

**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: *Michael Lehtonen v. Registrar, Motor Vehicle Dealers Act, 2002*, 2019 ONLAT  
MVDA 11878

Date: 2019 -07-11

File Number 11878/MVDA

Appeal from the Registrar's Proposal under the *Motor Vehicle Dealers Act, 2002*, S.O.  
2002, c. 30, Sched. B and Regulations, to refuse the registration of Michael Lehtonen as  
a Salesperson

**Between:**

Michael Lehtonen

Appellant

and

Registrar, Motor Vehicle Dealers Act

Respondent

**DECISION AND ORDER**

**Panel:** Harriet Lewis, Member

**Appearances:**

**For the Appellant:** Self Represented: No appearance

**For the Respondent:** Vlad Bosis, Counsel

## **A. OVERVIEW**

[1] On or about September 4, 2019, Michael Lehtonen (the Appellant) signed and applied for registration as a motor vehicle salesperson (the application) under the *Motor Vehicle Dealers Act, 2002* (the Act). He had not previously applied for registration as a salesperson.

[2] The required application is in a form established by Ontario Motor Vehicle Industry Council, (OMVIC), which is the body delegated by the Registrar of Motor Vehicle Sales (the Registrar) to administer the registration process.

[3] On January 21, 2019, the Registrar issued a proposal to refuse the Appellant's registration as a salesperson. On March 1, 2019, having come into possession of further information, the Registrar amended the January proposal by adding further grounds. The amended proposal (the Proposal) is to deny the Appellant's registration on the grounds that the Appellant will not carry on business as a salesperson with honesty and integrity, based on the following:

- i. The Appellant's conduct before and after submitting his application for registration is enough to conclude pursuant to section 6(1)(a)(ii) of the Act that the Appellant will not carry on business as a salesperson with honesty and integrity.
- ii. The Appellant made false and misleading statements in his application for registration which disentitle him to registration pursuant to section 6(1)(a)(iii) of the Act.

On February 5, 2019, the Appellant filed a Notice of Appeal of the Proposal.

[4] Having heard the Registrar's evidence, and in the absence of any contrary or mitigating evidence from the Appellant, I find that the Registrar has reasonable grounds for refusing the Appellant's registration as a salesperson under the Act.

## **B. PRELIMINARY ISSUES**

[5] The hearing of this matter was scheduled for June 3 and 4, 2019 at 9:30 a.m. in Collingwood, Ontario. In March 2019, the Appellant was served with a Notice of Hearing and a Case Conference Order, each containing the hearing date, place and time. By letter to his home address dated May 14, 2019, OMVIC served the Appellant with the respondent's materials and reminded him of the dates and time of the hearing. On May 29, 2019, the Tribunal's case management officer sent an email to the parties reminding them of the hearing date, time and place. In addition to the Tribunal member and a court

reporter, the respondent's counsel and three of the respondent's witnesses were present at the scheduled time.

[6] By 10:00 a.m. on June 3, 2019, the Appellant had not yet appeared. At my request, the case management officer telephoned each of the business and cell phone numbers provided by the Appellant but was unable to contact him.

[7] The Appellant having had due notice of the hearing, at the request of counsel for the Registrar, and in accordance with s. 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, I agreed to proceed in the absence of the Appellant, noting that if he were to appear during the hearing, the process would be arranged to facilitate his evidence. However, he did not appear.

### **C. ISSUES**

[8] The issues to be determined are:

- (i) Does the Appellant's past conduct afford reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty.
- (ii) Has the Registrar established that the Appellant provided false or misleading information on or with his application for registration?
- (iii) Based on the findings on issues (i) and (ii), should the Tribunal order the Registrar to carry out the proposal to deny the Appellant's registration as a motor vehicle salesperson?

### **D. EVIDENCE**

[9] The Registrar called three witnesses to testify:

- i. Karmjit Sidhu, the OMVIC Registration Officer assigned to oversee the Appellant's application process and ensure that his documentation was complete and accurate;
- ii. Christina Gorea, the Registration Team Lead at OMVIC who oversees the registration department and Ms. Sidhu; and
- iii. Andrea Korth, Business Standards and Project Manager, OMVIC.

[10] Ms. Sidhu testified that she received the Appellant's application for registration on September 20, 2018, duly signed by both the Appellant and his authorized employer and sponsoring dealer, Mr. Paul Thurston of Thirst-T's Cycle Limited.

[11] The application for a salesperson contains a "Section D: Eligibility", which asks a series of nine questions, all of which are required to be answered. A note at the bottom of the section specifies that if an applicant answered no to Question 1 or yes to any of Questions 2-8, they are expected to "provide the details on a statement signed and dated by the applicant and an authorized individual at the dealership". The Appellant answered no to Question 1, which asked whether he currently holds a valid Ontario driver's licence. He did not answer Question 3 which asks whether there are "any unsatisfied judgements, court orders or collections pending", and he answered yes to Question 8 which asks the applicant to indicate "whether the applicant has ever been found guilty or convicted of an offence under any law or are there any charges pending". Question 8 goes on to say: "Make sure to include those cases with a conditional, absolute discharge or stayed charges". Question 9 refers to the requirement to obtain a BackCheck clearance report in support of the application.

[12] Section E of the Application is entitled "Consent and Undertaking". It was signed by the Appellant and includes a confirmation:

"that I have not misrepresented or omitted any material facts in any document or statement made in support of this application. I understand that each statement is subject to verification.... I further understand the provision of false, incomplete or misleading information, or the omission of information in this application or the documents submitted with it may result in the refusal, suspension or revocation of registration".

[13] Accompanying the Appellant's application was a document entitled "Detailed Statements", signed by the Appellant and his employer on September 14, 2018. In that section, the Appellant purported to explain the answers to questions 1 and 8 by stating that he had been in a car accident leading to his driver's licence being suspended for a period of six months.

[14] A subsequent police information check and driving record check led the Appellant to disclose that he had been convicted on April 12, 2018 of driving with more than 80 mgs of alcohol in his blood. He was fined \$1,000 and his licence was suspended for one year rather than the six months that he had disclosed.

[15] Given the discrepancy in information, on September 26, 2018, Ms. Sidhu advised the Appellant by telephone that a second (level two) police report would be required. In recounting that telephone conversation, Ms. Sidhu said that the Appellant told her that he was refusing to submit a further report, asked for his money back, swore profusely

and advised her that his lawyer would be contacting her. Two days later, on September 28, 2019, he wrote Ms. Sidhu to apologize for his behaviour. Mr. Thurston co-signed the letter. In that letter, the Appellant also disclosed the fact that there were criminal charges pending against him.

[16] In that letter, Ms. Sidhu learned that the charges pending against the Appellant were for spousal assault, mischief and careless storage of a firearm. She therefore advised the Appellant that OMVIC would be ordering third party documentation to confirm this disclosure. As a result, the Appellant wrote to Ms. Sidhu to explain this non-disclosure, saying that he “failed to see the relevance of this personal domestic dispute or how these specific pending charges could correlate to obtaining a sales licence.” The fact that these charges were not disclosed remained a serious concern to OMVIC. On November 7, 2018, Ms. Sidhu sent an e-mail to the Appellant, asking that he provide information from his lawyer informing OMVIC if there was a possible resolution to the pending charges.

[17] Ms. Sidhu referred in her evidence to copies of three e-mails included in the respondent’s submissions. These had been received from the Appellant just moments after her request concerning the resolution of the pending charges: one in which he asked if she is being paid with public taxes, one in which he asked who pays her salary and a third in which he requests her citizenship and country of origin. At that point, Ms. Sidhu forwarded the file to Ms. Gorea who became engaged in additional correspondence with the Appellant.

[18] Ms. Gorea recalled the occasions on which she communicated directly with the Appellant, noting that it is unusual for her to engage with applicants. She did so in this case because of the Appellant’s rude and inappropriate behaviour towards Ms. Sidhu. As was usual in such cases, she also notified the sponsoring employer, Mr. Thurston, copying his dealership on the correspondence.

[19] On December 11, 2018, the Appellant pleaded guilty to the careless storage of a firearm and received a conditional discharge and a year’s probation. The charges of spousal assault and mischief were withdrawn. On December 21, 2018, the Appellant notified OMVIC of this information by an e-mail to Ms. Gorea and was advised, in return, that his application would now be forwarded to the legal department for review.

[20] On January 3, 2019, the Appellant wrote to Ms. Gorea as follows:

“Hey Sherlock Holmes, If you can’t get your act together over there I’m going to require a full refund and will be withdrawing my application”.

[21] Ms. Gorea replied on January 7, 2019, confirming that the legal review had not yet been completed, and that the Appellant would be advised once the application was

reviewed and a decision was made. She also advised that if he wished to withdraw his application, he must do so in writing.

[22] The Appellant did not withdraw his application. On January 21, 2019, the Notice of Proposal to deny registration was issued. The Appellant's Notice of Appeal was filed on February 5, 2019.

[23] Ms. Korth testified that her role with OMVIC includes the drafting of proposals to refuse, revoke or suspend registration. While a number of people have input into the decision on registration, it is ultimately the Registrar who makes a decision on the evidence before him.

[24] In this case the Registrar considered the false statements and omissions in the Appellant's application, as well as the conduct of the Appellant in the course of the application process.

[25] Ms. Korth confirmed that the Act and the rules for registration are designed for the protection of the public. There are approximately 8,000 registered motor vehicle dealerships in the province, and approximately 28,000 salespeople. The business and profession of motor vehicle sales is therefore highly regulated and the system of registration depends on voluntary, complete and honest disclosure in accordance with the Act and regulations. She stated that industry and the public should be entitled to rely on the willingness of dealers and salespersons to make proper disclosure.

[26] Ms. Korth noted that the Appellant did not voluntarily make full answer to the application questions, and provided a false answer as to the length of his vehicle licence suspension. He provided information about his pending criminal charges only after third party information was obtained by OMVIC. As of the date of the hearing, his period of probation in respect to his careless weapons charge had not yet expired. For that reason, it is not known how he will behave when unsupervised, but his conduct toward Ms. Sidhu, Ms. Gorea and to the rules of OMVIC in general, indicates that there is reason to believe he is ungovernable. In Ms. Korth's view, the Appellant's swearing, belligerent behaviour and demands for Ms. Sidhu's ethnic origin and citizenship were illustrative of his lack of professionalism and un-governability.

## **E. LAW AND ANALYSIS**

[27] Section 6(1)(a)(ii) of the Act provides that an applicant that meets the prescribed requirements is entitled to registration by the Registrar except where "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."

[28] Section 8(1) allows the Registrar to refuse registration, subject to s. 9(1) of the Act. That section requires the Registrar to serve a notice to the applicant of the proposal to refuse registration, together with written reasons therefor.

[29] Because the legislation speaks to the entitlement of the applicant to registration, the burden of proving disentitlement falls on the Registrar. The standard of proof for whether the Appellant will carry on business in accordance with the law and with integrity and honesty is “reasonable grounds for belief”. Reasonable grounds for belief will exist where there is an objective basis for the belief which is based on compelling and credible information.

[30] The Tribunal did not have the benefit of the evidence of the Appellant or his sponsoring employer in this case and I therefore rely on the evidence of the Registrar’s witnesses and the written record as submitted through those witnesses. I find the witnesses’ evidence to be credible and that the written evidence supports the oral evidence.

Did the Appellant make or provide a false statement in his application to be registered as a salesperson?

[31] The evidence tendered by the Registrar is that the Appellant executed the OMVIC salesperson application form in which he:

1. Confirmed that he had not misrepresented or omitted material facts;
2. Gave OMVIC permission to verify all statements or documents made in support of the application; and
3. Gave OMVIC the right to collect additional information from or exchange information with government and relevant non-government sources.

[32] Ms. Sidhu and Ms. Gorea gave evidence to show that in respect to the application form and the follow-up request for further particulars, the Appellant both omitted and misrepresented material facts. He had appeared in court in April 2018, at which time his driver’s licence was suspended for one year. That took place five months before his application for registration on which he knowingly and falsely claimed that his licence had been suspended for only six months. Further, he knowingly failed to disclose the existence of serious criminal charges which were pending against him at the date of the application, and in respect to one of which he remains on probation until December 11, 2019.

[33] I find that the Appellant knowingly failed to fully and honestly comply with the requirements of registration and instead made false statements in his application for registration.

Does the Appellant's past conduct afford reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty ?

[34] In argument, counsel for the Registrar acknowledged that the existence of a criminal conviction, while relevant to conduct, is not necessarily sufficient grounds to deny registration as a motor vehicle salesperson. However, he cited the case of *Re: Briden* [2008] O.L.A.T.D. as authority for the position that the Registrar is entitled to determine that an applicant should experience a period of unsupervised behavior after the end of a period of court imposed probation to establish the ability of the applicant to behave in compliance with the law. The Appellant has not yet experienced a post probation period of unsupervised good behaviour.

[35] Counsel further argued that the Appellant's rudeness and belligerence towards Ms. Sidhu and Ms. Gorea and the reference to Ms. Sidhu's ethnic origin which was made during the course of his application for registration are conduct so egregious as to raise a serious question as to the Appellant's ability to control his behaviour. He submitted that the Registrar is entitled to take such conduct into consideration in making a determination on governability and therefore suitability for registration.

[36] The Appellant repeatedly failed to provide required information until pressed to do so. Even then, he did not fully or honestly disclose relevant information including the length of his licence suspension and the existence of serious pending criminal charges. The nature and extent of the charges was only determined after OMVIC had requested and reviewed the sentencing report of those charges. Throughout the application process, the Appellant behaved in a rude and inappropriate manner towards Ms. Sidhu and Ms. Gorea even though they made it clear that they were working within the requirements set out by the regulatory authority for advancing his application process. I find that throughout the process the Appellant's behaviour was such that it is reasonable to conclude that he is unlikely to abide by the voluntary self-reporting and disclosure requirements required of salespersons and is ungovernable.

## **F. CONCLUSION**

[37] I therefore find on the evidence both that the Appellant made false statements on his application and that his conduct prior to and during the registration process affords reasonable grounds for the belief that the Appellant will not carry on business in accordance with the law and with integrity and honesty.

**G. ORDER**

[38] Pursuant to s. 9(5) of the Act, I direct the Registrar to carry out the Notice of Proposal to refuse the Appellant's registration as a salesperson pursuant to the Act.

Released: July 11, 2019

LICENCE APPEAL TRIBUNAL

A handwritten signature in cursive script, appearing to read "Harriet Lewis", written over a horizontal line.

Harriet Lewis, Member