

Licence  
Appeal  
Tribunal

Tribunal  
d'appel en  
matière de permis



ROSS ROBERT LADOUCEUR AND BRENDA LANCASTER AND  
DICE TOWING & AUTO SALES LTD. AND  
CHECKER TOWING INC. O/A CHECKER AUTO SALES

APPEAL FROM A PROPOSAL OF THE REGISTRAR UNDER  
THE *MOTOR VEHICLE DEALERS ACT*, R.S.O. 1990, c. M.42

TO REVOKE REGISTRATIONS

TRIBUNAL: CHRISTINA BUDBETH MINGAY, Vice-Chair

APPEARANCES:

ROSS ROBERT LADOUCEUR and BRENDA LANCASTER,  
representing themselves and the corporate Applicants

YOVANKA McBEAN, Agent, representing the Registrar under the  
*Motor Vehicle Dealers Act*

DATES OF  
HEARING:

February 8, 2010

Toronto

**REASONS FOR DECISION AND ORDER**

**BACKGROUND:**

This is a hearing before the Licence Appeal Tribunal (the "Tribunal") arising out of a Notice of Proposal issued by the Registrar under the *Motor Vehicle Dealers Act* (the "Registrar" and the "Act" respectively.) The Notice of Proposal dated June 30, 2009 proposed to revoke the registration of Ross Robert Ladouceur ("Mr. Ladouceur") and Brenda Lancaster ("Ms Lancaster") as salespersons under the Act. To revoke the registration of Checker Towing Inc. O/A Checker Auto Sales ("Checker") as a motor vehicle dealer under the Act; and, to refuse the registration of Dice Towing & Auto Sales Ltd. ("Dice") as a motor vehicle dealer under the Act.

The evidence on behalf of the Registrar was received through Douglas Stirrup ("Mr. Stirrup"), a Field Collections Officer with the Ministry of Revenue Ontario and through Laura Halbert ("Ms Halbert"), the Director of Compliance with the Ontario Motor Vehicle Industry Counsel ("OMVIC"). The Registrar's Book of Documents containing the majority of the documentary evidence relied on by the Registrar was entered into evidence as Exhibit #3 through Ms. Halbert.

Ross Ladouceur testified at the hearing as did Brenda Lancaster.

Extensive oral reasons and a decision in this matter were delivered to the parties at the conclusion of the hearing; this written decision serves to confirm those reasons and that decision.

### **ISSUES:**

The issues at the hearing are set out in the Registrar's Notice of Proposal to Refuse and Revoke Registration dated June 30, 2009, Exhibit #3 Tab 1. It was the Registrar's position that the Applicants' alleged conduct in failing to carry out their business in a financially responsible manner are indications of their failure to carry on business in accordance with law and with integrity and honesty as is required under Section 5 of the Act. The complained of conduct is: (1) the failure of the Applicants Mr. Ladouceur and Checker to comply with the terms and conditions of an Order of the Tribunal in dated July 24, 2003, specifically paragraphs 1 and 3 of that Order.; and (2) the failure of the Applicant Checker to meet the requirements of the *Corporations Tax Act* ("Tax Act") by not filing returns, remitting tax due and paying assessments when due.

In response to the allegations made by the Registrar, the Applicants' position throughout the hearing was that they had collectively taken steps to address all of the issues of concern to the Registrar to the best of their ability.

### **FACTS AND EVIDENCE:**

According to the records of Companies Branch found at Tab 7 of Exhibit #3, Checker was incorporated in February 1988. Mr. Ladouceur was an officer and director of Checker without interruption until it ceased operation in June of 2009. Ms Lancaster became an officer and director of Checker in September 2003 and remained in that role until June 2009.

Mr. Stirrup testified that he has been employed in the role of Field Collections Officer for approximately fifteen (15) years. Mr. Stirrup explained the operation of the corporate tax regulation procedure in Ontario. Corporations taxed in the province of Ontario are required to file corporate tax returns once per year. This must be done within six (6) months following the corporate year end. The corporate year end of Checker is December 31. Upon the failure of a corporation to file a tax return in a timely fashion, a generic letter is sent to the corporation. If the taxpayer fails to reply, the file is assigned to the Field

Collections office. In the circumstances of this case, Mr. Stirrup was assigned to make contact with the principals of the corporation in January 2009.

Mr. Stirrup further testified that if a corporate taxpayer failed to file returns, the Ministry of Revenue has the power to estimate the amount of taxes to be paid. This power is known as the power to make Arbitrary Assessments ("Arbitrary Assessment"). If the taxpayer disagrees with the Arbitrary Assessment an appeal can be filed and the estimate reversed. An Arbitrary Assessment is influenced by the location and type of business as well as the amount of income previously reported. A failure to file in a timely fashion also attracts a 10% one time penalty, calculated on the Arbitrary Assessment. Compound daily interest is charged on the outstanding amount.

Mr. Stirrup repeatedly stated in his evidence that he has no authority to alter the Arbitrary Assessment, penalty or the interest claim made the Ministry of Revenue. His role is strictly one of collections.

Mr. Stirrup testified that the personal bankruptcy of the principal of a corporation does not relieve the corporation of its obligation to pay corporate tax, even if the tax obligation was incurred prior to the bankruptcy.

Mr. Stirrup testified, with reference to Exhibit #3 Tab 9, that the total tax, penalty and interest owed by Checker is \$96,754.00 as at June 2, 2009. This amount does not include any Arbitrary Assessment for the years 2007 and 2008. The filing for the year 2009 is not yet due. The amount owing without penalty or interest is \$42,925.00.

The tax return for the year 2008 has yet to be filed. Mr. Stirrup testified that during a telephone conversation with Ms Lancaster in August 2009, she advised him that the 2008 filing had been made. His evidence was that it has not been received by the Ministry. During cross-examination, Mr. Stirrup agreed that as of 2009, all corporate tax filings, both federal and provincial, will be combined into one return. He agreed that if Ms Lancaster had made the filings for 2007 and 2008 to the federal tax authority, it was possible that she thought that she was providing the information to the provincial government as well.

The provincial corporate tax filings for the years 2000 and 2001 have not yet been filed; however, these returns can still be filed and Arbitrary Assessments appealed.

Ms Halbert testified about the role of OMVIC as the designated administrative authority for the Act. She testified about the process which resulted in the refusal to register the new Applicant and to revoke the license of the existing Applicants.

In February 2009, OMVIC received an application for a new license from Dice. At the time, OMVIC formed the concern that the officers and directors of Dice were the same as the officers of Checker and that the past conduct of those officers and directors was of concern to OMVIC.

Ms Halbert testified about the circumstances of the Consent Order of the Tribunal found at Exhibit #3, Tab 1A. Specifically, the Order required Checker to negotiate an arrangement for repayment of the corporate tax owing. The Order also required Mr. Ladouceur to be removed as an officer and director of Checker. Exhibit #3, Tab 7, referred to above, confirms that he was never removed. Mr. Ladouceur admitted this during his cross-examination. He stated that he believed it was a requirement of the Consent Order that Ms Lancaster be added but that he did not understand he was to be removed.

Ms Halbert testified that the business of being an automobile dealer is a detail oriented one, even in instances where the dealer or sales persons are not generating large amounts of revenue. She testified that the inability of Mr. Ladouceur to follow the terms of the Consent Order is a matter of concern. Of additional concern to the Registrar is the fact that corporate tax returns are outstanding and a large unresolved debt to the Ministry remains.

During cross-examination, the witness admitted that she was not aware that the Applicants had tried to settle the entire amount of their indebtedness of the Ministry of Revenue. She also admitted that some payments had been made toward the indebtedness but insisted that this did not satisfy the obligation of the Applicants to enter into a repayment arrangement as specified in the Consent Order.

Mr. Ladouceur testified that he has a Grade 5 education but until 2002 was only able to read at a Gr. 1 level. He is currently 62 years of age. He testified that previously his ex-wife was in charge of the business end of things and because of his limited education he relied on her representations about the finances of the business. He testified that he thought his bookkeeper was doing a "good job" but that she was not. When he and his ex-wife were separating, she declared bankruptcy. He did as well in order to be relieved of the obligation to honour the guarantees his ex-wife's debts. He stated that he believed that this relieved him of all of his obligations, among them the corporate tax debts of Checker which he viewed to be an extension of his obligations.

Mr. Ladouceur testified that he went into the long haul trucking business at this time (2001) because he was not making any money under the dealer license; however, in June 2002, he suffered a serious stroke which resulted in the revocation of his big rig long haul trucking license. It was then that he revived the business of Checker. He testified that he believes he owes a total of \$150,000 to the provincial and federal tax authorities. He offered to settle this debt for a total of \$50,000 but this offer was rejected.

Mr. Ladouceur testified that currently he owns a tow truck that has a value of approximately \$9,000. He buys cars at auction for approximately \$200 and then makes some repairs and cosmetic amendments and then attempts to re-sell them for a nominal profit.

Mr. Ladouceur testified that he had received advice from someone that if he could not longer carry on business through Checker, he should just start up a new business, Dice, and keep doing what he was doing. This was his purpose in making a registration application for Dice.

During cross-examination, regarding matters of concern to the Registrar, Mr. Ladouceur stated that he did not know how to remove himself as a director of Checker as was required by the 2003 Consent Order. He did not have legal advice at the time of the signing of the Order.

Ms Lancaster testified that the couple have tried to secure legal advice to assist them in finding their way out of their problems but have been unable to do so. She testified that the 2007 and 2008 corporate filings were made in August 2009, but that she mistakenly only sent them to the federal government believing that this would satisfy the provincial filing requirement as well.

She stated that it is impossible to file returns for 2000 and 2001 because she does not have access to any records upon which she can base a filing and that she does not want to make an improper filing. She also stated that although she signed the 2003 Consent Order as an officer and director of Checker, she did not understand her obligations under that document.

Under cross-examination, Ms Lancaster was unable to provide an explanation for why she did not make the filings for 2007 and 2008 in a timely manner. When questioned about whether she went the Bank to obtain banking records for Checker for the years 2000 and 2001, she stated that she did not do so. In addition, she admitted that she had never attempted to engage an accountant to assist with filing the returns. Further, she stated that she never thought to review Mr. Ladouceur's personal income tax filings as a starting point for filing nil returns for the years 2000 and 2001, which were the years that Mr. Ladouceur was working as a trucker and, according, to his evidence not operating the business.

#### **THE LAW:**

The Motor Vehicle Dealers Act states:

5. (1) An applicant is entitled to registration or renewal of registration by the Registrar except where,
  - b) the past conduct of the applicant affords reasonable grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty;

#### **APPLICATION OF LAW TO FACTS:**

The burden of proof in this matter rests on the Registrar and the requirement of the Registrar.

The issues in this matter are straightforward and the evidence led by the Registrar was not contested by the Applicants. The essence of their evidence was directed at explaining the context of their actions, rather than attempting to disprove the facts established by the Registrar.

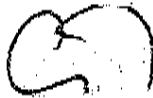
The evidence reveals a serious failure by the Applicants to demonstrate that they are now able to satisfy their financial obligations and legal obligations, including the basic requirement of filing corporate income tax. The evidence reveals Applicants who are suffering under the weight of unpaid tax obligations that, by their own admission, are impossible to repay. This evidence combined with a lack of real effort to resolve some of the issues which can more readily be addressed, such as the un-filed 2000 and 2001 tax returns, does not bode well for the Applicants' future efforts to conduct themselves in accordance with the law and with honesty and integrity.

The Act is a consumer protection statute. Having regard to the evidence placed before the Tribunal, the Tribunal finds that there are reasonable grounds to believe that the Applicants will not act in accordance with the law and with honesty and integrity.

#### DECISION:

Therefore by virtue of the authority vested in it under section 7(4) of the *Motor Vehicle Dealers Act*, the Licence Appeal Tribunal directs the Registrar to carry out his Proposal dated June 30, 2009, to Revoke the Registration of Ross Robert Mr. Ladouceur and Brenda Ms Lancaster and Checker Towing Inc. o/a Checker Auto Sales, and to Refuse the Registration of Dice towing & Auto Sales Ltd.

#### LICENCE APPEAL TRIBUNAL



Christina Budweth Mingay, Vice-Chair

*Released: March 3, 2010*

The hearing was recorded. Transcripts can be made available at your expense. The period to appeal a decision to the Superior Court of Justice or Divisional Court is 30 calendar days from the date of release of the decision. Please arrange to pick up your Exhibits within 30 days after that period has passed. The Tribunal requires seven days notice prior to releasing Exhibits.