



NOTICE OF DECISION
of the
MISSISSAUGA APPEAL TRIBUNAL
established pursuant to section 23.5 of the *Municipal Act 2001*

IN THE MATTER OF a Notice of Appeal to the Mississauga Appeal Tribunal (the "Tribunal"), received on August 13, 2013, from Kevin Medeiros, 909-4470 Tucana Court, Mississauga, Ontario, L5R 3K8, of a Licensing Manager's decision to deny an application for a Tow Truck Driver Licence, under the City of Mississauga's Tow Truck Licensing By-Law 521-04, as amended (the "Appeal").

AND IN THE MATTER of the Hearing of the Notice of Appeal by the Mississauga Appeal Tribunal on October 29, 2013 in accordance with the provisions of the City of Mississauga's Tow Truck Licensing By-Law 521-04, as amended, and the *Statutory Powers Procedure Act, R.S.O. 1990, c. S.22*, as amended.

BACKGROUND:

The Appellant is a former holder of a tow truck driver's licence under the City of Mississauga's Tow Truck By-Law 521-04 as amended ("the By-Law"). On 4 June, 2013, the Appellant submitted to the City an application for a tow truck driver's licence (the "First Application"). Section 4(3) of the By-Law sets out certain requirements without which, "No Person shall be Licensed under this by-law as a Driver". One of those requirements is that a current criminal record search "contains no convictions for five (5) years prior to the date of application renewal". The criminal records search disclosed a 2011 conviction for Failing to comply with condition of undertaking or recognizance. As a result, the City's Manager, Mobile Licensing Enforcement (the "Licence Manager") denied the First Application on June 11, 2013. While it is not directly relevant to this appeal, it should be noted that this requirement was incorporated into the By-Law on June 5, 2013 and pursuant to the amending by-law 0130-2013, applies only to the issuance of new Driver Licences until June 15, 2014, at which time it shall apply to the issuance of all Driver Licences under the By-Law.

Under the By-Law, a decision of the Licence Manager can be appealed to this tribunal within 7 days after being served with notice of the decision. The Appellant did not meet this deadline, but did subsequently attempt to bring an appeal. In accordance with the By-Law and this tribunal's Rules of Practice and Procedure, the Appellant was notified by the Tribunal Coordinator on August 1, 2013, that his appeal was denied due to the late filing and that the June 11, 2013 decision of the Licence Manager was final and

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binding.

In an apparent attempt to revive his right to appeal, the Appellant made another application to the City for a tow truck driver's licence on July 29, 2013 (the "Second Application"). The Second Application was substantially identical to the First Application and the Licence Manager issued a second denial letter on August 6, 2013, again citing the criminal conviction as grounds for denial. The Appellant then served the City on August 9, with a notice of appeal letter, which referred to the August 6 denial, but also to the circumstances surrounding the earlier June 11 denial.

The City's position is simply that under the By-Law, the Appellant is barred from being issued a new City of Mississauga tow truck driver's licence until his criminal records search shows no convictions within the most recent five year period. No evidence was given to suggest that the City viewed the particular conviction which appeared in the Appellant's record, as particularly serious or otherwise making the Appellant unsuitable to drive a tow truck in the City.

The City, summing up its case, took the position that the subject appeal should be denied on the basis that:

- The Licence Manager's denial of the First Application was in law final and binding and that the Appellant therefore had no right to make the Second Application;
- The tribunal lacks jurisdiction to grant a licence to an individual who is specifically disqualified from holding such a licence by virtue of the requirements of Section 4 of the By-Law.

The Appellant's evidence and argument is summarized as follows:

- The City acted improperly by denying the First Application, in light of the fact that the By-Law provision under which the First Application was denied, was not in existence until the passing of amending by-law 0130-2013 on June 5, 2013, the day after the First Application was made to the City;
- His situation in terms of family obligations, education and employment opportunities, makes his need to carry on business as a tow truck driver in Mississauga, of particular importance to him;

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- His criminal record is minor and should not bar him from holding a licence.

DECISION:

This appeal raises two important questions which must be resolved before any consideration can be granted to the Appellant's specific circumstances. Firstly, does a person who has been denied a licence under this By-Law but fails to serve a Notice of Appeal within the requisite 7 days, have the right to resurrect their right of appeal simply by making another licence application? Secondly, does this tribunal have discretion to grant relief that includes the grant of a licence to a person who is disqualified from holding such a licence under the By-Law? These are both important questions because they are fundamental to how this tribunal may deal with future matters before it concerning not only the by-law under consideration but also other by-laws under which this tribunal hears appeals.

It would be an odd result if the decision of the Licence Manager could be final and binding and yet allow an applicant who has missed the appeal deadline to resurrect their right to appeal simply by making another application for a licence. However, under the By-Law, there is no specific prohibition preventing this from occurring, nor does this tribunal's Rules of Practice and Procedure address the situation directly. If a subsequent application for a licence could not be made after the Licence Manager's decision had become final and binding, there is no apparent mechanism for ever permitting that subsequent application to be made, so that a failed applicant might never be able to obtain a licence in the future. It must be noted that the Licence Manager's letter of August 6, 2013 advised the Appellant that he was entitled to a hearing before this tribunal. It should also be noted that the August 1, 2013 letter from the Tribunal Coordinator denied the appeal of the June 4, 2013 decision of the Licence Manager and not the subsequent August 6 decision, which did not exist at that time.

Rule 7.02 of the tribunal's Rules of Practice and Procedure allow the tribunal to extend a time prescribed by the Rules. Rule 1.02(5) provides that the Rules shall be liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding on its merits. Section 2 of the *Statutory Powers and Procedures Act* imposes the same requirement in construing the tribunal's Rules. Nevertheless, the tribunal's Rules and the By-Law explicitly provide that the Licence Manager's decision is final and binding if a Notice of Appeal is received after the appeal deadline.

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Considering the foregoing, this tribunal finds that the June 11, 2013 denial of the First Application is final and binding and accordingly disregards the Appellant's arguments regarding that denial. The tribunal finds that as there is no specific prohibition that prevented the Appellant from making the Second Application on July 29, 2013, and in light of the Licence Manager's August 6, 2013 advice to the Appellant that he was entitled to an appeal before this tribunal, the tribunal can and should render a decision on the merits of the case.

Section 12 of the By-Law provides that:

"In making its decision the Appeal Tribunal may uphold or vary the decision of the Licence Manager, or make any decision that the Licence Manager was entitled to make in the first instance. The decision of the Appeal Tribunal issued under this By-Law is final (195-0)"

The tribunal is of the view that Section 12 allows for three distinct kinds of decisions, namely:

- uphold the decision of the Licence Manager;
- vary the decision of the Licence Manager;
- make any (other) decision that the Licence Manager was entitled to make in the first instance.

If in upholding or varying the Licence Manager's decision the tribunal was restricted to decisions that the Licence Manager was entitled to make, there would have been no reason for the By-Law to specify these first two powers. Legal Counsel for the City has taken a more restrictive view of this provision, however, this tribunal is of the view that the ordinary and plain meaning of the words used in the By-Law are unambiguous and do not lead to any absurdity. It is not absurd that City Council should have intended to grant to the tribunal the authority, where appropriate, to dispense with strict compliance with the otherwise mandatory requirements of the licencing scheme for the following reasons:

- 1) While sitting on the Tribunal, members sit as part of a validly established, independent tribunal, empowered to hear representations from both the Agent for the City of Mississauga as one party, and the Licensee/Applicant as the other party. In this regard, all members of the Tribunal must act in the public interest and in accordance with natural justice, and both parties have the ability to present their evidence fully and if they wish, to have representations made on their behalf by their chosen legal counsel or agents.

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- 2) The role of the Tribunal is to conduct review hearings and make final and binding decisions respecting the status of a license or application that is the subject of the appeal before the Tribunal.
- 3) Under the Statutory Powers Procedure Act, the Tribunal is obliged to follow certain basic rules of natural justice:
 - i. The Tribunal's directions and decisions must be impartial, give the appearance of fairness, and not be biased as to create prejudice against the Licensee/Applicant or the Enforcement Manager;
 - ii. The Tribunal is not a representative of the Enforcement Division Manager but is a tribunal with statutory power of decision conferred upon it by City Council.

The Ontario Court of Appeal in, *Mavi v. Canada (Attorney General)* [2009] O.J. No 4793 (Ont. C.A.) stated that "The modern rule of statutory interpretation requires that "the words of an Act ... be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of [City Council]". Following *Mavi*, conferring a case-by-case discretion strikes an appropriate balance between the important goal under the Tow Truck Licensing By-Law of ensuring public safety and allowing the tow truck industry to operate in the City of Mississauga. However, as this tribunal has previously emphasized, its powers to dispense with strict compliance with the requirements of a by-law were not given in order to usurp the role of the Licence Manager, nor should the tribunal disregard or violate the spirit and intent of the licencing scheme set out in the By-Law.

Having decided that the Appellant was not precluded from reviving his appeal rights by making a second application for a tow truck driver's licence, and that the tribunal is not obliged to dismiss the appeal solely on the basis of the Appellant's failure to satisfy the requirement set out in Section 4(3)(b) of the By-Law, the tribunal must now consider whether it is appropriate and just to allow the appeal and to grant a licence to Mr. Medeiros.

The criminal conviction which appears within the 5-year period referred to in the By-Law is a 2011 conviction for breach of undertaking or recognizance. There was little evidence before the tribunal regarding the circumstances surrounding this matter and the Licence Manager did not offer any evidence to suggest that the conviction should disqualify the Appellant from driving a tow truck in the City of Mississauga, other than the technical prohibition contained in the By-Law. The tribunal appreciates the

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important aims of the By-Law in regards to maintaining the integrity of the towing industry and keeping the citizens of Mississauga safe in what are frequently traumatic and vulnerable situations. Nevertheless, the tribunal is of the view that some offences speak directly to the suitability of an individual to hold the City's licence to drive and operate a tow truck, while other offences, though worthy of consideration, should not automatically disentitle an individual from holding such a licence. In this case, the tribunal does not view the conviction as reaching the threshold necessary to deny the issuance of the licence, even when coupled with an additional minor criminal conviction in 2004. A breach of an undertaking or recognizance does not necessarily imply that the offender represents a danger to the public, or that the offender will not carry on the licenced business in accordance with the law with honesty and integrity or carry on the business in a financially responsible manner. The tribunal is satisfied that the refusal of a licence would impose a significant hardship upon the Appellant and believes that in the particular circumstances of this case, it is appropriate to grant a licence to the Appellant on a probationary basis. Section 2(1) of the By-Law provides for terms and conditions on the grant of licences.

THEREFORE, BE ADVISED THAT it is the decision of the Mississauga Appeal Tribunal that:

- 1) The Appellant shall be forthwith issued a tow truck Driver's Licence;
- 2) The said Licence shall be probationary until the date upon which the Appellant can satisfy the Licence Manager that he has had no criminal convictions for a period of at least five years;
- 3) If, during the probationary period, the Appellant receives any additional charge or conviction under the Criminal Code or any other criminal laws of Canada, he shall within five (5) business days notify the Licence Manager of same, in writing, and the Licence Manager may cancel, revoke or suspend the Licence;
- 4) If, during the probationary period, the Appellant receives any additional charge or conviction under the Criminal Code or any other criminal laws of Canada, but willfully or negligently fails to notify the Licence Manager as required, the Licence shall be revoked forthwith and the Appellant shall be disqualified from holding any licence under the Tow Truck Licencing By-Law for a period of ten (10) years.

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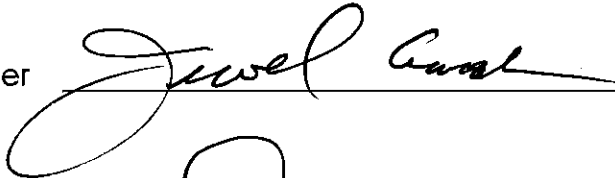
Issued by the Mississauga Appeal Tribunal on November 7, 2013.

Originally executed at the City of Mississauga on November 7, 2013 by:

Leonard Lyn,
Chair and Citizen Member



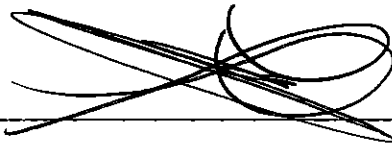
Jewel Amoah,
Acting Vice-Chair and Citizen Member



Roderick Chung,
Citizen Member



Luc Laverrière,
Citizen Member



Encl.: Record of Proceeding dated October 29, 2013



RECORD OF PROCEEDING

THE CORPORATION OF THE CITY OF MISSISSAUGA

MISSISSAUGA APPEAL TRIBUNAL

TUESDAY, OCTOBER 29, 2013 – 9:30 A.M.

COUNCIL CHAMBER, CIVIC CENTRE
300 CITY CENTRE DRIVE, MISSISSAUGA, ONTARIO, L5B 3C1

www.mississauga.ca

MEMBERS PRESENT: Leonard Lyn, Chair and Citizen Member
Jewel Amoah, Acting Vice-Chair and Citizen Member
Roderick Chung, Citizen Member
Luc Laverrière, Citizen Member

MEMBER ABSENT: Rafiq Rokerya, Vice-Chair and Citizen Member

APPELLANT: Kevin Medeiros

PROSECUTOR: Marcy Dunlop, Prosecution Office

STAFF PRESENT: Daryl Bell, Manager, Mobile Licensing Enforcement
Julie Lavertu, Mississauga Appeal Tribunal Coordinator
Charlene Perrotta, Manager, Prosecutions

OTHERS PRESENT: Marilyn Sparrow, Legal Counsel, Mississauga Appeal Tribunal

CONTACT PERSON: Julie Lavertu, Mississauga Appeal Tribunal Coordinator
Office of the City Clerk, Telephone: 905-615-3200, ext. 5471; Fax: 905-615-4181

Julie.Lavertu@mississauga.ca

This is a Record of Proceeding of the Mississauga Appeal Tribunal's Hearing regarding a Notice of Appeal by Kevin Medeiros (909-4470 Tucana Court, Mississauga, Ontario, L5R 3K8), received on August 13, 2013, of a Licensing Manager's decision to deny an application for a Tow Truck Driver Licence, under the City of Mississauga's Tow Truck Licensing By-Law 521-04, as amended.

CALL TO ORDER – 9:48 a.m.

DECLARATIONS OF DIRECT OR INDIRECT PECUNIARY INTEREST – Nil

INTERLOCUTORY ORDERS OF THE TRIBUNAL – Nil

WITNESSES

Jewel Amoah, Acting Vice-Chair and Citizen Member, administered the Oath or Affirmation as the case may be, to the individuals set out below at the time that the individuals were called to give evidence for the respective parties.

- The following individual testified on behalf of the City of Mississauga's Enforcement Division:

9:54 a.m. Daryl Bell, Manager, Mobile Licensing Enforcement (Mr. Bell was administered the Oath or Affirmation at 9:54 a.m., but began his testimony at 10:19 a.m. due to the Chair's decision at 9:58 a.m. to provide the Appellant with 15 minutes to review the Documents Brief prepared by Marcy Dunlop, Prosecutor, Prosecution Office, served to the Appellant via courier on October 15, 2013, as the Appellant stated that he had not received the Documents Brief via courier prior to the Hearing).

- The following individual testified on behalf of the Appellant:

10:50 a.m. Kevin Medeiros, Appellant

EVIDENCE ADMITTED BY THE TRIBUNAL

9:52 a.m. **Exhibit 1:** Documents Brief prepared by Marcy Dunlop, Prosecutor, Prosecution Office, served to the Appellant via courier on October 15, 2013, and containing the following documents:

TAB 1 Copy of Driver/Operator Licence Application dated June 4, 2013.

- TAB 2 Copy of letter from Affordable Towing dated June 4, 2013.
- TAB 3 Copy of Interview Record for Kevin Medeiros dated June 6, 2013.
- TAB 4 Copy of Police Criminal Record Check for Kevin Medeiros dated June 4, 2013.
- TAB 5 Copy of decision of Manager, Mobile Licensing Enforcement Daryl Bell dated June 11, 2013.
- TAB 6 Copy of Driver/Operator Licence Application dated July 29, 2013.
- TAB 7 Copy of decision of Manager, Mobile Licensing Enforcement Daryl Bell dated August 6, 2013.
- TAB 8 Copy of Notice of Appeal submitted by Kevin Medeiros dated August 9, 2013.
- TAB 9 Copy of Notice of Hearing of the Mississauga Appeal Tribunal issued September 27, 2013.
- TAB 10 Notice pursuant to Section 35 of the *Evidence Act* of Ontario.
- 11:42 a.m. Exhibit 2:** Letter dated August 1, 2013 from Julie Lavertu, Mississauga Appeal Tribunal Coordinator, to Kevin Medeiros regarding a refused Notice of Appeal regarding a Licensing Manager's decision to deny an application for a Tow Truck Drivers Licence (this document was referenced by Charlene Perrotta, Manager, Prosecutions, who made the Closing Statement to the Tribunal, and distributed to the Tribunal, Prosecutor, Appellant, and others present as per the Chair's request).

ADJOURNMENT – 1:39 p.m. (J. Amoah)