prohibited	Convicted: May 13, 2015

He was also convicted under the Municipal Code of charges relating to the operation of his taxi. When he was asked during his final submissions to explain his answer to the question about his charges and convictions in the past three years, his only explanation was that he trespassed because he knew people at the location. Importantly, he did not suggest he misunderstood the question, or that he thought when he was asked about charges that the question only referred to criminal charges. Instead, he "explained" the violations of the Trespass to Property Act.

We accept Mr. Thomson's submissions that the criminal burden of proof is different than the civil burden of proof. We also agree with Mr. Thomson that the contemporaneous police reports are the best evidence of the facts relied on to support the charges. However, it does not follow from those assertions that we should accept as fact the allegations in the police reports. Mr. Kanapathipillai was not convicted of most of the allegations. This is significant in our view, since it is possible he was not convicted because the evidence before the court did not reflect the facts contained in the reports reviewed by Mr. Elannan. Mr. Thomson did not question Mr. Kanapathipillai about any of the facts behind his criminal charges. As a result, the tribunal did not have the opportunity to observe and assess Mr. Kanapathipillai's demeanor when confronted with evidence of the serious criminal charges.

The burden of proof is on MLS to demonstrate why Mr. Kanapathipillai's licence should not be renewed, and it is not enough, when Mr. Kanapathipillai is present at the hearing, for MLS to rely on the police records to ask the tribunal to find facts. This is especially the

July 22, 2021

case where no conviction occurred, and where, having had the opportunity to question Mr. Kanapathipillai about the facts, counsel for MLS did not do so.

Accordingly, the tribunal is unable to base its decision on the allegations behind the criminal charges for which Mr. Kanapathipillai was not convicted.

This does not end the matter, however. Mr. Kanapathipillai has one criminal conviction (threaten death/ bodily harm) in August 2011 and several other convictions under the *Municipal Code* and the Trespass to Property Act. These are different matters. Mr. Kanapathipillai was convicted of those offences and he had an opportunity to explain the circumstances surrounding them. He did not do so.

The tribunal considered the convictions themselves and the facts behind the criminal conviction in 2011 in arriving at our decision. We did not hear facts about the other convictions, aside from Mr. Kanapathipillai's explanation that his conviction for trespassing occurred because he knew people at the location on which he was trespassing. We are also entitled to take into account that Mr. Kanapathipillai was not forthright with the Tribunal in providing an explanation of his convictions and charges in the last three years. This goes directly to Mr. Kanapathipillai's credibility.

In most cases, the conduct of the applicant is presented in order to determine how the applicant may reasonably conduct him or herself if granted a licence. In this case, the conduct in question occurred over many years.

Looking first at Mr. Kanapathipillai's conviction for threaten death/bodily harm under the Criminal Code of Canada in 2011, Mr. Elannan testified Mr. Kanapathipillai's conviction occurred after he threatened an individual in connection with an ongoing feud about money. Mr. Kanapathipillai did not deny that he was convicted. At the hearing, his explanation for all of his prior misconduct was that he was young and he is now 61 years of age. While Mr. Kanapathipillai is to be commended for taking responsibility for his actions regarding his convictions, his explanation is not persuasive. He would have been about 50 years old when he was convicted, and he did not explain his multiple trespassing convictions.

Members of the public are vulnerable when they enter a taxicab. Mr. Kanapathipillai's criminal conviction for threaten death/bodily harm gives the tribunal reasonable grounds to believe that he has infringed, or would infringe the rights of other members of the public, or has endangered or would endanger, their health or safety, especially when considered in the context of Mr. Kanapathipillai's apparent disregard for the importance of playing by the rules.

Mr. Kanapathipillai did not adequately explain the four convictions (the most recent on August 13, 2018) under the Trespass to Property Act. His explanation that he had friends in the building and that is why he went there only reinforces the Tribunal's reasonable belief that Mr. Kanapathipillai is prepared to breach the law when it suits his purposes.

When Mr. Kanapathipillai applied for the renewal of his licence in 2020, MLS's check of ICON showed that Mr. Kanapathipillai had a record of 30 offences under the *Toronto Municipal Code* – 25 of which were in taxicabs. These charges were from September 1997 to November 2019, including three convictions during the previous three years. He

July 22, 2021

was convicted of 21 offences with five of those convictions in the three years preceding his application for renewal in August 2020. Again, Mr. Kanapathipillai offered no explanation for these Municipal Code offences. His failure to explain those charges supports the tribunal's reasonable belief that the carrying on of the occupation of a vehicle-for-Hire driver by Mr. Kanapathipillai has resulted, or will result, in a breach of §545 of the Code or other law.

Balancing the protection of the public with the need of the licensee to make a livelihood, the Tribunal is not satisfied that Mr. Kanapathipillai established his need to make a livelihood as a Vehicle-for-Hire driver. While Mr. Kanapathipillai has limited education, he has no dependants. Mr. Kanapathipillai held a Vehicle-for-Hire Driver's licence from 1993 to 2001, but he had other employment between 2001 and 2006. The Tribunal accepts that he was able to make a livelihood doing factory jobs and construction when he was not driving a taxicab.

The Tribunal finds that, in the circumstances of this case, the need to protect the public interest outweighs Mr. Kanapathipillai's need for a Vehicle-for-Hire driver's licence.

Taking into consideration all of the evidence and the submissions, the Tribunal orders that Vehicle-for-Hire Driver's Licence No. D01-3610552 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;
- (2) There are reasonable grounds to believe that the issuing of a Vehicle-for-Hire 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 Vehicle-for-Hire Driver's Licence would infringe the rights of other members of the public or would endanger their health or safety.

Originally Signed

Verlyn Francis, Panel Chair
Panel Members: Anu Bakshi and Paula Turtle, concurring

Reference: Minute No. 126/21

Date Signed: September 8, 2021