

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of Hearing: December 1, 2022 (Videoconference Hearing)

Panel: Melina Laverty, Panel Chair

Re: David Prabakar Jayaraj (Report No. 7457)
Holder of Vehicle-For-Hire Driver's Licence
No. D01-4676416

Counsel for Municipal Licensing and Standards: Amy Tieu

Counsel for Applicant: Unrepresented

INTRODUCTION

Mr. Jayaraj was issued a Vehicle-For-Hire Driver's Licence on October 11, 2016.

On October 8, 2019, Municipal Licensing and Standards (MLS) became aware that Mr. Jayaraj had been arrested and charged with dangerous operation of a motor vehicle (contrary to section 249 (1) a of the Criminal Code of Canada [CCC]) and assault with a weapon (contrary to s. 267 a of the CCC) in relation to an incident on July 19, 2018. The Toronto Police Services (TPS) provided MLS with a copy of the general occurrence report on January 13, 2020.

On May 21, 2020, MLS sent a letter to Mr. Jayaraj advising that his Vehicle-For-Hire Driver's Licence would be subject to a review by the Toronto Licensing Tribunal (the Tribunal or TLT).

On April 29, 2021, the Tribunal first considered the matter and Mr. Jayaraj was in attendance. The matter was adjourned sine die (without a specific date to return to the TLT) pending the outcome of the two criminal charges, and the following interim conditions were placed on Mr. Jayaraj's licence: Mr. Jayaraj must report any new charges or convictions to MLS, and the outcome or decision regarding the criminal charges against him, within three (3) business days, via email to mlsconditionreporting@toronto.ca.

On January 5, 2022, Mr. Jayaraj was convicted of dangerous operation of a motor vehicle and assault with a weapon under the CCC.

On June 23, 2022, the Tribunal considered the matter and adjourned it; Mr. Jayaraj failed to attend.

On October 20, 2022, the Tribunal considered the matter again and adjourned it; Mr. Jayaraj failed to attend.

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Mr. Jayaraj failed to attend the hearing. Prior to commencing, the Tribunal considered whether to proceed in his absence.

Rule 12 of the Tribunal's Rules of Procedure allows for a hearing to proceed if the licensee does not attend but has been properly notified of the hearing time and place. A similar provision is set out in section 7 of the Statutory Powers Procedure Act (SPPA). Rule 5.4 of the Tribunal allows for service of the notice of the hearing via email at the last known email address.

Tribunal staff attempted to contact Mr. Jayaraj by telephone before the hearing commenced and advised that he could not be reached and had not tried to contact the Tribunal. Similarly, MLS counsel and staff had no recent contact with Mr. Jayaraj. Tribunal staff advised that the notice of hearing was sent to Mr. Jayaraj's e-mail address on file on October 21, 2022 but was returned as undeliverable. Efforts were also made to reach Mr. Jayaraj in person at his last known address on file with MLS (which is the same address appearing on Mr. Jayaraj's Ontario driver's licence according to the driver's abstract obtained on November 28, 2022). As set out in section 546-5F of the Toronto Municipal Code (the Code), as a licensee Mr. Jayaraj is obliged to tell MLS if he changes his address. On October 23, 2022, officers did a door knock at this address, and the current tenant advised that Mr. Jayaraj has not lived there since April 2022, and they had no forwarding address for him.

The Tribunal was satisfied that Mr. Jayaraj had been properly served with the notice of the hearing and decided to proceed with the hearing in his absence.

ISSUE

The issue before the Tribunal is whether Mr. Jayaraj's licence should be renewed, suspended, revoked, or have conditions placed on it.

MLS EVIDENCE

MLS called two witnesses.

First, Mr. Chris Alexander, Supervisor MLS Vehicle-for-Hire Unit, was affirmed and testified regarding Mr. Jayaraj's charges and convictions as set out in MLS Report No. 7457 (Exhibit 1 or the report), and an update to the report dated November 28, 2022, consisting of seven pages with two MLS charts and a three-year driver's abstract (Exhibit 2 or the update). Mr. Alexander noted that:

- Mr. Jayaraj was issued a Vehicle-For-Hire Driver's Licence on October 11, 2016. His licence expired on October 11, 2020 but is deemed to continue.
- The report includes MLS charts created from data found in the ICON (Integrated Courts Offences Network) database.
- The first MLS chart (page 54 of the report) shows several charges against Mr. Jayaraj under the CCC, but no convictions.

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- The second MLS chart (page 55 of the report) shows that Mr. Jayaraj has 11 charges and three convictions under the *Highway Traffic Act* (HTA).
- The third MLS chart (page 56-57 of the report) shows that Mr. Jayaraj has nine charges and two convictions under the Code, and another three convictions are under appeal.
- There is an update for the first MLS chart (page 3 of the update) which shows two CCC convictions on January 5, 2022 arising from an offence on July 19, 2018. For the conviction of dangerous operation of a motor vehicle, Mr. Jayaraj's sentence included a fine of \$1,800, a probation order of two years, and a suspension of his driver's licence for 18 months. The fine is shown as outstanding and Mr. Jayaraj has one year from the date of the conviction to pay or until January 5, 2023. For the conviction of assault with a weapon, Mr. Jayaraj was sentenced to two years probation.
- On April 29, 2021, TLT added conditions to Mr. Jayaraj's licence requiring him to report new charges/convictions to MLS and the outcome of the two criminal charges against him (p. 71 of the report). Mr. Jayaraj attended that day and was aware of the conditions.
- The MLS chart (page 5 of the update) shows two new charges against Mr. Jayaraj of criminal harassment for an offence on July 12, 2021. Mr. Jayaraj did not report those charges to MLS. MLS has no other information about them. Mr. Jayaraj also did not report the two January 2022 convictions to MLS. MLS became aware of the CCC convictions and charges against Mr. Jayaraj, as MLS performs a regular scan of ICON when it has concerns about a licensee.
- Mr. Jayaraj's Ministry of Transportation of Ontario (MTO) driver's licence was suspended on Jan 5, 2022 (p. 3 of the update) and is currently suspended (p. 7 of the update). When his MTO driver's licence was suspended, Mr. Jayaraj's Vehicle-for-Hire driver's licence was automatically suspended, according to the Code.
- MLS applies screening criteria when renewing licences. The criteria include thresholds as to whether a licence should be issued or renewed, which depend on the number and type of charges or convictions under the CCC, HTA, and the Code. Mr. Jayaraj would not meet the screening criteria for renewal because he has been convicted of an offence against a person (assault with a weapon) in the past five years, and similarly he would not meet the screening criteria as he was convicted of dangerous operation of a motor vehicle in the past five years.

Second, Police Constable William Ng, TPS, was affirmed and testified regarding Mr. Jayaraj's charges and convictions as set out in MLS Report No. 7457 (Exhibit 1 or the report), and an update to the report dated November 28, 2022, consisting of seven pages with two MLS charts and a three-year driver's abstract (Exhibit 2). PC Ng was also allowed to refresh his memory using his contemporaneous notes regarding the incident. The report includes his field notes and the prosecution summary (Appendix 3), and notes from his memo book (Appendix 5). PC Ng noted that:

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- He has worked in traffic services for the TPS since May 2007. He answers radio calls for highways and collisions in the city.
- On July 19, 2018, he received a radio call regarding an incident at Peter and Richmond Streets (that is taxi and cyclist collision, where the taxi failed to remain at the scene of the accident), and he volunteered to attend as the scene was near to the police station.
- He then received a call about a taxi near the Thompson Hotel, and spoke with the driver. While talking to him, he observed the taxi was a Toyota Camry in somewhat rough shape, and the front window was smashed and there was a foot impression on the passenger side doors. He obtained the driver's documents and taxi licence, and confirmed the driver's identity, and that Mr. Jayaraj was the driver.
- He asked Mr. Jayaraj to return to the scene. It was around 6:55 pm, or about 45 minutes after the incident. An altercation started between the cyclist and Mr. Jayaraj. At that time, he also surveyed and made observations of the scene on Richmond Westbound. On the north side of the road, there is a dedicated bike lane, with flexi sticks separating the car traffic from cyclists. He noted a pile of glass in the bike lane, a noticeable gouge in the asphalt, and a broken flex stick with fresh damage to the mounting. He obtained a written statement from a witness.
- He considered Mr. Jayaraj's account of the collision and found the evidence at the scene to be inconsistent with Mr. Jayaraj's recollection. After his investigation, he determined that he had reasonable and probable grounds to believe that Mr. Jayaraj had committed a CCC offence, and two charges were laid. Mr. Jayaraj was released on a Form 9 requiring him to appear in court. He also charged the cyclist with mischief as he kicked the taxi and broke the window on the passenger side.
- He later attended 362 Richmond Street and obtained camera evidence capturing the incident. The video showed the cyclist was traveling westbound and altered his direction on the other side of the flexi sticks. It depicts the taxi and the cyclist in a "road rage" incident. The cyclist kicks the taxi, and Mr. Jayaraj then makes a sharp turn, hitting the cyclist who, falls and gets pinned under the car. There is a commotion. The cyclist gets up and there is a heated argument. The cyclist pulls on the passenger window and it shatters. The taxi then takes off.
- Mr. Jayaraj told him that he was travelling westbound and said that was when the cyclist kicked the car and fell under it. However, his observation of the broken glass disproved this. It is safety glass, which means it shatters and is coarse. Because of its nature, once it lands on a surface it becomes difficult to move. If the incident occurred in the live traffic lane, the glass should have stayed there. But the glass was in the bike lane.
- The bike's front wheel was noticeably damaged and the frame/paint was grinded. The cyclist had minor injuries to his right thigh and thumb. Paramedics attended, but the cyclist refused ambulance transport. The cyclist believed there was an elderly lady in the taxi, but he could not locate the passenger. The taxi's dashcam revealed Mr. Jayaraj having a conversation with someone, but it was not possible to determine for certain if it was with someone in the car.

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- The location of the glass, the missing flexi stick, and the gouge in the roadway indicated to him that the collision occurred in the bike lane, and that there was a turning movement of the vehicle. While he formed reasonable probable grounds to lay the two criminal charges against Mr. Jayaraj based on his observations of the scene alone, it later became apparent that Mr. Jayaraj's actions were deliberate, after viewing the video evidence of the incident.

MLS SUBMISSIONS

In her closing submissions, Ms Tieu, on behalf of MLS, submitted that:

The City is asking the Tribunal to revoke Mr. Jayaraj's Vehicle-For-Hire Driver's Licence, as there are reasonable grounds to believe that Mr. Jayaraj will not operate a Vehicle-For-Hire in accordance with the law, or with integrity and honesty; and Mr. Jayaraj's operation of a Vehicle-For-Hire has resulted or will result in a breach of the law; and Mr. Jayaraj's operation of a Vehicle-For-Hire has infringed or would infringe the rights of other members of the public, or has endangered or would endanger public health or safety.

Mr. Jayaraj's criminal record (the two convictions after the 2018 incident) meets this test.

The Code stresses the importance of compliance with the law and safety. As a vehicle-for-hire driver, drivers are meant to offer safe transportation to members of the public. They are also meant to share the road safely with others.

Mr. Jayaraj used his taxi as a weapon. When the cyclist appears to have kicked the taxi, Mr. Jayaraj's response was to deliberately veer into the bicycle lane in order to strike the cyclist. The flexible pole (which delineates the lane usually) appears to have been missing where the collision occurred.

Mr. Jayaraj intentionally used his taxi as a weapon and may have had an elderly passenger present in the vehicle at the time. The cyclist was pinned to the pavement, and injured his thigh and thumb, and the bicycle was heavily damaged. Mr. Jayaraj was charged and subsequently convicted of dangerous operation of a motor vehicle and assault with a weapon (where the weapon used was his taxi) Mr. Jayaraj was placed on a two-year probation, had his licence suspended for 18 months, and was required to pay a fine of \$1800.

Mr. Jayaraj is also in breach of the screening criteria, and because of these two convictions, MLS would automatically refuse to renew the licence.

In April 2021, the TLT placed terms on Mr. Jayaraj's licence requiring him to report the outcome of the two pending criminal charges as well as any new charges or convictions against him. Mr. Jayaraj failed to report the outcome of the pending criminal charges and failed to report two new criminal harassment charges.

As set out in section 546-87 of the Code, every vehicle-for-hire driver shall have and maintain an unrestricted Ontario driver's licence in good standing at all times. If an individual's provincial driver's licence is suspended or revoked, the individual's vehicle-for-

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hire driver's licence shall be deemed suspended for the entirety of the period that the individual's provincial driver's licence is suspended or revoked. In other words, Mr. Jayaraj's Ontario driver's licence has been suspended since January 2022 and will remain so until July 2023.

There is no mitigating information before the Tribunal. Mr. Jayaraj is currently 61 years old according to his MTO driver's abstract. He was first issued a vehicle-for-hire licence in October 2016 and held a licence for less than two years before the 2018 incident with the cyclist. Mr. Jayaraj failed to carry out his business in accordance of the law, and the carrying on of his business has resulted in a breach of the law. Mr. Jayaraj operated his taxi in manner that showed flagrant disregard for the safety of cyclists, passengers, other drivers, and the public. Mr. Jayaraj wielded his taxi, his means of business, as a weapon. Harm was the intended outcome of his actions. As a vehicle-for-hire driver, he again may find himself in a dispute with others on the road. There is no information before us to suggest he would respond any differently. For example, there is no information to support that Mr. Jayaraj has completed anger management classes or counselling, or any other evidence to suggest he would react differently should a similar situation arise.

Driving is a privilege and not a right, and revocation of Mr. Jayaraj's Vehicle-For-Hire licence is appropriate and necessary, not only for public safety but for public confidence in the regulatory system. Public interest clearly supports revocation and there is nothing to suggest Mr. Jayaraj would follow conditions if they were to be placed on his licence.

ANALYSIS

Section 546-4 A of the Code sets out the grounds for denial of a licence. Having weighed the evidence, the Tribunal is satisfied that those grounds have been met, and there are reasonable grounds to believe that:

- Mr. Jayaraj will not operate a Vehicle-For-Hire in accordance with the law or with integrity and honesty;
- Mr. Jayaraj's operation of a Vehicle-For-Hire has resulted or will result in a breach of 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
- Mr. Jayaraj's operation of a Vehicle-For-Hire has infringed or would infringe the rights of the public and has or would endanger the health and safety of the public.

The information before us raises serious concerns about Mr. Jayaraj's ability to follow the law and drive safely.

Mr. Jayaraj was convicted of two serious offences under the CCC (dangerous driving of a motor vehicle and assault with a weapon) related to his operation of a taxi in July 19, 2018. These convictions support that Mr. Jayaraj operated his taxi in a manner that was dangerous to the public considering all the circumstances, and that he used his taxi as a weapon. At rush hour (just before 6:00 pm) on a busy downtown street when there are many cars, cyclists and pedestrians, Mr. Jayaraj drove his taxi in a manner that put the public in danger, and used his taxi as a weapon, by driving it into the bike lane and hitting a cyclist. When a car is used aggressively it raises serious concerns about public

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safety, as it puts other drivers, passengers, cyclists, and pedestrians at risk of harm. The cyclist sustained injuries, though they were minor, whenever a car and a cyclist interact there is always a risk of a serious or even life-threatening injury.

Since these events, Mr. Jayaraj has also been charged with two counts of criminal harassment, though the details of those charges were not available to the Tribunal.

Under s. 546-9 (C)(2), the Tribunal may impose conditions on a licence if it considers it appropriate. In this case, nothing short of revocation is appropriate. The Tribunal adds that even if we were considering conditions, Mr. Jayaraj has not shown he is able to follow conditions. Mr. Jayaraj did not follow the conditions the Tribunal placed on his licence in April 2021 as he did not report the new CCC charges and convictions against him, or the outcome of the two pending CCC related to the July 2018 incident.

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 Code.

As Mr. Jayaraj did not attend the hearing, the Tribunal was unable to determine the impact loss of his vehicle-for-hire Driver's licence may have on his livelihood. However, the Tribunal notes that when Mr. Jayaraj's Ontario driver's licence was suspended on January 5, 2023, his vehicle-for-hire licence was automatically suspended and thus he has not relied on this income since that time.

DECISION

For the reasons set out above:

The Tribunal revokes Mr. Jayaraj's Vehicle-For-Hire Driver's Licence.

Originally Signed

Melina Laverty, Panel Chair

Reference: Minute No. 162/22

Date Signed: December 20, 2022