

Appeal No.: 3282 001 2019
Hearing Commenced: January 29, 2019
& February 5, 2019

RED DEER APPEAL & REVIEW BOARD DECISION

CHAIR: Michael Kartusch
PANEL MEMBER: Tyler Lacoste
PANEL MEMBER: Frank Yakimchuk

BETWEEN:

ASADDULLAH AHMADZAI

Appellant

and

THE CITY OF RED DEER
Represented by Michelle Baer, City Solicitor
Amy Fengstad, Parking & Licensing Supervisor

City Authority

DECISION:

The application by the Appellant for a Taxi Driver License is denied. The reasons are described below.

BACKGROUND

1. The Red Deer Appeal & Review Board (the Board) is established by The City of Red Deer, By-law No. 3487/2012, *Appeal Boards Bylaw* (October 29, 2012). The duty and purpose of the Board is to hear and make decisions on appeals for which it is responsible under any City bylaw and in particular, arising from The City of Red Deer, Bylaw No. 3282/2001, *Taxi Business Bylaw* (June 18, 2001) (Taxi Bylaw).
2. On January 15, 2019 the City Authority refused a renewal of a Taxi Driver License pursuant to s. 49 of the Taxi Bylaw. Specifically, the refusal letter states:

As per The City of Red Deer Taxi Business Bylaw 3282/2001:

*49 The License Inspector is hereby authorized to:

e) refuse to issue a taxi driver's license to any person or to renew a taxi driver's license issued to any person under this bylaw*

You may appeal this decision per the Taxi Business Bylaw:

55 Any decision of the License Inspector under section 50 of this bylaw may be appealed to the Red Deer Appeal & Review Board by the broker, licensee, or driver in accordance with the relevant procedures as outlined in The City of Red Deer Committees Bylaw.

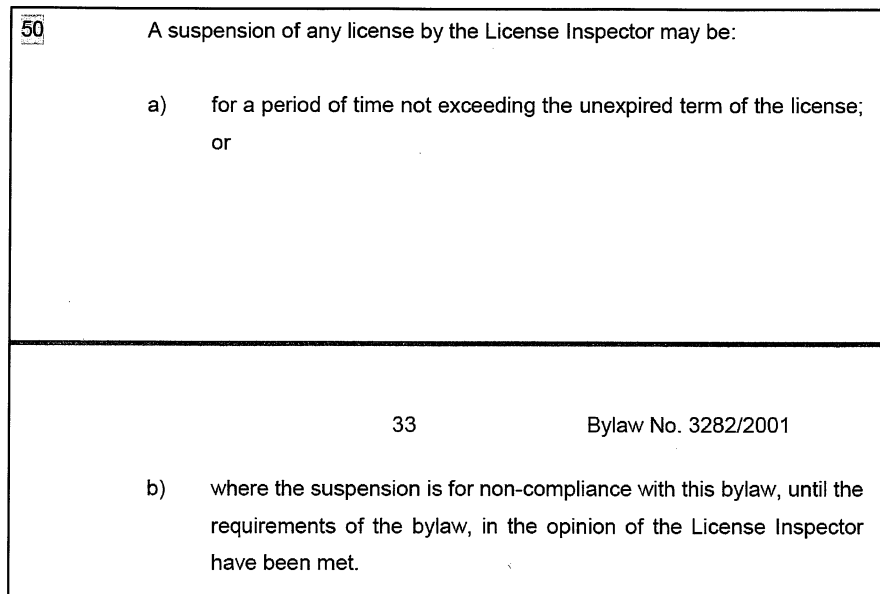
An appeal of the refusal was filed by the Appellant with the Board on January 16, 2019.

3. The hearing commenced on January 29, 2019 and was adjourned to February 5, 2019 to allow for a translator to be in attendance for the Appellant.
4. Board Member F. Yakimchuk stated that he was once a member of City Police in Halifax, NS and he also stated that he did not have a conflict or bias. Chair M. Kartusch and Board Member T. Lacoste stated that they did not have a conflict or a bias. None of the parties had any objection to the members of the Board.
5. The Board considered two preliminary issues: it's authority to hear the appeal; and public attendance and access to documents.

Board Authority to Hear the Appeal

6. The Board identified a discrepancy in the Taxi Bylaw and the letter of refusal issued by the City Authority. In s. 55, the Taxi Bylaw grants a right of appeal to decisions made under s. 50, however, the refusal letter states that the license was refused under s. 49 of the Taxi Bylaw.
7. The City Authority stated that they believe the discrepancy is a typographical or administrative error in the Taxi Bylaw. They believe this is supported by the fact that it would not make sense to have a right of appeal under s. 50 of the Taxi Bylaw and none under s. 49. They also argued that it would be administratively unfair for the Appellant to not have a right of appeal.

8. The Appellant agreed with the City Authority with respect to the Board's authority to hear the appeal.
9. The Board reviewed s. 49 of the Taxi Bylaw, which lists the powers of the License Inspector, while s. 50 of the Taxi Bylaw relates to the suspension of a license and reads:



10. Section 50 speaks only to the duration of a license suspension, and appears to have a built in remedy e.g. 'until the requirements of the bylaw have been met'. This leads the Board to believe that to prescribe an appeal under s. 50 of the Taxi Bylaw and not under s. 49 would be illogical and inconsistent with the purpose of the right of appeal. The Board believes the discrepancy is administrative or typographical in nature.
11. Further, it is evident in the refusal letter that the City Authority believed that the Taxi Bylaw vested a right of appeal to a person that is refused a taxi license. Given that the Board believes that the discrepancy is an administrative oversight or typographical error, the Board has determined that it would be a miscarriage of administrative fairness to, essentially, refuse the Appellant a hearing and decision.

Public Hearing & Record

12. The Board entered the following documents into evidence:
- A1 – hearing materials (5 pages)
 - B1 – City Authority: Report (blue binder with tabs/exhibits A–D)
 - B2 – City Authority: Department Policy 2019-050-DP (3 pages)
 - C1– Appellant: Submission (8 pages starting with letter from Associated Cab)
 - C2 – Appellant: Pardons and Waivers (4 pages)
 - C3 – Appellant: Letter from Appellant addressed to the Board (1 page)
 - D1 - Affidavit of Interpreter (1 page)
13. The Board advised the Parties that the hearing is open to the public, and that documents entered into evidence become a public record unless a Party requests that the hearing be closed or a written document sealed.
14. The Appellant requested that the proceedings be closed to the public and that Exhibit B1 / Tab Exhibit A / pages 1, 2, 3 and Exhibit C1 / pages 6, 7, 8 be sealed from the public record as they relate to a prior criminal offence and contain fingerprints and a photograph.
15. The City Authority did not object to the proceedings being closed to the public or to the sealing of Exhibit B1 / Tab Exhibit A / page 2 and Exhibit C1 / page 6 from the public record.
16. The City Authority did object to the request to seal Exhibit B1 / Tab Exhibit A / pages 1 and 3 as well as Exhibit C1 / pages 7 and 8 from the public record. The City Authority stated that sealing documents should be done for the purposes of protecting the victims of a crime, not protecting the convicted person. Further, the City Authority stated that they should not be sealed as they are documents that are publically available and can be disclosed.
17. The Board is a public body to which the open court principle applies. Public and media access is urged. This encourages fair and transparent decision making and is essential to

public confidence. However, in the interest of encouraging a full and open dialogue, the Board agreed to close the proceedings to the public.

18. The Board also agreed to seal Exhibit B1 / Tab Exhibit A / page 2 and Exhibit C1 / page 6 from the public record. Those are the pages that contain fingerprints. Fingerprints are used to confirm a person's identity. Public disclosure of them should be limited to law enforcement or authorized agencies only.
19. The Appellant also requested sealing Exhibit B1 Tab (Exhibit) A pages 1 and 3 as well as Exhibit C1 pages 7 and 8, from the public record. The Board determined that having those pages in the public record serves a greater public interest. Further, the Board believes their disclosure may be permitted by other public bodies. Sealing them in this case would be ineffective and the Board refused the request.
20. There were no further preliminary matters.

Position of the City Authority

21. The City Authority stated that the main reasons for the taxi driver license refusal are:
i) safety of the travelling public; ii) failure of the Appellant to disclose a criminal record; and iii) character and conduct of the Appellant.
22. With regard to the safety of the travelling public, the City Authority stated that the primary purpose of taxi regulations is to protect the public. In support of this, the City Authority referred the Board to the preamble of the Taxi Bylaw, passed in 2001, where the safety and protection of public is listed first as one of the purposes by which Council may pass a bylaw.
23. The City Authority stated that the Appellant has been convicted on 2 charges under s. 151 of the *Criminal Code of Canada* within the last 6 years. In making its decision to refuse the application, the City Authority determined that lack of complaints made against a taxi driver does not demonstrate fitness to have a taxi driver license, it is not enough to balance the risk to the public.

24. The City Authority referred to s. 29(1)(d) of the Taxi Bylaw which requires an Applicant of a license to provide a list of all convictions for any offences under the laws of Canada. The City Authority advised that in November of 2017, a letter was sent to all taxi brokerages reminding them of the application requirements.
25. The City Authority stated that taxi brokerages are required to share licensing requirements with drivers and that they likely do so as part of a training protocol. The City Authority also argued that not having knowledge of the law is not a defense.
26. The City Authority stated that the Appellant knew that the criminal record check was required as part of his license application in 2017 (Exhibit C1 page 6 has a date stamp), and that he intentionally failed to disclose it as required in the Taxi Bylaw.
27. The City Authority argued that failing to disclose the record speaks to the character of the Appellant - a person of integrity would have been open and transparent and provided the criminal record check to The City regardless of whether or not The City followed up with him.
28. The City Authority argued that taxi passengers are often vulnerable due to age, infirmity or gender; they may be travelling alone, in the night, or while impaired. For these reasons, each application for a taxi driver license must be considered on its own merit, and it is important to consider the character or conduct of the driver.
29. The City Authority stated that convictions for offences involving violence, sexual, and indecency offences are the most serious types of offences when evaluating an application for a taxi driver license. If minors are involved this adds to the seriousness. In support, the City Authority provided a copy of a policy (adopted after the refusal of this taxi driver license) that will be used when reviewing Vulnerable Sector Checks and Criminal Record Checks as they relate to Taxi Driver Licenses.
30. The City Authority reiterated that a lack of complaints or subsequent convictions against the Appellant does not demonstrate fitness to have a license particularly when the Appellant has not proven rehabilitation or provided evidence to indicate that he understands the nature of the offences.

31. The City Authority questioned the remorse of the Appellant and argued that shame and regret are not the same as rehabilitation. The Appellant has not shown true remorse or evidence that he is rehabilitated. She stated the Appellant has not proven that there are protocols in place with the Taxi Broker to ensure safety of the travelling public.
32. The City Authority spoke to the letters of reference submitted by the Appellant (Exhibit C1 / pages 1, 4 and 5) and argued that they should have very little weight as there is no indication in the content that writers are aware of the Appellant's record or the nature of it.
33. The City Authority acknowledged that as the sole income generator, the loss of the taxi driver license will impact the Appellant and his family. To this the City Authority argued that the Appellant's record does not prohibit many other types of employment and that the Appellant has not indicated that he is attempting to find alternative employment.
34. The City Authority argued that applying for a pardon (Appellant's Exhibit C2) does not ensure that it will be granted. If it is granted, the Appellant could re-apply for a taxi driver license, however, remaining free of charges and complaints is not enough to balance the risk to the public.
35. It is the City Authority's position that the Appellant's record, coupled with noncompliance of the taxi bylaw renders him unfit to hold a taxi driver license.

Position of the Appellant

36. The Appellant stated that it is the duty and responsibility of taxi drivers to ensure safe and secure transport to all people. He stated that is what he has done for the past 4 years and that is what he wants to continue to do.
37. With regard to disclosing his record, the Appellant stated that while it may be required under the Taxi Bylaw, he has never been asked by The City to provide it. He stated that he became aware of the requirement in 2017 and applied for a criminal record check in 2017 but was given his taxi driver license before it was processed and returned to him so he assumed it was not needed and did not provide it to The City.

38. He stated that the events that occurred which resulted in the 2013 charges and conviction did not involve a taxi. Since that time there have been no complaints or violations of any kind. The Appellant argued that if he was a risk to the safety of people, there would have been complaints made against him.
39. The Appellant stated that he has not transported minors alone and that he would ask the dispatcher to re-assign the call if there was a minor alone. He also stated that he transports passengers safely and securely and that he treats them all the same. When he sees minors, he sees his own kids.
40. The Appellant stated that he is sorry for the past and that everybody deserves a second chance. He argued that he has learned his lesson, been punished and has paid his debt to society.
41. The Appellant stated that he would sign any statement or attend any rehabilitation course that the Board or The City wanted or suggested. He referred the Board to the signed statements (Exhibit C1 / page 2 and Exhibit C3) he has already completed.
42. The Appellant stated that he is responsible to his nation, country and people. He stated that he was speaking from the depths of his heart and that he just wants to serve, be a good example and prove himself. Being given a license would be like giving him a second life.
43. The Appellant argued that working as a taxi driver gives him the flexibility he needs to support his family and that no other job can provide it. He also stated that he has financially invested in his car to use it as a taxi for his livelihood and that it cannot be used as anything but a taxi.

Board Analysis

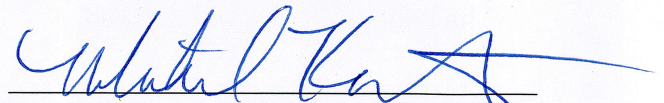
44. The Appellant stated that he provided the Taxi Broker with a copy of his record, but when asked when he did that, he was only able to say 'in 2019'. The Board reviewed both letters of reference with this in mind (Exhibit C1 / pages 1, 4 and 5) and could not find any indication in the content that the writers are aware of the Appellant's record or the nature of it. For this reason, the Board gave the letters very little weight.

45. The Board has empathy with regard to the hardship that the Appellant believes he will incur without a taxi driver license. However, the Board finds it is of little relevance in this case. The Board believes the safety of the travelling public is more important.
46. The City Authority stated that the Appellant failed to comply with the Taxi Bylaw when he did not provide the results of his record check for the 2018 license. The Appellant stated that he was aware of the requirement to provide the record check for the 2018 application but received his license prior receiving the results of the record check and so he believed it was not needed.
47. While the 2018 license is not the subject of this appeal, the Board believes that failure to follow the process, by not submitting the results of the 2017 criminal record check is relevant. The Appellant stated that he wishes the events of 2013 hadn't happened, that he could get rid of the criminal record. The Board feels these statements support the idea that the Appellant intentionally avoided disclosing his criminal record as he knew, or suspected, that it would cause problems with his taxi license.
48. The Board believes that the Appellant is truthful with respect to feeling shame and regret for his criminal record. However, shame and regret are not the same as rehabilitation. The letters of reference do not indicate that the writers are aware of the nature of the criminal record. Further, the Appellant was not able to substantiate his statements that there are protocols in place with the Taxi Broker to divert calls for trips that involve more vulnerable passengers (e.g. minors).
49. The Board is mindful that to rule that the Appellant should have taken action to demonstrate or support his rehabilitation could be seen as an attempt to impose a greater sentence than the Court did. That is not the case. The Board believes that seeking additional avenues to demonstrate his rehabilitation would be to the Appellant's credit, and he would be better able to convince the Board that his behaviour and conduct with vulnerable people is now appropriate.

CLOSING:

50. For the reasons detailed above, the appeal is denied. The application for a Taxi Driver License is refused.

Dated at the City of Red Deer, in the Province of Alberta this 13 day of February, 2019 and signed by the Chair on behalf of all three panel members who agree that the content of this decision adequately reflects the hearing, deliberations and decision of the Board.



M. Kartusch, Chair

Red Deer Appeal & Review Board