

**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: 1435856 Ontario Limited o/a Premier Truck Sales and Hardeep Kooner v.
Registrar, *Motor Vehicle Dealers Act, 2002*, 2018 ONLAT-MVDA 10909

Date: 2018-09-10
File Number: 10909/MVDA

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

Between:

1435856 Ontario Limited o/a Premier Truck Sales and Hardeep Kooner

Appellants

and

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

DECISION AND ORDER

Adjudicator: Avril A. Farlam, Vice-Chair

Appearances:

For the Appellants: Anwar Dewshi, Counsel

For the Respondent: Michelle Samaroo, Counsel

Heard in Toronto: February 21, 22, June 12, 13, 14, 15, 19, 20, 2018

REASONS FOR DECISION AND ORDER:

A. OVERVIEW

- [1] Under the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sch. B (the “Act”) the Registrar under the Act (“OMVIC” or “respondent”) issued a Notice of Proposal to Refuse Registration dated July 14, 2017 (“NOP”) to refuse the registration of 1435856 Ontario Limited o/a Premier Truck Sales (“143”) as a motor vehicle dealer and the registration of Hardeep Singh Kooner (“Mr. Kooner”) as a motor vehicle salesperson because the past conduct of the appellants or the appellants’ officer or director affords reasonable grounds for belief that they will not carry on business in accordance with law and with integrity and honesty, and because false statements were made in both applications for registration. Both appellants appealed to this Tribunal.
- [2] A Punjabi interpreter was present at the hearing on the days when Mr. Kooner testified. Mr. Kooner said questions could be asked of him in English but he would reply through the interpreter. The interpreter translated for Mr. Kooner some of the time during his testimony. Mr. Kooner answered his counsel directly without the assistance of the interpreter sometimes and read out loud some exhibits written in English.
- [3] Respondent’s counsel eliminated one of the grounds of refusal by conceding that the respondent is not relying on any past convictions of Harmeeek Transport related to axle weight, only gross weight, and that the respondent is not pursuing the ground of the appellants not being financially responsible in the conduct of business.

B. ISSUES TO BE DECIDED:

- [4] The issues to be decided are as follows:
- a. Does Mr. Kooner’s past conduct, specifically the safety record of his trucking business Harmeeek Transport Inc. (“Harmeeek Transport”), afford reasonable grounds for belief that the appellants will not carry on business in accordance with law and with integrity and honesty?
 - b. Did Mr. Kooner make false statements in the appellants’ applications for registration given that Mr. Kooner says that English is not his first language and he did not understand the questions?
 - c. If so, is refusal to register 143 as a motor vehicle dealer and Mr. Kooner as a motor vehicle salesperson appropriate?

D: CONCLUSION:

- [5] The past conduct of Mr. Kooner affords reasonable grounds for belief that the appellants will not carry on business in accordance with law and with integrity and honesty, specifically the safety record of Mr. Kooner's trucking business Harmeeek Transport.
- [6] Mr. Kooner made false statements in the appellants' applications for registration even though Mr. Kooner says that English is not his first language and he did not understand the questions. Refusal to register the appellants is appropriate.
- [7] I direct the Registrar to carry out the proposal.

E. LAW:

- [8] Unless registered under the Act, s. 4 (1) (a) prohibits a person from acting as a motor vehicle dealer and s. 4 (1) (b) prohibits a person from acting as a salesperson.
- [9] Section 6(1) (d) (iii) and (iv) of the Act provides that a corporation that meets the prescribed requirements is entitled to registration unless the past conduct of its officers, directors or interested person affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty or the officer or director of the corporation makes a false statement in an application for registration.
- [10] Section 6(1) (a) (ii) and (iii) of the Act provide that a person that meets the prescribed requirements is entitled to registration unless the past conduct of the person affords reasonable grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty or the applicant makes a false statement in an application for registration.
- [11] Section 9(1)(a) provides that the Registrar must provide written notice of the proposed refusal to grant or renew a registration and the applicant may request a hearing by the Licence Appeal Tribunal (the "Tribunal") pursuant to section 9(2).
- [12] Section 9(5) provides that the Tribunal shall hold the hearing and following the hearing, may direct the Registrar to carry out the proposal or substitute its opinion for that of the Registrar and the Tribunal may attach conditions to its order.

F: EVIDENCE AND ANALYSIS:

- a. Does Mr. Kooner's past conduct, specifically the safety record of Mr. Kooner's trucking business Harmeeek Transport afford reasonable grounds for belief that the appellants will not carry on business in accordance with law and with integrity and honesty?***

[13] I find that the past conduct of Mr. Kooner affords reasonable grounds for belief that the appellants will not carry on business in accordance with law and with integrity and honesty because the safety record of Mr. Kooner's trucking business, Harmeeek Transport, is poor and demonstrates a pattern of trucks being on the road with defects, some of them major, non-compliance with MTO requirements and numerous breaches of the law resulting in convictions.

[14] Travis Donohue, Carrier Safety Rating Administrator, Ministry of Transportation ("MTO") testified that Mr. Kooner is the sole director, officer and operator of Harmeeek Transport which has operated as many as fourteen trucks under a Commercial Vehicle Operator's Registration Certificate ("CVOR") issued by the MTO in 2005. He testified that he has met Mr. Kooner before and dealt with him in English. His 2008 audit notes record that he met with Mr. Kooner for the audit and there is no evidence in his notes that Mr. Kooner required a translator. Had this occurred, he would have noted it.

[15] He reviewed Harmeeek Transport's record which shows a history of violations of MTO requirements, convictions and interventions by the MTO. Violations include these defects on trucks:

- a) Brake system defects
- b) Wheels with cracked or damaged rim
- c) Load security
- d) Driveshaft defect
- e) No safety triangles or flares in vehicle
- f) Defective tires
- g) Defective lighting system
- h) Broken leaf spring

- i) No brake lights
- j) Mud seeping out of tailgate
- k) Horn not working
- l) Wheel becoming detached on 401 while truck in motion
- m) Defective suspension
- n) Bracket on vehicle contacting tire
- o) Steering system defect
- p) Air bags not working properly
- q) Driveshaft defect

[16] In 2016 the MTO took the appellants' trucks out of service several times and found defects in brakes, driveline, wheels/rims, trip inspection, load security and tires. Harmeeek Transport was given a conditional rating. MTO removed plates from the appellants' trucks on December 10, 2015, July 23, 2013 and twice in October 2014. On one occasion a wheel came off a truck while being driven resulting in a collision. On another occasion a truck failed to stop in the rain and hit a school bus.

[17] The appellants have convictions, including:

- a) eight counts of fail to ensure performance standards from 2013 to 2016
- b) trip inspection – December 2015
- c) no brake lights – June 2015
- d) no working speed limit system – November 2014
- e) vehicle part detached on highway – October 2014
- f) drive with major defect – August 2014 and May 2013
- g) no name on commercial vehicle – June 2014
- h) fail to ensure daily inspection reports complete – July 2013
- i) fail to surrender CVOR certificate – August 2014

- [18] Mr. Donohue explained that through interventions the MTO has tried to educate Mr. Kooner about the legal requirements for operating Harmeeek Transport and tried to bring Harmeeek Transport into compliance with the legislation. MTO interventions started in 2007 with a warning letter about the serious lack of compliance. There was an audit in 2008 which Harmeeek Transport failed and as a result of which it was given a conditional safety rating. In 2009 the MTO refused 143 a CVOR licence because of Harmeeek Transport's conduct. Mr. Kooner attended a show cause meeting with MTO officials in March, 2010 at which, in response to a request from the MTO, Mr. Kooner submitted a safety maintenance plan, which Harmeeek Transport then failed to follow. The MTO issued a Notice of Cancellation and Seizure in April, 2012, which Harmeeek Transport appealed and which was resolved on the parties' consent, resulting in a 10 day suspension and seizure in July 2012. In 2012 Harmeeek Transport was given an unsatisfactory safety rating which was changed to conditional after the suspension was over. The MTO conducted a facility audit in May, 2013 which Harmeeek Transport passed. By 2014, Harmeeek Transport's safety rating was changed from satisfactory to conditional. Mr. Kooner attended a second show cause meeting with the MTO in 2015 following which a suspension and seizure order was made and appealed, and which resulted in a fifteen day suspension and seizure in March 2016.
- [19] Laura Halbert, OMVIC's Deputy Registrar and Director of Compliance testified that in May 2016 OMVIC received an application from 143 to be registered as a motor vehicle dealer and an application from Mr. Kooner to be registered as a motor vehicle salesperson. Mr. Kooner, sole officer and director of 143, completed both applications. 143's application states that it will be dispatch for Harmeeek Transport. Mr. Kooner passed the English language OMVIC test with a score in the high 60's and did not ask for any extra time to complete the test or accommodation.
- [20] Ms. Halbert said that the motor vehicle sales industry is highly regulated and one of the purposes of the Act is to make sure the public is safe and receives an accurate record of any vehicle being purchased. She said the MTO and the Act require similar disclosure and record keeping. Therefore, Mr. Kooner's history of non-compliance with the MTO is the best indicator of his future conduct with OMVIC. She testified that the respondent considered the improvement in the MTO audits of Harmeeek Transport but said the improvements were made with a huge amount of oversight and intervention by the MTO and even so there is a pattern of non-compliance with MTO requirements. In her view Mr. Kooner, who directs the activities of Harmeeek Transport, has not demonstrated a significant, sustained improvement but only

improvement in response to MTO intervention and action. Any improvement in Harmeeek Transport's conduct with MTO does not outweigh the years of non-compliance with MTO requirements and the fact that Mr. Kooner lied several times to OMVIC in the applications. Ms. Halbert said OMVIC is concerned because Harmeeek Transport's CVOR was suspended as recently as 2016 - the same year in which the appellants applied to OMVIC for registration. The respondent's mandate is to protect the public, and approving the appellants' applications would not fulfill that mandate. She stated that the appellants should wait more time before reapplying if their licences are refused by the Tribunal.

- [21] Roop Parminder Singh Gill, employed as a truck driver by Harmeeek Transport since 2014 testified that he had no truck driving experience prior to being employed by Harmeeek Transport and has been trained by Harmeeek Transport. He admitted that trucks driven by him have been inspected and convictions have resulted.
- [22] Bevneet (Bob) Punia, a special advisor to the Ontario Dump Truck Association, a lobby group, testified that Harmeeek Transport is a member of the Association but said he was not familiar with Harmeeek Transport's CVOR record. Mr. Punia testified that the aggregate industry was given an exemption from s. 115 to s. 117 of the *Highway Traffic Act* and that in January, 2015 this exemption was extended to the excavation industry. Although he spoke generally of overloading of trucks by contractors and the adverse effects of overloading on the mechanical operation of trucks and other issues in the industry, he gave no specific testimony about the past conduct of the appellant, Harmeeek Transport's CVOR record or the statements Mr. Kooner made in the appellants' applications to OMVIC. His testimony was not relevant to the issues in this appeal and is given no weight.
- [23] The appellant Hardeep Singh Kooner came to Canada in 1999. He testified that Punjabi is his mother tongue and preferred language. He worked as a truck driver first and later started Harmeeek Transport and 143. He is the officer and director and directs both companies himself. Mr. Kooner did not dispute the safety record of Harmeeek Transport Inc. described by Mr. Donohue. He explained that Harmeeek Transport hauls excavation material mostly which is more difficult than hauling aggregate. For excavation materials, dump trucks are often required to drive on uneven roads and dumpsites are rough. Contractors overload the trucks with excavation material and if he complains, Harmeeek Transport can lose work. Because his trucks are often overloaded, this affects axles, suspension, brake lines, rims, tires, airlines and all

mechanical aspects of the trucks. Mr. Kooner said that the Ontario Dump Truck Association is concerned about overloading too. Weight is an everyday problem for him and others in the industry and this has caused mechanical issues with his trucks. He said that in the past some mechanical issues were not correctly repaired and he has a new mechanic now. He has implemented better driver training and a preventative maintenance program.

- [24] He said that in 2012 his wife got sick and because of that his attention to Harmeeek Transport was less. He also had a bad driver for 6 months to a year who caused some problems, and that person has been fired. He also said each of the convictions can each be explained such as when his wife went to court for him on one charge and pleaded guilty because she did not know what else to do when an adjournment was refused.

Submissions of OMVIC

- [25] OMVIC submits that Mr. Kooner's past conduct affords reasonable grounds for the belief that he will not carry on business in accordance with the law and with integrity and honesty because he has a long history of violations, convictions and interventions from MTO. This application is premature because the modest improvement in response to the actions taken by MTO is not enough to overcome eleven years of non-compliance with MTO requirements and the legislation applicable to Harmeeek Transport. Also, OMVIC submitted that as recently as 2016, Harmeeek Transport was sanctioned by the MTO and given a conditional rating.

Submissions of Appellants

- [26] The appellants submit that Harmeeek Transport's trucks are being overloaded by contractors and this has negatively affected its safety record and caused not just weight offences but other offences as well. I do not accept this submission. Mr. Kooner as the officer, director and directing mind of Harmeeek Transport is responsible for its compliance with the law. Financial pressure or the risk of losing work cannot be used as an excuse for failing to comply with the law. Mr. Kooner submitted that the convictions are explainable by the failed work of his mechanic, by his driver or by his wife and her medical condition. Mr. Kooner had the opportunity to raise all appropriate defences to the charges in court and the convictions in evidence cannot be re-opened or re-argued before me. I find that Mr. Kooner's past conduct and that of Harmeeek Transport, evidenced by the safety convictions, does afford reasonable grounds for the belief that 143 and Mr. Kooner will not carry on business in accordance with the law and with integrity and honesty.

[27] The appellants also submit that there has been improvement in the record of Harmeeek Transport as a result of Mr. Kooner taking responsibility, providing training for drivers and implementing a preventative maintenance program. In finding that the respondent has proven its case I have considered the whole of Mr. Kooner's conduct. Although Mr. Kooner has made some progress with the safety record of Harmeeek Transport, this progress is not enough to overcome the repeated violations and convictions and interventions by the MTO over a period of eleven years preceding the appellants' applications to OMVIC. One of the purposes of the Act is protection and safety of the public. A motor vehicle dealer and its salesperson must be able to conduct business in accordance with the law and with integrity and honesty. Members of the public must be able to be safe and feel safe and to have trust and confidence in their motor vehicle dealer and salesperson, in the record keeping and compliance with the law. Given Harmeeek Transport's poor safety over many years and the convictions it has not been long enough since Harmeeek Transport's last conviction, last safety inspection violation and last intervention by MTO for the appellants to demonstrate that they are able to conduct business in accordance with the law and with integrity and honesty under the Act.

b. Did Mr. Kooner make false statements in the appellants' applications for registration given that Mr. Kooner says that English is not his first language and he did not understand the questions?

[28] I find that false statements were made by Mr. Kooner in the applications for registration of 143 and himself. With respect to both false statements, Mr. Kooner said that because English is not his first language he did not understand the questions. I do not accept this testimony. Ms. Halpern testified that Mr. Kooner passed the English language OMVIC test with a score in the high 60's and did not ask for any extra time to complete the test or for any accommodation. Mr. Donohue testified that he met with Mr. Kooner for the 2008 audit and dealt with him in English. There is no evidence in his 2008 audit notes that Mr. Kooner required a translator. Mr. Donohue said that had this occurred, he would have noted it. At the hearing, Mr. Kooner answered his counsel directly without the assistance of the interpreter sometimes and read out loud some exhibits written in English. I find that Mr. Kooner was able to read and understand English sufficiently to understand the questions on the OMVIC applications being asked of him and to answer them.

[29] On the May 19, 2016 OMVIC application for 143 Mr. Kooner answered "no" to the question "Has the applicant ever had a commercial, professional or business registration certificate or licence of any kind refused..." OMVIC says

this was a false answer because 143 had previously been refused a CVOR certificate by the MTO in 2009 as Mr. Donohue testified. Mr. Kooner testified that he answered “no” to this question because he understood this question referred to his Ontario driver’s licence. He said he had no intention of providing false answers or not disclosing the information, and he would have disclosed it if he had known he had to. The Notice of Refusal to Issue a Commercial Vehicle Operator’s Registration Certificate (Ministry of Transport) dated November 12, 2009 was addressed to Mr. Kooner as President of 143. Further, Mr. Kooner testified that he knew the reason for the refusal and therefore it is more likely than not that he was aware of the refusal. When asked by OMVIC to provide details of the refusal he was able to do so in his written response to OMVIC’s letter received by OMVIC on July 26, 2016. There is no reference in the question to his driver’s licence, and this interpretation of the question is neither reasonable nor credible. Mr. Kooner filled out the application on behalf of 143, checked off the box “Corporation” and signed it. In bold lettering in a box immediately preceding this question it is noted that the “applicant” is the “...relevant...corporation identified in Section A...” Mr. Kooner correctly answered the other questions on the application. I find Mr. Kooner’s answer was false, that he had knowledge of the CVOR refusal, failed to disclose it and knowingly falsely answered this question.

[30] On his May 19, 2016 OMVIC application Mr. Kooner answered ...“no” to the question “Is the applicant currently (or has the applicant ever been) an officer, director, owner, partner or operator of a business/company that’s been charged or convicted of an offence under any law....” OMVIC says this was a false answer because Harmeeek Transport had numerous regulatory offence convictions related to its CVOR certificate as Mr. Donohue testified. Mr. Kooner testified that he answered “no” to this question because he understood this question referred to his Ontario driver’s licence and he did not know the regulatory offences of Harmeeek Transport should have been disclosed as that was a separate corporation. He said he had no intention of providing false answers or not disclosing the information and would have disclosed it if he had known he had to. I find Mr. Kooner’s answer was false, that he had knowledge of convictions against Harmeeek Transport having been to court to deal with the charges and that he knowingly falsely answered this question.

[31] The appellants suggest that I follow *Ability Moving & Transfer Ltd. (Re)*, [2009] O.L.A.T.D. No. 203, *Thistle town Motor Freight (2003) Inc. (Re)*, [2006] O.L.A.T.D. No. 580, *6233317 Canada Inc. (c.o.b. Rockwell Truck Line) (Re)*, [2015] O.L.A.T.D. No. 226 and *Pouraziz (Re)*, [2011] O.L.A.T.D. No. 252. I reviewed these cases and find none of them persuasive as not only do the

facts differ greatly from this case. In several of the cases appellants' counsel provided, the appellants had taken steps quickly to improve their safety records, unlike these appellants who had a poor safety record for years. In one of the cases cited, the appellant was going to be working with oversight and supervision unlike in this case where Mr. Kooner is the directing mind and sole owner of 143. In this appeal there was no testimony from the safety consultant hired by the appellants.

c. Is refusal to register 143 as a motor vehicle dealer and Mr. Kooner as a motor vehicle salesperson appropriate?

[32] Even if the respondent has proven a ground of refusal, there can be cases when the imposition of conditions can adequately protect the public interest. However, in this particular case I do not find that conditions are an appropriate alternative to refusal. The appellants' counsel said the appellants would be open to conditions including not selling "as is" vehicles, vehicles with over \$3,000.00 in damage, structural damage, vehicles with excess use such as taxis, emergency vehicles, daily rentals or other heavily used vehicles, and using a mechanic approved by OMVIC. The respondent's counsel submits that OMVIC has no confidence in Mr. Kooner's conduct based on his handling of business at Harmeeek Transport. The respondent submits that if he cannot adequately maintain his own fleet of trucks then it expects similar problems with vehicles Mr. Kooner would sell to the public.

[33] Nothing in the evidence led me to believe that these or any other conditions attached to the licences would be appropriate or effective. While Mr. Kooner and 143 are not applying for CVOR licences, I find that there are no conditions that would make it appropriate to grant the appellants' registration in light of the lengthy safety record, including convictions; the fact that the safety record has improved only slightly and only with much MTO oversight; the inability to maintain their truck fleet; and the false statements on their applications.

ORDER:

[34] For the reasons set out above I order the respondent to carry out the NOP.

LICENCE APPEAL TRIBUNAL



Avril A. Farlam, Vice-Chair

Released: September 10, 2018