

**LICENCE APPEAL
TRIBUNAL**

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



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

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

Citation: Christopher Charles Lyons v. Registrar, *Motor Vehicle Dealers Act, 2002*, 2018 ONLAT-MVDA 11284

Date: 2018-11-22
File Number: 11284/MVDA

An Appeal of a Notice of Proposal by the Registrar, *Motor Vehicle Dealers Act, 2002* S.O. 2002, c. 30, Sched. B – to Refuse a Registration

Between:

Christopher Charles Lyons

Appellant

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

REASONS FOR DECISION AND ORDER

Adjudicator:

D. Gregory Flude, Vice Chair

Appearances:

For the Appellants:

Caroline Ursulak, Counsel

For the Respondent:

Thomas Felix, Counsel

Heard in Toronto:

August 14-16, 2018

OVERVIEW

- [1] The appellant applied for registration under the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sched. B (the “Act”) on September 20, 2017 as a Motor Vehicle Salesperson. On March 13, 2018 the Registrar, *Motor Vehicle Dealers Act, 2002* (the “Registrar”) issued a Notice of Proposal to refuse the appellant’s registration. He has appealed that decision to the Tribunal.
- [2] The Registrar asserts two grounds in seeking to deny the appellant’s registration: the appellant’s past criminal convictions and that the appellant provided a false answer on his application form. With respect to the criminal convictions, the appellant acknowledges that he was convicted of three serious sexual offences involving minors, but he argues that he has fully accepted the wrongfulness of his behaviour, is remorseful, has good insight into his past behaviour, and will not offend again. Concerning the false answer, the appellant argues that he simply misunderstood the question.
- [3] Section 6 of the Act sets out three grounds for denial of refusal of registration, two of which apply in this case: 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 he provided a false statement on the application. Each ground is independent of the other. Failure to satisfy either ground is sufficient to refuse registration.
- [4] The bulk of the evidence I heard addressed the question of whether the appellant has rehabilitated himself to the point where the public trust can be reposed in him once again. Based on that evidence, I am satisfied that he has done so.
- [5] Much less evidence was focussed on the false statement issue. It consisted of the appellant’s explanation of why he answered a question incorrectly on the application form. It comes down to the question of whether I believe that a person of the appellant’s intelligence and education could misread a clearly written question. I have concluded that he did not misread the question and that he knowingly provided a false answer on his application.

AGREED FACTS

- [6] The parties submitted an Agreed Statement of Facts. In it, the appellant admits that, while being a high school teacher, he committed three criminal offences of which he was convicted on October 8, 2014: luring a child under the age of 16 by means of telecommunication, and two counts of sexual exploitation of a young person by a person in trust and authority. He was sentenced to serve a term of 15 months imprisonment followed by three years of probation.
- [7] The Agreed Statement of Facts states that the appellant’s probation was to end in August 2018, but from the evidence at the hearing and other documentary

evidence, I conclude the 2018 date is incorrect and should read 2019. He was released on early parole in August 2015 after serving five months of his sentence and was on parole for another 10 months until 2016. His three year probation did not start until he finished his parole. From this it appears that he will remain on probation until June 2019.

- [8] There are other sentencing terms. The appellant is subject to a lifetime prohibition order prohibiting him from being around young people without supervision. His name is included in the National Sex Offender Registry.
- [9] In addition to the criminal proceedings against him, the appellant was also subject to a disciplinary hearing before the Ontario College of Teachers (“OCT”). In March 2016, following a joint plea and submission on penalty, the Discipline Committee revoked his teaching certificate. It published the decision in its official publication, *Professionally Speaking/Pour parler profession*.
- [10] The appellant applied for registration as a motor vehicle salesperson on or about September 20, 2017. He disclosed his criminal convictions but failed to disclose the OCT disciplinary action. The Agreed Statement of Facts uses an abbreviated version of the question concerning disciplinary action but I am of the view that the wording of the whole question is important. The appellant was asked and answered “No” to:

Has the applicant ever had a commercial, professional or business registration certificate or licence of any kind refused, suspended, revoked, cancelled or been subject to disciplinary action or has the applicant ever been or are they currently a party to such a proceeding?

- [11] In response to a question relating to convictions, the appellant disclosed his three convictions and provided a letter to the Registrar giving details. The letter is referenced in the Agreed Statement of Facts, and I will set out its relevant provisions in this section. The opening paragraph discloses the convictions:

As part of my application, I wish to disclose the following information. In 2013, as a teacher at a ... secondary school, I exchanged a series of emails, some of which contained suggestive language, with three female students. I was charged, and subsequently pleaded guilty to two counts of sexual exploitation, and one count of luring a child by means of a computer. The students involved were high school-aged.

OTHER EVIDENCE

- [12] Almost immediately following charges being laid against him, the appellant embarked on a series of treatments designed to help him understand and come to terms with his behaviour. He accepted responsibility for his actions and pleaded guilty to the criminal charges to relieve the victims of his actions from the necessity of testifying. He testified before me that he feels deeply remorseful and has great concern for the impact of his actions on his victims. He further testified that as a result of the treatment he has undergone, he now has good insight into his behaviour such that he will not reoffend.
- [13] The appellant first saw a psychologist, Dr. Brian Shaw, in May, 2013, shortly after he was charged. Dr. Shaw diagnosed the appellant with Major Depressive Disorder with a history of Dysthymic Disorder (low level depression, including amotivation, avoidance behaviours, procrastination and periods of social withdrawal). Dr. Shaw recommended, and the appellant completed, Cognitive-Behaviour Therapy. The appellant completed 27 sessions with Dr. Shaw. At the end Dr. Shaw noted that the appellant's participation had been excellent and his understanding of his character issues and emotional vulnerabilities had markedly improved.
- [14] Following his conviction, the appellant was required to attend forensic psychological assessments. The forensic psychologist who performed the assessment, Dr. Monik Kalia, confirmed Dr. Shaw's finding of Dysthymic Disorder – now referred to as Persistent Depressive Disorder, noting that people with this disorder will have a major depressive episode at some point in their lives. He found that the appellant had a low risk of reoffending but recommended treatment at his clinic, the Manasa Clinic, once the appellant was released on parole.
- [15] Based on the reports of Drs. Shaw and Kalia and his release plan, the appellant was released on parole after serving five months of his sentence. It was a condition of his release that he attend group sessions with Dr. Kalia at the Manasa Clinic. Although not a requirement of his parole, the appellant chose to continue his treatment at the Manasa Clinic under the supervision of Dr. Gojer, a forensic psychiatrist. He also began a course of psychoanalysis with a social worker, Nicholas Carveth.
- [16] Both Dr. Gojer and Mr. Carveth testified to the appellant's commitment to understanding his condition and ensuring he will never offend again. Both were of the opinion that the appellant is at a very low risk of reoffending. Dr. Gojer pointed to a unique set of circumstances that triggered the appellant's behaviour: low self-esteem and a major depressive episode. In Dr. Gojer's view, now that the appellant's mental health problem has been identified and is being treated, the conditions for the appellant to reoffend are unlikely to recur.

Employment History

- [17] On his release on parole, the appellant began working writing copy for an Internet service company. He had met the owner of the company and a relationship grew between them. They now have a child together. After several years, the appellant decided that he would prefer to make it on his own. After doing some consulting work, he decided to combine work with his love for cars and began to look for jobs in the car industry. He would always disclose his criminal convictions, usually at the end of an interview if the company was on the verge of offering a job. Often this disclosure would result in a termination of the interview and no job. This state of affairs continued until he was offered his current job.
- [18] The appellant applied to his current employer for the position of car jockey. He was interviewed by the sales manager who quickly formed the opinion that the appellant was overqualified for a lower level job but would make a good salesperson. A second interview was set up with the General Manager of the dealership who confirmed the opinion of the sales manager.
- [19] Once the possibility of employment was on the table, the appellant told the General Manager of his criminal convictions. The General Manager took the position that the appellant had served his debt to society and offered him a position. Pending OMVIC registration, the appellant was employed in the dealership in a non-sales capacity, ultimately becoming the manager of a car boutique the dealership operated at a local mall.
- [20] The General Manager of the dealership has since moved to another company. The Sales Manager was promoted to General Manager in March 2018. The appellant asked to speak to the new General Manager, and, over lunch, told him of his criminal convictions. The new General Manager took the same position as his predecessor. In fact, the new General Manager testified on behalf of the appellant at the hearing. He described the appellant's responsibilities as boutique manager. He finds the appellant trustworthy and conscientious and supports the appellant's application for registration.

Parties' Positions and Analysis

- [21] In proceedings under the Act, the Registrar carries the onus of proving that the appellant is not a suitable candidate for registration. This onus arises out of the wording of s. 6(1) which states that an applicant is entitled to registration unless the applicant falls within one of the exceptions set out subsection (a). The Registrar asserts that ss. 6(1)(a)(ii) and (iii) apply.

Section 6(1)(a)(ii) – Past Conduct

- [22] Subsection 6(1)(a)(ii) directs an enquiry into the appellant's past conduct to determine if it provides reasonable grounds for belief that he will not carry on

business in accordance with law or with integrity and honesty. The Registrar points to both the nature of the appellant's criminal offences and the fact that they are reasonably recent. He is still on probation.

- [23] With respect to the nature of the offences, the Registrar points out that they involve a breach of trust and abuse of a position of authority as a school teacher. The Registrar further points out that the relationship between a motor vehicle salesperson and a consumer is a trust relationship where the consumer relies on the salesperson to provide advice and full disclosure.
- [24] The Registrar does not discount the possibility of future registration. Relying on a number of authorities of this Tribunal, the Registrar argues that not enough time has elapsed from the time of the criminal activity and sentencing for the appellant to provide a record showing he can be invested with the public trust again. In the Registrar's view, the appellant has been continually under court supervision since he committed his offences. In the Registrar's submission, there needs to be a period of unsupervised activity to demonstrate that the appellant can be trusted.
- [25] The appellant points to the fact that his criminal behaviour arose out of a special confluence of circumstances: he was suffering from low self-esteem, he was undergoing a major depressive episode, and he compensated for these factors by increasing his workload, thereby increasing his stress. The appellant argues that he has undertaken extensive treatment to address these factors and has made great strides. He has a very low likelihood of reoffending.
- [26] The appellant's current employer testified. The appellant argues that that evidence demonstrates that he is currently in a position of trust as the manager of his employer's car boutique. His general manager testified that he trusts the appellant completely and finds him honest and diligent.
- [27] Both parties provided me with case law supporting their positions. A review of the cases highlights the fact that each case turns on its facts. In *Elizabeth Goulart v. Registrar, Real Estate and Business Brokers Act, 2002*, ONLAT decision released March 5, 2008 ("*Goulart*"), I held that it would be the exception to permit registration while an applicant was still serving the sentence.
- [28] In the *Goulart* case, the appellant had been sentenced to almost 9 years in prison for importing drugs. She had been released to a halfway house after serving one-sixth of her sentence and granted full parole after serving one-third. Her parole officer testified that, from 25 years' experience as a parole officer, she could definitively say that Ms. Goulart was going to succeed in reintegrating into society. I held, in that case, that despite the fact that she would remain on parole for approximately six more years, looking at the totality of Ms. Goulart's past conduct, she should be registered.

- [29] The appellant asks me to apply the same reasoning in this case. He points to his extensive and ongoing measures to seek treatment to understand his behaviour and ensure that it is not repeated. The Registrar relies on *10152 v Registrar, Real Estate and Business Brokers Act 2002*, 2016 CanLII 100995 (ON LAT) (“10152”). There are many similarities between the case at hand and the 10152 case.
- [30] The appellant in *10152* had been a teacher. In that capacity she had come across a troubled student. When she left the school the student was attending, she followed up on his case and ended up acting as his foster parent. For five years after becoming a foster parent, starting when the student was 16 years old and continuing until he was 21, the appellant and the student entered into a sexual relationship. There are parallel issues with the current case in terms of the appellant being in a position of trust and authority.
- [31] The appellant in *10152* was still on probation at the time of hearing. The Registrar took the position that she should not apply until after she had completed her probation. The Tribunal agreed with the Registrar’s submissions and denied the appellant registration.
- [32] There is a significant difference between the two cases. At the time of the hearing the appellant in *10152* had been working as an administrator in a real estate office run by a friend. When the appellant’s story became public, the friend had approached her and offered support. He had then hired her, and in the intervening years they had entered into a romantic relationship. To the extent that the appellant relied on the friend’s evidence in support of her position that she was not lacking in integrity and honesty as evidenced by the trust reposed in her by her employer, the Tribunal discounted the evidence. It did not feel that the appellant’s friend could be objective.
- [33] On the current facts, the appellant became employed with no previous relationship with his employer. That employer has reposed confidence in him to act as boutique manager, and he has repaid that confidence by being honest and diligent. In finding that I would not deny the appellant registration on this particular ground, I take note of his extensive and ongoing efforts to understand his wrongdoing and ensure that it does not happen again. I note the confidence of his employer and, assessing the appellant’s past conduct as a whole, I cannot see what value is added by making the appellant wait another year or so before granting him registration.
- [34] As the Law Society Tribunal stated in *Danny Freitas v. Law Society of Upper Canada*, 2010 ONLSHP 29 (CanLII), this Tribunal is not in the forgiveness business. It is for the appellant to rehabilitate himself and for me to assess those efforts in determining if the public trust may be reposed in him again. I am satisfied that if this were the only ground, he would be entitled to registration under the Act. Unfortunately for the appellant, it is not. I must now look at the provisions of s. 6(1)(a)(iii).

Section 6(1)(a)(iii) – False Answer

- [35] As set out in the facts above, the appellant answered “No” to a question on his application about previous regulatory proceedings. It is not in dispute that the answer is incorrect as the appellant had his teacher’s certificate revoked by the OCT. Subsection 6(1)(a)(iii) makes a false answer on an application for registration a stand-alone ground to deny the registration. This subsection has been clarified by the Divisional Court in *Registrar, Motor Vehicle Dealers Act v Vernon*, 2016 ONSC 304 (“*Vernon*”). The question I must ask myself is: did the appellant knowingly make a false statement on his application? I find that he did.
- [36] The appellant’s position is that he simply misread the question. He points out that it follows a question that asks him if he has an Ontario driver’s licence. He testified that he assumed this question related to something to do with driving or the operation of a fleet of vehicles and since he did not operate a fleet and his licence was in good standing, he answered “No.” In the Agreed Statement of Facts, the question has been edited to refer only to the word “licence” and delete reference to “registration certificate.” I accept that on the version of the question in the Agreed Statement of Facts it is possible to make such an error. When the full wording of the question is considered, the possibility of error recedes.
- [37] The appellant points out that he fully disclosed his criminal record. In his view, this disclosure would lead the Registrar to search into his full history and find the OCT decision. In his opinion he would have no reason to knowingly answer the question incorrectly. Of course, there is no way to know his reasons for giving the answers he did, but his intent may be inferred from all of his disclosure.
- [38] Looked at in its totality, the appellant’s disclosure significantly understates his criminal activity. It also appears to be crafted in such a manner so as not to draw attention to his OCT proceeding. Starting with his explanation to the Registrar, the appellant states that his conviction arose out of: “a series of emails, some of which contained suggestive language, with three female students.” He fails to mention that two of the three charges were for sexual exploitation that involved inappropriate touching, a hug and a kiss. He also downplays the content of the emails. They contain graphic language and were salacious, not simply suggestive. At one point, he sent 96 of them within three days.
- [39] In this disclosure, the appellant does acknowledge that he was working as a teacher at the time of the incidents, but he fails to include the professional disciplinary proceedings. This omission is notable because he acknowledges in the work history section of the application form that he was terminated from his employment for disciplinary reasons. The termination, of course, pre-dates the OCT disciplinary proceeding.
- [40] The psychological testing performed on the appellant showed that he is of very high intelligence. His first language is English and he has a university-level

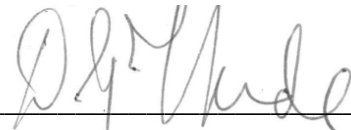
education. Prior to completing the application form, he had been working as a copy writer for a website design company, dealing with the nuances of the English language daily. These factors argue strongly against the appellant's position that he misunderstood the question.

[41] Having considered all of the above, I find that the appellant knowingly made a false statement on the application form.

ORDER

[42] In accordance with the authority set out in s. 9(5) of the Act, I direct the Registrar to carry out his proposal dated March 13, 2018 to deny the appellant registration under the Act.

LICENCE APPEAL TRIBUNAL



D. Gregory Flude, Vice Chair

Released: November 22, 2018