

**LICENCE APPEAL
TRIBUNAL**

**Safety, Licensing Appeals and
Standards Tribunals Ontario**

**TRIBUNAL D'APPEL EN MATIÈRE
DE PERMIS**

**Tribunaux de la sécurité, des appels en
matière de permis et des normes Ontario**



Citation: Myles Mathew Dayes v. Registrar, Motor Vehicle Dealers Act, 2002, 2020 ONLAT
MVDA 12281

Date: 2020-03-31
File Number:12281/MVDA

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

Between:

Myles Mathew Dayes

Appellant

-and-

Registrar, Motor Vehicle Dealers Act, 2002

Respondent

DECISION AND ORDER

Adjudicator: Stephen Scharbach

Appearances:

For the Appellant: Mathew Myles Dayes, Self-Represented

For the Respondent: Anne Marshall, Student-at-Law

Date and place of Hearing: Toronto, ON, February 12, 2020

DECISION and ORDER

INTRODUCTION

- [1] This is an appeal by Mr. Myles Mathew Dayes (“appellant”) from a proposal issued by the Registrar, *Motor Vehicle Dealers Act, 2002*, (“Act”) to refuse his application for registration as a motor vehicle salesperson.
- [2] The Registrar’s proposal is based on two allegations:
- 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. That past conduct was the appellant’s involvement in a robbery in 2006.
 - the appellant provided false information to the Registrar in his application by providing a false and misleading description of his role in the robbery.
- [3] The appellant’s position is that:
- his past conduct no longer affords reasonable grounds to refuse his application - it took place 14 years ago when he was 20 years old. He was convicted, served his sentence, and his conduct since then has been without blemish.
 - he did not provide false information to the Registrar – he readily disclosed the conviction and truthfully responded to the Registrar’s request for additional information by accurately describing his involvement in the incident.
- [4] As described more fully below, I have concluded that the appellant’s past conduct no longer affords reasonable grounds to refuse his application but that he provided false information to the Registrar by providing a description of his role in the robbery that minimized and conflicted with the conclusions reached by the judge and jury at his criminal trial.
- [5] However, in the particular circumstances of this case, I conclude that the public interest can be adequately addressed by granting the appellant registration subject to conditions.

THE ACT

- [6] The Act regulates the trade of motor vehicles in Ontario to protect the automobile buying public. Anyone trading in motor vehicles in Ontario must be registered under the Act as either a salesperson or a dealer and registration is restricted to those whom the Registrar has determined to be qualified and suitable.

- [7] In order to qualify for registration, applicants must successfully complete a course of study. To demonstrate suitability, applicants must provide information about their intended business operation, undergo background checks including a criminal record check, and demonstrate financial responsibility.
- [8] The Act provides that an applicant who meet the prescribed requirements is entitled to registration unless:
- 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,
 - the applicant makes a false statement in his/her application for registration.
- [9] If the Registrar proposes to refuse an application on those grounds, the Act requires the Registrar to give the applicant written notice of the proposal, including reasons and notification of the right to a hearing.
- [10] If a hearing is requested, the Act provides that the Tribunal shall hold a hearing and make an independent decision on whether to grant or refuse the application based on the facts presented at the hearing.
- [11] After holding a hearing, the Tribunal may direct the Registrar to carry out the proposal, or the Tribunal may substitute its opinion for that of the Registrar, and the Tribunal may attach conditions to its order or to a registration

THE REGISTRAR'S NOTICE OF PROPOSAL

(i) Past Conduct

- [12] The past conduct that the Registrar relies upon is the appellant's involvement in a robbery that took place on October 29, 2006 when he was 20 years old.
- [13] The information submitted at the hearing indicates that the appellant and a friend drove to Cambridge, Ontario and, together with two others, robbed a group of youths in a school parking lot while armed with a shotgun and a knife. The appellant drove the vehicle. A witness followed the vehicle and called the police. The appellant and his associates were quickly arrested and charged with various offences.
- [14] The three associates (two of whom were young offenders) pled guilty to various offences. The appellant pled not guilty. It was his position at trial and upon appeal that he drove to the scene of the crime with the others but stayed with the vehicle while the other three committed the robbery.

- [15] However, following a jury trial, the appellant was convicted of several crimes including robbery, pointing a firearm, possession of a dangerous weapon, carrying a concealed weapon, and unauthorised possession of a firearm.
- [16] On June 20, 2011, he was sentenced to a total of six years imprisonment less 10 months credit for time served pre-sentence. The trial judge stated in his sentencing remarks that the appellant was present and participated at the scene of the robbery. The Judge stated:

On most of the counts here, Mr. Dayes was found guilty by the jury. Correctly, the jury did not provide particulars of the basis of their decisions. A party to an offence is just as guilty as a direct participant and that was all the jury decided; guilt or innocence. The precise role of the accused is not always relevant for the purpose of a finding of guilt or innocence, but it is relevant for the purpose of sentencing...**Based on what I did see and hear at the trial, I am prepared for the purpose of sentencing to conclude that Mr. Dayes was a direct participant at the scene of the robbery. I do not consider that he was pointing the gun or holding the knife, but he was there with others who were. I do not accept that he was merely the driver of the getaway vehicle. I also conclude that to some extent at least, Mr. Dayes was a direct participant in the planning, however inadequate it might have been, of the robbery.** He was the eldest member of the party and certainly the best educated. (emphasis added)

- [17] The appellant's appeal of that conviction was dismissed.
- [18] The Registrar argues that the appellant's conduct combined elements of theft with elements of violence and its seriousness was reflected in the 6-year sentence imposed. It suggests a lack of honesty, integrity and a willingness to contravene the law.
- [19] Salespersons routinely have access to and collect customer credit card information, financing/banking information, and personal information and refusal of the appellant's application for registration is required in order to protect the public.

(ii) False Information

- [20] The Registrar also argues that registration should be denied because the appellant provided false information to the Registrar in connection with his application for registration.
- [21] In his application received by OMVIC on September 10, 2018, the appellant truthfully disclosed that he had been previously convicted. He was asked to

provide details of the convictions in writing. He did so but in that statement, he denied being a direct participant at the scene of the robbery. He stated in part:

...I was asked by a friend for a ride to Cambridge to pick up money from his cousin's house...When we got to Cambridge the plan slightly changed. [friend's] cousin asked us to meet him with some others at a nearby plaza. When we arrived at the plaza, [friend] got out and met his cousin, they went around the corner in the direction of the bank in the plaza.

After waiting over 25 minutes, I drove around the plaza looking for [friend] and his cousin to no avail. A few minutes after my search they came running to the vehicle I was driving. I had a feeling something was up but was frustrated and wanted to head home as I had plans for that evening. On our way back to Etobicoke, we stopped in Mississauga to get food. ...we were approached by over 8 police officers and later arrested. I had no idea what I was being arrested for at the time. I was driven back to Cambridge by the OPP and was told about the robbery. I denied any involvement in the robbery.

[22] According to the Registrar, the appellant's description of his involvement in the robbery is false - it seems to conflict with the jury's finding of guilt and clearly conflicts with the conclusions expressed by the trial judge when passing sentence. In the Registrar's view, the appellant's conduct in committing the crimes, together with his false account of his involvement, disentitles him to registration.

FINDINGS AND ANALYSIS

(i) Past Conduct

[23] The conduct for which the appellant was convicted is disturbing and very serious. The Registrar accurately points out that it contains elements of both theft and violence and clearly calls into question the appellant's suitability to be registered as a salesperson.

[24] However, I conclude that the appellant's past conduct by itself no longer affords reasonable grounds for belief that he will not carry on business with integrity, honesty or in accordance with the law.

[25] The appellant claims, as he did in his criminal trial and appeal, that he was not a direct participant in the robbery. However, a jury found beyond a reasonable doubt that the appellant was guilty of most of the crimes for which he was charged, and the trial judge concluded for the purposes of sentencing that the appellant was a direct participant in the planning and execution of the robbery.

[26] I am in no position to second guess the findings of jury or the trial judge and I proceed on the basis that the appellant was a direct participant in the planning and execution of the robbery and is guilty of the crimes for which he was convicted.

[27] However, the incident occurred 14 years ago when the appellant was 20 years old. He is now 34 years old. It is the appellant's present suitability for registration that I must consider - in other words, does the appellant's 2006 conduct presently afford 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?

[28] I conclude that the appellant's past conduct by itself no longer affords reasonable grounds for belief that he will not carry on business with integrity, honesty or in accordance with the law.

[29] I come to that conclusion after considering both the seriousness of the 2006 incident as well as the appellant's conduct in the 14 years since it occurred. I note that:

- The conduct occurred in 2006 when the appellant was a 20-year-old 2nd year university student. There is no record of any convictions or arrests before or since then.
- He was arrested in October 2006 and was placed on house arrest for over 4 years until his trial, conviction and sentencing in June 2011. There is no record of the appellant breaching any of the conditions of his house arrest.
- In June 2011 the appellant was convicted, imprisoned, and assessed by corrections officials. An intake assessment report indicates that although the appellant was convicted of serious crimes, he did not appear to be committed to a criminal lifestyle. The report states:

Dayes conviction history consists of the current offences only. He doesn't appear to possess criminal values or attitudes. However, his involvement in the current offences for whatever reason is a significant concern. He does remain in denial of actively being involved in the current offences and is appealing the convictions and sentence. The current offences took place in October 2006 and it appears he resumed a non-criminal lifestyle following arrest and subsequent release on house arrest.

- The appellant appealed his conviction and was released on bail pending appeal. The appellant appears to have complied with all his bail conditions.

- He lost his appeal and was re-incarcerated. He was placed in a minimum-security setting and was released on parole on his first application after serving one third of his sentence.
- He was on parole from October 2014 to March 2018. The appellant testified that he complied with all his conditions of parole and successfully completed it without incident.
- Since release from prison he has been continuously employed, for the past three years as an IT recruiter. There is no suggestion that any current or previous employer has had concerns involving the appellant's honesty or integrity.
- He is currently living a responsible lifestyle. He is married, owns a home, pays a mortgage, and is supporting his two small children.
- He submitted three letters of support from individuals who describe him as reliable, trustworthy and respectable.
- The appellant testified on his own behalf. He presented as a sincere, credible, modest individual who is aware of the mistakes he made in the past and has been successfully working toward achieving a productive, law abiding life.

[30] In summary, the information before me indicates that the appellant committed a serious crime 14 years ago and paid a heavy price for it. However, since the incident in 2006 and since his release from prison in October 2014 he has remained constructively employed and, except for speeding ticket, has had no further brushes with the law.

[31] One of the purposes of sentencing in criminal matters is to promote and achieve rehabilitation. The available evidence suggests that the appellant has done everything required of him to achieve rehabilitation without any relapses into criminal behaviour over an extended period. I therefore conclude that the appellant's role in the 2006 incident, by itself, no longer affords reasonable grounds to believe that he will not carry on business in accordance with law and with integrity and honesty.

(ii) False Information

[32] The issue is whether the appellant knowingly provided false information to the Registrar. I acknowledge the Registrar's position – the appellant provided information that significantly conflicted with the findings of a judge and jury. Those findings are final and conclusive, and the appellant's assertion of different facts is false.

- [33] That is correct, and I conclude that the appellant knowingly provided false information to the Registrar as his description of the incident conflicted with and minimised his role in the crimes as determined by the Court.
- [34] The question then becomes, what is the appropriate disposition in light of all of the circumstances of the case? According to the Act, a person who is otherwise qualified for registration is entitled to Registration unless he or she makes a false statement in their application. However, the Registrar and the Tribunal (on an appeal) have the statutory discretion to consider the applicant'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.
- [35] In the circumstances of this case, I conclude that the public interest will be adequately protected by granting the appellant registration subject to conditions. I come to that conclusion for the following reasons.
- [36] Firstly, the appellant provided false information to the Registrar in that his description of the incident significantly conflicted with the jury's findings of guilt and the trial judge's findings on sentencing. However, this case differs from two similar cases referred to me where applicants were found to have knowingly provided false information to the Registrar by providing misleading versions of the facts underlying their convictions.¹
- [37] In both of those cases, it appears that the version provided by the applicant to the Registrar differed significantly from the facts the applicant had agreed on a plea bargain. The applicants had essentially provided one version of the facts to the court and later a more favourable version to the Registrar. In those circumstances, the applicants' description of the facts underlying their convictions was found to be knowingly false and sharply called into question their integrity and honesty.
- [38] The circumstances in this case are different. Throughout the criminal proceedings and up to the present the appellant has maintained that he was not directly involved in the robbery. That position was rejected by the jury when it found him guilty and specifically rejected by the judge during sentencing. I have therefore concluded that asserting that position to the Registrar is false.
- [39] However, it appears that the appellant's account of his role in the robbery reflects a continuation of the position he has consistently maintained and, unlike the two cases referred to above, does not so obviously indicate a willingness to be untruthful with the Registrar.

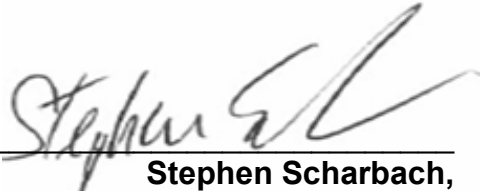
¹ *111445 v. Registrar, Motor Vehicle Dealers Act, 2002*, 2018 CanLii 116999 (ON LAT)
Registrar, Motor Vehicle Dealers Act, 2002 v. Vernon 2016 ONSC 304 (Div Ct.) [2016]

- [40] Secondly, the appellant's provision of false information must be seen in the broader context of the appellant's circumstances. As indicated above, the appellant committed a serious crime 14 years ago when he was 20 years old. Since the incident in 2006 and since his release from prison in October 2014 he has remained constructively employed and, except for speeding ticket, he has had no further brushes with the law. The appellant has apparently done everything required of him to achieve rehabilitation and has not relapsed into criminal behaviour over an extended period.
- [41] In my view, the appellant's past conduct since the 2006 incident is a stronger indication of his suitability than the fact that he provided a consistently maintained description of his role in the crime that conflicts with the Court's findings. I conclude that he should not be disentitled to registration if conditions can adequately address any lingering public interest concerns.
- [42] In my view, the public interest can be adequately addressed by granting the appellant registration as a salesperson subject to conditions. The Registrar's position at the hearing was that registration should be refused but, if registration is to be granted certain suggested conditions should be considered. I agree and have imposed the suggested conditions.

ORDER

- [43] Pursuant to s. 9(5) of the *Act*, I substitute my opinion for that of the Registrar and direct the Registrar to register the appellant as a salesperson subject to the following conditions which shall remain in force for two years:
- (i) The appellant shall comply with all requirements of the *Motor Vehicle Dealers Act, 2002* and Ontario Regulation 333/08, the Code of Ethics in Ontario Regulation 332/08, the OMVIC Standards of Business Practice and OMVIC Policies and Guidelines, as may be amended from time to time.
 - (ii) The appellant shall only be employed as a salesperson at a dealership that has been approved by the Registrar and such approval shall not be unreasonably withheld.
 - (iii) The appellant's employment as a salesperson shall not be transferred to another registered dealer unless that transfer is approved beforehand by the Registrar and such approval shall not be unreasonably withheld.
 - (iv) The appellant shall report in writing any new criminal or *Provincial Offences Act* charges to the Registrar and to his sponsoring dealer within 5 days of being charged.

LICENCE APPEAL TRIBUNAL



Stephen Scharbach,
Adjudicator

Released: March 31, 2020