

**LICENCE APPEAL  
TRIBUNAL**

**TRIBUNAL D'APPEL EN MATIÈRE  
DE PERMIS**



**Safety, Licensing Appeals and  
Standards Tribunals Ontario**

**Tribunaux de la sécurité, des appels en  
matière de permis et des normes Ontario**

Citation: Robert Nadeau v. Registrar, *Motor Vehicle Dealers Act, 2002*, 2017 ONLAT  
MVDA 10845

Date: 2018-01-23  
File Number: 10845 MVDA

Appeal from a Proposal of the Registrar under section 9 of the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sch. B to Refuse a Registration

Between:

Robert Nadeau

Appellant

and

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

**DECISION AND ORDER**

**ADJUDICATOR:** Marisa Victor, Member

**APPEARANCES:**

**For the Appellant:** Self-represented

**For the Respondent:** Michelle Samaroo, Counsel

Place and date of  
hearing: Ottawa  
December 8, 2017

## REASONS FOR DECISION AND ORDER

### A. OVERVIEW:

- [1] Mr. Nadeau was a registered motor vehicle sales person from 1994 to November 18, 2015. His licence became inactive in 2015 when his then-sponsoring dealer advised the Registrar that he had been arrested at work. One month later he pleaded guilty to two counts of criminal harassment and one count of mischief related to incidents involving criminal harassment of his ex-partner. He was sentenced to eight months of imprisonment to be followed by three years of probation. In April 2016, after being released from jail, he applied to renew his licence to be motor vehicle sales agent.
- [2] On May 23, 2017, the Registrar issued a Notice of Proposal to Refuse a Licence in response to the renewal application. The Registrar's grounds for refusal are on the basis that Mr. Nadeau's past criminal convictions show that he will not act in accordance with the law, with honesty or integrity in the future. The second ground the Registrar relies on is that Mr. Nadeau provided false statements on this renewal application as well as past renewal applications.
- [3] After reviewing the evidence, I find Mr. Nadeau is unfit for registration. The Registrar has shown that there are reasonable grounds to believe he will not act with integrity, honesty and within the law and that he made a false statement in his past renewal applications.
- [4] I direct the Registrar to carry out the Notice of Proposal to refuse a registration.

### B. ISSUES:

- [5] The Tribunal must decide if the Registrar's Notice of Proposal to refuse the appellant's registration should be carried out or if the Tribunal should substitute its own opinion. To answer this question, I must decide whether the appellant is unfit for registration on either of the following grounds as set out in s. 6(1)(a)(ii) or s. 6(1)(a)(iii) of the *Motor Vehicle Dealers Act, 2002* (the Act):
- a. Does the appellant's past criminal convictions and conduct show that there are reasonable grounds to believe he will not carry on business in accordance with law, with integrity or honesty?
  - b. Did the appellant make a false statement in an application for registration when he:

- i. Failed to disclose the victim fine surcharge and restitution orders in his 2016 application; and/or
  - ii. Failed to disclose his 2007 convictions in his 2008 renewal, and 2014 renewal?
- c. Was there an abuse of process as a result of the length of time it took to process the appellant's renewal application?
  - d. Are there appropriate conditions that can facilitate a registration?

**C. RESULT:**

[6] For the reasons that follow, I find that the appellant's past criminal record together with his conduct demonstrates a reasonable ground to believe he will not act in accordance with the law, with honesty and integrity.

[7] Therefore, the proposal by the Registrar to refuse the appellant's registration should be carried out.

**D. BACKGROUND:**

[8] The appellant was first registered as a motor vehicle sales agent on April 7, 1994.

[9] In 2003, the appellant declared bankruptcy.

[10] On January 23, 2006, the appellant was charged with a number of offences stemming from actions he took during the break-up of his marriage.

[11] On March 7, 2007, the appellant pleaded guilty to harassment, assault, forcible confinement and failure to comply with bail conditions. Mr. Nadeau was sentenced to a nine month conditional sentence, including three months of house arrest, together with fifteen months of probation which lasted until June 2008.

[12] On May 27, 2008, the appellant submitted a renewal application. In response to the questions asked as to whether the appellant has ever been found guilty or convicted under any law, the appellant checked off "no."

[13] On May 30, 2014, the appellant submitted a renewal application. In response to the question "has the registrant ever been found guilty or convicted of an offence under any law or are there any charges pending", the appellant checked off "no."

- [14] On July 25, 2014, the Parole Board of Canada granted Mr. Nadeau a record suspension for his 2007 conviction. This is often referred to as a pardon. A pardon ceases to be in effect and a criminal record reactivated if a pardoned person is convicted of a further indictable offence.
- [15] In November 18, 2015, Mr. Nadeau was charged with indictable offences for the actions he took against his partner during the break-up of their relationship.
- [16] On December 14, 2015, Mr. Nadeau plead guilty to two counts of criminal harassment and one count of mischief.
- [17] On February 23, 2016, Mr. Nadeau was sentenced. The following are the key conditions of sentence:
- a. Eight months of jail time, to be followed by 3 years of probation;
  - b. \$790.02 in restitution to the victims to be paid within nine months of the start of his probation; and
  - c. \$600 in victim impact surcharge to be paid within 18 months.
- [18] As of the sentencing date, Mr. Nadeau's pardon was no longer in effect as he had been convicted of further indictable offences. As a result, Mr. Nadeau's charges from March 2007, harassment, assault, forcible confinement and failure to comply with bail conditions, were no longer suspended.
- [19] The appellant was released from custody in April 2016 and began probation at that time.
- [20] On April 22, 2016, the appellant submitted a renewal application. In the renewal form he notes the following:
- a. His licence is inactive due to being incarcerated.
  - b. In answer to the question "are there any unsatisfied judgments, court orders or collections currently pending against the registration," the appellant checked off "no." The appellant had been ordered to pay a victim impact surcharge and restitution and had been given eighteen months to pay. The fines had not been paid at the time he submitted the form, but the time to pay had not expired.

- c. In answer to whether he had ever been found guilty or convicted of any offence, he checked off “yes”.
- d. He added a letter which advised of the 2016 charges.

[21] In November 2016, the appellant applied for a licence with the Alberta Motor Vehicle Industry Council. After a telephone interview and providing several requested documents, he was provided with a twelve-month conditional licence to sell motor vehicles in the Province of Alberta on January 9, 2017.

[22] On May 23, 2017, the Registrar issued its Notice of Proposal to Refuse a Registration (the Proposal) which is the subject of this appeal.

[23] On June 13, 2017, Mr. Nadeau appealed the Registrar’s Proposal to this Tribunal.

**E. ISSUE 1 – THERE ARE REASONABLE GROUNDS TO BELIEVE THE APPELLANT WILL NOT ACT WITHIN THE LAW, WITH INTEGRITY OR WITH HONESTY**

[24] The Registrar has the burden to prove that the appellant’s past conduct provides reasonable grounds to believe he will not carry on business in accordance with law, integrity and honesty. The standard of proof is “reasonable grounds for belief” which is a lower standard of proof than a balance of probabilities.

[25] The Court of Appeal in the *Famous Flesh Gordon* decision (*Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc. (Famous Flesh Gordon’s)* 2013 ONCA 157 (CanLII), makes it clear that there must be reasonable grounds for belief that the person will, in future, carry on activity in a way that is contrary to the public interest such that they will not act in accordance with the law, with honesty and with integrity. The Court of Appeal emphasized that any and all past or present conduct can and should be considered. Furthermore, there should be a nexus between the appellant’s overall conduct and the business.

[26] The purpose of the act is consumer protection. Therefore, the question is whether it is in the public’s best interest to register a person in consideration of their past conduct, which in this case involves two sets of criminal convictions. The appellant’s conduct in all matters, not just the convictions, must be examined in order to determine if the respondent has met the test.

[27] The following conduct will be considered:

- a. The applicant’s criminal convictions;

- b. The past renewal applications;
- c. The present renewal application;
- d. The appellant's evidence regarding the expired pardon;
- e. The appellant's psychological reports;
- f. The appellant's actions before the Alberta motor vehicle licensing regime (AMVIC);
- g. The appellant's character witnesses and employment record;  
and
- h. The appellant's testimony before this tribunal.

[28] In analysing the above conduct, some of the factors that I believe are important to consider when determining if there are reasonable grounds to believe the appellant will not act in accordance with the law, with honesty and integrity are:

- a. The seriousness of the crimes;
- b. The span of time during which the criminal activity was undertaken;
- c. Whether the appellant has shown a clear demonstration of repentance and remorse and an acceptance of responsibility for his behaviour;
- d. The appellant's overall record;
- e. The appellant evidence that he had learned from his mistakes;  
and
- f. The connection, if any, between his overall conduct and his ability to carry on business as required.

#### **I. The Appellant's Criminal Convictions**

[29] The respondent called Mr. Girling as its witness. Mr. Girling served as a member of the Ontario Provincial Police for 37 years before retiring and taking up his position as Director of Investigations at Ontario Motor Vehicle Industry Council (OMVIC) nearly two years ago.

- [30] He testified that he oversees a team of 15 members who investigate and enforce the provisions in the Act. There are approximately 28,000 salespeople in Ontario.
- [31] Mr. Girling testified that the salespeople are front line workers with direct interaction with consumers. These consumers are generally making a large purchase that is often secondary only to a home purchase.
- [32] Mr. Girling testified that Mr. Nadeau identified his past criminal record in his 2016 renewal application.
- [33] Mr. Nadeau testified that he had been continually licensed since 1994 and that he had a successful career working for only a few different dealerships. He stated his success was due to his strengths in the business.
- [34] Mr. Nadeau also testified that the two sets of actions, in 2006 and 2015, were very different. The first was as a result of finding his wife in bed with another man. The second conviction arose after the break-up of his relationship with his partner and the corresponding loss of contact with his nine-year-old step son who he had raised from the age of 17 months. He stated that the sudden loss was very hard to deal with.
- [35] Mr. Nadeau took issue with the respondent's characterization of his 2015 actions as cruel and nasty. He pointed to some of the judge's positive statements during the plea and sentencing appearances before the court. These included that:
- a. He pleaded guilty saving court time and saving putting the victims through testifying;
  - b. He was successfully employed;
  - c. He had no major mental disorder; and
  - d. He was considered low risk to re-offend.
- [36] He was conviction for breach of bail conditions for picking up his children from school in 2007. To explain, Mr. Nadeau testified that the Judge who had granted him bail had failed to put in a condition regarding agreements made in family court. After he was found guilty of the bail condition, his conditions were amended to allow him to pick up his children pursuant to a family court agreement. Mr. Nadeau referred to this breach as a technicality.
- [37] Mr. Nadeau maintained that he had disclosed his 2007 convictions to the Registrar after he was charged in 2006. He relied on the conditions on his licence

registration at that time for proof of disclosure. In cross-examination, Mr. Nadeau agreed that the conditions on his 2007 licence were as a result of declaring bankruptcy and not due to disclosure to OMVIC of his 2007 criminal conviction. However, he maintained that he had previously disclosed his charges in any event.

[38] Mr. Nadeau's two sets of criminal convictions for actions taken against women in intimate relationships with him is certainly troubling and these are indeed serious crimes. Nevertheless, his criminal convictions are not in itself necessarily a bar to registration.

[39] In Mr. Nadeau's favour, there was a significant amount of time that passed between the first set of convictions and the second. After that first conviction, Mr. Nadeau was still able to successfully co-parent his children and even had his youngest child living with him full time. He continued work as a successful salesman.

[40] Mr. Nadeau's second conviction is significantly more disturbing because of the lengths Mr. Nadeau went to criminally harass his ex-partner. The judge in 2016 stated that his actions were cruel, prolonged and premeditated. The court transcripts from the plea agreement and the sentencing appearance describe in detail the appellant's actions taken against his ex-partner. He was also not a first-time offender, although he was treated as such by the criminal justice system due to the pardon which was not yet invalidated.

[41] Since his second conviction, Mr. Nadeau has shown some evidence of change. He appears to have insight into his crimes and has embraced counselling. One of his character witnesses noted that he is now calmer.

[42] Mr. Nadeau's crimes were not at his place of work, nor do they appear to be connected in any way to consumer protection. His former boss testified that in spite of the convictions, he would re-hire him.

[43] The purpose of the act is to protect the public when purchasing a vehicle. It is hard to connect the crimes to Mr. Nadeau's business. From that perspective, it is possible that Mr. Nadeau could be licensed again.

## **II. Failure to Disclose Past Convictions**

[44] The fact that the 2008 and 2014 renewal applications had check marks indicating "no" on the question as to whether the appellant had previous convictions is not in dispute. There was also a statement at the end of each document confirming the

appellant has read the document that it is a serious offence to provide false information and attesting that the information submitted is true.

- [45] Mr. Nadeau testified that he didn't read the documents fully and maintained that he had disclosed his charges to OMVIC in 2006. Had he previously disclosed his convictions, as he maintained, he would have had no reason to hide this information in the 2008 and 2014 renewal application.
- [46] In testimony, he placed the blame equally on OMVIC for not doing its due diligence to discover his false statement.
- [47] I reject Mr. Nadeau's assertion that he did not read the documents fully. Mr. Nadeau testified that he was excellent at paperwork and indeed this was the very reason he was sought out as an employee. When asked about convictions, he clearly checked off no when the answer was yes. The only logical conclusion is that Mr. Nadeau knowingly misled the Registrar when he filled out the registrations forms in 2007 and 2014. In addition, trying to blame OMVIC for failing to uncover his false statements earlier is not a reasonable position and a shows a failure to learn from his mistakes.
- [48] I find that the appellant was not truthful when he filled out his 2008 and 2014 renewal applications. He has also failed to take responsibility for those actions now.

### **III. The Expired Pardon**

- [49] According to the provisions of the Criminal Records Act, the pardon for the 2007 convictions was no longer valid because of Mr. Nadeau's 2016 convictions for indictable offences.
- [50] Mr. Nadeau testified that he knew the pardon was no longer valid as of the date of his sentencing in 2016.
- [51] Despite this awareness, Mr. Nadeau continued to rely on his 2014 pardon in this appeal. Mr. Nadeau wrote in his appeal documents to this Tribunal that he was given a pardon and the Government of Canada cannot use those charges against him. I find this to be a misleading submission.

### **IV. Psychological Status and Therapy**

- [52] Mr. Nadeau included as part of his evidence, a report by Dr. Helen Ward, Forensic Psychiatrist. Dr. Ward's report was written for the purpose of assessing Mr.

Nadeau's mental state and providing the report to the judge prior to sentencing in 2016. Dr. Ward found that Mr. Nadeau did not have a major mental disorder and that his actions could be explained best by an adjustment disorder. She also found that he was at low risk to reoffend. She found that one of his protective factors was the ability to easily obtain employment. Mr. Nadeau became emotional when testifying to this point and expressed the difficulties he has faced in trying to obtain employment without his OMVIC registration. He stated this has been his hardest struggle.

[53] Mr. Nadeau testified that he also attends counselling and provided two letters by Dr. Keith McFarland, psychologist. The letters attested to the appellant's continuing attendance at therapy.

[54] Mr. Nadeau relied heavily on Dr. Ward's report. However, in her report Dr. Ward does not seem to know about Mr. Nadeau's prior convictions from 2007. At the time the report was written, Mr. Nadeau's pardon was still in effect, however, Dr. Ward's lack of inclusion of that previous conviction in her report and how it would affect her findings, means that this report carries little weight. In particular, it is unknown how this additional information would affect Dr. Ward's analysis of Mr. Nadeau likelihood of re-offending and steps he needs to take to rehabilitate.

## **V. The Alberta Licensing Regime**

[55] Mr. Nadeau discussed the process he went through to be licensed as a motor vehicle salesman in Alberta. He provided the Alberta registrar with copies of his pardon documents as well.

[56] When asked in cross-examination, Mr. Nadeau said he didn't know why the Alberta authority had asked for the pardon documents but guessed that they didn't believe he had received one. When questioned as to whether he advised the Alberta authority that the pardon was no longer valid, he stated he didn't recall advising them but that if they had done their due diligence they would know it was no longer valid.

[57] I find that Mr. Nadeau did not make it clear that his pardon for the 2007 conviction was no longer in effect and this is troubling. Mr. Nadeau again tried to shift the blame to the Alberta licensing authority instead of just advising them of the truth.

## **VI. Employment and Character Testimonies**

[58] Mr. Nadeau reviewed his current employment status. He had obtained a position that allowed him to work full time but it required extensive travel to Manitoba. He

stated this was damaging and stressful to his new relationship but that he has child support and debts to pay. If he obtains his OMVIC licence he can continue in the same job but work much closer to home.

[59] Mr. Nadeau provided some customer testimonials and letters of recommendation from employers. All of the letters were positive in regard to the help he provided customers and his work ethic.

[60] Mr. Nadeau called two character witnesses to testify on his behalf as to his work ethic:

- a. Michael Pearson, financial services manager at Elite BMW; and
- b. Mike Gervais, Ottawa Dodge preowned sales manager.

[61] Both witnesses had known the appellant for some time and had worked with him in the automotive sales industry. Mr. Nadeau was reported to have worked with customers and was always good with paperwork. Both witnesses were aware of his criminal convictions but only to a limited degree.

[62] Mr. Pearson stated that Mr. Nadeau was now calmer and seemed less stressed and that he was now a different person. He stated that Mr. Nadeau had never let his personal life affect his business life.

[63] Mr. Gervais testified that Mr. Nadeau was a good fit with management and with his peers. Mr. Gervais had been the appellant's boss and found his paperwork outstanding. Mr. Nadeau's speciality was financing and insurance. He generally had no issues with customers and had a great rapport. Mr. Gervais also stated that Mr. Nadeau did not let his personal life affect his business. Mr. Gervais stated that he wanted to re-hire Mr. Nadeau due to his excellent paperwork skills.

[64] In cross-examination, Mr. Gervais agreed that the 2007 and 2016 convictions were problematic with regard to the Act's requirement to act in accordance with the law. He said that if it was someone else he didn't know he would have an issue. However, he had worked with Mr. Nadeau for many years and due to his honesty and integrity would hire him again. Mr. Gervais also testified that he had hired people with criminal records before and that many people in the industry have had some problem in the past.

[65] I find that Mr. Nadeau's character witnesses provide some evidence that Mr. Nadeau has learned from his mistakes and that can be expected to carry on business in accordance with law, integrity and honesty in the future. However,

neither witness was fully apprised of Mr. Nadeau's criminal actions and this weakens the weight of their testimonies.

## **VII. Summary of Findings Regarding Acting Within the Law, with Honesty and Integrity**

[66] As noted above, I have significant concerns about Mr. Nadeau's conduct that calls into question his ability to act within the law, with honesty and with integrity in his business.

[67] Taking all the above into account, I find the following:

- a. Mr. Nadeau was convicted of serious criminal offences;
- b. Mr. Nadeau's psychological report carries little weight and therefore I have lack evidence as to whether he has accepted responsibility for his behaviour;
- c. Mr. Nadeau's failure to take responsibility for the false statements in on his renewals in 2008 and 2014 and his attempt to place the blame on OMVIC for failing to uncover those false statements shows a lack of honesty and integrity; and
- d. Mr. Nadeau's reliance on a now invalid pardon for his 2007 convictions both before this Tribunal and in his communication with the Alberta licencing authority show a lack of honesty and integrity.

[68] While Mr. Nadeau's criminal convictions are serious, it is his lack of honesty and integrity both about the convictions and in regard to his other conduct that causes significant concern with regard to his ability to act with honesty and integrity in his business. Therefore, in light of the totality of evidence, I find that the Registrar has met its burden to show that there are reasonable grounds to believe Mr. Nadeau will not act in accordance with the law, with integrity or honesty.

## **F. ISSUE 2 – THE APPELLANT MADE SOME FALSE STATEMENTS IN HIS APPLICATION FOR REGISTRATION:**

[69] The two questions here are whether the appellant made false statements in his applications for registration when he:

- a. Failed to disclose the victim fine surcharge and restitution orders in his 2016 application; and/or
- b. Failed to disclose his 2007 convictions in his 2008 renewal, and 2014 renewal.

[70] The test for this issue was set out in *Ontario (Registrar, Motor Vehicle Dealers Act, 2002) v. Vernon*, 2016 ONSC 304 (Div. Ct) and is whether the applicant knowingly made false statements.

[71] Since I have found that the Registrar has met its burden in relation to issue 1, it is not necessary for me to decide this issue.

[72] Had I needed to consider these issues, I would have found that Mr. Nadeau did not make a false statement with regard to his 2016 application when he said that he had no outstanding judgments even though he had not yet paid his victim impact fine. Mr. Nadeau testified that he was not past due on those amounts at the time he filled out the form. I believe that is a reasonable interpretation of the question. In addition, I note that Mr. Nadeau did pay the amounts owed within the prescribed 18-month time period allowed. As such, I would have found that Mr. Nadeau did not knowingly mislead the Registrar on that item.

[73] With regard to the 2007 and 2014 applications, however, consistent with my findings under Issue 1, I would have found that he made false statements when he failed to disclose his criminal record.

### **G. ISSUE 3 – THERE WAS NO ABUSE OF PROCESS IN THE LENGTH OF TIME IT TOOK TO PROCESS THE APPELLANT’S 2016 RENEWAL APPLICATION**

[74] Mr. Nadeau took the position that the length of time it took to process his application was unreasonable especially considering the Alberta licencing authority was able to process his application in nine weeks.

[75] Mr. Girling agreed in cross-examination that 13 months did not seem reasonable. He added that as part of their investigation they order transcripts and court documents and some of that documentation can take time.

[76] I find that the length of time it took to process Mr. Nadeau’s application was exceptionally long and caused him some emotional harm. However, I did not have evidence before me that this caused the appellant significant prejudice such that an abuse of process occurred.

## H. ISSUE 4 – THERE ARE NO APPROPRIATE CONDITIONS

[77] Mr. Girling testified that Mr. Nadeau's 2016 renewal application was not appropriate for granting with conditions. His history shows a similar pattern of behaviour; criminal actions against those he has been in an intimate relationship with. He has also shown that he cannot be governed, for example by failing to abide by his 2007 bail conditions which resulted in an additional conviction.

[78] In submissions, the respondent argued that although it took the position conditions were not appropriate, if a registration with conditions was to be granted, I should consider the following conditions:

- a. A requirement to retake certification course regarding changes in the legislation since 2010;
- b. The appellant can only work for franchise dealer for the next five years as franchise dealers are more heavily scrutinized;
- c. The appellant cannot apply to be a dealer;
- d. The appellant must provide full and complete disclosure;
- e. The appellant must notify OMVIC of new charges within five days of being charged;
- f. The appellant cannot have registration without consent for five years.

[79] I accept the appellant's explanation for the conviction for the bail violation. Therefore, I do not find that the bail violation shows that the appellant is necessarily ungovernable. In addition, there appeared to be no complaints about governability from his past employers including those who testified.

[80] Nevertheless, I have found the appellant's conduct, in addition to the criminal convictions, lacks honesty and integrity. It is difficult to see how the above conditions would ensure that the appellant is acting with honesty and integrity in his work when he has not been able to accept responsibility for his actions, such as making false statements and the reliance on an expired pardon, to show that he has learned from his mistakes before this Tribunal. Therefore, I agree with the respondent that the above conditions are not appropriate in order to ensure that the appellant will act in accordance with law, integrity and honesty.

**I. CONCLUSION:**

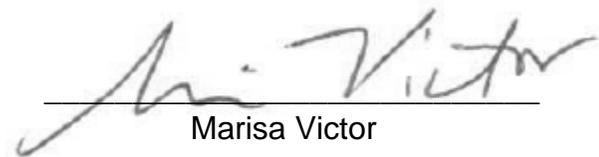
[81] In conclusion, I find that the Registrar has met its burden to show that there are reasonable grounds to believe that Mr. Nadeau will not conduct business in accordance with the law, with integrity or with honesty.

[82] There has been no evidence that the conditions proposed by the Registrar in the alternative would address Mr. Nadeau's honesty and integrity issues.

**J. ORDER:**

[83] The Tribunal directs the Registrar to carry out the Proposal to refuse the appellant's registration.

*Released: January 23, 2018*



Marisa Victor