

**COURT FILE NO.:** 06-DV001219  
**DATE HEARD:** 2008/04/07

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(DIVISIONAL COURT)**  
**CUSINATO, FERRIER, LOFCHIK, JJ.**

**RE:** ALLRIGHT AUTOMOTIVE REPAIR INC. and BRUCE ANDERSON,  
Applicants (Appellants in appeal)  
and  
REGISTRAR, *MOTOR VEHICLE DEALERS ACT*, Respondent (Respondent  
in appeal)

**COUNSEL:** Eric Lay, for the Appellants

A. Michael Rothe, for the Respondent

**ENDORSEMENT**

**By the Court**

[1] This is an Appeal from the Decision and Order of Vice-Chair Daniel Laurin of the Licence Appeal Tribunal ("The Tribunal or LAT") released April 27, 2007.

[2] The Appellants are Allright Automotive Repair Inc. ("Allright") and the company's principal Bruce Anderson ("Anderson").

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[3] In the Tribunal's decision, the proposal of the Registrar to revoke Allright's dealer licence and Anderson's sales person licence under the *Motor Vehicle Dealers Act*, R.S.O. 1990, c.M.42, ("*The Act or MVDA*") was confirmed.

[4] The Tribunal's determination is based on the conduct of Anderson as principal of Allright, the corporation which retains the dealer's licence, which conduct also reflects on his ability to conduct himself within s. 5(1)(b) of the MVDA..

[5] We conclude that the standard of review herein is reasonableness. See *Dunsmuir v. New Brunswick*, [2008] S.C.J. No. 9:

51 Having dealt with the nature of the standards of review, we now turn our attention to the method for selecting the appropriate standard in individual cases. As we will now demonstrate, questions of fact, discretion and policy as well as questions where the legal issues cannot be easily separated from the factual issues generally attract a standard of reasonableness while many legal issues attract a standard of correctness. Some legal issues, however, attract the more deferential standard of reasonableness.

52 The existence of a privative or preclusive clause gives rise to a strong indication of review pursuant to the reasonableness standard. This conclusion is appropriate because a privative clause is evidence of Parliament or a legislature's intent that an administrative decision maker be given greater deference and that interference by reviewing courts be minimized. This does not mean, however, that the presence of a privative clause is determinative. The rule of law requires that the constitutional role of superior courts be preserved and, as indicated above, neither Parliament nor any legislature can completely remove the courts' power to review the actions and decisions of administrative bodies. This power is constitutionally protected. Judicial review is necessary to ensure that the privative clause is read in its appropriate statutory context and that administrative bodies do not exceed their jurisdiction.

53 Where the question is one of fact, discretion or policy, deference will usually apply automatically (*Canada (Attorney General) v. Mossop*, [1993] 1 S.C.R. 554, at pp. 599-600; *Dr. Q*, at para. 29; *Suresh*, at paras. 29-30). We believe that the same standard must apply to the review of questions where the legal and factual issues are intertwined with and cannot be readily separated.

54 Guidance with regard to the questions that will be reviewed on a reasonableness standard can be found in the existing case law. Deference will usually result where a tribunal is interpreting its own statute or statutes closely connected to its function, with which it will have particular familiarity: *Canadian Broadcasting Corp. v. Canada (Labour Relations Board)*, [1995] 1 S.C.R. 157, at para. 48; *Toronto (City) Board of Education v. O.S.S.T.F., District 15*, [1997] 1 S.C.R. 487, at para. 39. Deference may also be warranted where an administrative tribunal has developed particular expertise in the application of a general common law or civil law rule in relation to a specific statutory context: *Toronto (City) v. C.U.P.E.*, at para. 72. Adjudication in labour law remains a good example of the relevance of this approach. The case law has moved away considerably from the strict position evidenced in *McLeod v. Egan*, [1975] 1 S.C.R. 517, where it was held that an administrative decision maker will always risk having its interpretation of an external statute set aside upon judicial review.

[6] On application to the facts before us, we conclude deference to the Tribunal's conclusions are warranted. There is ample evidence to find that the dealer was not supervising the salesperson Peter Rockwell ("Rockwell") nor was it operating in accordance with the law, when it permitted him to act as a salesperson when he was not properly registered under the MVDA as required.

[7] The failure of Anderson to supervise Rockwell permitted him to enter into, as verified by the record, a number of fraudulent transactions.

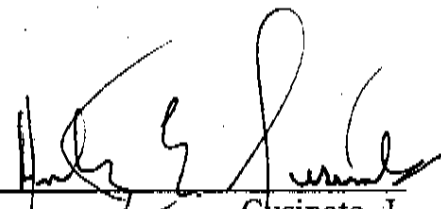
[8] The conduct of Anderson, in this context, reflects not only upon the corporate dealership but as well upon him personally.

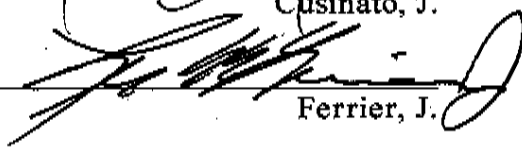
[9] While no doubt the Board's reasons are not couched in the applicable statutory language, we interpret the Board's reasons to be a finding that the past conduct of the Appellant Anderson as an officer and director of the corporation and as an individual, affords reasonable grounds for the belief that he would not conduct himself in accordance with the law, with integrity and honesty.


[10] The Board, having come to these conclusions, was not required to consider conditions as an alternative to revocation.

[11] Based on the foregoing, it was reasonable for the Board to direct the Registrar to carry out the proposal.

[12] For these reasons the appeal is dismissed. As quantum was agreed by Counsel, costs are payable to the successful Respondent in the fixed sum of \$3,000.00 all inclusive.

  
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 Cusinato, J.

  
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 Ferrier, J.

  
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 Lofchik, J.

DATE RELEASED: *April 15, 2008*

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