

Licence  
Appeal  
Tribunal

Tribunal  
d'appel en  
matière de permis



MARIO MIJATOVIC O/A TRIGON AUTO UNLIMITED

MOTION TO CONSIDER AN APPLICATION FOR AN EXTENSION  
OF TIME

TRIBUNAL: JANE WEARY, Vice-Chair

APPEARANCES: MARIO MIJATOVIC, appeared on his own behalf

AVIVA HARARI, Counsel, representing the Registrar, *Motor  
Vehicle Dealers Act*

DATE OF  
HEARING: October 27, 2006

Toronto

### REASONS FOR RULING AND ORDER

#### BACKGROUND:

Mario Mijatovic (the "Applicant") brings a motion under section 7 of the *Licence Appeal Tribunal Act* before the Tribunal for an order extending the time for filing an appeal to the Registrar's Notice of Proposal to Refuse Registration, dated February 15<sup>th</sup>, 2006, whereby the Registrar under the *Motor Vehicle Dealers Act* (the "Act") seeks to deny his application for registration as a motor vehicle dealer.

It was not until September 20, 2006 that the Applicant filed a Notice of Appeal dated February 23, 2006. By that time the Registrar had issued, on March 16<sup>th</sup>, 2006, a Final Notice denying his registration. The Registrar is of the position that the Applicant failed to file his Appeal within the prescribed time.

#### EVIDENCE:

Mr. Mijatovic testified that he had always intended to file an appeal and had initiated the process within the time prescribed under the Act of 15 days from receipt of the Registrar's Proposal, as evidenced by the date on his Appeal form being February 23, 2006. He testified that when he had initially met with the Deputy Registrar in furtherance of his application he had been advised that it was likely his registration application would be refused. He testified that the Registrar's Deputy gave as the

reason that "criminals like you should not be in business". On later receiving the Proposal, which included a booklet from the Tribunal setting out the appeal process, Mr. Mijatovic stated he contacted the Registrar's office by telephone to advise that he had no proof to counter the Registrar's allegations that he was unfit for registration until his bankruptcy court proceeding occurred. The Registrar's simply advised him that his rights to appeal were set out in the Proposal.

The Applicant testified that he had spent some considerable money in preparing for the registration application, including renting premises from which to conduct his potential dealership, and had done everything he could to ensure his registration would be favourably received. It was his understanding he could not proceed with any appeal to this Tribunal prior to the decision of the bankruptcy court.

This occurred in April 2006; he received a follow-up letter from the Trustee-in-Bankruptcy dated May 2006 (Exhibit 4, last page). The letter notes that, while Mr. Mijatovic's explanation had a "ring of truth", the circumstances of financial loss amounted to "commercially immoral" behaviour on his part such that he would not be eligible for discharge for an extended period of eighteen months.

Mr. Mijatovic testified that he had taken \$300,000 back to Serbia from Canada with which he was to make certain purchases for Canadian clients. He had left the cash in the back seat of his car and it was stolen. Mr. Mijatovic stated that it was common practice to carry large amounts of cash in Serbia, although he recognized such was not the case in Canada. He had been forthright with the Registrar at the time of his initial application when he advised he was facing bankruptcy proceedings as a result of this incident. He is reporting to the Trustee monthly as is required, but has not made any payments yet on the account.

In response to questions posed in cross-examination the Applicant stated he had not filed his appeal on receipt of the bankruptcy court decision and had waited another four and a half months before doing so due to medical reasons. He had not brought any documentation of these medical issues with him. He testified he had also been back to Serbia during the summer months.

The Registrar did not introduce any oral evidence but relied on materials earlier filed by him (Exhibit 4). Included is an affidavit of Yovanka McBean stating she is employed by the Ontario Motor Vehicle Industry Council ("OMVIC") and, as such, has knowledge of the facts attested to in her affidavit. Included are notes taken by her during the interview held between herself and Mr. Mijatovic in furtherance of his application. These notes read "... I said I did not believe much of what he had told me and that I did not believe that he had \$300,000 in cash stolen..." and further "... I said I'm sure he has friends who would be prepared to lie for him..." and later "... even if I did believe his story, he would still be guilty of negligence in leaving \$300,000 in cash sitting in the backseat of his car."

In submissions Counsel for the Registrar directed this Tribunal to the four part test for what constitutes "reasonable grounds" in a motion requesting an extension of time in which to file an appeal as set out by Mr. Justice Blair of the Court of Appeal in *Frey v. MacDonald* [1989] O.J. No 236 and cited by this Tribunal most recently in *Desmond Roy Allan*, August 23, 2006. These are as follows:

1. the existence of a bona fide intention to appeal
2. the length of the delay
3. prejudice to the other party, including whether it can be compensated by costs;  
and
4. the merits of the appeal.

Counsel acknowledged that the Applicant had intended to file an appeal on receipt of the Proposal. However, she noted that, whilst the initial delay waiting for the conclusions of the Bankruptcy Court might have been merited, the fact was that the Applicant chose to delay a further five months before submitting his Appeal without any explanation or notice to the Registrar. Further, his explanation for doing so at this hearing were not corroborated or founded on any independent evidence.

Counsel argued that there was as a result, significant prejudice to the Registrar's case in proceeding after such a lengthy delay period. She argued nine months was an unreasonable time period in which to seek an appeal and that witnesses may have moved or be no longer available were the case to proceed.

As regards the merits, Counsel's position was that the Applicant remained an undischarged bankrupt and this amounted to very strong evidence of inadequate financial responsibility, in particular for registration as a sole dealership. She noted as well that in this case the Trustee had seen fit to double the usual period before discharge from nine to eighteen months based on the "commercially immoral" nature of the Applicant's behaviour.

In closing Counsel requested the Tribunal order that the Applicant pay the costs of the Registrar under Rule 14 of the *Licence Appeal Tribunal Act*. She relied upon the inordinate length of the delay and advised the Tribunal that the grounds set out for providing such an Order in the legislative section were not exhaustive.

#### **FACTS FOUND PROVEN:**

1. The Registrar's Notice of Proposal to refuse registration was received by the Applicant on February 16, 2006.
2. Together with delivery of the Notice of Proposal the Applicant was also served with an information booklet from the Tribunal setting out the procedure to be

followed by him in order to appeal from the Proposal. Included is the requirement to file the appeal within 15 days.

3. The Applicant telephoned the Registrar's office to explain about his need to wait for the Bankruptcy Court proceedings and was advised his rights to appeal were subject to the information contained in the Notice of Proposal.
4. The Registrar's Final Notice refusing registration was sent to the Applicant's proper address on March 16, 2006.
5. On September 20, 2006 the Applicant requested an extension of time to commence his appeal of the Proposal.

### **THE LAW:**

Section 20 of the Act provides as follows

- (1) Any notice or order required to be given or secured under this Act or the regulations is sufficiently given or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is required to be made at the latest address for service appearing on the records of the ministry of Consumer and Commercial Relations....

Section 7 states:

- (1) Where the Registrar proposes to refuse to grant or renew a registration or proposes to suspend or revoke a registration, the Registrar shall serve notice of the Proposal together with written reasons therefore, on the applicant or registrant.
- (2) A notice under subsection (1) shall state that the applicant or registrant is entitled to a hearing by the Tribunal if the applicant or registrant mails or delivers, within fifteen days after service of the notice under subsection (1), notice in writing requiring a hearing to the Registrar and the Tribunal, and the applicant or registrant may so require a hearing.
- (3) Where an applicant or registrant does not require a hearing by the Tribunal in accordance with subsection (2), the Registrar may carry out the Proposal stated in the notice under subsection (1)...

Section 7 of the *Licence Appeal Tribunal Act* provides:

Despite any limitation of time fixed by or under any Act for the giving of any notice requiring a hearing by the Tribunal or an appeal from a decision or order of the Tribunal under section 11 or any other Act, if the Tribunal is satisfied that there are reasonable grounds for applying for the extension and for granting relief, it may,

- (a) extend the time for giving the notice either before or after the expiration of the limitation of time so limited; and
- (b) give the directions that it considers proper as a result of extending the time.

## REASONS FOR DECISION:

In the Court of Appeal decision referenced by Counsel for the Registrar, *Frey v. MacDonald*, Blair J.A. stated:

"..Usually time for an appeal or taking any steps within an appeal is not extended unless the appellant has maintained a firm intention from the beginning to appeal and the failure to observe the time limits is reasonably explained. This, however, is subject to the broader rule that extensions should be granted if the "justice of the case" requires: see *Miller Manufacturing and Development Co. v. Robert J. Alden et al* (1979) 13 C.P.C. where authorities are collected."

After canvassing the law, the learned Justice concludes:

[The decisions] reveal that a number of considerations are viewed as important, the emphasis given to them in each case varying with the circumstances. They include the existence of a bona fide intention to appeal, the length of the delay, prejudice to the other party, whether it can be compensated by costs and the merits of the appeal.

Thus all four aspects of the test need to be considered with no one aspect necessarily having ascendancy. Further, the premise is that an extension should not be granted if the appellant is not reasonably able to explain why he failed to observe the limitation unless "justice of the case" requires otherwise.

In this matter the Applicant acknowledged that he had received the Notice of Proposal, as well as the Tribunal's booklet regarding the procedure to be followed to appeal the Proposal. His Notice of Appeal is dated February 23<sup>rd</sup> and is thus well within the appeal timeframe given of 15 days. However, the Notice was not filed by the Applicant for just shy of seven months. The reason given was that he required a final disposition of his bankruptcy proceeding. The facts establish this was received early in May. His allegation that he was thereafter unable to file the Appeal Notice due to medical conditions was not corroborated by any independent evidence. Further, he testified he had been able to travel out of the country during this time. Given that he needed only to mail or fax the Notice, his further four and a half month delay is found to be indicative of negligence on his part and does not support his having maintained a "firm intention from the beginning" to appeal the Proposal.

The next question to consider is whether the justice of the case requires the Tribunal to grant the extension requested. In the circumstances the Tribunal does not find that it does. These circumstances arise out of the Applicant's failure to take the action required of him of which he had clear notice. He is the author of his own misfortune. Further, the Applicant is not appealing a revocation of an existing licence, but rather a first time approval for a licence. Thus there is no risk to him of loss of an existing business. While it is unfortunate that he had undertaken some financial expense in preparing for the application for registration, it is always open to him to re-apply for registration at some future time.

Looking to the third aspect of the test the Tribunal concludes that the amount of the delay, whether the full seven months, or the close to five months following the Bankruptcy dispositions – in either case – significant. Nonetheless, the Tribunal is not convinced the Registrar's position would be prejudiced unduly as a result and finds that any possible prejudice could be compensated by costs to cover expenses such as locating necessary documents or witnesses.

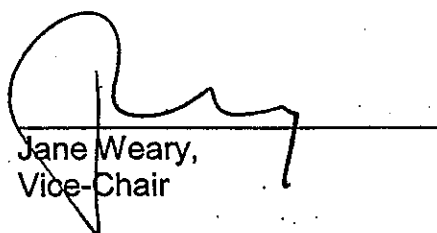
As concerns the fourth test, the Applicant's position that the circumstances of the bankruptcy were not indicative of any malfeasance on his part might be persuasive at a Tribunal hearing into the merits of a Proposal to refuse registration based on solely on the past conduct of the Applicant. In this case, however, the Proposal is based in part on the Applicant's financial position and this Tribunal agrees with the Registrar that there is merit to the Registrar's conclusion that the Applicant's financial responsibility is *prima facie* suspect, given he remains an undischarged bankrupt for some further significant time, being an extra-ordinary period imposed by the Trustee-in-Bankruptcy. This is of reasonable concern to the Registrar responsible for consumer protection over an applicant seeking registration as a sole proprietor dealer of motor vehicles.

Thus, given that the Applicant's delay in filing his appeal is extensive and not found to have been reasonably justified as well as the fact that the merits of his appeal have not been adequately demonstrated as regards the issue of his financial responsibility alone, his appeal for an extension of time is denied.

As to the Registrar's request for costs, this also is denied. Contrary to the submissions of Counsel, the Tribunal finds that section 14 of the *Licence Appeal Tribunal Act* clearly sets out an exhaustive list of required findings of behaviour. These, being that the applicant's behaviour must be found to be unreasonable, frivolous, vexatious or in bad faith, before such costs can be ordered. None of these have been established as present in the actions of the Applicant in bringing the motion.

The Applicant's motion is therefore dismissed, and the Respondent's request for costs denied.

LICENCE APPEAL TRIBUNAL



Jane Weary,  
Vice-Chair

RELEASED: November 9, 2006

FILE NAME: 3793.mvda.Mijatovic.motion.doc

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.

This decision, which is being released to the parties in this proceeding, will also be posted on the Licence Appeal Tribunal's website [www.lat.gov.on.ca](http://www.lat.gov.on.ca) in two weeks time. The decision will also be available on Quicklaw at a later date.