



## CITY OF VANCOUVER

## CHAUFFEUR'S PERMIT APPEAL HEARING MINUTES

APRIL 4, 2006

A Chauffeur's Permit Appeal Hearing of the Council of the City of Vancouver was held on Tuesday, April 4, 2006, at 8:00 p.m., in the Council Chamber, Third Floor, City Hall, to determine if the cancellation by the Chief Constable of the 2006 Chauffeur's Permit (the "Permit") issued to David Tung (the "Permit Holder"), should be upheld or overturned.

**PRESENT:** Mayor Sam Sullivan  
 (in the Chair until the 9:40 p.m. recess)  
 Deputy Mayor Tim Stevenson  
 (assumed the Chair at 9:57 p.m. following the recess)  
 Councillor Suzanne Anton  
 Councillor Elizabeth Ball  
 Councillor David Cadman  
 Councillor Kim Capri  
 Councillor George Chow  
 Councillor Heather Deal  
 Councillor Peter Ladner  
 Councillor B.C. Lee  
 Councillor Raymond Louie

**ABSENT:** Mayor Sam Sullivan  
 (following the 9:40 p.m. recess)

**CITY CLERK'S OFFICE:** Denise Salmon, Meeting Coordinator

**COMMITTEE OF THE WHOLE**

MOVED by Councillor Ladner  
 SECONDED by Councillor Anton

THAT this Council resolve itself into Committee of the Whole, Mayor Sullivan in the Chair.

**CARRIED UNANIMOUSLY**

1. David Singh Tung (the "Permit Holder")  
 2006 Chauffeur's Permit (VanRIMS No. 08-2000-22)

Vancouver City Council had before it for consideration an Evidence Brief, prepared by the City of Vancouver's Legal Department, which contained the following material (*on file in the City Clerk's Office*) and the evidence of witnesses:

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- A Letter to Mayor Sullivan and Members of Council from David Singh Tung
- Letter to David Singh Tung from Constable 1118 Kevin Barker, Taxi Unit dated January 24, 2006
- Handwritten notes of Kevin Barker
- Taxi Detail Information System dated January 4, 2006
- Criminal Record
- B Vancouver Police Department General Occurrence Hardcopy relating to incident of January 13, 2004
- C Vancouver Police Department General Occurrence Hardcopy relating to incident of June 4, 2005

Iain Dixon, lawyer, was present on behalf of the City. David Singh Tung (the "Permit Holder") was present and represented by Rishi S. Gill, Barrister.

Mr. Dixon advised the Permit Holder's Chauffeur's Permit had been revoked by the Chief Constable pursuant to section 36(5) of the Motor Vehicle Act, RSBC 1996 c. 318 (the "MVA") and that the City of Vancouver's powers to regulate chauffeurs and other drivers of vehicles used by carriers on a street in connection with their business are found in section 317, (1)(I) of the Vancouver Charter. Mr. Dixon further advised that this matter comes before Council as a result of section 36(7) of the MVA whereby a Permit holder whose Permit has been revoked by the Chief Constable may appeal the matter to Council who may, on hearing the evidence, uphold or overturn the decision of the Chief Constable. Mr. Dixon noted that pursuant to section 36(8) of the MVA the decision of the Council is final.

Mr. Dixon referred the Council to the evidence before it as set out in the documents which were considered by the Chief Constable in cancelling the Permit Holder's Chauffeur's Permit, and the foregoing evidence which sets out the allegations which have given rise to the Permit cancellation:

- that the Permit Holder is unfit to act as a chauffeur because of his history of engaging in criminal activity which may be related to his employment as a chauffeur and may put the public at undue risk.

At this point in the proceedings, Mr. Gill requested an adjournment of the Hearing as developments have arisen with respect to Mr. Tung's criminal matter currently before the courts. The criminal matter is part of the City's submission regarding the license suspension and Mr. Gill submitted that it would be inappropriate to continue until the matter is resolved by the criminal courts.

Mr. Gill also drew Council's attention to a letter dated January 24, 2006, in which Constable Barker advised Mr. Tung if he filed an appeal, the cancellation of his permit would

be held in abeyance until the appeal is heard and decided upon; this did not occur, Mr. Tung still does not have his license.

Mr. Dixon submitted a letter dated February 3, 2006, had been sent to Mr. Tung indicating his license would be suspended as of that date, and the evidence Council will hear will be no different before or after the criminal hearing. Mr. Dixon also noted there were Police Officers in attendance, and the difficulty in scheduling another Hearing date.

Following brief discussion, it was

MOVED by Councillor Ladner

THAT this Chauffeur's Permit Appeal Hearing proceed.

CARRIED UNANIMOUSLY

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At this point in the proceedings, Councillor Anton rose on a Point of Information, and questioned if the Police Officers waiting to give evidence should be requested to leave the Chamber prior to giving their evidence.

Mr. Dixon advised he had no objection to this request, and Mr. Gill affirmed he would like the Officers to leave.

Accordingly, the Police Officers not currently testifying left the Chamber.

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In support of the allegations set out in the reports and evidence contained within the aforementioned Evidence Brief, Mr. Dixon called the following witnesses:

PC #1118 Kevin Barker  
PC #1367 Richard Kitos  
PC #2206 Russell Brown

Mr. Gill also directed questions to the witnesses.

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At 9:40 p.m. Council agreed to recess. The Hearing reconvened at 9:57 p.m. with Deputy Mayor Stevenson in the Chair.

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Mr. Dixon then called:

PC #2060 Michael Thrower

The following evidence was submitted by the permit holder's counsel, Mr. Gill:

- an Applicant's Book of Documents, prepared by Rishi S. Gill, counsel for David S. Tung, which contained the following material (*distributed at the meeting and on file in the City Clerk's Office*):
  1. Gail Tung, statement in support, dated March 30, 2006
  2. Carmelina MacDonald statement in support, dated April 4, 2006
  3. Gerald Penner, statement in support, dated April 3, 2006
  4. Tony Vieira, statement in support, dated April 3, 2006

Mr. Gill called David Singh Tung as a witness. Mr. Tung submitted that he did not agree with the allegations that he was unfit to hold a license, and provided his version of the Stanley Park and hair salon incidents referenced in the City's Evidence Brief. Mr. Tung advised the credit cards and bank cards found in his cab by the Police on Tuesday, January 13, 2004, were inadvertently left behind by his weekend customers, and he had not had an opportunity to return these to the taxi cab office. Mr. Tung also advised he had, on occasion, signed for purchases using his wife's credit card, and did not think it a problem to sign on behalf of his acquaintance, Mr. Gill, for purchases made at the hair salon with a card he believed belonged to Mr. Gill.

Mr. Gill advised Council that Mr. Tung had been acquitted in the Stanley Park case referenced in the Evidence Brief.

Mr. Dixon also directed questions to the witness.

Mr. Dixon concluded by setting out the legal test which Council must apply in determining whether or not the Permit cancellation by the Chief Constable of the 2006 Chauffeur's Permit issued to David Singh Tung, should be upheld or overturned. Mr. Dixon submitted that the evidence presented at the Hearing accords with the allegations as set out in the evidence briefs and that the evidence of Mr. Tung should not be believed.

Mr. Gill submitted the incident in Stanley Park was not a coincidental meeting, but rather, Mr. Kashmir was aware Messrs. Tung and Gill would be in Stanley Park at that time. Mr. Gill also referred Council to the submissions in the Applicant's Book of Documents, and stated these references, including the compelling statement from his wife, were from individuals who know Mr. Tung personally and professionally. Mr. Tung should be seen as a family man, who helps his friends and has worked for cab companies for twenty years.

Mr. Gill noted Mr. Tung derives the vast majority of his income from driving a cab, and submitted for Council's consideration that the permit holder, David Singh Tung, be allowed to continue to hold his permit, subject to conditions as follows:

- Mr. Tung not be allowed to handle any credit cards;
- Mr. Tung's license be issued on a monthly basis to allow for monitoring; and
- Mr. Tung be allowed to deal only with cash.

## **COUNCIL DISCUSSION**

Council members referenced the final evidence provided by Mr. Dixon, that led them beyond their initial inclination to believe that Mr. Tung simply had an astounding lack of judgment to the conclusion that Mr. Tung had, at least, twice driven the get-away car. Council agreed that the suggested conditions put forward by Mr. Tung's counsel would not assist in addressing the allegations put forward by the Chief Constable and concluded that the Chief Constable's decision to revoke Mr. Tung's Chauffeur's Permit was correct.

MOVED by Councillor Chow

THAT the cancellation by the Chief Constable of the 2006 Chauffeur's Permit (the "Permit") issued to David Tung (the "Permit Holder"), be upheld as the Permit Holder is unfit to act as a chauffeur because of his history of engaging in criminal activity which may be related to his employment as a chauffeur and may put the public at undue risk.

CARRIED UNANIMOUSLY  
(Mayor Sullivan absent for the vote)

## **RISE FROM COMMITTEE OF THE WHOLE**

MOVED by Councillor Anton

THAT the Committee of the Whole rise and report.

CARRIED UNANIMOUSLY  
(Mayor Sullivan absent for the vote)

## **ADOPT REPORT OF COMMITTEE OF THE WHOLE**

MOVED by Councillor Cadman  
SECONDED by Councillor Capri

THAT the report of the Committee of the Whole be adopted.

CARRIED UNANIMOUSLY  
(Mayor Sullivan absent for the vote)

The Council adjourned at 11:50 p.m.

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