



**Citation: Malandrucolo v. Registrar, *Motor Vehicle Dealers Act, 2002, 2024*
ONLAT 15854 MVDA**

Licence Appeal Tribunal File Number: 15854 MVDA

An Appeal from a Notice of Proposal by the Registrar, *Motor Vehicle Dealers Act, 2002*,
S.O. c. 30, Sch. B. to refuse registration

Between:

Mauro Malandrucolo

Appellant

and

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

DECISION

VICE-CHAIR: Avril A. Farlam

APPEARANCES:

For the Appellant: Mauro Malandrucolo, Self-Represented

For the Respondent: Jane Samler and Jonathan Hou, Counsel

Heard: July 30, August 1, September 10 and September 27, 2024

OVERVIEW

- [1] Mauro Malandrucolo (the “appellant”) appealed from the Notice of Proposal to Refuse Registration dated April 25, 2024 (“NOP”) issued by the Registrar (“Registrar”) under the *Motor Vehicle Dealers Act, 2002*, (“Act”) to refuse the registration of the appellant as a motor vehicle salesperson under s. 6(1)(a)(ii) and s. 6(1)(a)(iii) the Act.
- [2] The NOP is based on grounds summarized as follows:
 - a. The appellant’s past conduct disentitles him to registration under the Act, pursuant to s. 6(1)(a)(ii) of the Act, and
 - b. The appellant’s provision of false statements in applications for registration disentitles him to registration under the Act pursuant to s. 6(1)(a) (iii) of the Act.
- [3] The Registrar also submitted at the hearing that the false statements constitute past conduct with respect to integrity and honesty within the meaning of s. 6(1)(a)(ii) of the Act.
- [4] The NOP gives notice that the Registrar may provide further and other particulars and further grounds for refusal/revocation/suspension of registration. The respondent issued a Notice of Further and Other Particulars dated June 20, 2024 alleging more past conduct disentitling the appellant to registration under the Act pursuant to s. 6(1)(a)(ii).

ISSUE

- [5] The issue to be decided is whether 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, or whether the applicant has made a false statement in an application for registration.

RESULT

- [6] I order the respondent to carry out the NOP.

LAW

- [7] Section 6(1)(a)(ii) and (iii) of the Act provide that a person other than a corporation that meets the prescribed requirements is entitled to registration unless:
- (ii) 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, or
 - (iii) the applicant makes a false statement in an application for registration.
- [8] Section 9(1)(a) provides that the Registrar must provide written notice if the Registrar refused under subsection 8(1) to grant a registration.
- [9] Section 9(2) provides that an applicant is entitled to a hearing by the Tribunal if the applicant requests a hearing within the legislated timeframe. Under section 9(5), the Tribunal shall hold the hearing and following the hearing, may direct the Registrar to carry out the proposal or substitute its opinion for that of the Registrar and may attach conditions to its order or to a registration.
- [10] The onus is on the Registrar to establish the grounds alleged in the NOP.

ANALYSIS

The Registrar has established that the past conduct of the appellant affords reasonable grounds for belief that the appellant will not carry on business in accordance with law and with integrity and honesty, and that the appellant has made a false statement in an application for registration.

- [11] For the following reasons, I find that the Registrar has established that the past conduct of the appellant affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty, and that the appellant has made a false statement in an application for registration. As a result, the appellant is disentitled to registration.
- [12] The appellant was initially registered as a motor vehicle salesperson under the Act in 2002.
- [13] The appellant submitted seven applications for registration in 2021 and 2022. In these seven applications, the appellant answered “no” to the question:

“Have you ever been found guilty or convicted of an offence under any law, or are there charges pending? Make sure to include those cases with a conditional, absolute discharge or stayed charges. Please note: This question refers to charges under any law.”

- [14] In the appellant’s December 4, 2023 application for registration which resulted in the NOP, the appellant answered “no” to the question:

“Has the applicant ever been charged with an offence under any law, within or outside of Canada? This includes charges that are still pending or before the courts, charges that were stayed, charges that resulted in a finding of guilt, conviction, absolute or conditional discharge, and charges that were withdrawn, dismissed or resulted in a finding of not guilty.”

- [15] Based on the Registrar’s records, court documents, and other records brought forward by the Registrar, taken together with the testimony of the Registrar’s witnesses, investigator Blake Smiley and Susan Dicks, OMVIC’s Registration Services Manager, I find that the appellant falsely answered these questions based on the following facts established by the Registrar at the hearing:

CHARGES	DATE OF APPLICATION	DATE OF DISPOSITION
Arrested September 11, 2020 Intimate Partner Violence, Criminal Harassment Information #2009267 – Monica A. – s. 264(3) and s. 162.1, <i>Criminal Code of Canada</i>	January 18, 2021 (Salesperson Change Application)	August 11, 2022 – Guilty Plea, Finding of Guilt, on count #1 Count #2 withdrawn Probation – 1 year Conditional Discharge
Arrested January 27, 2021	June 10, 2021 (Salesperson Change Application)	August 11, 2022 – Withdrawn

<p>Failure to Comply With Undertaking not to communicate with Monica A.</p> <p>Information #2101017 – s. 145(4)(a), Criminal Code of Canada</p>		
	<p>June 23, 2021 (Renewal Application)</p>	
	<p>September 29, 2021 (Salesperson Change Application)</p>	
	<p>September 30, 2021 (Salesperson Change Application)</p>	
	<p>December 14, 2021 (Salesperson Change Application)</p>	
	<p>February 10, 2022 (Salesperson Change Application)</p>	
<p>1. Arrested April 14, 2023 Criminal Harassment</p>	<p>December 4, 2023 (Application Resulting in NOP)</p>	<p>April 16, 2024 Count #1 Withdrawn</p>

<p>Information #31103995 = Monica S. – s. 264(1) Criminal Code of Canada</p> <p>2. March 22, 2022</p> <p>Breach of Undertaking re Magda T. – Information #003539 - s. 145(4)(a) Criminal Code of Canada</p>		<p>Peace Bond – Appellant currently subject to Peace Bond</p>
	<p>Eight Applications – 2021 to 2023</p>	

- [16] The disposition of these charges required numerous attendances by the appellant’s lawyer and on at least one occasion, the appellant. In addition, there was a Peace Bond made April 16, 2024 requiring the appellant not to contact or communicate with Magda T. or Monica S. On the basis of this evidence, I find it more likely than not that the appellant was aware of the charges, especially given that the Court records disclose numerous court appearances before the disposition of the above charges.
- [17] Although much of the appellant’s testimony, cross-examination of the Registrar’s witnesses, and submissions was directed to trying to distinguish between a conviction and a guilty plea resulting in a conditional discharge, in support of his contention that he does not have a criminal record, that distinction is not relevant to whether the appellant answered the above questions falsely. The questions clearly refer to “charges” and the appellant answered that there had been none when he had to have known of the charges laid, having been arrested on several occasions by the police, having hired a lawyer to represent him on the charges, and having had to appear in Court himself to plead guilty.
- [18] Further, the appellant attempted to downplay the charges because they involved women he described as his ex-wife and former girlfriend. This does not affect

the fact that charges were laid, or lessen the appellant's obligation to disclose them on the applications he made for registration.

- [19] The appellant testified and submitted at the hearing that he does not deny that the answers he gave on his applications were incorrect, but he assumed that the questions were referring to convictions, not charges, because anyone "can be charged with anything and he was embarrassed". The appellant claimed he did not have any malice and had given the same answers on the early applications and no one took issue with that.
- [20] I do not accept the appellant's explanation that he assumed the questions referred to convictions, not charges. The word "charges" is clear in the questions on the application. The appellant testified that he has a post-graduate degree in economics and is seeking to be registered in a regulated industry that requires him to understand contracts and other written documents.
- [21] My task in applying this ground is to determine if the appellant made a false statement knowingly ([Registrar, Motor Vehicle Dealers Act v Vernon](#), 2016 ONSC 304 at [para. 8](#) (Div. Ct.)). As described above, I do not accept as credible his explanations for these repeated false statements, and find that he made them knowingly.
- [22] I find that falsely answering "no" to these questions on his applications for registration constitutes both past conduct of the appellant affording reasonable grounds for belief that the appellant will not carry on business in accordance with law and with integrity and honesty, and also establishes that the appellant has made a false statement in an application for registration. I find that not only did the appellant make a false statement, he repeated false statements contrary to an explicit instruction in the application, which affords such reasonable grounds.
- [23] I also find that the appellant falsely answered "no" to the question on the December 4, 2023 application that asks:
- "Are there any active or unsatisfied judgements, collections or court orders (including family support payments which are in arrears) against the applicant, in any jurisdiction?"*
- [24] Ms. Dicks testified that as early as June 2022, the appellant had collections owing for child support through the Family Responsibility Office ("FRO") for some \$25,000.00 and a recent credit report shows this as still owing.

- [25] The appellant denied that he was indebted on account of child support and attempted to characterize the alleged debt as a claim by his ex-wife for special expenses which he challenged in Court. The appellant also filed a letter from Canada Revenue Agency dated August 23, 2024. This letter relates to another issue described by CRA as a repayment to the appellant of some \$22,000.00 because of his financial hardship. The evidence does not persuade me that the appellant did not have a collection claim through FRO for alleged child support. While it is of course the appellant's right to challenge FRO collections if he wishes to, I find this does not relieve him of the obligation to answer the question on the application truthfully. The question clearly refers to "collections...including family support payments" and I find the appellant should have answered it truthfully, albeit with whatever explanation he felt appropriate.
- [26] Regarding this question, again, the appellant suggested that he did not understand the question and thought he answered it truthfully. Again, I do not find this to be credible testimony given the experience and education of the appellant and the clarity of the question. I find that the appellant made a false statement regarding collections on his application.
- [27] Ms. Dicks testified that the Registrar must be able to trust applicants to tell the truth on their applications, including the appellant. Ms. Dicks also testified that dealers must be able to rely on the information in the applications. I found this testimony credible and reliable and I accept Ms. Dick's evidence in reaching my conclusions.
- [28] In the Notice of Further and Other Particulars, the Registrar also alleges other past conduct disintitling the appellant to registration under the Act pursuant to s. 6(1)(a)(ii) including:
- A. Aggressive behaviour and racial slurs about employees at a motor vehicle dealership ("Wallace Chevrolet") in 2021 after his employment there was terminated for mishandling customer transactions.
 - B. Aggressive behaviour and sexually explicit statement about employees at a motor vehicle dealership ("401 Auto") in 2021 during his employment there and after being terminated.
 - C. Making sexually explicit statements in 2023 to an employee of a motor vehicle dealership where he used to be employed ("Raceway Chrysler").

- [29] I find that the Registrar has established that the past conduct of the appellant set out above affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty for the following reasons.
- [30] Mr. Charan Kamal Singh, Eliot Wallace, Jacqueline Nimeck, Patrick Taylor and Vanessa Gardiner all testified about the appellant's aggressive, and unprofessional behaviour at the respective motor vehicle dealerships where they encountered the appellant during the course of their employment at their dealerships. I find that the testimony of each of these witnesses is reliable based on the convincing details stated by each of these witnesses, not seriously shaken in cross-examination and I accept their testimony and find that the conduct they each described in fact occurred.
- [31] Mr. Singh, General Sales Manager at Wallace Chevrolet and the appellant's supervisor at the time of termination of the appellant's employment in January, 2021 testified that the appellant called him a "Paki" after he was terminated and refused to leave the dealership until the police were called. Mr. Singh testified that the police took the appellant outside of the dealership to speak to him and convinced him to leave. Although the appellant suggested in cross-examination of Mr. Singh that the appellant had actually called him a "lakey and a puppet", Mr. Singh stood by his statement and his testimony was not seriously shaken in cross-examination.
- [32] Eliot Wallace, General Manager at Wallace Chevrolet testified that after the appellant's employment was terminated as described above, the appellant was found at the dealership property. A letter dated July 8, 2021 was written by the dealership's lawyer to the appellant cautioning him not to trespass on dealership property as he had done on June 29, 2021, and cautioning the appellant about sending text messages to the dealership which indicate the appellant will send purportedly incriminating items to police "...presumably to extract a payment from my clients." Although the appellant testified that he was simply trying to obtain return of his belongings from the dealership, this letter makes it clear that there was litigation between Wallace Chevrolet and the appellant in which both parties were represented by counsel and the appellant had no need to be at the dealership.
- [33] Jacqueline Nimeck, testified that she briefly worked with the appellant at Raceway Chrysler, in 2019. Ms. Nimeck testified that the appellant did not get along well with the other employees and there were customer complaints, and the appellant's employment was terminated. In 2020 the appellant left a Google review of Raceway Chrysler that she described as malicious and unnecessary, naming previous employees by name, and not identifying himself as a former employee. Ms. Nimeck testified that she responded to the Google review. The

Google review and Ms. Nimeck's response were both filed at the hearing. The contents of both documents corroborated Ms. Nimeck's testimony.

- [34] Ms. Nimeck testified that in 2023 Raceway Chrysler was hiring and the appellant applied for employment. Ms. Nimeck testified that she responded with "Really?" following which he sent her sexually explicit messages referring to her sleeping with others to get ahead. The appellant said he would send her his financial information and suggested "you'll need it to dry yourself after how wet you get reading it". Ms. Nimeck testified that this disgusted her, and that she doesn't appreciate receiving sexual comments addressed to her in the workplace but was surprised at how vulgar this communication was. Although the appellant suggested that she misunderstood his meaning, or he was joking, Ms. Nimeck's testimony was not shaken in cross-examination.
- [35] Patrick Taylor, Associate Vice-President of 401 Auto testified that in November, 2021 410 Auto terminated the appellant's employment at the dealership, following which Mr. Taylor was asked to come to the dealership to assist because the appellant was yelling and causing a scene. Mr. Taylor testified that before he opened the door to the showroom, he could hear the appellant yelling. The dealership's head of human resources was in the showroom and the appellant was yelling, screaming and saying profanities at her and was adamant about not leaving the dealership. Mr. Taylor testified that he asked the appellant to leave after which the appellant cursed him and said profanities to him. The appellant was demanding to get \$100.00 cash that he said he had used to pay for lunch for the staff. Mr. Patrick described that the appellant charged at him, stood inches from his face and urged Mr. Patrick to hit him. Mr. Patrick called 911, got cash from another employee, gave \$100.00 to the appellant, and then the appellant left. Mr. Patrick told the staff to lock the dealership doors because the appellant said he was coming back. All this took place in the middle of the day in the dealership showroom. Although the appellant suggested it was reasonable for him to ask for his \$100.00 back now that he had been fired, this does not excuse his conduct toward the dealership, its employees, and senior management.
- [36] Vanessa Gardiner, General Sales Manager of 401 Auto in November, 2021, was the immediate supervisor of the appellant. Ms. Gardiner found that in a customer file, the appellant's paperwork was wrong in that the bill of sale didn't match the bank contract, and the appellant had the documents signed electronically, which 401 Auto did not allow. When she spoke to him about this, Ms. Gardiner got angry, raised his voice in the dealership showroom in front of other employees, said she was micro-managing him and that 401 Auto was a joke. Ms. Gardiner testified that the appellant said he didn't have to take orders from a "fucking

child,” refused to deliver two vehicles, and left the dealership. Another employee started crying.

- [37] Ms. Gardiner said the next day the appellant came in and sat at his desk. The human resources manager Jolene spoke to him after which the appellant began yelling and refused to leave. Jolene called Mr. Taylor. The appellant said they were all “fat fucks”. When Mr. Taylor arrived, as described above, Ms Gardiner heard the appellant demand Mr. Taylor to punch him. Mr. Taylor gave him \$100.00 cash. Ms. Gardiner testified that everyone in the showroom was tense and scared. After the appellant left the dealership, he sent her threatening texts until she blocked him on her phone. The appellant locked up the dealership at 8:00 p.m. at night and had a family member come to the dealership and check on her during closing for about the next week because she was afraid of the appellant. Ms. Gardiner said that she had seen the appellant raise his voice to customers and once called customers “liars”.
- [38] I find that Ms. Gardiner and Mr. Taylor’s evidence confirmed each other’s with regard to the one incident. Taken in totality, the conduct as described by the witnesses indicates a clear pattern of concerning behaviour lacking in integrity and honesty. It took place in relation to the workplace, impacting coworkers, and in areas of the dealership premises accessible to customers of the dealership.

Conditions

- [39] The appellant submitted that he will abide by any conditions attached to his registration.
- [40] The Registrar submitted that no conditions can regulate the appellant’s honesty and integrity, and ensure his conduct.
- [41] I have considered whether this is a case in which I should allow the appellant’s registration and attach conditions. I conclude that it is not for the following reasons.
- [42] Nothing in the evidence led me to believe that further monitoring or supervision of the appellant, or any other conditions attached to a licence would be appropriate or effective in ensuring the appellant will not continue to make false statements and will not engage in the pattern of conduct which I have found above.
- [43] I agree with the testimony of Ms. Dicks that the Registrar must be able to trust applicants to tell the truth on their applications, including the appellant, and that dealers must be able to rely on the information in the applications.

[44] Although the appellant stated at the hearing that he would now abide by conditions imposed, even if that is true, this simply amounts to now saying that he will comply with obligations he has had all along but failed or refused to comply with.

Conclusion

[45] For the reasons set out above, I find that the Registrar has established that the past conduct of the appellant affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty, and that the appellant has made a false statement in an application for registration. As a result, the appellant is disentitled to registration.

ORDER

[46] I order the respondent to carry out the NOP.

Released: November 19, 2024



Avril A. Farlam
Vice-Chair