



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

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IN THE MATTER OF a Notice of Appeal to the Mississauga Appeal Tribunal (the "Tribunal"), received on May 23, 2013, from Derek Paulino, 232 Macedonia Crescent, Mississauga, Ontario, L5B 3R7, 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 September 24, 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:**

On April 22, 2013, the Appellant, Mr. Derek Paulino, made application to the City of Mississauga Transportation and Works Department, Enforcement Division, Mobile Licensing Enforcement ("Mobile Licensing Enforcement"), for a Tow Truck Driver's Licence. By letter dated May 9, 2013, Daryl Bell, the Manager, Mobile Licensing Enforcement, advised Mr. Paulino that his application was denied, solely on the basis of Mr. Paulino's failure to qualify for a Tow Truck Driver's Licence under s.4(1) of By-law 521-04 as amended, being the City of Mississauga Tow Truck Licensing By-Law (the "By-law"). S.4(1) reads as follows:

4(1) No person shall be licensed under this by-law unless he/she has at least seven (7) years driving experience after completing the requirement of a full Ontario "G" driver's licence or the equivalent; is a citizen of Canada or a landed immigrant, or has a valid employment authorization issued by the Government of Canada to work as a Driver and has a working knowledge of English (54-13)

Mr. Paulino obtained his full Class G driver's licence on September 29, 2008, and at the time of making his application, had not had the benefit of the minimum seven years of experience required by s.4(1) of the By-law.

Mr. Bell was present at the hearing and gave testimony confirming that but for this section of the By-law, he had no reason to refuse to grant the licence sought. Heather

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**Appellant:** Derek Paulino, 232 Macedonia Crescent, Mississauga, Ontario,  
L5B 3R7  
**Hearing Date:** September 24, 2013

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Bourgeois, the Agent for the City introduced as evidence, a Corporate Report dated November 22, 2012, which explained the City's rationale for placing the minimum qualification of seven years' experience as a Class G driver, into the By-law. Section 4(1) was the result of a proposal from the Towing Industry Advisory Committee, and amended through the input of City staff and the City's Legal Services Division. The minimum requirement of seven year's driving experience as recommended by the Commissioner of Transportation and Works was intended to address the inherent dangers of inexperienced drivers having control of heavy vehicles with second vehicles connected to them in tow. Ultimately, City Council passed s. 4(1) as it now appears in the By-law.

The Appellant gave testimony that he currently has ample driving experience and is currently licensed as a tow truck driver in the City of Toronto. He notes the irony that under the law, he can mentor young drivers but cannot drive a tow truck for the City of Mississauga. He also testified that in order to keep his job, he must have a City of Mississauga Tow Truck Driver's Licence.

**DECISION:**

Under s. 8(1) of the By-law, the power and authority to refuse to issue or renew a Licence has been delegated to the Licence Manager and his or her delegates. This power is not unlimited. In exercising his or her powers, the Licence Manager must act in accordance with the By-law.

Under s. 11(1) of the By-law, the power and authority to conduct appeal hearings under the By-law has been delegated to this Tribunal. However, just as the Licence Manager's, the Tribunal's powers are not without limit. While the Tribunal has the power to uphold or vary the decision of the Licence Manager, or to make any decision that the Licence Manager was entitled to make in the first instance, these powers were not given in order to usurp the Licence Manager's role, or so that the Tribunal should ignore the licencing scheme set up by the elected members of City Council with the input and advice of the Towing Industry Advisory Committee, City staff, the Legal Services Division and the Commissioner of Transportation and Works. This Tribunal must act in accordance with those provisions of the By-law directly applicable to it, but should also reach its decisions without violating the spirit and intent of the licensing regime determined by the City's elected representatives.

It is unfortunate that the City had, as of the time that Mr. Paulino made his application

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for a Tow Truck Driver's Licence, not amended their Application Requirement Check List to include the seven year Class G driver's licence requirement. As such, Mr. Paulino may not have known that he did not qualify under the By-law for issuance of the licence sought. It is hoped that the City will amend this checklist or otherwise ensure that future applicants have actual notice of this requirement. Nevertheless, any inconvenience suffered by Mr. Paulino does not justify a departure from the letter or spirit of the By-law's requirement for a minimum period of full Class G licencing, which is in the public's interest.


THEREFORE, BE ADVISED THAT it is the decision of the Mississauga Appeal Tribunal that: the Licence Manager's decision to refuse to grant a Tow Truck Driver's Licence to the Appellant, Mr. Derek Paulino, is upheld.

The Tribunal thanks all parties for their clear and concise presentations of their testimony and arguments.

Issued by the Mississauga Appeal Tribunal on September 24, 2013.

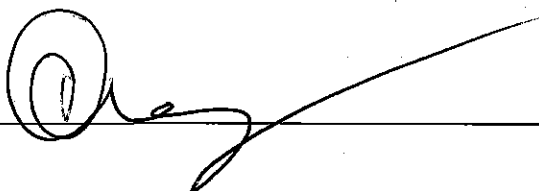
Originally executed at the City of Mississauga on September 24, 2013 by:

Leonard Lyn,  
Chair and Citizen Member



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Roderick Chung,  
Acting Vice-Chair and Citizen Member



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Jewel Amoah,  
Citizen Member



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Encl.: Record of Proceeding dated September 24, 2013



## **RECORD OF PROCEEDING**

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THE CORPORATION OF THE CITY OF MISSISSAUGA

### **MISSISSAUGA APPEAL TRIBUNAL**

**TUESDAY, SEPTEMBER 24, 2013 – 9:30 A.M.**

**HEARING ROOM, CIVIC CENTRE  
300 CITY CENTRE DRIVE, MISSISSAUGA, ONTARIO, L5B 3C1  
[www.mississauga.ca](http://www.mississauga.ca)**

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

**MEMBERS ABSENT:** Luc Laverrière, Citizen Member  
Rafiq Rokerya, Vice-Chair and Citizen Member

**APPELLANT:** Derek Paulino

**PROSECUTOR:** Heather Bourgeois, Prosecution Office

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

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](mailto:Julie.Lavertu@mississauga.ca)

This is a Record of Proceeding of the Mississauga Appeal Tribunal's Hearing regarding a Notice of Appeal by Derek Paulino (232 Macedonia Crescent, Mississauga, Ontario, L5B 3R7), received on May 23, 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 – 9:36 a.m.

DECLARATIONS OF DIRECT OR INDIRECT PECUNIARY INTEREST – Nil

INTERLOCUTORY ORDERS OF THE TRIBUNAL

WITNESSES

Roderick Chung, 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:

**9:46 a.m.** Daryl Bell, Manager, Mobile Licensing Enforcement

**10:02 a.m.** Daryl Bell, Manager, Mobile Licensing Enforcement (At the request of Ms. Bourgeois and with the agreement of the Chair, Mr. Bell was called for further questioning).

- The following individual testified on behalf of the Appellant:

**9:55 a.m.** Derek Paulino, Appellant

EVIDENCE ADMITTED BY THE TRIBUNAL

**9:49 a.m.** **Exhibit 1:** Documents Brief prepared by Heather Bourgeois, Prosecutor, Prosecution Office, served to the Appellant via courier on September 11, 2013, and containing the following documents:

TAB 1 Copy of the Notice of Hearing of the Mississauga Appeal Tribunal by Derek Paulino.

- TAB 2 Copy of letter dated August 29, 2013 to Mr. Derek Paulino from Ms. Julie Lavertu, Mississauga Appeal Tribunal Coordinator.
- TAB 3 Copy of decision of Manager, Mobile Licensing Enforcement Daryl Bell dated May 9, 2013.
- TAB 4 Copy of Notice of Appeal submitted by Derek Paulino.
- TAB 5 Copy of Driver/Operator Licence Application for Derek Paulino dated April 22, 2013 together with the Application Requirement Check List dated April 22, 2013.
- TAB 6 Copy of the Interview Record dated May 1, 2013 prepared by Daryl Bell, City of Mississauga, Manager, Mobile Licensing Enforcement.
- TAB 7 Certified copy of Derek Paulino's Licence status dated June 25, 2013.
- TAB 8 Copy of driving record for Derek Paulino dated June 20, 2013.
- TAB 9 Photocopy of Derek Paulino's driver's licence.
- TAB 10 Notice pursuant to Section 35 of the *Evidence Act* of Ontario.
- 9:51 a.m. Exhibit 2:** Corporate Report, dated November 22, 2012 and considered by the Towing Industry Advisory Committee at their meeting on December 10, 2012, from Martin Powell, Commissioner of Transportation and Works, entitled "Amendments to the Tow Truck Licensing By-law 521-04, as amended, Requirement for Driver Experience to become a Tow Truck Driver."

ADJOURNMENT – 11:07 a.m. (R. Chung)