



Citation: Veerasingam v. Registrar, *Motor Vehicle Dealers Act, 2002*, 2023 ONLAT MVDA 14410

Licence Appeal Tribunal File Number: 14410/MVDA

In the matter of an appeal from a Notice of Proposal to Refuse to register the appellant as a salesperson under the *Motor Vehicle Dealers Act, 2002*.

Between:

Beashema Veerasingam

Appellant

and

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

DECISION

VICE-CHAIR: Colin Osterberg

APPEARANCES:

For the Appellant: Zeeshan Rahman, Paralegal

For the Respondent: Andrea Di Fazio, Student-at-Law, Representative

HEARD: June 7 and 13, 2023

OVERVIEW

- [1] Pursuant to a Notice of Proposal dated October 29, 2022 (“NOP”), the Registrar, *Motor Vehicle Dealers Act, 2002* (the “Registrar”) proposes to refuse the registration of Beashema Veerasingam (the “appellant”) as a motor vehicle salesperson under the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 20, Sched. B (the “Act”).
- [2] The Registrar alleges that the appellant’s past conduct affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty pursuant to s. 6(1)(a)(ii) of the *Act*.
- [3] Under s. 6(1)(a)(ii) of the *Act*, an individual appellant is disentitled to registration as a motor vehicle salesperson if his past conduct affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty. The Registrar argues that there are such reasonable grounds for belief based on its allegations that:
1. the appellant sexually harassed a co-worker and customers at two separate motor vehicle dealerships;
 2. the appellant made false claims relating to the alleged harassment in an effort to exculpate himself; and
 3. the appellant failed to accept accountability for his conduct.
- [4] The appellant appeals the NOP to the Tribunal. He denies some of the allegations made against him and says he has mitigating explanations for others. He says that the conduct alleged in all of the circumstances does not warrant disentanglement to registration.

PRELIMINARY ISSUES

Adjournment Request

- [5] At the commencement of the hearing, the appellant requested that the hearing be adjourned. The hearing was scheduled for three days from June 7 - 9, 2023. The appellant’s representative stated at the outset of the hearing on June 7, 2023, that the appellant was not available to attend the hearing on June 9, 2023, because he was required to attend a religious festival in Rochester, New York.

Also, the appellant's representative's mother was scheduled to be in hospital for tests on June 8, 2023, and he would like to be in attendance for that.

- [6] In addition, the appellant's representative said that he had not yet produced the documentation he intended to rely on at the hearing and had not arranged for his witnesses to attend at the hearing. The reason given for the failure of the appellant to properly prepare for the hearing was that he and his representative thought that the matter might settle and assumed that the hearing would not be necessary.
- [7] The Registrar took no position on the adjournment request but advised that it was ready to proceed.
- [8] For the reasons which follow, I denied the adjournment request but ordered that the hearing proceed on June 7, 2023, and June 13, 2023, in order to accommodate the appellant's religious obligations.
- [9] A Case Conference in this matter was held December 21, 2022, and at that time the parties confirmed that they were available for the hearing either May 9-11, 2023, or June 5-9, 2023. The hearing was scheduled for May 9-11, 2023. On March 21, 2023, an adjournment request made by the respondent was granted and the hearing was moved to the June 7-9, 2023 hearing dates on consent and was marked peremptory on the respondent to proceed. In that decision, the adjudicator made it clear that, generally, unspecified scheduling conflicts are not sufficient grounds to grant an adjournment request and that "for the sole reason" that the parties had agreed to a short adjournment which would not unduly delay the proceedings, the adjournment was granted. A Notice of Hearing for June 7-9, 2023, was sent to the parties by the Tribunal on March 23, 2023.
- [10] On May 26, 2023, the appellant filed a request to adjourn the hearing because the appellant had a "conflict of dates" and was unavailable to attend "the hearing fully". On May 30, 2023, the Tribunal denied the adjournment request and directed the parties to attend and participate in the hearing on the dates scheduled. As noted above, the appellant again requested that the hearing be adjourned on June 7, 2023, after the hearing had commenced.
- [11] The Tribunal is entitled to control its procedure and has the discretion to grant or deny adjournment requests: See *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, ss. 21 and 25.01(a); *Riddell v. Huynh*, 2019 ONSC 2620 (Div. Ct.), at para. 33.

- [12] When considering an adjournment request, the Tribunal will consider, among other factors, the timeliness of the request, whether the parties have been given the opportunity to canvass their availability, the specific reasons for being unable to proceed on the scheduled date, the length of the requested adjournment, whether previous adjournments have been granted or denied, previous peremptory hearing dates, and any other relevant factor. See also *Law Society of Upper Canada v Igbinosun*, 2009 ONCA 484 at para. 37.
- [13] In the present case, the appellant's request to adjourn these hearing dates was denied in the Tribunal's Order dated May 30, 2023. The Tribunal has consistently held that an adjournment request following a previous denial will only be considered where a party has identified new or exceptional circumstances. These hearing dates, June 7-9, 2023, were canvassed and agreed to by the appellant in December 2022 and scheduled in March 2023. The appellant did not raise his inability to attend all of those dates until May 26, 2023, less than two weeks before the dates scheduled. The appellant's representative only advised as to the specifics of the appellant's previous commitment on the morning the hearing commenced and only said that he (the representative) wanted to attend hospital with his mother the following day at that time.
- [14] The fact that the appellant had not yet produced the documentation that he intended to rely on at the hearing and had not arranged for his witnesses to attend at the hearing is not a reasonable basis for the requested adjournment. At the Case Conference in December 2022, the parties were ordered to exchange any and all documentation they intended to rely on at the hearing together with written summaries of each witness's anticipated evidence no later than March 29, 2023.
- [15] A parties' failure to comply with the Tribunal's production order is not a reasonable basis upon which that party may request an adjournment. Subject to any exceptional circumstances, the parties have the obligation to proceed on the scheduled hearing dates. I find the appellant's submission that he thought the matter might settle to be irrelevant to this obligation.
- [16] For these reasons I ordered that the matter proceed on June 7, 2023, as scheduled. I reluctantly allowed the matter to continue on June 13, 2023, since the parties and the Tribunal were able to complete hearing the evidence on that date and as that would accommodate the attendance by the appellant at the religious event in Rochester.
- [17] The hearing proceeded on those dates and the parties provided their closing arguments in writing as I ordered at the conclusion of the evidence.

Request for Confidentiality Order

- [18] In the appellant's closing submissions at para. 93, he made a request for a confidentiality order; specifically a request to seal the Tribunal's adjudicative record for this matter. The appellant submits that he has built a strong and valuable base of clients and the record, if left unsealed, would tarnish that reputation, as well as having potential impacts on his personal life. The appellant did not file a formal motion for a confidentiality order with the Tribunal, as he was of the opinion that there would not be sufficient grounds to support the position.
- [19] The Registrar's position is that there is no compelling reason to make an order to seal the record.

Legal Framework

- [20] The Tribunal's adjudicative records are generally open to the public, in accordance with the open court principle: see *Toronto Star v. AG Ontario*, 2018 ONSC 2586. The *Tribunal Adjudicative Records Act, 2019*, S.O. 2019, c. 7, Sch. 60 ("*TARA*") requires that the Tribunal make its adjudicative records available to the public. Adjudicative records include the notice of appeal, the evidence that is admitted in the proceeding, parties' submissions, and the Tribunal's decisions, along with the other documents listed in s. 1(2) of *TARA*.
- [21] As public access to adjudicative records is protected by s. 2(b) of the *Canadian Charter of Rights and Freedoms*, restrictions on access are exceptional. Pursuant to s. 2(2) of *TARA*, the Tribunal may order that all or part of an adjudicative record be treated as confidential and not disclosed to the public if the tribunal determines that:
- a. matters involving public security may be disclosed; or
 - b. intimate financial or personal matters or other matters contained in the record are of such a nature that the public interest or the interest of a person served by avoiding disclosure outweighs the desirability of adhering to the principle that the record be available to the public.
- [22] Rule 13.1 of the Licence Appeal Tribunal, Animal Care Review Board, and Fire Safety Commission Common Rules of Practice and Procedure, Version I (October 2, 2017) ("*Rules*") is consistent with *TARA* and permits the Tribunal to restrict public access to the adjudicative record on the same grounds.

[23] The Supreme Court of Canada in *Sherman Estate v. Donovan*, 2021 SCC 25 (“*Sherman Estate*”) outlines a three-part test. All three prerequisites must be met in order to properly impose a discretionary limit on openness:

1. Court openness poses a serious risk to an important public interest;
2. the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
3. as a matter of proportionality, the benefits of the order outweigh its negative effects.

[24] The person seeking to restrict access to adjudicative records has the onus of displacing the general rule of openness. Upholding the presumption of openness generally involves a recognition that neither individual sensibilities nor mere personal discomfort associated with participating in judicial or quasi-judicial proceedings are likely to justify a restriction on the open court principle.

Has the Appellant Established a Basis for a Confidentiality Order?

[25] The central thrust of the appellant’s submission is that the Tribunal decision may contain information that may impact his base of clients, tarnish his reputation, and negatively impact his personal life.

[26] I note that the Court in *Sherman Estate* states at paragraph 63, among other things:

...neither the sensibilities of individuals nor the fact that openness is disadvantageous, embarrassing or distressing to certain individuals will generally on their own warrant interference with court openness.

[27] While personal reputational harm can be an important public interest according to *Sherman Estate*, the question is whether that interest rises to the level necessitating a sealing order or some other form of confidentiality order.

[28] While I appreciate that there is an important public interest to protecting the appellant’s private information it does not supersede the fundamental importance of the open court principle. I am not satisfied that the appellant has provided the Tribunal with evidence that would demonstrate a serious risk to his professional reputational interests nor his personal life such that it would rise to the level of an important public interest.

[29] The appellant's request is denied as the first prong of the test has not been met. Nonetheless I will consider the other two prongs of the *Sherman Estate* test. Second, I am not satisfied that the appellant's request to seal the record is necessary to prevent a serious risk of reputation harm. Third, I am not satisfied that issuing an order to seal the record nor an alternative measure available including referring to the appellant by initials only overrides the open court rule allowing the public domain with access to the decision issued by the Tribunal.

ISSUES

- [30] The issues in dispute are:
- i. whether the past conduct of the appellant affords reasonable grounds for belief that he will not carry on business as a motor vehicle salesperson in accordance with law and with integrity and honesty according to s. 6(1)(a)(ii) of the *Act*; and
 - ii. if so, whether the public interest can be adequately protected through granting registration with conditions.

RESULT

- [31] For the reasons which follow, I find that the Registrar has satisfied its burden of proving that the appellant's past conduct affords reasonable grounds for belief that he will not carry on business as a motor vehicle salesperson in accordance with law and with integrity and honesty and that the public interest cannot be adequately protected through granting registration with conditions.
- [32] I therefore direct the Registrar to carry out its proposal to refuse the registration of the appellant as a motor vehicle salesperson.

ANALYSIS

Issue i: Reasonable grounds for belief

- [33] The Court of Appeal for Ontario in *Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc. (Famous Flesh Gordon's)*, 2013 ONCA 157 at paras. 18-19, held that the standard of proof with respect to reasonable grounds for belief does not require the Registrar to go so far as to show that the conduct makes it more likely than not that he will not carry on business as required.
- [34] According to the Supreme Court of Canada in *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para.114, the reasonable grounds

for belief must be more than mere suspicion and will be found to exist where there is an objective basis for the belief which is based on compelling and credible information.

- [35] Further, there must be a nexus between the appellant's past conduct and his ability to conduct business as a motor vehicle salesperson serving the interests of the public: See *CS v. Registrar, Real Estate and Business Brokers Act, 2002*, 2019 ONSC 1652 (Div. Ct.) at para. 32.
- [36] The Registrar presented evidence of the following three alleged acts of misconduct which it submits afford reasonable grounds for belief that the appellant will not carry on business as required.

1. June 2021 Conduct

- [37] The Registrar alleges, and the appellant admits, that in June 2021, when he was registered as a salesperson and employed at East-Court Metro Ford Lincoln Sales Ltd. ("East-Court"), he sent a sexually explicit video of himself and approximately 23 text messages to a former co-worker, GP. GP complained to East-Court and the appellant's employment was terminated.
- [38] A screenshot of the video and text messages were submitted into evidence at the hearing. The video is, as the appellant admits, offensive. The text messages start by issuing an apology and claiming they were sent to the wrong person. However, by the end of the 23-text long stream of messages, the appellant sends a message that says "Luv u" and others which have emojis either winking or blowing kisses.
- [39] The appellant says that the explicit video was sent to GP by mistake. He points out that the video was sent at 12:31 a.m. and that the text messages, which started at 12:32 a.m. without there having been any response from GP to the video, immediately stated that the video was sent to the wrong person by mistake. While the timing may be indicative of a mistake having been made, it may also be an effort to provide an excuse should the video prove to be unwelcomed by its recipient.
- [40] Punit Sibal, the senior general manager for East-Court at the material time, gave evidence at the hearing. He stated that the appellant was employed as a sales manager and that GP was employed on the sales support team. He said that GP did not report to the appellant but she was required to do work for him as requested. Some time in 2020, GP resigned with no reason given for that resignation.

- [41] In June 2021, Mr. Sibal received a letter from GP stating that the appellant had sent sexual messages to her and a screenshot of the above mentioned video was attached. Mr. Sibal met with the appellant's supervisor and the appellant, and the appellant admitted sending the video and messages. There was no evidence, either from Mr. Sibal or the appellant, that the appellant told Mr. Sibal that the video was sent to GP by mistake. The appellant was immediately suspended and then terminated later that week.
- [42] Later, GP brought a civil action against East-Court and the appellant which led to a settlement requiring both East-Court and the appellant to make a payment to GP.
- [43] Mr. Sibal testified that, other than this complaint involving GP, there were no other complaints involving the appellant that he was aware of.
- [44] GP did not testify at the hearing.
- [45] The appellant is not a credible witness and his evidence on this issue was not credible. His answers to questions at the hearing were often rambling and unresponsive. He falsely alleged that he sent inappropriate texts to the wrong person while intoxicated on at least one other occasion which will be described below. GP had not worked with the appellant for over a year by the time these texts were sent and how GP could have been confused with someone else was never explained. There was no evidence at the hearing that the appellant told East-Court that the message had been sent by mistake and the appellant did not dispute his immediate termination for cause. These actions are not consistent with his allegation that the offending text was sent by mistake.
- [46] In all the circumstances, I find that, on a balance of probabilities, the appellant intentionally sent an explicit video of himself to GP, a former co-worker, and that he falsely alleged that it was done mistakenly. I find the appellant's explanation to be unplausible and his evidence to be unreliable and unsupported by other evidence.
- [47] I also disagree with the appellant's submission that the Registrar failed to prove that the messages he sent to GP were unwanted, particularly given that GP did not testify at the hearing. The uncontradicted evidence is that GP complained about the texts to the appellant's employer very soon after they were sent. GP brought a civil action against the appellant and the employer. Moreover, the suggestion that GP might have wanted the appellant to send him these text flies in the face of the appellant's own evidence that he sent the texts to her by accident, and is not a reasonable one.

- [48] The appellant also suggests that, since GP was no longer an employee of East-Court, and the incident did not involve the trade or sale of a vehicle, there is no nexus between the misconduct and whether the appellant will carry on business in accordance with law, and with honest and integrity. I disagree.
- [49] The appellant knew GP through his employment with her at East-Court. He had her contact information as the result of that employment. The appellant's employer, East-Court, clearly thought the appellant's conduct was sufficiently connected with his employment that it terminated him as a result. In fact, the appellant, in his submissions, admits that he cooperated with his employer's act to investigate the incident and accepted his termination as a consequence of the conduct. He never suggested to his employer that they should not be investigating the incident and did not complain that he was wrongfully dismissed.
- [50] In my view the appellant's conduct with respect to this allegation is serious. Sending a former co-worker unwanted, explicit video of oneself late at night followed by a flurry of text messages is intimidating, disturbing, and in the nature of harassment. I find that the appellant knew this and that is why he took steps to try to make it seem like the text was mistakenly sent, and why he accepted his termination.
- [51] In my view, the appellant's actions show a lack of honesty and integrity. Instead of accepting that his conduct was improper and taking concrete action that might provide evidence that this will never happen again, the appellant has made excuses and tried to downplay the seriousness of the conduct.
- [52] I find that the appellant's past conduct affords reasonable grounds for belief that he will not carry on business as a motor vehicle salesperson in accordance with law and with integrity and honesty.

2. Conduct in December 2021 and January 2022

- [53] The parties agree that, in December 2021 and January 2022, Ryan Beharry and his partner, Melissa, attended at Leggat Stouffville Ford ("Leggat") where the appellant was working as a salesperson. Ryan and Melissa agreed to purchase two vehicles through the appellant which were to be delivered at a later date. They were also trading in two of their own vehicles as part of the transaction.
- [54] Three or four days after leaving the dealership, Melissa received a number of Instagram messages from the appellant. The messages started at about 11:00 p.m. on a Wednesday evening and initially were only related to the trade-in and purchase transaction.

- [55] After a number of messages back and forth, Melissa started receiving messages from the appellant's Instagram account that were more personal and eventually included photographs that Melissa had previously posted on her Instagram account. The messages included comments including "cutee" and heart emoji's.
- [56] Ryan testified at the hearing that he and Melissa found the messages disgusting and inappropriate. That they were sent late at night and contained personal images the appellant had apparently made some effort to find on Melissa's Instagram account, was concerning to them. According to Ryan, Melissa felt she was being harassed by the appellant and felt very uncomfortable.
- [57] Ryan later asked the appellant about the messages and the appellant responded that he was drunk, and the messages were intended for another person. The Registrar points out that this was the same explanation the appellant used after he sent GP the sexually explicit message referred to above.
- [58] Ryan complained to Leggat about the messages and about six months later the appellant's employment there was terminated. It was not clear that the termination was related to the incident with Ryan and Melissa.
- [59] Ryan testified that after he complained to Leggat the appellant reached out by text and told him that the offending texts were actually being sent by someone else who had hacked his Instagram account. When Ryan pointed out that the appellant had previously admitted to sending the texts claiming he was drunk, the appellant blocked his account and stopped responding to him.
- [60] The appellant agrees that he sent some messages to Melissa late at night but denies sending the messages that were inappropriate. He says that those inappropriate messages were sent by someone who had hacked his account and who was engaged in a campaign to ruin the appellant's life.
- [61] The appellant testified that in 2021 a co-worker's husband became convinced that the appellant was having an affair with the co-worker and began harassing him. At first the husband called the appellant frequently at work and that later progressed to the husband hacking into the appellant's Instagram account and posting fraudulent messages with the apparent attempt to cause the appellant harm.
- [62] The appellant says that the inappropriate messages sent to Melissa were actually sent by the ex-husband-turned-hacker. He says he actually spoke with this person and this was confirmed to him verbally.

- [63] I did not find the appellant's evidence that his Instagram account had been hacked to be credible. He presented no evidence to corroborate this allegation. He presented no other examples of fake messages being sent by the alleged hacker. He did not change his Instagram account in response to the incidents. He did not summons the hacker to testify at the hearing despite knowing his identity. Other than his own allegation about this, there was no other evidence presented.
- [64] The appellant did produce the contents of a Durham Regional Police file which shows that on May 26, 2022, the appellant reported to police that he was being harassed by the ex-husband of a former colleague and that the ex-husband was calling him at work and at home. The appellant also alleged to police that this person was messaging the appellant's wife on social media and creating fake accounts to send her messages when he is blocked. The police were unable to verify the appellant's allegations because of a lack of any supporting evidence.
- [65] The police file also shows that on July 5, 2022, the appellant again reported that he was being harassed by the jealous husband of a former co-worker. The appellant apparently reported that this person had started to harass him via phone calls and he sent Instagram messages to his wife about the affair and had created a fake account. The appellant told police that he was receiving harassing phone calls and text messages. Again, the police were unable to verify the appellant's account because of a lack of supporting evidence.
- [66] It is significant that, although the appellant went into significant details when telling the police about his harasser's activities over the course of two separate interviews, he never suggested to them that the ex-husband had ever hacked into the appellant's account and sent messages pretending to be the appellant. This is surprising since the appellant testified that he only went to police after he found out from this ex-husband that he had been the person responsible for sending the false messages to Melissa.
- [67] Finally, the appellant had no reasonable explanation for having first admitted to Ryan that he had sent the messages while drunk and then later alleged that his Instagram had been hacked. He said that he gave the first explanation because he wanted to see if he could de-escalate the situation, but I found this to be nonsensical. It makes no sense to admit sending inappropriate messages rather than explaining that someone else was responsible if the purpose was to de-escalate the situation.
- [68] After considering the evidence, I find that the appellant's explanation, and his evidence in general, with respect to these allegations to not be credible. The

story itself does not seem realistic. If true, there should be some evidence which would support the allegation that the account had been hacked. Also, if he was hacked as alleged, then it makes no sense that he would have admitted sending the messages, albeit with the excuse that he had been drinking and that they were meant for someone else. If the reason for going to police included that his Instagram was hacked, then he would have told the police about that, and their records would likely have reflected that allegation. Again, the appellant's evidence was often rambling and unresponsive to questions asked of him at the hearing.

- [69] I find that the appellant did send inappropriate text messages to a customer late at night which were harassing in nature and which occurred over the course of several days. I find that he lied to Ryan about being drunk and sending the text to the wrong person. I find that he lied to his employer, the police, and the Tribunal about being the victim of a hacker.
- [70] Moreover, I find that the appellant knew the messages he was sending to Melissa were inappropriate. He initially told Ryan the messages were intended for another person and were sent while he was drunk. He later said that the messages were sent by a hacker trying to get him in trouble. In other words, rather than suggesting the messages were innocent, the appellant attempted to avoid responsibility for sending them.
- [71] More to the point, these two explanations would seem to be mutually exclusive. While both try to disclaim responsibility for actions (thematically, both say that the sender of the bad texts "isn't the real me"), the drunk explanation admits it is him personally but attempts to explain away the behaviour as out of character, while the hacker explanation removes the admission that it was him (it was someone else).
- [72] In my view, sending a customer a series of inappropriate messages late at night and then fabricating a story to avoid responsibility for that behaviour lacks honesty and integrity. The appellant's conduct was directly connected to his business as a salesperson.
- [73] I find that the appellant's past conduct affords reasonable grounds for belief that he will not carry on business as a motor vehicle salesperson in accordance with law and with integrity and honesty.

3. Misrepresentations made to avoid responsibility

- [74] The Registrar states that, after the NOP was issued, the appellant filed a Notice of Appeal which included his explanations about the Registrar's allegations. It is alleged that the Notice of Appeal, and the appellant's testimony at the hearing both contain significant inconsistencies and discrepancies, which, when taken together with the incidents of harassment and sexual harassment, form a continuing pattern of dishonesty and a lack of integrity.
- [75] In particular, the Registrar argues that his claim that a hacker was responsible for sending Melissa offensive messages was a fabrication. The Registrar says that the appellant was dishonest with the police, in his Notice of Appeal, and in his testimony at the Tribunal.
- [76] In my view, the submissions made in the appellant's Notice of Appeal are not relevant. Statements made in pleadings, such as a Notice of Appeal, are not evidence, but allegations, often crafted by a party's legal representative. In my view, those statements are not necessarily indicative of dishonesty when contradicted by the evidence at the hearing and cannot be relied upon for that purpose.
- [77] I have concluded above that the appellant did indeed fabricate the story about the hacker and that he tried to mislead Ryan, the police and in his evidence at the Tribunal in order to provide an explanation for the inappropriate messages he sent to Melissa.
- [78] I have considered whether these allegations directed at the appellant's honesty and integrity may not have been sufficiently particularized in the NOP. The appellant has been alleging the involvement of the hacker since shortly after Ryan and Melissa made their complaints and the Registrar has not taken any steps to give additional notice to the appellant of its intention to rely on that in its proposal to refuse to register the appellant as a salesperson.
- [79] In *Hodge v. Registrar Real Estate and Business Brokers Act*, 2022 ONSC 7206 ("*Hodge*"), the Divisional Court found that the Tribunal's reliance on conduct which had not been alleged in the notice of proposal in its determination that the appellant's past conduct affords reasonable belief that he will not carry on business in accordance with the law, integrity, and honesty, was a breach of procedural fairness. As a result, the Court quashed the Tribunal's decision and ordered a new hearing by the Tribunal.
- [80] In my view, the decision in *Hodge* is distinguishable on its facts. In that case, the Tribunal relied on conduct which was unrelated to, and outside the scope of, the conduct alleged in the notice of proposal. In *Hodge*, the conduct alleged in the

notice of proposal was that the appellant falsely stated that he had completed certain continuing education courses, while having had staff complete the courses on his behalf. The Tribunal, however, relied on evidence that the appellant had used insulting, degrading language against an employee and when that employee complained, used his power of ownership of the brokerage to terminate the workplace investigation into his conduct.

- [81] In the present case, it is alleged the appellant was dishonest in attempting to cover-up or downplay the conduct alleged in the NOP by telling false stories to the complainants, his employer, the police, and the Tribunal. The appellant knew his version of events was in issue in the appeal and knew his version of events was disputed by the Registrar. The Registrar included these allegations in its opening statement at the commencement of the hearing and the appellant did not object at that time. He never suggested that he was caught by surprise or that he did not know the Registrar was going to rely on that evidence
- [82] I am satisfied that the appellant had sufficient notice that his honesty was in issue and that the Registrar alleged that he was being dishonest with respect to the hacker, how the impugned messages were sent, and why.
- [83] In my view, the appellant's failure to accept responsibility for his conduct including making false statements to customers who made complaints about his behaviour, his employer, the police, and the Tribunal, are conduct which afford reasonable grounds for belief that he will not carry on business as a motor vehicle salesperson with integrity and honesty. Further, his misrepresentations to the police and to the Tribunal while under oath, show a disregard for the law.

Summary

- [84] I find that the appellant's conduct affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty. That conduct includes sending a former co-worker unwanted, explicit video of himself, late at night, in circumstance where he knew, or ought to have known, those messages were unwanted and in the nature of harassment. That conduct also includes knowingly sending a customer inappropriate messages late at night as he did.
- [85] I also find that the appellant's conduct of attempting to avoid the consequences of his conduct by making false statements to customers who made complaints about his behaviour, his employer, the police, and the Tribunal, is conduct which affords reasonable grounds for belief that he will not carry on business as a

motor vehicle salesperson in accordance with the law and with integrity and honesty.

- [86] To be clear, even had I not considered the conduct of attempting to avoid the consequences of his conduct, I would have still found that the Registrar had established that the appellant's past conduct affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty.

Issue ii: Remedy

- [87] The Registrar and the Tribunal have the statutory discretion to consider the appellant's circumstances and determine whether the public interest requires outright refusal of registration or whether the public interest can be adequately protected through granting registration with conditions. The Tribunal owes no deference to the Registrar's position of seeking refusal of registration.
- [88] Factors which may justify registration with conditions will include, among others, that the appellant has accepted responsibility for his past conduct, that he has taken steps to ensure the conduct will not occur again, that there are safeguards which may be implemented that can prevent recurrence such as supervision or reporting requirements, or that there are some other conditions which will provide assurance that the appellant's conduct will not be repeated.
- [89] In the present case, there is no evidence before the Tribunal which indicates that there are conditions which may be imposed which will provide assurance that the appellant's conduct will not be repeated in the future. He has not accepted responsibility for his conduct. He has continued to attribute his conduct to intoxication and mistaken identity in the case of GP, and to his being victimized by a hacker in the case of Melissa and Ryan. He has taken no action to provide any assurance that his conduct will not happen again such as engaging in counselling or appropriate education. He has suggested no method of supervision, reporting, or some other action which might provide the Tribunal with the assurance that conditions would act to mitigate the risk of misconduct in the future.
- [90] I find that the appellant has presented no basis in the evidence for the Tribunal to conclude that registration with conditions would be appropriate or would adequately protect the public.

Conclusion

- [91] I conclude that the Registrar has satisfied its burden of proving that the past conduct of the appellant affords reasonable grounds for belief that he will not carry on business as a motor vehicle salesperson in accordance with law and with integrity and honesty according to s. 6(1)(a)(ii) of the *Act*.
- [92] I conclude that the appropriate remedy is refusal of registration and not registration with conditions

ORDER

- [93] The Tribunal directs the Registrar to carry out its proposal to refuse the registration of the appellant as a motor vehicle salesperson.

Released: August 8, 2023



**Colin Osterberg
Vice-Chair**