

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

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**Date of Hearing:** May 23, 2024

**Panel:** Verlyn Francis, Panel Chair;  
Peter Harris, Member

**Re:** Keith Johnathan Jarrett (Report No. 7896)  
Applicant for the Renewal of Pedicab Driver's Licence No. D18-5222039

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

**Counsel for Applicant:** Unrepresented

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### **INTRODUCTION**

Keith Johnathan Jarrett was issued Pedicab Driver's Licence D18-5222039 on August 10, 2022 which expired on August 9, 2023. In June 2023, Mr. Jarrett applied for renewal of that licence.

After conducting an investigation, Municipal Licensing and Standards Division (MLS) informed Mr. Jarrett by letter dated August 31, 2023, that his application for renewal of the licence would be subject to a hearing because they had reasonable and probable grounds to believe that he was in breach of §545 of the Toronto Municipal Code (the Code).

On September 22, 2023, Mr. Jarrett requested a hearing before the Toronto Licensing Tribunal (the Tribunal). The matter was before the Tribunal for a hearing on May 23, 2024.

At the end of the hearing, the Tribunal suspended Mr. Jarrett's Pedicab Driver's Licence pending the decision of the Tribunal. These are the reasons for decision.

### **CITY'S EVIDENCE**

The evidence of MLS was presented through Jamil Elannan, Supervisor at MLS.

In his testimony, Mr. Elannan referred to Report No. 7896 (entered as Exhibit 1) which was prepared by MLS staff under his supervision. He indicated that when the application for the pedicab driver's licence was received and the licence issued on August 10, 2022, MLS was not aware that Mr. Jarrett had a criminal record. He testified that MLS has been unable to locate the criminal records check which should have accompanied Mr. Jarrett's application for the pedicab driver's licence which was issued on August 10, 2022. Mr. Elannan explained that, based on the MLS system, if Mr. Jarrett had provided a judicial matters check and that criminal record check was clear, then MLS would have no concerns and the licence would be issued.

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Mr. Elannan testified that on June 16, 2023, MLS received an application for a pedicab owner's licence from Mr. Jarrett and, based on the information received, MLS did some checks which indicated that Mr. Jarrett has a criminal record. The issue that triggered the checks by MLS was that the criminal records that was received from several police departments did not have the seal that is usually attached. Based on that discrepancy, MLS conducted its own check of the Integrated Court Offences Network (ICON) and this check revealed that that Mr. Jarrett has a criminal record.

Mr. Jarrett did not proceed with the pedicab owner's licence but, based on the information revealed by ICON, MLS decided that if the fee was submitted for the renewal of the pedicab driver's licence, they would refuse to issue the renewal and bring the matter before the Tribunal for a hearing. When the renewal payment was received from Mr. Jarrett, in its letter dated August 21, 2023, MLS refused the renewal of the pedicab driver's licence on the basis that Mr. Jarrett was in breach of §545 of the Code because he had been convicted of sexual assault and criminal offences against the person.

The chart at pages 8 to 11 of Exhibit 1 was prepared by MLS staff from the printouts of the ICON system set out at pages 12 to 27. The ICON printouts were generated by inputting Mr. Jarrett's name and date of birth into the system and cross-referencing the results of the search with the information in the MLS records. The items set out in pages 8 to 11 is the criminal record that MLS referred to in its letter dated August 21, 2023.

Pages 28 to 36 of the report is an occurrence report MLS received from the Toronto Police Service in response to a freedom of information request. The occurrence report deals with an assault on February 27, 2023 which was withdrawn on July 10, 2023.

In cross-examination, Mr. Jarrett asked Mr. Elannan whether MLS had received communication from two persons regarding Mr. Jarrett's criminal record. Mr. Elannan testified that he did not know the two individuals mentioned and he was not aware that any MLS staff received information from them about Mr. Jarrett's criminal record.

## **APPLICANT'S EVIDENCE**

In reviewing the chart of criminal charges and convictions starting at page 8 of Exhibit 1, Mr. Jarrett acknowledged in his testimony that he has a lot of charges on his record. He pointed out that, of the 38 charges, 27 had been withdrawn or dismissed. He indicated that he knew everything about the charges but did not expect them to come up during this hearing or he would have brought all his records.

Mr. Jarrett testified that he was aware that there was a prohibition against conviction for a sexual offence for ten years prior and for assault in the five preceding years his application. He explained that his convictions for sexual assault were within ten years, but they were minor and consisted of a hugging a girl goodbye, a kiss on the cheek, and a kiss on the forehead.

In addressing the first charge in 2017 when he was 27 years old, he indicated that he had just graduated university and college and was in residence beside the university when he went on a date with a girl. They did not "hit it off or anything" and she decided to make up a story that he approached her in the hall and grabbed her pants. The story was false but he was immediately arrested for sexual assault. Up to that point, Mr. Jarrett testified, he had no history with police,

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and he thought they would do an investigation because he knew the allegation was false. He was released from custody the next day but his photograph was sent around the whole university and he was deemed a rapist and he amassed about thirteen charges from different girls. He felt it was the police's intention to get all these charges so that something would "stick". He went to trial approximately two years later and his lawyer got most of those charges dismissed, and proved the original girl was a liar. The Crown Attorney proceeded with the kiss on the forehead and he did not receive a jail term but he did anger management and sought help from a psychologist, etc. Other than that case, Mr. Jarrett testified that the charges were all minor and he agreed to a plea deal to drop the charges.

Referring to the Toronto Police Service synopsis at page 32 of Exhibit 1, Mr. Jarrett testified that the charge was made March 12, 2023 as a result of a false allegation made by his girlfriend of seven years and it was withdrawn. She wanted to recant her statement but he was arrested and that charge is the first one on the list starting at page 8.

The assault charge that he pleaded guilty to on July 19, 2022 was from an occurrence on October 31, 2020, and is the only relevant one in five years. Mr. Jarrett stated that every time he is charged, the Crown always suggested a plea deal that he did not want to take. However, his Legal Aid lawyers got him to plead guilty because they did not want to go to trial.

In cross-examination by Mr. Thomson, Mr. Jarrett testified that he is 35 years old, unmarried with no children. He finished his schooling in 2017 with an honour's Bachelor of Arts degree in political science, and a college diploma in travel and tourism from Algonquin College in 2010. He has no other training and has been in the workforce since 2017. Between finishing school in 2017 and getting his pedicab licence in 2017 in Ottawa, he did one construction job in Ottawa and two or three jobs in construction in Toronto. He was a candidate in one provincial and two federal elections but he was mostly a volunteer in politics. Since 2017, he also did Uber Eats from 2019 to 2022, and he could go back to that but he does not want to right now because the pay is bad. The pay for rickshaw is much better. Since August 2022, he has not had any other jobs.

Pedicab work or rickshaw is seasonal, warm weather work which starts around May and finishes about mid-October when the weather gets worse. In the winter, he studies for the LSAT because he wants to become a lawyer, and does market research studies and medical studies for compensation.

Mr. Jarrett said he initiated and abandoned his application for a pedicab owner's licence because of the criminal records check, and he was aware that MLS would investigate. He came up with the idea that his friend, Zacharie Phommachanh, would own the business and he would work under his friend.

Regarding the criminal charges and convictions on pages 8 to 11 of Exhibit 1, Mr. Jarrett testified that most of the charges were withdrawn when he pleaded guilty to a number of serious charges. However, to change his behaviour in the professional area, he completed three anger management courses, three partner-response courses which was required as a result of his convictions for sexual assault and assault. He also undertook an extensive 12-week course in 2017 to learn about consent and communication, but he "already knew that stuff" because he has respect for women. He reiterated that his charges were the result of a hug, and kisses on the cheek and forehead. He has also completed 11 psychotherapist sessions and is now waiting to switch to a male counsellor.

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He testified that he has been with his current girlfriend since 2017 and he met her mid-trial on the sexual assault charges. The 2017 allegations were made by five women and in all the charges, there were four convictions and at least eight were withdrawn.

Counsel for MLS went through all the criminal charges set out in Exhibit 1 and gave Mr. Jarrett the opportunity to comment on the circumstances leading to each one. With regard to failure to comply with bail conditions at line 12 on October 2, 2017, Mr. Jarrett testified that, as a result of being charged with assault with a weapon on October 2, he was charged with breach of bail conditions. This was a charge involving an ex-girlfriend and the charge was withdrawn. He explained that his girlfriend had pulled a knife on him and he grabbed it from her and tried to go out the door and, as he closed the door, she hit her head on the door. He didn't want to deal with the police when they came and his girlfriend told them that she hit her head when he closed the door.

The assault conviction on October 31, 2020 at line 5 on page 8 was from a group of four charges and he entered into a plea deal where the other charges were withdrawn. This incident involved his current girlfriend when she was mad because he was speaking to another girl and she was hit by the door when he attempted to leave the room.

In the fail to comply conviction at line 3, Mr. Jarrett testified that he was volunteering at a food bank where a transgender person (a man transitioning to a woman) had a "crush" on him and grabbed his crotch area and he grabbed the person by the shoulder. Mr. Jarrett said he demanded by text that the person apologize, but the person went to the police first. Mr. Jarrett testified that, "with the heat of transgender and homophobia", it was considered a sensitive crime and he had to plead guilty but he did not spend the night in jail.

## **SUBMISSIONS**

### Applicant's Submissions

Mr. Jarrett submitted that many of the charges against him were withdrawn because they were made by false accusers. The fact that so many charges were withdrawn denigrates the police but the 2017 charges were laid at a time when there was a high-profile sexual assault trial taking place in Toronto so the police were following protocol.

He indicates that, as an athlete, he really loves working as a rickshaw driver. He had previously worked in sales and this work involves sales and getting people to get into his rickshaw. Mr. Jarrett submitted that he has integrity, is professional and respectful of his customers. He does not consume drugs and he works at night when there are drunks.

He has had the same girlfriend for seven years. She lives with her family but they are close to living together.

The rickshaw season is short and he has never had an incident while working as a rickshaw driver. He has customers who love him and who text him for another ride because they have a good experience.

Mr. Jarrett submitted that to facilitate his pedicab driver's licence being renewed, he would get a go-pro camera that records everything that he does with his customers. He would keep footage

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and send it back to the police or MLS. He proposed that this could be done for one season as a trial.

### MLS Submissions

On behalf of MLS, Mr. Thomson submitted that Mr. Jarrett is not entitled to a pedicab driver's licence because, as a person who has been convicted of a sexual offence in the last ten years, and an offence against the person in the last five years, he is in violation of §545-4 of the Code. Mr. Thomson submitted that there is ample evidence before the Tribunal to prove this.

Mr. Thomson cited the case of Yarco Developments Inc. v. Home Construction Regulatory Authority (Registrar), 2024 ONSC 93 (Div. Ct.) at paragraph 53 in support of the proposition that the onus is on Mr. Jarrett to prove the non-existence of reasonable grounds for belief supporting a denial of his application for renewal of his pedicab licence.

In 2022 MLS issued a licence because it appeared Mr. Jarrett provided a clear record. He did not proceed with the owner's licence because he was aware that criminal convictions are considered. In support of his application to renew his pedicab driver's licence, he produced a criminal records check which did not show his convictions. Mr. Jarrett seems to minimize his conduct and blame the victims, police and gay and transgender people but all of that is moot because of his convictions.

Mr. Thomson submitted that operating a business and obtaining a licence is a privilege and not a right and Council mandates that MLS not issue a licence in the circumstances of this case in order to protect people – especially in the entertainment district where people may be drunk.

Mr. Jarrett is 35 years old, has a BA, has done other work, and is not married. He wants a pedicab driver's licence because he likes it but that does not outweigh the need to protect the public.

## **DECISION**

The issue before the Tribunal is whether Pedicab Driver's Licence No. D18-5222039 issued to Mr. Jarrett on August 10, 2022 should be renewed or revoked.

Chapter 545-4 C. of the Toronto Municipal Code provides that an applicant for a licence is entitled to be issued a 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, 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.

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The standard of proof required by the Code is that the Tribunal decide whether or not there is “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 Code. Reasonable grounds to believe is a lower standard of proof than “balance of probabilities”.

As part of the application for a pedicab driver’s licence, the applicant is required to indicate whether they have been charged with or convicted of criminal offences. In this case, in the initial application which led to the issuing of the pedicab licence on August 10, 2022, if Mr. Jarrett provided a record of offences with his application, MLS is unable to locate it in its records. MLS has placed uncontested evidence before the Tribunal that Mr. Jarrett responded to this requirement by submitting a criminal background check with the application for renewal of the licence. The submitted document did not contain the usual seal. As a result, MLS conducted its own investigation through ICON and discovered that Mr. Jarrett had 38 criminal charges and convictions.

At the hearing, Mr. Jarrett testified that he was aware that he was required to provide a criminal records check with his application and that he could be denied a licence or renewal of a licence if he had sexual assault convictions in the previous ten years or convictions for offences against the person in the previous five years. As a result, he withdrew his application for a pedicab owner’s licence and had a friend apply for that licence instead.

Mr. Jarrett testified that even though he was charged with 38 offences, 27 of those charges were withdrawn or dismissed in plea agreements. He did admit to being convicted of the following:

<b>Offence Date</b>	<b>Offence</b>	<b>Disposition &amp; Date</b>
August 10, 2022	Fail to comply / probation order	Convicted January 9, 2024
October 31, 2020	Assault	Convicted July 19, 2022
October 2, 2017	Fail to comply / bail condition	Convicted May 30, 2018
March 3, 2017	Criminal Harassment	Convicted October 22, 2018
March 14, 2017	Criminal Harassment	Convicted October 22, 2018
March 17, 2017	Assault	Convicted October 22, 2018
March 17, 2017	Assault	Convicted October 22, 2019
December 13, 2017	Sexual Assault	Convicted October 22, 2018

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January 20, 2017	Criminal Harassment	Convicted October 22, 2018
February 28, 2017	Sexual Assault	Convicted October 22, 2018
February 10, 2017	Sexual Assault	Convicted October 22, 2018
March 29, 2017	Assault	Convicted October 22, 2018

While admitting to these criminal convictions, Mr. Jarrett sought to minimize their seriousness and to blame the victims, the police, his lawyers, the criminal justice system, and societal views on gender for his charges and convictions.

In accordance with the screening criteria under §545 of the Code, MLS shall deny the renewal of a licence if the applicant has:

- (a) Been convicted of any sexual offence under the Criminal Code in the preceding ten years;
- (b) Been convicted of an offence against the person in ss. 264.1 to 286.1 of the Criminal Code in the preceding five years.

The Tribunal finds that the record of 12 criminal convictions set out above, and admitted to by Mr. Jarrett, clearly shows that he falls within this class of applicants that may be denied a licence.

To counter the revocation of his pedicab driver's licence, Mr. Jarrett requested that licence be renewed with the condition that he place a camera on his pedicab and send the footage to police or MLS. Mr. Jarrett has two convictions for failing to comply with bail conditions and probation orders. In other words, Mr. Jarrett failed to comply with orders of the criminal court. This conduct does not give the Tribunal comfort that Mr. Jarrett will comply with conditions placed on his pedicab driver's licence. Based on the evidence before it, the Tribunal finds that Mr. Jarrett is unlikely to follow any condition that the Tribunal might place on his pedicab driver's licence. Therefore, the Tribunal cannot accede to this submission.

As the Divisional Court indicated in *Yarco Developments Inc. v. Home Construction Regulatory Authority (Registrar)*, 2024 ONSC 93 at para 53, the onus is on Mr. Jarrett to prove that reasonable grounds do not exist to support denying him a pedicab driver's licence. He has not discharged that onus.

Based on all the evidence at the hearing, the cumulative effect of Mr. Jarrett's conduct as evidenced by the 12 admitted convictions set out above, and the submissions, the Tribunal has reasonable grounds to believe that, in accordance with §545-4 A, if granted a pedicab driver's licence, Mr. Jarrett will not carry on his occupation with integrity and honesty; and that his conduct has infringed, or would infringe the rights of other members of the public, or has endangered, or would endanger, their health or safety.

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That is not the end of the matter, however. The Tribunal is mandated by the Toronto Municipal Code, § 546-8.A.(3)(c) to have regard for the need to balance the protection of the public interest with the Licensee's need to make a livelihood.

Mr. Jarrett is 35 years and unmarried. He has a Bachelor of Arts degree and a college diploma in travel and tourism. He has been in the workforce since 2017, has been a candidate in three political elections, has worked in construction, and did Uber Eats for three years. The Tribunal, therefore, concludes that Mr. Jarrett is capable of earning his livelihood without a pedicab driver's licence.

In all the circumstances of this matter, and balancing the Tribunal's mandate to protect the public interest and Mr. Jarrett's need to earn a livelihood, we are satisfied that, in this case, the interest of the public outweighs Mr. Jarrett's need to earn a livelihood as a pedicab driver.

Taking into consideration all of the evidence and the submissions, the Tribunal orders that the Pedicab Driver's Licence No. D18-5222039 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 Pedicab 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 Mr. Jarrett affords reasonable grounds to believe that the granting of a pedicab driver's licence to the applicant would infringe the rights of other members of the public or would endanger their health or safety.

*Verlyn Francis*

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Verlyn Francis, Panel Chair

Panel Member: Peter Harris, concurring

Reference: Minute No. 44/24

**Date Signed: June 12, 2024**