

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: November 21, 2019

Panel: Mary Lee, Panel Chair;
Edgar-André Montigny and Anu Bakshi, Members

Re: Jimmy Jay John Robert Moore Lungley (Report No. 7306)
Applicant for a Tow Truck Driver's Licence (Application No. B942655)

Counsel for Municipal Licensing and Standards: Graham Thomson

Counsel for Applicant: Unrepresented

SUMMARY

On June 4, 2019, Mr. Lungley submitted an application for a Tow Truck Driver's Licence. On June 11, 2019, Municipal Licensing and Standards (MLS) sent Mr. Lungley a letter outlining the grounds for denial of a licence. On June 25, 2019, Mr. Lungley requested a hearing before the Toronto Licensing Tribunal (the Tribunal or TLT).

After hearing the evidence and submissions of the parties, the Tribunal issued a Tow Truck Driver's Licence with conditions.

INTRODUCTION

1. Mr. Lungley applied for a Tow Truck Driver's Licence, and MLS denied to issue a licence as records of the Ministry of the Attorney General's Integrated Court Offences Network (ICON) reveal multiple charges and convictions registered against Mr. Lungley under the Compulsory Automobile Insurance Act (CAIA), the Highway Traffic Act (HTA), the Criminal Code of Canada (CCC), the Environmental Protection Act (EPA), and Liquor Licence Act (LLA).

ISSUE

2. The issue before the Tribunal is whether Mr. Lungley's conduct (as evidenced by his record of charges and/or convictions under the CAIA, HTA, CCC, the EPA and the LLA) provides reasonable grounds to believe that:
 - i. Mr. Lungley will not operate a Tow Truck in accordance with law, and with integrity and honesty; or
 - ii. Mr. Lungley's operation of a Tow Truck has resulted or will result in a breach of the law; or
 - iii. Mr. Lungley'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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CITY OF TORONTO'S EVIDENCE

Mr. Jamil Elannan, Supervisor, MLS, was the only witness for the City. Mr. Elannan was affirmed and testified regarding Mr. Lungley's charges and convictions as set out in MLS Report No. 7306, and ICON printouts dated October 21, 2019, November 13, 2019 and November 20, 2019 (Exhibit 1). He testified that:

3. Page 11 of Report 7306 shows that during the period October 2005 to January 24, 2017, Mr. Lungley had a record of six criminal charges under the CCC. He was convicted on four of those charges for the following: possess property, obstruct peace officer on two separate occasions, and fail or refuse to comply. The criminal charges of possession of substance and fail to re-attend court were both withdrawn.
4. Page 201 – 204 of Report 7306 provides the offence detail for the possess property charge. The court synopsis also notes that Mr. Lungley's driver's licence was suspended for unpaid fines at the time of the incident.
5. The latest 3 year Driver Record Search dated November 20, 2019 shows four demerit points and convictions for the following two charges: No Drivers Licence or Improper Class of Licence (Apr 2017) and Speeding 138 km in a 100 km zone (Jul 2019).
6. Page 25 – 31 of Report 7306 shows 76 charges under the HTA and CAIA during the period February 2007 to April 5, 2019. Mr. Elannan highlights Line 1 on page 25 showing a recent speeding offence, 138 km in a 100 km zone, dated April 5, 2019 and an outstanding fine.
7. The updated document dated November 13, 2019 shows three new charges that occurred on October 25, 2019. The charges are as follows: by-law offence, improper tires/drawn vehicle – commercial motor vehicle and improper/no muffler.
8. The updated document dated November 20, 2019 is the latest three year Driver Record Search which notes four demerit points and convictions for the following two charges: No Drivers Licence or Improper Class of Licence (Apr 2017) and Speeding 138 km in a 100 km zone (Jul 2019).
9. Page 170 of Report 7306 shows three charges between the dates September 27, 2007 and May 7, 2014 under the LLA and EPA.
10. Page 177 of Report 7306 shows six parking violations between January 2, 2009 and April 2, 2019.

Mr. Lungley 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. Lungley provided information about his record of charges and convictions, and personal circumstances, including the following:

11. Mr. Lungley commenced his testimony by acknowledging that he has a bunch of outstanding fines on past tickets. He stated that he is currently on a payment plan, which involves him paying \$100 a month until all the fines are paid. So far he has paid a substantial amount.
12. He testified that 75% of his charges have been withdrawn due to insufficient evidence. Mr. Lungley elaborated that the careless driving charge was withdrawn.
13. He stated that since he has had his driver's licence, there have been only 12 charges concerning his driving habits. The rest of the charges are due to vehicle issues such as stickers not up to date, etc.
14. He emphasized that he has never had a traffic conviction in a commercial vehicle. He stated that this is good given that he drives almost 24/7.
15. He explained that recent charges are still before the courts and he is negotiating some agreements with the prosecutor on those charges. He appealed the recent speeding charge and he expects a reduced fine.
16. He explained the circumstances surrounding the possession of property charge. He said it was a trade between him and a friend. He traded his motorcycle for a car. He admitted that the trade may not have been proper regarding the correct paperwork. He explained that when he got the car, he did some work on it and then started driving it. He then went out of the province for 6 to 8 weeks. While he was away, his friend wanted his plates back. However, he stated he could not return it. When he returned to the province, he started driving again until eventually he was pulled over by the police and was charged.
17. At that time, Mr. Lungley was also charged for driving while under suspension for unpaid fines. He stated that he did pay his fines but did not know that he had to wait 24 hours after he paid his fines before he could start driving again. That charge was eventually withdrawn.
18. Mr. Lungley is 32 years old and a single father of three children ages 13, 11 and 8. Due to financial reasons, he admits that he took some risks and messed up with expired tickets.
19. He has driven a tow truck in Peterborough for 2 years.
20. Driving a tow truck is his only source of income. He makes \$400 to \$900 a day. His desire is to drive in Toronto to make more money because it is not

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very busy in Peterborough. Mr. Lungley also stated that he likes helping people.

CITY OF TORONTO'S SUBMISSIONS

In his closing submissions, Mr. Thomson, on behalf of MLS, submitted that:

21. The Tribunal should refuse to issue a Tow Truck Driver's Licence to Mr. Lungley as there are reasonable grounds to believe that he 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. Lungley'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.
22. While Mr. Thomson is sympathetic to Mr. Lungley's situation to make more money in Toronto, he is not entitled to a Tow Truck Driver's Licence.
23. Mr. Lungley has not demonstrated good judgement and he does not follow the rules under the regulatory scheme. Clients would be vulnerable in his care.
24. Mr. Lungley's record shows a long history of not following regulatory requirements. Mr. Thomson argues that Mr. Lungley is trying to balance his needs over public interest.
25. Mr. Lungley's recent criminal conviction for possession of property stems from an agreement with a friend. He did not properly register the vehicle and did not follow the proper regulatory process. This is concerning from a public interest standpoint. Mr. Lungley downplays his criminal conviction. He knew he was in contravention of the law but continued with his behaviour. In addition, Mr. Lungley's driving record shows that he has driven without a valid licence and insurance. This is consistent behaviour that he is not maintaining his vehicle.
26. Mr. Lungley's record shows 80 charges under HTA and CAIA. He has 51 convictions and a lot of outstanding fines but is on a repayment plan.
27. While his careless driving charge was withdrawn, the observing police officer commented on Mr. Lungley's driving in a crowded street, when it was dark, cold and windy with two passengers. Again, when explaining this incident, Mr. Lungley was downplaying his conduct. There is a risk to public safety on this basis.
28. Counsel further submits that Mr. Lungley incurred further charges since his application and pre-hearing on October 27, 2019. All of these charges raise serious concerns with honesty and integrity in accordance with the law.
29. Having regard for the need to make a livelihood, Mr. Lungley is 32 years old, lives in Peterborough, and has three children ages 13, 11 and 8.

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30. Mr. Lungley is currently employed as a tow truck driver and has previous work experience in the concrete industry. He appears to be in demand since he works 24/7.
31. Mr. Lungley has submitted two letters with job offers, counsel is not sure which job in Toronto he intends to take.
32. He testified that he will make more money in Toronto. He appears to be in the vehicle trade business. He appears to be prioritizing those expenditures over keeping his vehicles in compliance with the law.

APPLICANT'S SUBMISSIONS

33. In closing, Mr. Lungley stated that if he is granted a Tow Truck Driver's Licence, he promises not to have any more traffic violations. He further stated that he always keeps his truck in good maintenance and pays for fuel. If granted a licence in Toronto, it will permit him to help more people. Mr. Lungley testified that he can't prove himself if he is not given a chance.

ANALYSIS

34. Section 546-4 A of the Toronto Municipal Code sets out the grounds for denying the issuance of a licence. Having weighed the evidence, the Tribunal is satisfied that those grounds have not been met, and there are not reasonable grounds to believe that Mr. Lungley 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. Lungley'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.
35. Having said that, the Tribunal cannot ignore the long history of charges and the record before us raises some concerns about Mr. Lungley's ability to follow the law and drive safely, but not enough to justify refusing to issue a Tow Truck Driver's Licence. The Tribunal may impose conditions it considers appropriate. The panel is willing to give Mr. Lungley an opportunity to prove himself and is satisfied that those concerns about Mr. Lungley's ability to follow the law and drive safely, could be satisfied with conditions on his Tow Truck Driver's Licence.
36. The Tribunal did have some concerns about Mr. Lungley's ability to follow the law and drive safely. In particular, there were several recent charges since he filed his application and after his pre-hearing on October 27, 2019.
37. 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. Although Mr. Lungley is taking the steps to pay off all his unpaid fines, the Tribunal has concerns, in particular his recent charges, if Mr. Lungley can indeed follow the law and drive in a safe manner. The Tribunal is satisfied that conditions on his licence would help alleviate the Tribunal's concerns, reduce the risk and protect the public.

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38. In considering whether to renew, grant or deny a licence, and whether to do so with or without conditions, the Tribunal must also 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.
39. Overall, the Tribunal concluded that Mr. Lungley's livelihood needs further tipped the balance in his favour in this case. Mr. Lungley is a single father of three children ages 13, 11 and 8. It is evident from Mr. Lungley's outstanding fines that he is experiencing financial difficulty in making ends meet. Despite financial hardship, Mr. Lungley arranged a repayment plan to pay off his unpaid fines which demonstrates a more responsible attitude. Mr. Lungley's main source of income is driving his tow truck. Driving a tow truck gives him flexibility when it comes to obtaining day care for his children.

DECISION

For the reasons set out above:

Mr. Lungley'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 application may be cancelled;
- 2) Immediately upon being issued, the licence will be suspended until February 21, 2020 at noon ("Suspension Period"). Mr. Lungley must surrender his licence and photo card to MLS on the first day of suspension;
- 3) During the Suspension Period, if there are any new charges under the CCC, HTA, and/or CAIC, Mr. Lungley must notify MLS of the new charges in writing within 24 hours. This does not include the charges set out in Report 7306 and relevant updates. The notification must include his licence number and the nature of the charges and can be done in any one of the following ways: in person at 850 Coxwell Avenue, via email to mlsconditionreporting@toronto.ca; or via fax at 416-392-3102;
- 4) Should there be any new charges during the Suspension Period, Mr. Lungley's Tow Truck Driver's Licence is cancelled immediately;
- 5) Should Mr. Lungley successfully complete the Suspension Period ending February 21, 2020 at noon, his Tow Truck Driver's Licence will be returned and subject to the following additional conditions:
- 6) 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. Lungley is advised that during the probationary period, MLS may make additional checks of any driving, criminal, and by-law charges and convictions against Mr. Lungley, and conduct other investigations as appropriate to assess Mr. Lungley's compliance

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with the requirements of Chapter 545 of the Municipal Code and other applicable laws;

- 7) Prior to each of the next three (3) renewals of the licence, Mr. Lungley 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;
- 8) During the probationary period, if MLS has concerns with any new charges or convictions against Mr. Lungley, or any other concerns with respect to the conduct of the licensee, those matters and Report No. 7276, and any updating material, may be brought back before the Tribunal for a full hearing.

Originally Signed

Mary Lee, Panel Chair

Panel Members; Edgar-André Montigny and Anu Bakshi concurring

Reference: Minute No. 206/19

Date Signed: December 30, 2019