



Citation: 2300147 Ontario Inc. & Yaqobi v. Registrar, *Motor Vehicle Dealers Act, 2002*,  
2022 ONLAT MVDA 13924

**Date: 2022-10-24**  
**File Number: 13924/MVDA**

Appeal from a Notice of Proposal to Revoke the Registrations of the appellants under the  
*Motor Vehicle Dealers Act, 2002*

**Between:**

**2300147 Ontario Inc. o/a Certified Preowned Cars & Yaqob Yaqobi**

**Appellant**

and

**Registrar, *Motor Vehicle Dealers Act, 2002***

**Respondent**

## **DECISION AND ORDER**

**Adjudicator:** Colin Osterberg, Member

**Appearances:**

**For the Appellant:** Masood Fariad, Counsel

**For the Respondent:** Jane Samler, Counsel

**Heard by Videoconference:** **October 3, 4 and 5, 2022**

## REASONS FOR DECISION AND ORDER

### A. OVERVIEW

- [1] Pursuant to a Notice of Proposal dated February 28, 2022, and a Notice of Further and Other Particulars dated September 2, 2022, the Registrar proposes to revoke the registration of 2300147 Ontario Inc. o/a Certified Preowned Cars (“CPC”) as a motor vehicle dealer, and to revoke the registration of Yaqob Yaqobi (“Yaqobi”) as a motor vehicle salesperson, under the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 20, Sched. B (the “*Act*”) and Regulations.
- [2] CPC has been registered as a dealer under the *Act* since its incorporation in 2012. Prior to that, it was registered as a proprietorship since 2006. Its sole director and officer is Nadia Fariad (“Fariad”) and it operates a used car dealership and a motor vehicle inspection station (“MVIS”) at 1078 Islington Avenue in Etobicoke (the “dealership”). Yaqobi is employed as a salesperson at the dealership and has been in charge of its day-to-day operation since it started doing business.
- [3] The Registrar states that Yaqobi is disentitled to registration on the grounds that:
- a. his 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*.
- [4] The Registrar states that CPC is disentitled to registration on the grounds that:
- a. the past conduct of Fariad or Yaqobi afford reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty pursuant to s. 6(1)(d)(iii) of the *Act*;
  - b. Fariad made false statements in applications for renewal of registration pursuant to s. 6(1)(b)(iv) of the *Act*.
- [5] The appellants appeal the Registrar’s proposal to revoke registrations to the Tribunal.
- [6] Based on all the evidence, I find that the appellants are disentitled to registration under the *Act* and direct the Registrar to carry out its proposal dated February 28, 2022. For the reasons set out below, I find that Yaqobi, Fariad, and CPC are interested persons in one another under the *Act*.

### B. PRELIMINARY ISSUE

- [7] The Registrar brought a motion requesting a confidentiality order with respect to the evidence of a witness it intended to call at the hearing. The Registrar argued that a confidentiality order is necessary in order to protect sensitive information about the witness.

- [8] For the reasons that follow, I ordered that the identity of the witness be anonymized. I ordered that she be referred to as the “Complainant” when giving her evidence and that her name be redacted from any documents filed with the Tribunal before they are released. I also ordered that the Complainant’s name be redacted from the transcript of the hearing before it is released to the parties or to any third party.
- [9] The grounds for revoking the appellants’ licences include allegations that Yaqobi sexually assaulted the Complainant on several occasions and that he did so through acts of extortion over the period of approximately four years. The Registrar alleges that, based in part on these allegations, there is reason for belief that the appellants will not carry on business in accordance with the law, and with integrity and honesty.
- [10] The Registrar requested that the Tribunal impose a publication ban prohibiting information directly or indirectly identifying the Complainant from being published by anyone in any document, broadcast or transmitted in any way, and that the Tribunal close the hearing to members of the general public and others who are not directly involved in the hearing or who have not obtained the permission of the Tribunal to be present.
- [11] The appellants did not object to the confidentiality order and did not file any materials for the motion despite being properly served with the Registrar’s materials in advance of the hearing. The appellants did take the position that, if a confidentiality order is made with respect to the Complainant, then a similar order should be made with respect to the appellants.

### **Legal Framework**

- [12] The Tribunal’s adjudicative records are generally open to the public, in accordance with the open court principle<sup>1</sup>. The *Tribunal Adjudicative Records Act, 2019*, S.O. 2019, c. 7, Sched. 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*.
- [13] Hearings at the Tribunal are also generally open to the public, in accordance with s. 9 of the *Statutory Powers Procedure Act* (“*SPPA*”) and the open court principle<sup>2</sup>.
- [14] As public access to adjudicative records and open hearings are protected by s. 2(b) of the *Charter of Rights and Freedoms*, restrictions on those protected rights 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, or that the hearing be conducted in the absence of the public, only in very limited circumstances, if the tribunal determines that:

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<sup>1</sup> *Toronto Star v. AG Ontario*, 2018 ONSC 2586

<sup>2</sup> *Ibid* at para. 6

- a. matters involving public security may be disclosed; or
- b. intimate financial or personal matters or other matters disclosed at the hearing or 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 and the hearing be open.

[15] The test established by the Supreme Court of Canada for ordering publication bans provides further guidance when considering whether to override the principle that tribunal proceedings should be open to the public: *Toronto Star* at paras. 89-93; *R. v. Mentuck*, 2001 SCC 76 at para. 32.

[16] The test was recently recast by the Supreme Court of Canada in *Sherman Estate v. Donovan*, 2021 SCC 25 ("*Sherman Estate*") which states that the following 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.

[17] The person seeking to restrict access has the onus to displace 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. The open court principle takes primacy over privacy interests; exceptions to openness must be proven on a case-by-case basis.<sup>3</sup>

### **Analysis**

[18] The Supreme Court in *Sherman Estate* recognized that preservation of an individual's dignity is a matter of public interest and at paragraph 77 of that decision specifically identified "subjection to sexual assault or harassment" as the type of personal sensitive information that, if exposed, could pose a serious risk to a person's dignity. Further, I agree with the Registrar's submission that the public has an interest in not discouraging the reporting of sexual assaults and in securing the evidence of victims of such incidents at hearings such as the present appeal.

[19] Accordingly, I am satisfied that there is a serious public interest in protecting the confidentiality of the Complainant as it is information that is sufficiently serious such

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<sup>3</sup> *Ibid* para. 91

that it can be said to strike at the biographical core of the individual. The order requested in this case meets the first part of the test in *Sherman Estate*.

- [20] I am also satisfied that part two of the *Sherman Estate* test is met. There are no reasonable alternative measures which will safeguard the Complainant's privacy interests than a confidentiality order.
- [21] Under the third part of the *Sherman Estate* test, I am not satisfied that an order that the hearing be closed to the public is necessary to protect the identified interests and find that those interests can be protected by making an anonymization order with respect to the name of the Complainant. This will protect the privacy interests of the Complainant, allow the public the opportunity to attend the hearing and better understand the reasons for the decision of the Tribunal, and will not impact the fairness of the hearing process for the appellants.
- [22] Based on the *Sherman Estate* test I am satisfied that the Registrar met the onus for a confidentiality order as outlined above.
- [23] With respect to the appellants' submission that the confidentiality order should apply to them as well as to the Complainant, I do not accept that keeping an alleged sexual assailant's identity private constitutes a serious public interest which might supersede the open court principle.
- [24] Further, the appellants have presented no evidence that a confidentiality order is necessary to prevent a serious risk to an important public interest as it pertains to the appellants' identity. In fact, the appellants only sought this relief in response to the Registrar's motion and only request that their identities be kept confidential *if* that order is made with respect to the Complainant. The Tribunal should not grant a confidentiality order to a party simply because one is granted to another person in the same proceeding. The onus is on the party to show that such an order is necessary and that the circumstances satisfy the test in *Sherman Estate*.
- [25] I am not satisfied that any confidentiality order should be made as it pertains to the appellants.
- [26] Based on the above, I ordered that:
1. no person shall publish, broadcast, or transmit any information that could identify the Complainant in this appeal;
  2. the Tribunal shall confirm the above prohibition at the commencement of each day of the hearing;
  3. the parties and witnesses are directed to refrain from referring to the Complainant by name, including during the giving of testimony, in any oral or written submissions, and in any documentation filed or referred to in relation to the appeal. The parties are directed to refer to the Complainant as the "Complainant";

4. if a transcript of the proceedings is ordered, then the name of the Complainant shall be redacted where it appears in the transcript prior to its release to the parties or others.

5. This order shall be noted in the Tribunal's physical and electronic filing system.

## **C. ISSUES**

### **With respect to Yaqobi's registration**

[27] The first issue to be decided is whether the past conduct of Yaqobi 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*.

[28] If the answer to any of the above question is in the affirmative, then Yaqobi is not entitled to registration, and I must decide whether the public interest can be adequately protected through granting registration with conditions.

### **With respect to CPC's registration**

[29] The first issue to be decided is whether Yaqobi is an interested person in respect of Fariad or CPC. As set out below, I have determined that Yaqobi is an interested person in Fariad and CPC and so his past conduct is relevant to CPC's entitlement to registration.

[30] The second issue to be decided is whether past conduct of Fariad or Yaqobi afford reasonable grounds for belief that CPC's business will not be carried on in accordance with law and with integrity and honesty pursuant to s. 6(1)(b)(iii) of the *Act*;

[31] The third issue to be decided is whether Fariad made a false statement in applications for renewal of registration pursuant to s. 6(1)(b)(iv) of the *Act*;

[32] If the answer to questions two or three is in the affirmative, then CPC is not entitled to registration, and I must decide whether the public interest can be adequately protected through granting registration with conditions.

## **D. LAW**

[33] Under s. 6(1)(a)(ii) of the *Act*, an individual applicant is disentitled to registration as a motor vehicle salesperson if the past conduct of the applicant or of an interested person in respect 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.

[34] Under s. 6(1)(d)(iii) of the *Act*, an applicant corporation is disentitled to registration as a motor vehicle dealer if the past conduct of its officers or directors or of an

interested person in respect of the corporation affords reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty.

[35] The Ontario Court of Appeal has described the applicable standard of proof with respect to reasonable grounds for belief as follows:

The standard of proof provided by s. 6(2)(d) of the *Act* is that of “reasonable grounds for belief”... As applied to this case, s. 6(2)(d) of the *Act* required the Registrar simply to show that Mr. Barletta’s past or present conduct provides *reasonable grounds for belief that he will not carry on business in accordance with law and integrity and honour*. The Registrar does not have to go so far as to show that Mr. Barletta’s past or present conduct *make it more likely than not that he will not carry on business as required*.<sup>4</sup>

[36] At the same time, 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.”<sup>5</sup> 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.<sup>6</sup>

[37] Under s. 6(1)(d)(iv) of the *Act*, an applicant corporation is disentitled to registration as a motor vehicle dealer if an officer or director of the corporation makes a false statement or provides a false statement in an application for registration or for renewal of registration.

[38] Under s. 6(2) of the *Act*, a registration is subject to such conditions that are either consented to by the applicant, applied by the Registrar under s. 9 of the *Act*, as ordered by the Tribunal, or as are prescribed. Section 9 of the *Act* provides that the Registrar may apply conditions to a registration and that the Tribunal may direct the Registrar to carry out its proposal or substitute its opinion for that of the Registrar and attach conditions to its order or to a registration.

## **E. EVIDENCE AND ANALYSIS**

### **YAQOBI**

#### **Past Conduct**

[39] The Registrar alleges that there are reasonable grounds for belief that Yaqobi will not carry on business in accordance with law and with integrity and honesty on the basis of the following past conduct:

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<sup>4</sup> *Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc. (Famous Flesh Gordon’s)*, 2013 ONCA 157 at 18-19.

<sup>5</sup> *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para.114

<sup>6</sup> *CS v. Registrar, Real Estate and Business Brokers Act, 2002*, 2019 ONSC 1652 at para. 32

1. Yaqobi used his position as a motor vehicle salesperson to commit acts for which he was charged with sexual assault and extortion in respect of a customer, the Complainant;
2. Yaqobi failed to complete and provide the Complainant with a written contract in relation to motor vehicle trades contrary to s. 40(9) and/or s. 41(9) of O. Reg. 333/08 under the *Act*; and
3. Yaqobi failed to notify the Registrar of criminal charges against him contrary to s. 31(1) of O. Reg. 333/08 under the *Act*.

### **1. Sexual assault and extortion allegations**

- [40] The determination with respect to this issue depends, in part, on my findings with respect to the credibility of the Complainant and Yaqobi. The version of events given by each is markedly different. Unlike a criminal proceeding, the standard of proof with respect to these allegations at this hearing is not beyond a reasonable doubt; rather, it is a balance of probabilities.
- [41] The test for the credibility of a witness' version of events is its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions<sup>7</sup>.
- [42] The Ontario Divisional Court described a number of factors which may be applicable in making credibility assessments<sup>8</sup> including the following:
- The appearance and demeanour of the witness and the manner in which he testified.
  - whether the witness has an interest in the outcome of the proceeding;
  - whether the witness has, or demonstrates, bias when presenting his/her testimony;
  - whether the witness' evidence is contradicted by the evidence of another witness or other evidence at the hearing which the tribunal finds to be more credible;
  - whether the witness has previously made a statement that is inconsistent with his evidence at the hearing;
  - whether the witness' story is probable or improbable. Did the evidence make sense and was it reasonable?

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<sup>7</sup> *Faryna v. Chorny*, [1952] 2 D.L.R. 352 (BCCA)

<sup>8</sup> *Pitts and Director of Family Benefits Branch of the Ministry of Community & Social Services*, 1985, 51 O.R. 302 at p. 15



- any other matter that the tribunal believes is relevant to the credibility or truthfulness of the witness.

### **Evidence of the Complainant**

- [43] According to the Complainant, she first attended CPC in 2015 to get her vehicle repaired. She did not return to CPC again until 2017 at which time she was in the market to purchase a vehicle. She went to CPC to purchase a vehicle because her credit was poor, and CPC offered financing to people with poor credit. She purchased a vehicle from CPC on a lease-to-own basis. The person she dealt with at CPC was Yaqobi.
- [44] After she took possession of the vehicle, the Complainant says Yaqobi insisted that she come to the dealership on a regular basis so that he could inspect the vehicle. She also had to attend the dealership to make her monthly car payment. On some of these occasions, Yaqobi took the vehicle for a test drive and insisted that the Complainant come with him. The Complainant says that, on the test drives Yaqobi regularly made inappropriate sexual statements which made the Complainant uncomfortable. She asked Yaqobi to stop doing that, but he persisted. The Complainant says that she felt that she had to put up with Yaqobi's inappropriate statements because she needed a vehicle to transport herself and her disabled son, and her credit was such that she did not believe she would be able to find another dealer who would provide her the financing she needed.
- [45] The Complainant purchased another vehicle from CPC through Yaqobi in 2019. This was done pursuant to a lease-to-own agreement as well. Again, after the Complainant took possession of the vehicle, Yaqobi insisted that she come into the dealership regularly for vehicle inspections. The complainant says that during the test drives which were part of these inspections, Yaqobi regularly touched her in a sexual way without her consent. She asked him to stop but Yaqobi persisted. The appellant regularly told Yaqobi that she did not want a relationship with him, but Yaqobi continued to insist that the Complainant attend at the dealership and go with him in the vehicle where he would touch her sexually in spite of her protests.
- [46] The Complainant says that Yaqobi made it clear to her that her vehicle would be repossessed if she did not go with him on the inspection drives or if she did not allow him to continue touching her inappropriately.
- [47] On one occasion after the 2019 purchase, the Complainant says that Yaqobi brought her into a back room where he took off his pants and began masturbating in front of her. He asked her to touch him but she refused and told him that she did not want a relationship with him.
- [48] On another occasion, the Complainant says that Yaqobi called her in the evening and insisted on coming to her home to pick up the monthly lease payment. She says he brought a pizza with him, and they ate that together with her young son. After her son went to bed, the Complainant says that Yaqobi sexually assaulted her. Although

she did not provide details of the assault at the hearing, the Complainant says that their clothing was removed during that encounter. The Complainant says that the sexual activity that took place that evening was unwanted by her, but that Yaqobi made it clear that, if she did not comply, he would repossess her vehicle.

- [49] The Complainant purchased another vehicle from CPC through Yaqobi in July 2021. This was a lease-to-own contract like the others. The Complainant says that she returned to the dealership again, despite Yaqobi's previous assaults, because she needed a vehicle and felt that she would be unable to obtain credit for one anywhere else.
- [50] The Complainant says that Yaqobi continued to harass her. By October 2021 the Complainant was no longer willing to tolerate Yaqobi's behaviour and made a report to the police. The police charged Yaqobi with four counts of sexual assault and three counts of extortion.
- [51] I find the evidence of the Complainant to be credible. Her evidence is generally consistent with her previous accounts made to police and was internally consistent. She has limited interest in the outcome of this proceeding. Her evidence was probable, made sense, and was reasonable. She did not waiver in her account despite a long, and vigorous, cross examination by appellants' counsel. Her demeanour was consistent with the upsetting nature of the evidence she gave.
- [52] The appellants argue that some of the Complainant's actions do not make sense in the circumstances. For example, the Complainant alleges that she was the victim of Yaqobi's sexual improprieties on numerous occasions between 2017 and October 2021 when the police were contacted and yet she continued to attend at the appellants' dealership for maintenance of her vehicles and to purchase new cars.
- [53] The argument that a complainant's credibility may be impugned based on the correspondence between her post-offence behaviour and the expected behaviour of the stereotypical victim of sexual assault is discriminatory towards victims, is without merit, and has been rejected by the courts<sup>9</sup>.
- [54] Moreover, I accept the Complainant's evidence that she felt she had no choice but to comply with Yaqobi's demands that she come to the dealership for vehicle "inspections" and had no other option but to purchase vehicles from him. She was financially unable to purchase vehicles from other sources, had poor credit, and had been threatened that, if she did not come in for inspections, and did not comply with Yaqobi's sexual assaults, he would repossess her vehicle. She needed a vehicle to transport her disabled son, as well as herself, and she did not believe she had any choice but to comply.
- [55] The appellants argue that the fact that the Complainant deleted texts and videos sent to her by Yaqobi which allegedly would have corroborated her allegations is evidence that those texts did not support the Complainant's allegations and that the

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<sup>9</sup> *R. v. A.R.J.D.*, 2018 SCC 6 at para. 2

allegations are not true. The Complainant says that she was in a romantic relationship at the time and was afraid that her boyfriend would see the texts and video in question and so she deleted them. She was also concerned that her young son might open them when he was playing with her phone. Also, she deleted the texts and video at a time she had no intention of reporting the assaults to the police or anyone else.

- [56] I found the Complainant's explanation for the deletion of the texts to be reasonable. Yaqobi testified that he still has all of the texts between the Complainant and himself and yet did not produce them at the hearing. If the Complainant's evidence about the content of the texts was not true, then he could easily have proven that by disclosing the texts and yet he chose not to do so. It seems unlikely that the Complainant would have made up the existence of the texts and video if she knew Yaqobi could refute her evidence by producing his copy of the same texts.
- [57] Finally, the appellants argue that the Complainant's evidence at the hearing is different than the version of events that she gave to the police in October 2021 when she reported the assaults. In a synopsis document apparently completed by Toronto Police, it states that the Complainant went to CPC for the first time to purchase a vehicle in 2015. At the hearing, the Complainant said that in 2015 she went there to have repairs done and that she only attended to purchase a vehicle in 2017. Further, the synopsis states that the unwanted physical contact occurred on 10-15 occasions starting in 2015 onward. At the hearing, the Complainant said that the verbal assaults started in 2017 and that the physical assaults took place starting in 2019, and occurred on 4 or 5 occasions.
- [58] I am not satisfied that the above discrepancies impair the Complainant's credibility in a significant way. First, Yaqobi agreed with the Complainant at the hearing that the 2015 visit to the dealership was for repairs and that the first vehicle was purchased in 2017. Nothing turns on this error.
- [59] Second, the synopsis is not a statement by the Complainant but a summary of the police investigation. It is unclear who authored the synopsis or on what evidence its contents are based. The synopsis is unsigned and no one from the police was called as a witness to describe how the synopsis was put together. The Complainant says the synopsis is not accurate and it is clearly incorrect with respect to the year the Complainant first purchased a vehicle from Yaqobi. While the Complainant might have gotten the years wrong when speaking with police, or the police might have misunderstood the information provided by the Complainant, I am not convinced anything turns on that issue and I am not satisfied that the synopsis impairs the Complainant's credibility.
- [60] As a result of the above, I find that the Complainant's evidence was credible.

### **Evidence of Yaqobi**

- [61] Yaqobi denies all the Complainant's allegations of sexual misconduct.

- [62] Yaqobi agrees that the Complainant first attended CPC in 2015 for a vehicle repair. According to Yaqobi, after that the Complainant regularly attended CPC's premises to hang around with him and the other mechanics. He says he and the Complainant became friends and, in 2016 or 2017, he hired her, with Fariad's approval, to assist him in driving vehicles that he had sold to purchasers in Africa to the shipper's location somewhere in Toronto. He said that he and the Complainant would drive to the shipper in separate vehicles and then the Complainant would drive him back to CPC's premises. Yaqobi said this occurred on many occasions. According to Fariad, Yaqobi told her that the Complainant was in financial difficulty and that he wanted to help her by giving her this job and so she agreed.
- [63] I do not find the evidence of Yaqobi and Fariad to be credible. It was offered as evidence that the Complainant and Yaqobi were friends and that the Complainant voluntarily went in car rides with Yaqobi on many occasions. This was, according to the appellants, supportive of their argument that the Complainant continued to seek out opportunities to be with Yaqobi and that this behaviour is not consistent with the Complainant being a victim of Yaqobi's sexual assaults. As noted above, I find this position to be without merit.
- [64] Although Yaqobi and Fariad allege that they have text messages which prove that the Complainant was hired as a driver, they did not produce those messages, or any other documentation which would support this allegation at the hearing. Further, they say that there are multiple witnesses, including employees and friends, to the Complainant's regular attendance at CPC during this time but did not present evidence of those witnesses at the hearing. Fariad's evidence that the Complainant was hired because she had financial problems and poor credit is inconsistent with Yaqobi's evidence that the Complainant did not have financial problems or poor credit and could have gone elsewhere to purchase vehicles had she wished to do so.
- [65] I am not satisfied that the Complainant was hired as a driver as the appellants allege and I find that they were not being truthful when they testified about that at the hearing.
- [66] Both Yaqobi and Fariad deny that Yaqobi ever admitted to having a sexual relationship with the Complainant, either consensual or non-consensual. However, in a series of texts between Fariad and the Complainant in January 2022, about three months after the criminal charges were laid against Yaqobi, Fariad, using a false name to conceal her identity, states that Yaqobi told her that he was having a sexual affair with the Complainant. Fariad's texts even refer to the incident in which Yaqobi masturbated in front of the Complainant as the Complainant testified to at the hearing.
- [67] At the hearing, Fariad testified that she was trying to bait the Complainant into telling the truth, and that Fariad made up the contents of the texts she sent. I do not find this explanation to be credible. Fariad says she never believed that the Complainant and Yaqobi had a sexual relationship. However, the texts appear to be intended to

get the Complainant to admit that the sex was consensual, not that it never happened. Moreover, the abusiveness and offensiveness of the texts is inconsistent with the purposes alleged by Fariad.

- [68] I find that, after the criminal charges were laid, Yaqobi probably told Fariad that he had a consensual sexual relationship with the Complainant and that he and Fariad were not being truthful about this at the hearing.
- [69] Yaqobi agrees that the Complainant purchased three vehicles from him, and that those purchases took place in 2017, 2019, and 2021. All three purchases were lease-to-own contracts. He initially denied that he required the Complainant to come into the dealership so that he could inspect the vehicles but later said that he wanted her to come in for oil changes every three or four months and that she had to come in every month to make her lease payments in cash. He denied taking the Complainant out for rides during those visits and denied ever assaulting her or engaging in any sexual activity with her.
- [70] Yaqobi says that he did attend at the Complainant's residence on one occasion in the evening order to pick up her lease payment. He says the Complainant invited him in and they ordered a pizza. He says they ate the pizza together and he left. He denied any sexual activity and denied assaulting the Complainant on that occasion.
- [71] In addition to the issues discussed above, I do not consider the totality of the appellants' version of events to be believable. They allege that, before October 2021 when the criminal charges were laid, they and the Complainant were friends, even good friends. According to the appellants, they had helped the Complainant by providing her false receipts so that she could continue receiving social assistance benefits; they had given the Complainant a job helping deliver vehicles; Fariad had spent an hour of unpaid time giving the Complainant dietary advice for her son; and the Complainant had spent many hours socializing with Yaqobi and others at CPC's premises. All of this took place over the course of about six years.
- [72] Despite this friendly and long-term relationship, and without any prior indication that anything was wrong, the appellants say the Complainant falsely reported to the police that Yaqobi had sexually assaulted her on many occasions and that he had extorted her silence by threatening to repossess the vehicles he had sold her. They say they have evidence of this in the form of text messages but failed to present that evidence at the hearing.
- [73] I do not find the appellants' version of events to be in harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable.
- [74] I find on a balance of probabilities that Yaqobi sexually assaulted the Complainant on multiple occasions and that he used threats of repossession of vehicles sold to the Complainant, his position as a motor vehicle salesperson, and her vulnerability to those threats, in order to extort compliance with his demands.

[75] Therefore, I find that the Registrar has satisfied its onus of proving that there are reasonable grounds for belief that Yaqobi will not carry on business as a motor vehicle salesperson in accordance with the law and with integrity and honesty according to s. 6(1)(a)(ii) of the *Act*.

## **2. Failure to provide a written contract**

[76] Under s. 40(9) and 41(9) a salesperson and a dealer are required to ensure that a purchaser is provided with a copy of the sales contract. The parties agree that Bills of Sale were completed for the three vehicle purchases made by the Complainant. The parties also agree that the Bills of Sale with respect to the vehicles purchased by the Complainant in 2019 and 2021 misrepresented the price for which the vehicles were sold. Both parties say that those vehicles were sold for approximately twice the price that is shown on the Bills of Sale. It is agreed that both of those vehicles were sold on a lease-to-own basis but that fact is not reflected in the Bill of Sale.

[77] The parties disagree about who requested the incorrect sale price be shown and whether the Complainant ever received a copy of the Bills of Sale. According to the Complainant, Yaqobi determined the amount shown on the Bill of Sale for reasons that were unknown to her. According to Yaqobi and Fariad, the Complainant requested that the price be misrepresented because she was worried that she would lose her social assistance benefits if the accurate price were shown.

[78] In my view, nothing turns on who requested the inaccurate Bills of Sale. The obligation to provide an accurate Bill of Sale under the *Act* is that of the dealer and the salesperson. Whether the price of the vehicle was misrepresented in the Bill of Sale as requested by the Complainant or Yaqobi and Fariad, the fact is that Yaqobi and Fariad participated in the misrepresentation and issued a false contract. In my view, this amounts to a failure to provide the customer with the written contract under sections 40(9) and 41(9) and is evidence that they will not carry on business in accordance with law and with integrity and honesty.

## **3. Failure to notify Registrar of criminal charges**

[79] On October 16, 2021, Yaqobi applied for a renewal of his registration as a salesperson under the *Act*. In his renewal application form, Yaqobi answered “no” when asked whether there were any criminal charges pending against him. That answer was truthful at the time. Three days later, Yaqobi was charged with four counts of sexual assault and three counts of extortion in relation to the circumstances described above.

[80] Yaqobi agrees that he was under an obligation to advise the Registrar that the charges were laid and that he did not do so. He says that he was so shocked at the allegations that advising the Registrar did not occur to him. At no time before receiving the Registrar’s Notice of Proposal in February 2022 did Yaqobi advise the Registrar about the charges.

- [81] Although Yaqobi was likely surprised by the charges against him, I find that this does not excuse his failure to advise the Registrar about the charges for the next four months. It was his evidence that he told Fariad about the charges immediately and told her that she would have to take over responsibility for collecting the lease payment rent the Complainant owed for the vehicle she purchased. He continued to carry on business during that four months, and there was no evidence that he neglected his other responsibilities during that time.
- [82] I find that Yaqobi's failure to advise the Registrar of the criminal charges as he was required to do is evidence that he will not carry on business in accordance with law and with honesty and integrity.

## **CPC**

### **Yaqobi is an interested person in CPC**

- [83] Under s. 6(4)(b) of the Act, a person is deemed to be an interested person in respect of another person if the person is associated with the other person or if the person exercises or may exercise control either directly or indirectly over the other person.
- [84] Under ss. 1(2) of the Act, a person is associated with another person if: 1. one person is a corporation of which the other person is an officer or director; 4. one person is a corporation that is controlled directly or indirectly by the other person; and/or 7. both persons are associated within the meaning of paragraphs 1 to 6 with the same person.
- [85] The evidence shows that Fariad is the Officer and Director of CPC. She is therefore an interested person in CPC.
- [86] Fariad and Yaqobi have never been married but were romantically involved in the past and have four children together as a result of that relationship. They regularly describe themselves as husband and wife when interacting with other people including in their business dealings. As an example of this, they represented themselves as husband and wife to various inspectors from OMVIC over the course of several years.
- [87] In addition to their personal relationship, Yaqobi and Fariad have a business relationship. Although Fariad is the owner, officer and director of CPC, she attends at the dealership only occasionally. The evidence demonstrates that, from its inception in 2012, the day-to-day operations of CPC have been handled by Yaqobi. He is the person in charge at the dealership on a daily basis. He describes himself as manager on Bills of Sale and signs those on behalf of the dealership. He negotiates the terms of sales with customers and manages the employees of the business. Yaqobi and Fariad testified that Fariad has the final decision-making authority with respect to all aspects of the business, but it is clear that Yaqobi is able to exercise significant control over CPC's business.
- [88] On the basis of the above evidence:

- Fariad is associated with CPC (s. 1(2)1) and an interested person in CPC (s. 6(4));
- Yaqobi is associated with CPC (s. 1(2)4) and an interested person in CPC (s. 6(4) and s. 6(4)(b)); and
- Fariad and Yaqobi are associated persons (s. 1(2)7) and they are interested persons in one another (s. 6(4)).

### **Past conduct**

- [89] I find that Yaqobi's past conduct affords reasonable grounds for belief that CPC will not carry on its business in accordance with the law and with integrity and honesty. Yaqobi is the manager of CPC's business and the person in charge of its day-to-day operation. He has used his position to commit serious crimes against the Complainant and has, with the acquiescence of Fariad, falsified Bills of Sale in the business.
- [90] I also find that Fariad's past conduct affords reasonable grounds for belief that CPC will not carry on business in accordance with the law and with integrity and honesty.
- [91] According to Fariad, she approved the inaccurate Bills of Sale with respect to the Complainant's vehicle purchases in 2019 and 2021. This is contrary to the *Act* and regulations. The purpose for which Fariad says this was done was to mislead the Complainant's social assistance provider. This shows a willingness on the part of Fariad to act dishonestly, without integrity, and to break the law in the operation of the business.
- [92] In addition, I am concerned with the text messages sent by Fariad to the Complainant in January 2022. On learning that her employee, Yaqobi, had been charged with sexual assault and extortion as the result of conduct alleged to have taken place as an employee of CPC, I would expect Fariad, as the employer, to take steps to investigate the allegations thoroughly with the protection of the customers of the business in mind.
- [93] Instead, Fariad sent a series of abusive and offensive texts to the Complainant. At the hearing, Fariad explained that she sent the texts in an effort to find out the truth from the Complainant. I find that explanation to be absurd. Fariad admits that she never believed the Complainant's version of events, and when the Complainant maintained her story during this text exchange, Fariad sent even more aggressive and insulting texts. Fariad was not attempting to find the truth, but to goad or intimidate the Complainant into recanting her allegations. If Fariad really thought there was a chance the Complainant was telling the truth about being sexually assaulted, then sending these texts is even more disturbing.
- [94] It was Fariad's obligation as an employer to treat allegations of sexual misconduct of an employee seriously and to treat the Complainant with care and respect. Instead, Fariad attacked the Complainant with a clear purpose of defending the



employee by discrediting, dishonestly, the Complainant. I find this conduct to afford reason for belief that CPC's business will not be carried on in accordance with the law, and with honesty and integrity.

### **False statements in applications**

- [95] In the renewal applications from 2015 thru 2021, with respect to CPC's dealership registration, Fariad answered "no" when asked whether CPC had ever been found guilty or convicted of an offence under any law. In fact, CPC was convicted on May 1, 2014 of one count under s. 91(1) of the *Highway Traffic Act*, R.S.O. 1990, c. H.8 for operating a MVIS station without a licence. In addition, CPC was convicted on June 25, 2015 of two counts under s. 4(2) of O. Reg. 601/90 under the *Act* for failure to ensure equipment was kept in proper working order and that all devices were accurately calibrated.
- [96] Fariad explained that she was never advised of the charges in 2014 and 2015 and that her answers were truthful in the applications for renewal. I find Fariad's explanation to be improbable and I do not accept it. She provided no explanation for being unaware of the charges and convictions, or how they may have escaped her attention. Yaqobi was the person in charge of the day-to-day operation of the business and says that he advised Fariad of all activities which took place. He did not explain how Fariad might have not known about the convictions.
- [97] I find that Fariad likely knew about the convictions and did not answer the questions accurately in the renewal applications. This disentitles CPC to registration under s. 6(1)(b)(iv) of the *Act*.

### **Summary**

- [98] I find that Yaqobi's past 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 committing sexual assault and extortion against a customer and using his position as a motor vehicle salesperson to assist him in committing those crimes. It also includes preparing Bills of Sale containing information that he knew to be false for improper, and probably illegal, purposes, and failing to report criminal charges made against him to the Registrar.
- [99] I find that Yaqobi, Fariad, and CPC are interested persons in one another.
- [100] I find that Yaqobi's past conduct affords reasonable grounds for belief that CPC's business will not be carried on in accordance with the law and with integrity and honesty.
- [101] I find that Fariad's past conduct affords reasonable grounds for belief that CPC's business will not be carried on in accordance with the law and with integrity and honesty.
- [102] I find that Fariad made false statements in applications for renewal of registrations.

## Remedy

[103]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.

[104]This is not an appropriate case for licensure with conditions. The conduct of Yaqobi and Fariad is serious. They accept no responsibility for their actions and their actions reflect an attitude of disregard for the law, and an absence of honesty and integrity.

[105]There is no basis in the evidence for the Tribunal to conclude that licensure with conditions would be appropriate or would adequately protect the public.

## F. ORDER

[106]The Tribunal directs the Registrar to carry out its proposal to revoke the registrations of Yaqobi as a motor vehicle salesperson and CPC as a motor vehicle dealer.

LICENCE APPEAL TRIBUNAL



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Colin Osterberg,  
Member

**Released: October 24, 2022**