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## RECORD OF DECISION

### SASKATOON LICENSE APPEAL BOARD

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**APPEAL NO.:** 4-2019

**RESPONDENT:** City of Saskatoon, Community Services Department,  
Community Standards Division

In the matter of an appeal to the City of Saskatoon, License Appeal Board by:

**RANBIR DHULL**

respecting the denial for renewal of a taxi license.

**IN ATTENDANCE:**

<b>Before</b>	Asit Sarkar, Chair June Bold, Member Cameron Choquette, Member
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<b>Appeared for the Appellant</b>	Ranbir Dhull, Appellant Andrew Mason, Agent/Solicitor
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<b>Appeared for the Respondent</b>	Mark Wilson, License and Permitting Manager Wayne Sum, Taxi & Rideshare Manager Erik Agrey, Solicitor, City Solicitor's Office
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The appeal was heard in Committee Room "E", Ground Floor, City Hall in the City of Saskatoon on January 6, 2020 at 9:00 a.m.

**GROUND AND ISSUES:**

THE APPELLANT, Ranbir Dhull, launched an appeal under Section 63(1) of *The Vehicles for Hire Bylaw, 2019* No. 9651\* in connection with the City's letter respecting the renewal of taxi driver license denial and revocation of taxi driver license. The City's letter dated October 24, 2019 outlined in part, the following (Exhibit "R.1"):

"Upon subsequent review of your taxi driver licence renewal application made on October 23, 2019, I regret to inform you that we will not be renewing your licence as you do not meet the provincial requirements as a taxi driver set forth in the Vehicles for Hire Regulation.

Your licence denial has been decided on the basis that you do not meet the current provincial requirements as noted in section 3(5) of the Vehicles for Hire Regulation which states:

Sec. 3(5)      No person shall authorize or enable a driver to provide vehicle-for-hire, limousine or taxi services if that driver has been convicted of an offence set out in Appendix A.

As you have an offence conviction set out in Appendix A of the Regulation, the City cannot authorize or enable you to be licenced.

Please surrender any and all taxi driver permits and taxi driver identification cards to my office immediately. All permits and identification cards are considered the property of the City of Saskatoon."

As set out in the Notice of Appeal to the Saskatoon License Appeal Board (Exhibit "A.1"), the Appellant outlined the reasons for appealing, as follows:

"Mr. Sum, in making his decision dated October 24, 2019, erred in fact and/or law. The applicant/Appellant Ranbir Dhull has not been convicted of an offence as set out in section 3(5) or Appendix A of the Regulations to the Vehicles for Hire Act, S.S 2018 Ch. V 3.2. The decision rejecting the Appellant's application should be set aside and the application for license should be granted."

\* It should be noted that *The Vehicles for Hire Bylaw, 2019* No. 9651 came into force on September 30, 2019, replacing repealed *Taxi Bylaw, 2014 and Transportation Network Company Bylaw, 2018*.

**EXHIBITS:**

Exhibit A.1      Application to Appeal received November 15, 2019.

Exhibit A.2.      Criminal Occurrence Security Check dated October 23, 2019.

Exhibit R.1 Letter from Wayne Sum, Taxi & Rideshare Manager, Community Standards to Ranbir Dhull dated October 24, 2019.

Exhibit B.1 Notice of Hearing dated November 27, 2019.

### **EVIDENCE AND ARGUMENT OF THE APPELLANT:**

The Appellant, Ranbir Dhull, was in attendance accompanied by his legal counsel Andrew Mason. The following is a summary of the Appellant's evidence and argument.

Solicitor Mason distributed a copy of his client's Criminal Occurrence Security Check (entered as Exhibit "A.2."), noting the absolute discharge granted in relation to the charge in question. His case was that according to the law, the City wrongly denied the renewal. Regardless of plea, Ranbir was by definition in the Criminal Code, not convicted as per the respondent's claim. He expressed the peculiar connotation with the City's definition of conviction within the Bylaw and questioned the intention.

The Appellant answered questions from the Respondent and Appeal Board members.

### **EVIDENCE AND ARGUMENT OF THE RESPONDENT:**

The City of Saskatoon, being the Respondent, was represented by Mark Wilson, Licensing and Permitting Manager and Wayne Sum, Taxi & Rideshare Manager, Community Standards.

Mark Wilson provided the following report to the Board:

#### **"Circumstances**

- Ranbir Dhull was previously licensed by the City of Saskatoon as a taxi driver. Taxi driver licenses are valid for one year and must be renewed annually.
- Mr. Dhull's taxi driver license expired on May 31, 2019.
- Saskatoon Police Service notified the City on October 1, 2019 that Dhull had received an absolute discharge on August 20, 2019 in relation to a Criminal Code Charge of assault.
- Whereas section 10 of The Vehicles for Hire Regulations, permits a city to make bylaws requiring transportation network companies to establish a complaints process for accepting, recording, reviewing and responding to complaints from the public;
- As per Bylaw 9651, The Vehicles for Hire Bylaw, 2019, Section 46 (1)(v)(i) states:
  - o 'Every taxi driver shall immediately notify the City of being charged with or convicted of any prescribed criminal offence; or'

Mr. Dhull failed in his obligation under the bylaw to notify the City that he had been charged with assault.

- Had the City been notified in accordance with the bylaw, the notification would have triggered license suspension and cancellation provisions under section 62(1)(e), which states that:
  - o 'A license issued under this Bylaw may be suspended or cancelled for any of the following reasons:
    - in the case of a taxi driver, a licensee has been charged with or convicted of any prescribed criminal offence.'
- Mr. Dhull had applied and paid for a taxi license renewal on October 23, 2019 with all the required documents, including a recent criminal record check.
- Upon review of his criminal record check, the absolute discharge from August 20, 2019 was present on his record.

The City has adopted the Vehicles for Hire Bylaw, the purpose of which is to regulate the taxi industry in regard to safety, health and welfare of people.

- A prescribed criminal offence is listed in Appendix A, Section 3(c) of the Vehicles for Hire Regulation
  - o Criminal Code Section 266 is noted in the Regulation as 'In the preceding 10 years, offences pursuant to the Criminal Code (Canada) ...against the person pursuant to sections 264, 266, 270, 270.1, 282, and 283;'

### **Decision for Denial**

- Section 13(2) of The Vehicles for Hire Bylaw, outlines when the City shall approve a license unless any item is determined to be true.
  - Section 13(2)(c) speaks to 'the applicant has been convicted of a prescribed criminal offence. The fact that a conviction is being appealed shall have no effect under this clause;'
  - Conviction is defined in the Bylaw as:
    - o 'a conviction or a guilty plea, and includes a conviction of any business entity for which the applicant had, at the time of the prescribed criminal offence leading to the conviction; a management responsibility or a controlling interest;'
  - Section 33(6), regarding processing of renewal applications states that 'The City shall approve the renewal provided that the applicant has fully complied with all applicable requirements of this Bylaw.'
- As Mr. Dhull had been charged with assault and failed to disclose this to the City, and the subsequent charge resulted in an absolute discharge, Mr. Dhull's application for a taxi driver license did not meet the bylaw requirement and could not be approved. The application was therefore denied.
- The purpose and intent of the Vehicles for Hire Bylaw is to establish a system of regulation, with which to protect the public.  
Taxi drivers are responsible for transporting vulnerable members of the public, and as such, may not be approved for license if they have pled guilty or have been convicted of a criminal offence which could endanger the public. Mr. Dhull

was charged with assault, and failed to report the charge to the taxi broker or the City. An assault charge when reported may lead to a suspension or cancellation of a license. Further, conviction is defined to include a guilty plea. The bylaw requires this in order to ensure the safety of the public.

Regarding the three bars of entitlement:

- 1) It is felt that granting this appeal would contradict the purpose and intent of the licensing bylaw.

The purpose and intent of the bylaw is to protect public safety, by ensuring that all taxi drivers have a clear criminal record, and are able to transport vulnerable members of the community, and are in compliance of all sections of the bylaw. Granting this appeal will result in a taxi driver who has been charged with assault and failed to report the charge, and received an absolute discharge, transporting members of the public, who depend on safety vetting of their drivers.

- 2) It is felt that granting this appeal would be granting the appellant a special privilege, inconsistent with the restrictions on other persons under the same licensing bylaw.

All other taxi drivers must have a clear criminal record check, without prescribed convictions. If this appeal is granted, Mr. Dhull will have been granted a special privilege of holding a taxi driver license, despite failing to report his assault charge, and having an absolute discharge. Further, all other drivers, per section 33(6) of the bylaw, were in full compliance of the bylaw at the time their license was renewed.

- 3) It is felt that granting this appeal would amount to a relaxation of the provisions of the licensing bylaw so as to contradict the purpose and intent of the licensing bylaw.

The purpose and intent of the bylaw is protect public safety. The criminal record check, and conviction definition are intended to protect the traveling public. Granting this appeal will relax this review process, and contradict the purpose and intent to ensure public safety in licensing taxi drivers.”

Following the report, Licensing & Permitting Manager Wilson summarized the Respondent’s position and answered questions of the Appeal Board members along with Taxi & Rideshare Manager Sum. An inquiry with respect to the consistency between the quoted provincial and municipal legislation was made and it was explained that although guided by the overarching provincial Act, the City issues taxi licenses pursuant to its Bylaw which goes beyond the minimum prescriptions of the Act. (ie. conviction is defined to include a guilty plea.) Solicitor Agrey advised the City’s request for extension (which was denied on December 23, 2019) was made in order to obtain further information from the provincial court regarding the Appellant’s plea.

**BYLAWS:**

Section 12(2) of *The Vehicles for Hire Bylaw, 2019* No. 9651 provides for the information that shall be included with an application for a taxi driver's license:

- (a) *the applicant's full name;*
- (b) *the applicant's date of birth;*
- (c) *the applicant's current address and telephone number;*
- (d) *a letter from a taxi broker on company letterhead confirming its affiliation with the applicant taxi driver;*
- (e) *written proof that the applicant holds a valid and subsisting prescribed class of Saskatchewan Driver's Licence issued by Saskatchewan Government Insurance;*
- (f) *a criminal record check that meets the prescribed requirements and includes a vulnerable sector check;*
- (g) *the applicant's certificate of approval from the Saskatoon Police Service;*
- (h) *written proof that the applicant has completed any training program approved and required by the City;*
- (i) *the issuing jurisdiction and the effective dates of any licence or permit held by the applicant to drive a taxi and whether such licence or permit has been denied, revoked or suspended, and if so, the reason or reasons therefor.*

Further, Section 62(1) provides for the suspension and cancellation of licenses issued under this Bylaw for any of the following reasons:

- (a) *a licensee, an employee of a licensee or a TNC driver has violated or failed to comply with this Bylaw;*
- (b) *a licensee, an employee of a licensee or a TNC driver has violated or failed to comply with a condition of the licence;*
- (c) *a licensee, an employee of a licensee or a TNC driver has refused to allow an inspection as authorized by this Bylaw;*
- (d) *a licensee has given false or misleading information in the application for the licence;*
- (e) *in the case of a taxi driver, a licensee has been charged with or convicted of any prescribed criminal offence or the licensee's driving privileges or Saskatchewan Driver's Licence has been suspended, cancelled, revoked, invalidated or amended. The fact that a conviction is being appealed shall have no effect on the suspension or cancellation of the licence.*

In the general course of its deliberations, the Board was guided by principles expressed in *The Saskatoon License Appeal Board Bylaw, 2012*, and any amendments thereto, in its entirety.

As provided for in Sections 5(1) and 6(1) of *The Saskatoon License Appeal Board Bylaw*:

- 5. (1) *A license appeal may only be taken by a person who:*
  - (a) *has applied for a license and been denied, or holds a license that has been suspended or cancelled, or holds a license upon which conditions have been imposed; and*
  - (b) *believes that an error has been made by the City in the decision to deny, suspend or cancel a license, or to issue a license with conditions.*

6. (1) *A notice of appeal, together with the filing fee prescribed in section 7, must be filed with the secretary of the appeal board within 30 days after the date the appellant is served or is deemed to have been served with the decision of the City.*

Further, as provided for in Section 16(1) and (2) of the Bylaw:

16. (1) *Subject to subsection (2), after hearing an appeal, the appeal board may, as the circumstances require and as the board considers just and expedient:*
- (a) confirm, revoke or vary the City's decision to impose conditions or to refuse, suspend or cancel a license; or*
  - (b) substitute its own decision for the decision appealed from.*
- (2) *In determining an appeal under subsection(1), the appeal board:*
- (a) is bound by the provisions of the bylaw pursuant to which a license is refused, suspended, cancelled or issued conditionally; and*
  - (b) may confirm, revoke or vary the City's decision only if the appeal Board's decision would not:*
    - (i) contradict the purpose and intent of the licensing bylaw;*
    - (ii) grant the appellant a special privilege inconsistent with the restrictions on other person under the same licensing bylaw; or*
    - (iii) amount to a relaxation of the provisions of the licensing bylaw so as to contradict the purposes and intent of the licensing bylaw.*

### **APPLICATION /ANALYSIS:**

In determining the appeal, the Board was governed by Section 16 of *The Saskatoon License Appeal Board Bylaw, 2012*.

#### **1. Does the granting of this appeal contradict the purpose and intent of the licensing bylaw?**

In deciding this question, the Panel was cognizant of the evidence presented by both parties on the facts of the appeal and the state of the interpretation of the Criminal Code of Canada with regard to the implications of any "guilty plea" by a person charged with a violation of the Code and the final disposition of the matter by the Court. In this appeal, the facts that were not in dispute are: a) the appellant was charged with violation of a provision of the Criminal Code (the assault); (b) the appellant was given absolute discharge of the charge by the Court; and (c) while the appellant did not inform the Licensing & Permitting or Taxi & Rideshare Manager of the assault charge when it was made, at the time of application for renewal, he provided appropriate evidence (Report of Criminal Record Check) with respect to the charge and its eventual disposition by the Court. Therefore, the Panel looked at the state of interpretation of the Criminal Code of Canada with regard to "absolute discharge". The Appellant's legal counsel, quoting from legal interpretations, pointed out that when a person is given "absolute discharge" from a charge of violation of the Code, the individual's record will not show a conviction, irrespective of the fact as to whether there was a guilty plea prior to the Court's disposition of the matter. The

Respondent's solicitor did not disagree with this interpretation. In view of this, the Panel finds that the Appellant had no conviction on record at the time of application for renewal. Therefore, denial of the license due to "a conviction on record" is not supported by both fact and the law.

The Respondent indicated that even though non-reporting of the original charge of assault to the Taxi & Rideshare Manager could be technically considered a violation of the Bylaw, this was not the reason for the denial of the application. Therefore, the Panel did not consider this to be a basis of denial of the application.

The final issue to be adjudicated is the Respondent's position regarding "charged or convicted" aspect of the Bylaw in determining whether the license is to be renewed. The Respondent's position was that even though the Bylaw was subservient to The Cities Act, the City had the right to make provisions that go beyond those in the Act as the provisions of The Cities Act are seen as "minimum" for the protection and safety of the public. However, the Respondent was not able to provide any legal basis for this position. Therefore, given the interpretation of "absolute discharge" as meaning "no conviction", the Panel found the "charged or convicted" part of the reasons for denial to be contradictory.

Therefore, the Panel found that granting of the appeal will not contradict the purpose and intent of the Bylaw.

**2. Does the granting of this appeal grant to the applicant a special privilege inconsistent with the restrictions on other persons under the same licensing bylaw?**

There was no evidence presented that other applications for renewal were denied for the reason of applicant being "charged" with a similar violation. Therefore, given that according to the report of criminal record check, the appellant had no "conviction" record, the Panel found that granting of the appeal would not grant the appellant a special privilege inconsistent with the restrictions on other persons under the same licensing bylaw.

**3. Does the granting of this appeal amount to a relaxation of the provisions of the licensing bylaw so as to contradict the purposes and intent of the licensing bylaw?**

The Panel was not presented with any evidence to conclude that the granting of this appeal would amount to a relaxation of the provisions of *The Vehicles for Hire Bylaw* so as to contradict the purposes and intent of the Bylaw.



**DECISION:**

The Board grants the appeal and asks the Taxi & Rideshare Manager to grant the appellant a license to drive a taxi as long as other conditions are satisfied.

DATED AT SASKATOON, SASKATCHEWAN, THIS \_\_\_\_\_ DAY OF JANUARY, 2020.

CITY OF SASKATOON LICENCE APPEAL BOARD

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Asit Sarkar, Chair

\_\_\_\_\_  
Janice Hudson, Secretary

**TAKE NOTICE** that in accordance with Section 16(1) of *The Saskatoon License Appeal Board Bylaw, 2012*, every decision of the appeal board is final and not open to question or review in any court, and no decision of the appeal board shall be restrained by injunction, prohibition, *mandamus*, *quo warranto*, *certiorari* or other process or proceeding in any court or be removable by application for judicial review or otherwise into any court on any grounds.