



Hamilton

REPORT 11-005 HAMILTON LICENSING TRIBUNAL

1:00 p.m.

Wednesday, July 6, 2011

Rooms 264, 2nd Floor

Hamilton City Hall

71 Main Street West, Hamilton

Present: Councillors C. Collins (Vice Chair), C. Clark, S. Duvall and R. Pasuta

**Absent with
Regrets:** Councillor T. Whitehead (Chair) – Vacation

Also Present: Vince Ormond, Manager, Licensing and Permits
Justyna Hidalgo, Solicitor
Lisa Pasternak, Senior Solicitor
Stephanie Paparella, Legislative Assistant, Office of the City Clerk

Other Attendees: Fred Rudolph, Rudolph Law Office, Legal Counsel (Item 4.1)
Rajinder Singh, Appellant (Item 4.1)
Gayle Christie, Christie Law, Certified Paralegal/Agent (Item 4.2)
[REDACTED], Appellant (Item 4.2)
Richard D. Simmons, Ross & McBride, Legal Counsel (Item 4.3)
Nirmal Gill, Appellant (Item 4.3)

THE HAMILTON LICENSING TRIBUNAL PRESENTS REPORT 11-005 AND RESPECTFULLY RECOMMENDS:

1. **APPEAL HEARING: Manfred Rudolph, Rudolph Law Offices, on behalf of Rajinder Singh, Raj Cab Co. – Refusal of Renewal Applications for Taxi Cab Owner Plate Licenses (Plate Numbers 191, 244 and 286) and the Taxi Cab Driver Licence issued to Mr. Rajinder Singh (Item 4.1)**

- (a) That Mr. Rajinder Singh be prohibited from reapplying for a Taxi Cab Driver's Licence until after July 2014.

- (b) That Taxi Cab Owner Licence Number 11-128368 (Plate 191), Licence Number 11-128421 (Plate 244), and Licence Number 11-128463 (Plate 286) be suspended until August 15, 2011.
- (c) That the owner(s) of the taxi cab vehicles, which will be operating under Taxi Cab Owner Licence Number 11-128368 (Plate 191), Licence Number 11-128421 (Plate 244), and Licence Number 11-128463 (Plate 286), be required to provide an updated Ministry of Transportation Safety Standard Certificate and pass a City vehicle inspection, prior to the suspension end date of August 15, 2011 and any further use of the Licences.
- (d) That the charges currently pending before the Courts, against RAJ CAB. Co. for operating unlicensed vehicles during the period between February 1, 2011 and April 15, 2011, proceed at the discretion of the City Prosecutor.
- (e) That, should Mr. Rajinder Singh submit a new application for a Taxi Cab Driver Licence in 2014 or later, staff be directed to immediately request a hearing for the Tribunal's consideration of the application.

2. SHOW CAUSE HEARING: Respecting the Refreshment Vehicle – Class B Licence issued to [REDACTED] [REDACTED] for Mister Twister Inc (Item 4.2)

That the Refreshment Vehicle Licence, issued to [REDACTED] operating as Mister Twister Inc., remain in effect until its expiry on September 3, 2011, contingent upon the following condition; and, provided that the licensee satisfies all necessary requirements, as set out in the Licensing By-law 07-170, as amended:

- (i) That the Licensee provide proof of an updated vehicle ownership document(s) to the Issuer of Licenses within two weeks from the date of this hearing.

3. SHOW CAUSE HEARING, respecting Taxi Cab Owner Plate (Private) #085, Licence #12 128262 21, issued to Mr. Nirmal Gill (Item 4.3)

That the Taxi Cab Owner Plate Licence #12 128262 21 (Private #085), issued to Mr. Nirmal Gill, remain in effect until its expiry on January 31, 2012, provided that the licensee satisfies all necessary requirements, as set out in the Licensing By-law 07-170, as amended.

FOR THE INFORMATION OF COUNCIL:

(a) CHANGES TO THE AGENDA (Item 1)

There were no changes to the agenda.

The July 6, 2011 agenda for the Hamilton Licensing Tribunal was approved, as presented.

(b) DECLARATIONS OF INTEREST (Item 2)

There were no declarations of interest.

(c) APPROVAL OF THE MINUTES OF THE PREVIOUS MEETING (Item 3)

(i) May 19, 2011 (Item 3.1)

The Minutes of the May 19, 2011 meeting of the Hamilton Licensing Tribunal were approved, as presented.

(d) APPEAL HEARING: Manfred Rudolph, Rudolph Law Offices, on behalf of Rajinder Singh, Raj Cab Co. – Refusal of Renewal Applications for Taxi Cab Owner Plate Licenses (Plate Numbers 191, 244 and 286) and the Taxi Cab Driver Licence issued to Mr. Rajinder Singh (Item 4.1)

On February 7, 2011, the Director of Municipal Law Enforcement sent correspondence to Rajinder Singh advising that, in accordance with the City of Hamilton Licensing By-Law 07-170, as amended, the application for the Renewal Applications for Taxi Cab Owner Licenses (Plate Numbers 191, 244 and 286) were refused and licences will not be issued, based on the following grounds:

1. Section 5(2)(b) of the City of Hamilton Licensing By-Law 07-170, as amended, the applicant shall be responsible for ensuring that truthful information is provided in forms required or in responses supplied to enquiries made under this By-law.
2. Section 6(1)(d) of the City of Hamilton Licensing By-law 07-170, as amended, the applicant shall provide either a new application or a written and signed list of the changes in the required information from the previous application.
3. Section 6((1)(e)(ii)b and Section 6(1)(e)(iii)b of the City of Hamilton Licensing By-law 07-170, as amended, applicants shall supply as list of any criminal, provincial or driving offences in all jurisdictions for which the

applicant has been convicted and not pardoned and which do not appear on any original criminal or driving record submitted.

4. Section 12(1)(b) of the City of Hamilton Licensing By-law 07-170, as amended, the Issuer of Licenses shall refuse to issue the licence where it is determined that the application contains false or misleading information.
5. Section 12(1)(d) of the City of Hamilton Licensing By-law 07-170, as amended, the Issuer of Licenses shall refuse to issue the licence where the conduct of the person affords reasonable grounds for belief that the person will not carry on or engage in this business in accordance with the law or with honesty or integrity.
6. Schedule 25, Section 35(1)(b) of the City of Hamilton Licensing By-law 07-170, as amended, no licence shall be renewed if the past conduct of the applicant or licensee affords reasonable grounds for the belief that the applicant or licensee will not carry on the activity for which a licence had been or may be issued or renewed in accordance with this Scheduled and the law and with professionalism, integrity and honesty.
7. Schedule 25, Section 35(1)(g)(ii) of City of Licensing Hamilton By-law 07-170, as amended, no licence shall be renewed if the past conduct of the officers or directors of the applicant or licensee affords reasonable grounds for belief that the applicant or licensee will not carry on the activity for which he or she is to be licensed or continue to be licensed in accordance with the law.
8. Schedule 25, Section 35(1)(i) of the City of Hamilton Licensing By-law 07-170, as amended, no licence shall be renewed if the applicant has misrepresented or omitted to a representative of the Issuer of Licences or to the Licensing Tribunal a material fact in his or her application for the licence being applied for or for a prior licence.

Namely:

On January 4, 2011, Mr. Rajinder Singh signed Declaration "A" – Character Check (Record), appearing on each renewal notice for the licenses noted above, which states that the applicant has not been convicted of a criminal offence since issued the original licence; and, Mr. Rajinder Singh submitted to the Issuer of Licenses a Criminal Records Search, dated January 10, 2011, that did not contain a Criminal Code Conviction.

On October 7, 2010, Mr. Rajinder Singh was convicted under Section 253(1)(a) of the Criminal Code of Canada for operating a motor vehicle while impaired by alcohol or a drug.

9. Section 12(1)(a) of the City of Hamilton Licensing By-law 07-170, as amended, the Issuer of Licenses shall refuse to issue the licence, where a policy under Section 15 requires refusal.
10. Section 15(1) of the City of Hamilton Licensing By-law 07-170, as amended, the Issuer of Licenses shall use and apply the policies, where applicable, to the decision to deny or approve licences.

Appendix "A" Departmental Policy Standard Character and Driving Record Criteria for Conditional Issuance and Refusal of Mobile Licence Applications or Renewals, Schedule 25, Taxicabs – Taxicab Driver and Taxicab Owner, City of Hamilton Licensing By-law 07-170, as amended; specifically:

Item "E" - Refuse licence if 1 Criminal Negligence or Impaired Driving conviction (occurred) within 1 year of the application or renewal date.

Namely:

On October 7, 2010, Mr. Rajinder Singh was convicted under Section 253(1)(a) of the Criminal Code of Canada for operating a motor vehicle while impaired by alcohol or a drug.

11. Section 12(1)(c) of City of Hamilton Licensing By-law 07-170, as amended, the Issuer of Licenses shall refuse to issue the licence where, in the opinion of the Issuer of Licenses, the business would put public safety at risk.
12. Schedule 25, Section 35(1)(c) of the City of Hamilton Licensing By-law 07-170, as amended, the issuance, renewal, or continuance of the licence would be contrary to the public interest.
13. Schedule 25, Section 35(1)(g)(iii) of the City of Hamilton Licensing By-law 07-170, as amended, when the applicant or licensee is a corporation, the issuance, renewal or continuance of the licence would be contrary to the public interest.

Namely:

On January 4, 2011, Mr. Rajinder Singh signed Declaration "A" – Character Check (Record), appearing on each renewal notice for the licenses noted above, which states that the applicant has not been convicted of a criminal offence since issued the original licence; and, Mr. Rajinder Singh submitted to the Issuer of Licenses

a Criminal Records Search, dated January 20, 2011, that did not contain a Criminal Code Conviction.

On October 7, 2010, Mr. Rajinder Singh was convicted under Section 253(1)(a) of the Criminal Code of Canada for operating a motor vehicle while impaired by alcohol or a drug.

14. Section 8(5)(e) of the City of Hamilton Licensing By-law 07-170, as amended, a licence shall expire where any provincial licence required for the licensee to carry on or engage in their business has been revoked or suspended.
15. Schedule 25, Section 11(9) of City of Hamilton Licensing by-law 07-170, as amended, no person shall operate a taxi cab or act as a driver, owner or broker of a taxi cab while such person's licence is under suspension.

Namely:

The Province of Ontario, Ministry of Transportation Driver Record Search of Mr. Rajinder Singh, dated January 7, 2011, shows Driver's Licence Suspensions on January 5, 2010 and October 7, 2010.

Mr. Rajinder Singh held three (3) City of Hamilton Taxi Cab Owner (Private) licenses and a City of Hamilton Taxi Cab Driver licence during the periods of suspension noted above; and, failed to inform the Issuer of Licenses of such suspensions when they occurred.

On March 4, 2011, Manfred Rudolph, of Rudolph Law Office, submitted a request for an appeal hearing, on behalf of his client Mr. Rajinder Singh, respecting the refusal of the renewal applications submitted by Mr. Singh for three (3) Taxi Cab Owner Licences (Taxi Cab Owner Licence 11 128368 2I (Plate 191); 11 128421 2I (Plate 244); and, 11 128463 2I (Plate 286), to the Legislative Assistant to the Licensing Tribunal, Office of the City Clerk. The required payment for the appeal hearing request was provided by Mr. Rudolph's office on March 7, 2011.

A Notice of Hearing was sent to Mr. Rudolph's office advising that a hearing date had been set for Thursday, April 21, 2011 at 9:30 a.m.

On April 15, 2011, Mr. Rudolph provided a written request to the Office of the City Clerk advising that, due to medical reasons, he would be seeking an adjournment for the April 21st hearing. At the April 21, 2011 meeting of the Hamilton Licensing Tribunal, the adjournment request, submitted by Mr. Rudolph was granted to the July 6, 2011 scheduled hearing date.

As a separate matter, on February 9, 2011, the Director of Municipal Law Enforcement, sent correspondence to Rajinder Singh requesting that, as a result of Mr. Singh's Province of Ontario Driver's Licence suspension on January 5, 2010, that he return his City of Hamilton Taxi Cab Driver's Licence 11 127214 2M and Photo Identification card to the City at 77 James Street North, Suite 250, Hamilton, Ontario within seven days from the date of that letter, as required under the City of Hamilton Licensing By-law 07-170, as amended:

1. Section 8(5)(e) a licence shall expire where any federal, provincial or municipal licence, including a permit, an approval, a registration or any other type of permission, required for the Licensee to carry on or engage in their business has been revoked, suspended or has expired without renewal.
2. Section 8(7)(b) the licensee shall return the licence certificate, plate, sticker or photo identification to the Issuer of Licenses where a licence has expired under paragraph 8(5)(e), within seven days of the date of expiry.

In that letter, Mr. Singh was advised that failure to return the City of Hamilton Taxi Cab Driver's Licence and Photo Identification card to the City, within seven days, would result in a request for a City of Hamilton Licensing Tribunal Hearing.

The appeal hearing for Rajinder Singh, Raj Cab Co., respecting the refusal of his renewal applications for Taxi Cab Owner Licences 11 128368 2I (Plate 191); 11 128421 2I (Plate 244); and, 11 128463 2I (Plate 286), was called to order.

Mr. Ormond provided his Opening Statement. Mr. Ormond's comments included, but were not limited to, the following:

- This hearing was requested due to concerns for public safety and consumer protection, as the appellant was convicted of driving while under the influence of alcohol or a drug, contrary to the Criminal Code of Ontario.

Mr. Rudolph provided his Opening Statement. Mr. Rudolph's comments included, but were not limited to, the following:

- Agrees with the City's concerns for public safety and consumer protection, and is in agreement with the Statement of Facts and Joint Submission (provided to the Tribunal as Exhibit 31).

For the record, Mr. Ormond submitted the following Exhibits 1 through 31, and provided a verbal over view of same:

1. Copy Mobile Licence Taxi Cab Owner (Private) – Hamilton Licence 11 128368 2I (Plate 191), issued to Rajinder Singh, Raj Cab Co.
2. Copy Mobile Licence Taxi Cab Owner (Private) – Hamilton Licence 11 128421 2I (Plate 244), issued to Rajinder Singh, Raj Cab Co.
3. Copy Mobile Licence Taxi Cab Owner (Private) – Hamilton Licence 11 128463 2I (Plate 286), issued to Rajinder Singh, Raj Cab Co.
4. Copy Mobile Licence Taxi Cab Driver – Hamilton Licence 11 127214 2M, issued to Rajinder Singh, expiry September 25, 2011.
5. Business Names Report Raj Cab Co.
6. Hamilton Police Service Occurrence Details report No. 10102722, Impaired Operation – Motor Vehicle, Mr. Rajinder Singh, dated January 5, 2010.
7. Certificate of Conviction, Mr. Rajinder Singh, dated October 7, 2010.
8. Copy Ontario Ignition Interlock Program Enrollment Service Agreement, dated December 14, 2010.
9. E-mail from Glyn Wide, Manager of Enforcement, dated December 17, 2010.
10. Bill of Sale from #9 Auto Sales Ltd., dated December 21, 2010.
11. Correspondence from the City to Mr. Rajinder Singh requesting a Criminal Records Check and Driver's Abstract, dated December 21, 2010
12. Taxi Cab Owner Plate Renewal, dated January 4, 2011.
13. Province of Ontario Temporary Driver's Licence, issued to Mr. Rajinder Singh, dated January 7, 2011.
14. Province of Ontario, Ministry of Transportation 3 Year Driver Record Search, No. 088-2-1208, Mr. Rajinder Singh, dated January 7, 2011.
15. Peel Regional Police Criminal Records Search, Mr. Rajinder Singh, dated January 10, 2011.
16. City of Hamilton Certification Form for an In-Vehicle Camera System, Cab 191, dated January 11, 2011.
17. Invoice from Burlington Taxi Inc. for Taxicam Kit ,dated January 11, 2011.

18. Correspondence from the City to Mr. Rajinder Singh, requesting additional information, dated January 11, 2011.
19. Correspondence from Mr. Rajinder Singh to the City, requesting permission to install an Interlock Device in Taxi Cab #191, dated January 12, 2011.
20. Correspondence from the City to Mr. Rajinder Singh, regarding his request to install an Interlock Device in Taxi Cab #191, dated January 13, 2011.
21. Refusal of Taxicab Owner Licences Renewal letter, dated February 7, 2011.
22. Correspondence from the City to Mr. Rajinder Singh, requesting the return of his City of Hamilton Taxi Cab Driver's Licence 11 127214 2M, dated February 9, 2011.
23. Correspondence from the City to Mr. Manfred Rudolph, accompanied by the enclose of the City's file notes, dated February 28, 2011.
24. Correspondence from Rudolph Law Office, regarding a request for an Appeal Hearing, dated March 4, 2011.
25. Correspondence from the Office of the City Clerk to Mr. Manfred Rudolph, respecting the Notice of Appeal Hearing, dated March 15, 2011.
26. Correspondence from the City to Mr. Manfred Rudolph, outlining additional grounds, dated March 16, 2011.
27. Correspondence from the City to Mr. Manfred Rudolph, accompanied by the enclosure of file notes regarding Taxi Cab Owner Plate #191, dated March 31, 2011.
28. Correspondence to Mr. Manfred Rudolph, accompanied by enclosure of file notes regarding Taxi Cab Owner Plate #244, dated March 31, 2011.
29. Correspondence from the City to Mr. Manfred Rudolph, accompanied by the enclosure of file notes for Taxi Cab Owner Plate #286, dated March 31, 2011.
30. Correspondence from the City to Mr. Manfred Rudolph, accompanie by the enclosure of microfiche records, dated March 31, 2011.
31. Agreed Upon Statement of Facts:
 - (a) That Mr. Rajinder Singh has been a licensed taxi cab driver in the City of Hamilton since in or about 1981. Licence Number 11-127214.

- (b) Mr. Rajinder Singh is a taxi cab plate owner in the city of Hamilton and, together with Dalbir Singh, is owner of RAJ CAB Co.; holding three (3) taxi cab owner plates.
- (c) That RAJ CAB Co. is a general partnership that holds the ownership of three (3) taxi cab plates, Licence Number 11-128368 (Plate 191), Licence Number 11-128421 (Plate 244), and Licence Number 11-128463 (Plate 286).
- (d) On or about October 23, 1986, Mr. Singh was charged with impaired driving and failing to take a breathalyzer test. Mr. Singh was convicted of these charges and sentenced to a two (2) year driving prohibition from January 5, 1987 to January 4, 1989.
- (e) Mr. Rajinder Singh's Ontario driver's licence was suspended between January 4, 2005 and April 4, 2005, pursuant to an Administrative Driver's Licence Suspension (failure to give a breath sample). Charges were subsequently withdrawn.
- (f) The following charge was laid against Rajinder Singh: That, on or about January 5, 2010, at the City of Hamilton did operate his taxi cab bearing Plate Number 191 while his ability to operate a motor vehicle was impaired by alcohol or a drug, contrary to the provisions of Section 253(1)(a) of the Criminal Code of Canada.
- (g) The following charge was laid against Rajinder Singh; that, on or about January 5, 2010, at the City of Hamilton without reasonable excuse, failed or refused to comply with a demand made to him by a peace officer under Section 254(3)(a), without reasonable excuse, contrary to the provisions of Section 254(5) of the Criminal Code of Canada.
- (h) Mr. Singh's Ontario driver's license was suspended between January 5, 2010 and April 4, 2010 for an Administrative Driver's License Suspension – failure to provide a breath sample. Mr. Singh did not drive a taxi cab during this period.
- (i) Mr. Singh contacted the License Mechanic Inspector for the City of Hamilton on or about April 4, 2010 and advised that his license was to be reinstated after the above-noted suspension. The Inspector advised Mr. Singh to bring in proof of reinstatement along with a doctor's note that confirmed he was capable of driving. Mr. Singh complied and provided the documents requested to the Inspector.
- (j) On or about September 21, 2010 Mr. Singh attended the City of Hamilton to renew his taxi cab driver's licence, which had the listed expiry date of September 25, 2010. The licence was renewed.

- (k) Mr Singh's taxicab driver's licence expired on January 5, 2010, due to the Administrative Driver's Licence Suspension and Section 8(5)(e) of the General Provisions of the City of Hamilton Licensing By-law 07-170. Both the April and September, 2010 up-to-date drivers abstract showed Mr. Singh's Administrative Driver's Licence Suspension.
- (l) On October 7, 2010, Mr. Singh pled guilty to the charge of:
 - Operating a motor vehicle while impaired by alcohol or a drug, contrary to the provisions of Section 253(1)(a) of the Criminal Code of Canada.
- (m) Rajinder Singh's Ontario Driver's License was suspended from October 7, 2010 until January 7, 2011.
- (n) The charge was based on the evidence that included information that there was a fare (passenger) in the taxi cab being operated by Mr. Rajinder Singh when the taxi cab was stopped by Hamilton Police Services. This vehicle stop was as a result of a call received by Hamilton Police Services at approximately 8:00 a.m., on January 5, 2010.
- (o) Rajinder Singh has not driven a taxi cab since October 7, 2010. Mr. Singh has returned his taxi cab driver's licence to the City.
- (p) On or about December 17, 2010, the City received a telephone call from Anthony Rizzuto, Broker and Owner of Blue Line Taxi Cab Inc., advising the City of Rajinder Singh's convictions; and, of Mr. Singh's intention to seek approval for an interlock device to allow him to continue on as a taxi cab driver in the City of Hamilton.
- (q) That RAJ CAB Co. has permitted the continued use of Plate #191, Plate #244 and Plate #286 since the January 31, 2011 expiry date to April 15, 2011, in spite of being warned by Municipal Law Enforcement Officers that the plates had expired.
- (r) The City and Mr. Singh's legal counsel agreed that the by-law requirements to keep a plate operational would not affect the renewals subject of this appeal.
- (s) All plates had been leased in the January and February time period of 2011 while the plate renewal applications were being processed by the City. The following is the chronology:
 - (i) December 21, 2010 – purchase a vehicle for \$5,600.00;

- (ii) January 4, 2011 – Rajinder Singh applies for the renewal of the three plates – within the normal timeframe for a renewal application, which must be filed by January 31, 2011;
- (iii) January 11, 2011 – Camera Purchased (camera being a new requirement);
- (iv) January 18, 2011 – Rajinder and Rizzuto agree re leases for the two plates;
- (v) January 31, 2011 – Safety inspection of one of the vehicles;
- (vi) January 31, 2011 – leases of #244 and #286 to Rizzuto and payment of the lease registration to the City on that date;
- (vii) None of the fees charged by the City, for the renewal of the plate or the lease arrangement, have been refunded nor a refund requested;
- (viii) February 3, 2011 – Camera inspection on one of the vehicles;
- (ix) February 7, 2011 – Hand delivered letter from the City indicating the plates would not be renewed;
- (x) February 9, 2011 – Letter from the City asking that the driver's license be returned, pursuant to section 8(5)(e) – relying on January 2010 suspension as a basis for this request;
- (xi) February 10, 2011 – Lease Agreement for Plate #191;
- (xii) February 10, 2011 – Other camera certification submitted;
- (xiii) February 11, 2011 – Taxi inspection;
- (xiv) February 23, 2011 – Rajinder Singh retains legal counsel;
- (xv) February 28, 2011 – Staff produced background files;
- (xvi) March 7, 2011 – Appeal filed;
- (xvii) March 31, 2011 – Staff produced additional documents;
- (xvii) April 1, 2011 – Meeting between staff and legal counsel;

- (xix) April 21, 2011 – Adjournment request approved by the Licensing Tribunal;
 - (xx) April 21, 2011 – Plates returned to staff;
 - (xxi) June 21, 2011 – Taxi Driver Licence returned to staff;
 - (xxii) June 22, 2011 – Fax received indicating that the updated police record has not been submitted to staff;
 - (xxiii) June 24, 2011 – Fax of police record submitted;
 - (xxiv) July 5, 2011 – Agreed Statement of Facts and Joint Submission confirmed.
- (t) As part of the agreed upon submissions to the Licensing Tribunal, Mr. Singh has agreed and undertook that he will not reapply for a taxi driver's licence until after July 2014.

Joint Submission:

The City of Hamilton and Mr. Rajinder Singh (RAJ CAB Co.) submit that:

- (a) The, Licence Number 11-128368 (Plate 191), Licence Number 11-128421 (Plate 244), and Licence Number 11-128463 (Plate 286) be suspended until August 15, 2011. This is a 4 month suspension from April 15, 2011 to August 15, 2011.
- (b) That the taxicab vehicles be required to provide an updated Safety Standard Certificate and pass a City inspection.
- (c) That charges that are pending against RAJ CAB. Co. for operating unlicensed vehicles during the period between February 1, 2011 and April 15, 2011 may proceed at the discretion of the City Prosecutor.

In closing, Mr. Rudolph's comments included, but were not limited to, the following:

- He and his client understand that the City is reserving the right, in 2014 (should Mr. Singh apply for a Taxi Cab Driver Licence) to review the facts, at that time, and possibly continue to deny a Taxi Cab Driver Licence to Mr. Rajinder Singh.

- Mr. Rudolph suggested that the recommendations contained in the Agreed Statement of Facts and the Joint Submissions are the appropriate course of action for the Tribunal.
- The City has established violations of the City of Hamilton Licensing By-Law 07-171, as amended, and understands the City's concerns for public safety and consumer protection.

In closing, Mr. Ormond's comments included, but were not limited to, the following:

- The information contained in the applications was incomplete and misleading and, in the interest of public safety and consumer protection, believes that the recommendations contained in the Agreed Statement of Facts and Joint Submission, as listed below, should be upheld:
 - (a) Mr. Rajinder Singh not be permitted to reapply for a Taxi Cab Driver's Licence until after July 2014.
 - (b) Taxi Cab Owner Licence Number 11-128368 (Plate 191), Licence Number 11-128421 (Plate 244), and Licence Number 11-128463 (Plate 286) be suspended until August 15, 2011.
 - (c) The owner(s) of the taxi cab vehicles, which will be operating under Taxi Cab Owner Licence Number 11-128368 (Plate 191), Licence Number 11-128421 (Plate 244), and Licence Number 11-128463 (Plate 286), be required to provide an updated Ministry of Transportation Safety Standard Certificate and pass a City vehicle inspection, prior to the suspension end date of August 15, 2011 and any further use of the Licences.
 - (d) Charges currently pending before the Courts, against RAJ CAB. Co. for operating unlicensed vehicles during the period between February 1, 2011 and April 15, 2011, proceed at the discretion of the City Prosecutor.

For the record, Councillor B. Clark was not able to attend at the beginning of the testimony for this matter; therefore, removed himself from the room and did not take part in the debate or vote on this matter.

The Hamilton Licensing Tribunal moved into Closed Session, at 1:30 p.m., to deliberate upon the submissions of the parties, respecting the Renewal Applications for Taxi Cab Owner Plate Licenses (Plate Numbers 191, 244 and 286) and the Taxi Cab Driver Licence issued to Mr. Rajinder Singh and the Taxi

Cab Driver Licence issued to Mr. Rajinder Singh. Subsequently, the Hamilton Licensing Tribunal reconvened in Open Session at 1:43 p.m.

Having heard the submissions of the parties, the Tribunal provided their recommendation, as shown as Item 1 in the Hamilton Licensing Tribunal Report 11-005. The reasons for that decision are the interest of public safety and consumer protection.

(e) **SHOW CAUSE HEARING: Respecting the Refreshment Vehicle Licence for Mister Twister Inc. ([REDACTED]) (Item 4.2)**

On January 28, 2011, the Director of Municipal Law Enforcement sent correspondence to [REDACTED] advising that his application for a Refreshment Vehicle Licence, for Mister Twister Inc., was refused and a licence would not be issued on the following grounds:

1. That in accordance with Section 12(1)(b) of the City of Hamilton Licensing By-Law 07-170, as amended, the Issuer of Licences shall refuse to issue the licence where it is determined that the application is incomplete.
2. That in accordance with Section 5(2)(c) and Section 5(2)(d) of the City of Hamilton Licensing By-Law 07-170, as amended, the applicant shall be responsible for ensuring that any correction of information is brought to the attention of the Issuer of Licences in writing, and all necessary and required information and materials are delivered to the Issuer of Licences.
3. That in accordance with Schedule 19, Section 3(c) of the City of Hamilton Licensing By-law 07-170, as amended, a person applying for a refreshment vehicle licence shall supply with the application the name and address of business under which the refreshment vehicle or vehicles will be operated.
Namely:
 - (a) The business address on the licence application does not match the address of the business on the Articles of Incorporation;
 - (b) The Articles of Incorporation supplied by the applicant, dated April 3, 1997, were apparently revised in November 2009, and the licence applicant no longer shows as an Officer or Director; and,
 - (c) The written request for confirmation of the business address and for confirmation of Officers, Directors, and those individuals having signing authority, which was sent to the licence applicant on December 6, 2010, was not responded to.

4. That in accordance with Section 12(1)(d) of the City of Hamilton Licensing By-law 07-170, as amended, there are reasonable grounds for belief that the person will not carry on or engage in business in accordance with the law.

Namely:

- (a) There are current charges before the courts against Mister Twister Inc. and [REDACTED] for operating a refreshment vehicle without a licence.

On February 15 2011, the Director of Municipal Law Enforcement sent correspondence to the Legislative Assistant to Tribunal requesting that a Show Cause hearing be scheduled and brought before the Hamilton Licensing Tribunal to consider whether the Refreshment Vehicle Licence – Class B, issued to [REDACTED] [REDACTED] for Mister Twister Inc., should be revoked or suspended or conditions imposed.

On February 23, 2011, a Notice of Show Cause Hearing was sent to [REDACTED] [REDACTED], at Mister Twister Inc., 501 Lakeshore Road East, Mississauga, Ontario L5G 1H9 via registered mail (RW 362 514 635 CA), advising of a hearing date of Thursday, April 21, 2011 at 9:30 a.m. That correspondence was returned to the Office of the City Clerk, by Canada Post, marked “unclaimed”.

Staff was later able to reach Mr. [REDACTED] to advise him of the hearing date. At which time, Mr. [REDACTED] requested an adjournment of the April 21, 2011 hearing in order to have time to review and prepare for the hearing, as he had been out of town for the winter. Subsequently, an adjournment was granted, on a peremptory basis, from the April 21, 2011 to the July 6, 2011 scheduled hearing date.

The Show Cause Hearing for [REDACTED], respecting his application for a Refreshment Vehicle Licence, for Mister Twister Inc., was called to order.

Mr. Ormond provided his Opening Statement. Mr. Ormond’s comments included, but were not limited to, the following:

- The City believes that the information provided to the Issuer of Licences, with respect to the Refreshment Vehicle Licence issued to [REDACTED] [REDACTED] for Mister Twister Inc., to be incomplete and misleading.
- The City has made several attempts to contact [REDACTED] and to obtain the correct and complete information; however, efforts had been unsuccessful to-date.

Ms. Gayle Christie provided her Opening Statement. Ms. Christie’s comments included, but were not limited to, the following:

- Advised that [REDACTED] was running for the 2010-2014 municipal election and his attention was diverted from his business.
- Stated that he is a good corporate citizen in Toronto.

For the record, Mr. Ormond submitted the following Exhibits, and provided a verbal overview of same:

1. Copy of City of Hamilton Mobile Licence Refreshment Vehicles – Class B, Licence No. 10 280422 2F, Plate 184.
2. Mobile Licence Application for Refreshment Vehicle Plate 184, dated September 1, 2010.
3. Copy Province of Ontario Vehicle Permit for Refreshment Vehicle Plate 184.
4. Mobile Licence Application for Refreshment Vehicle Plate 191, dated September 7, 2010.
5. Copy Province of Ontario Vehicle Permit for Refreshment Vehicle Plate 191.
6. Articles of Incorporation for Mister Twister Inc. provided by [REDACTED] as part of the Refreshment Vehicles Licence Application for Plates 184 and 191.
7. Correspondence from [REDACTED] regarding corporate mailing address, undated.
8. Corporate Profile Mister Twister Inc., dated July 16, 2010.
9. Correspondence requesting additional information, sent to [REDACTED], Mister Twister Inc., dated September 27, 2010.
10. Correspondence requesting additional information, sent to [REDACTED], Mister Twister Inc., dated December 6, 2010.
11. Refusal of Application for Refreshment Vehicle Plate 191, dated January 28, 2011.
12. Request for Show Cause Hearing, dated February 15, 2011.
13. Notice of Show Cause Hearing, dated February 23, 2011.
14. Summons to Mister Twister Inc.
15. Summons to [REDACTED].

16. Notice of Show Cause Hearing, dated May 26, 2011.
17. Correspondence from Town of Oakville.
18. Correspondence from Canada Revenue Agency.

In Closing, Ms. Christie's comments included, but were not limited to, the following:

- The confusion respecting an original request for information regarding his Refreshment Vehicle Licence was simply a misunderstanding due to his diverted attention, warehouse location and time spent out of the country; making him unable to pick up/receive his mail.
- The Appellant and his agent are satisfied with the Agreed Statement of Facts.

In closing, Mr. Ormond's comments included, but were not limited to, the following:

- That based on the following Agreed Statement of Facts between the City and [REDACTED]:
 - (i) That the Corporation information has been clarified; confirming that [REDACTED] are the same individual (Roland is [REDACTED] middle name);
 - (ii) That the address for service has since been provided;
 - (iii) That the City has been advised by the Appellant and his Agent that all outstanding fines in other municipalities have been paid in full; and,
 - (iv) That the charges before the Courts in Hamilton will proceed in November 2011,

the City is recommending:

That the Refreshment Vehicle Licence, issued to [REDACTED] operating as Mister Twister Inc., remain in effect until its expiry on September 3, 2011, contingent upon the following condition; and, provided that the licensee satisfies all necessary requirements, as set out in the Licensing By-law 07-170, as amended:

- (i) That the Licensee provide proof of an updated vehicle ownership document(s) to the Issuer of Licenses within two weeks from the date of this hearing.

Having heard the submissions of the parties, the Tribunal provided their recommendation, as shown as Item 2 in the Hamilton Licensing Tribunal Report 11-005.

(f) SHOW CAUSE HEARING, respecting Taxi Cab Owner Plate (Private) #085, Licence #12 128262 21, issued to Mr. Nirmal Gill

On June 10, 2011, the Director of Municipal Law Enforcement, sent correspondence to the Legislative Assistant to the Hamilton Licensing Tribunal, requesting that a Show Cause hearing be scheduled and brought before the Hamilton Licensing Tribunal to consider whether the Taxi Cab Owner Plate Licence (Private) #085, issued to Mr. Nirmal Gill, should be revoked or suspended or conditions imposed, based on the following grounds:

1. Section 14(1)(f), in the opinion of the Issuer of Licenses, the business would put public safety at risk.
2. Schedule 25, Section 20(m), no person shall be licensed as a taxicab owner or have such a licence renewed unless the vehicle registered in the person's name meets the requirements of Sections 53 to 58, inclusive, of this Schedule relating to vehicle approval.
3. Schedule 25, Section 56(2)(b), inspections shall be conducted by Officers and will include and not be limited to visual exterior and interior inspections of the taxicab vehicle.
4. Schedule 25, Section 56(2)(c), inspections shall be conducted by Officers and will include and not be limited to assessment of mechanical fitness and safety.
5. Schedule 25, Section 65(1)(d), no licensed owner or lessee shall operate or permit the operation of a vehicle of which he or she is the owner where the vehicle is not approved for use as a taxicab under the provisions of this Schedule.
6. Schedule 25, Section 65(1)(k), no licensed owner or lessee shall operate or permit the operation of a taxicab where such vehicle has mechanical defects.

7. Schedule 25, Section 65(1)(z), no licensed owner or lessee shall permit his or her taxicab plate or the operations thereof to be used on a vehicle that does not comply with this Schedule.

Namely:

- (a) Taxi Plate #085, owned by Mr. Nirmal Gill, is affixed to the vehicle 2006 Dodge Caravan, Serial Number 1D4GP25R26B676253. CARFAX Vehicle History Report, dated June 8, 2011, shows a front centre impact accident on August 27, 2009 resulting in severe damage to the vehicle.
8. City of Hamilton Taxi Inspection Report, dated June 2, 2011 reveals that:
- (a) The air bag light is on; and,
(b) The ABS light is not working.

Mr. Gill was copied on the June 10, 2011 letter.

On June 14, 2011, a Notice of Show Cause Hearing was sent to Nirmal Gill via registered mail, advising of a hearing date of Wednesday, July 6, 2011 at 1:00 p.m.

Mr. Ormond provided his Opening Statement. Mr. Ormond's comments included, but were not limited to, the following:

- This matter was brought before the Tribunal regarding concerns of public safety and consumer protection.
- Neither the City nor the Appellant know what is causing the air bag sensor to go off (faulty sensor or faulty air bag); therefore, the City wishes to err on the side of caution for the safety of both the passengers and the driver.
- The assumption with the public that the features of the vehicle are fully operational and in good working order. If a passenger observes an air bag warning light, they may not feel safe in the vehicle.
- City may provide for additional requirements above and beyond both Federal and Provincial requirements, where they believe that public safety and consumer protection are at risk.
- The age of vehicles increases the wear and tear of the vehicle. Newer vehicles have many indicator lights that indicate low air in the tires, low fuel, etc. that were non-existent 30 years ago; making it necessary to change requirements as technology changes. As part of the mechanical fitness and safety of the vehicle, if the air bag sensor light is on, that the City would want to err on the side of the caution in the interest of public safety, although a malfunction of the air bag sensor light is not a matter that would warrant an inspecting mechanic to fail an inspection or remove a vehicle from the road.

Mr. Richard Simmons, Legal Counsel, Ross & McBride, provided his Opening Statement, on behalf of his client, Mr. Nirmal Gill. Mr. Simmons' comments included, but were not limited to, the following:

- There are no requirements in the City of Hamilton Licensing By-law 07-170, as amended, or within the Ministry of Transportation's Highway Traffic Act and Regulations that require vehicles, let alone taxi cabs, to have air bags. Therefore, as there are no requirements to have air bags, it would be unnecessary and unfair to require that one taxi cab owner/operators to pay up to thousands of dollars to repair the air bag sensor light and then a subsequent inspection fee of \$245, when other taxi cabs are not even required to have the air bags.
- Provincial inspections do not require vehicles to have air bags or properly functioning air bag sensors lights in those that do.
- There is an even broader issue – If the City is going to require air bags, then they would be required to ensure that they are operational and enact a by-law that would reflect the same.
- Air bags and functioning air bag sensor lights are not required for Toronto airport limos, and there are many cabs in the city of Hamilton that do not have airbags. Therefore, to force those individuals that happen to own a car equipped with air bags to repair the sensor lights, and to pay the costs associated with the repairs and additional inspection fee, while other taxi cab drivers/owners do not have the same requirement would be unfair and does not protect the public.
- There is no connection to public safety or consumer protection – it isn't a mechanical defect (air bag sensor light). If it was serious, the inspector would have removed the vehicle from the road. Ultimately, the duty of care would rest with the owner. However, to place different requirements on these vehicles would put the City in a difficult position.
- As the Ministry of Transportation does not require air bags and the City of Hamilton does not have a by-law not mandate that all taxi cabs to have air bags and properly functioning air bag sensor lights, how can we call it a safety issue?
- The Board of Education requires, through their contract with the Taxi Cab Company, that air bags be disengaged as they are dangerous for children who are passengers.

For the record, Mr. Ormond introduced the following Exhibits, and provided a verbal overview of same:

1. City of Hamilton Mobile Licence Taxi Cab Owner (Private), Plate 085, issued to Mr. Nirmal Gill, Licence No. 12 128262 21, date of expiry January 31, 2012.
2. Province of Ontario Ministry of Transportation Vehicle Permit for VIN 1D4GP25R26B676253, Effective date 10 01 08.
3. Province of Ontario Ministry of Transportation Safety Standards Certificate, dated January 4, 2010.
4. City of Hamilton Vehicle Inspection, dated January 11, 2010.
5. Province of Ontario Ministry of Transportation Safety Standards Certificate, dated October 24, 2010.
6. City of Hamilton Taxi Inspection Report, dated October 27, 2010.
7. City of Hamilton Taxi Inspection Report, dated November 23, 2010.
8. Province of Ontario Ministry of Transportation Safety Standards Certificate, dated May 30, 2011.
9. City of Hamilton Taxi Inspection Report, dated June 2, 2011.
10. Province of Ontario Used Vehicle Information Package.
11. CARFAX Vehicle History Report.
12. Previous accident history.
13. Request for Show Cause Hearing
14. Notice of Hearing

First Witness for the Appellant: Mr. Jagtar Singh Chahal, Chairman & CEO of Hamilton Cab

Mr. Chahal's was solemnly affirmed, prior to providing his testimony. Mr. Chahal's comments included, but were not limited to, the following:

- Mr. Chahal confirmed that his company drives over 300 children to and from school each day and that, on most days, it is the same driver taking the same children to and from school.

- The Board of Education requires that the air bags be disengaged for the safety of children who must sit in the front seat of the taxi cab.
- Mr. Chahal also noted that, when at all possible, children are required to sit in the back seat.
- When asked if when the air bags were disengaged if the sensor light would remain on, Mr. Chahal advised that yes, the lights would sometimes remain on. It is very common at some point in time to have the sensor lights in 80% to 90% of the vehicles go off.
- Currently approximately 25% of the company's taxis have the air bags disengaged.
- The vehicle owner is required to have his/her mechanic turn off the air bag on the passenger side only.

Mr. Ormond introduced Exhibit 15 – a print out from the Transport Canada web site advising of the following air bag on-off switch decision:

Vehicle owners and lessees may consider obtaining an on-off switch for one or both of their air bags, but it is unsafe to deactivate an air bag unless they are, or other user of the vehicle is, in one of the four risk groups below:

1. Infants in rear-facing infant seats. A rear-facing infant seat must never be placed in the front passenger seat unless the air bag is turned off.
2. Drivers or passengers with unusual medical conditions. These are people who have been informed by a physician that an air bag poses a risk to them because of their condition. However, they should not turn off their air bag unless their physician also has informed them that the risk of having the air bag is greater than the risk posed by not having the air bag. Without an air bag, even belted occupants could hit their head, neck or chest in a crash.
3. In the U.S. a national conference of physicians considered all medical conditions commonly cited as possible justifications for turning off air bags. In general, the physicians recommend NOT turning off air bags for persons with:
 - Pacemakers; supplemental oxygen, eyeglasses, median sternotomy, angina, chronic obstructive pulmonary disease (COPD), emphysema, asthma, breast reconstruction, mastectomy, scoliosis (if the person can be positioned properly), previous back or neck surgery, previous facial reconstructive surgery or facial injury, hyperacusis, tinnitus, advanced age, osteogenesis imperfecta, osteoporosis and arthritis (if the person can sit a safe distance from the air bag), previous ophthalmologic

surgery, down syndrome and atlantoaxial instability (If the person can reliably sit properly aligned), and pregnancy.

The physicians did recommend turning off the air bag if a safe sitting distance or position cannot be maintained by a driver because of:

- Scoliosis or achondroplasia

Or by a passenger because of:
Scoliosis or down syndrome and atlantoaxial instability.

4. Children under the age of 12.

Note: The balance of the information for this hearing will be provided in the Minutes of July 6, 2011.

(g) ADJOURNMENT (Item 5)

There being no further business, the Hamilton Licensing Tribunal adjourned at 4:35 p.m.

Respectfully submitted,

Councillor C. Collins, Vice Chair
Hamilton Licensing Tribunal

Stephanie Paparella
Legislative Assistant,
Hamilton Licensing Tribunal
July 6, 2011