



Citation: Tilbury Auto Sales and RV Inc. et al. v. Registrar, *Motor Vehicle Dealers Act, 2002*, 2025 ONLAT MVDA 17413

Licence Appeal Tribunal File Number: 17413

In the matter of an appeal from a Notice of Proposal to Revoke Registration under section 9 of the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sch. B (the "Act"), and an Immediate Temporary Suspension Orders issued under section 10 of the *Act*.

Between:

Tilbury Auto Sales and RV Inc. and Lindsay Belanger

Appellants

and

Registrar, *Motor Vehicles Dealers Act, 2002*

Respondent

DECISION and ORDER

VICE-CHAIR: Colin Osterberg

APPEARANCES:

For the Appellants: A. Debly, Counsel

For the Respondent: A. Nyamekye, Counsel

Heard by videoconference: August 11, 2025

OVERVIEW

- [1] On July 11, 2025, the Registrar under the *Act*, (the “Registrar”) issued a Notice of Proposal to Revoke Registration (“NOP”) under s. 9 of the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sch. B (the “*Act*”), and an Immediate Temporary Suspension Order (“ITSO”) under s. 10 of the *Act* to the appellants, Lindsay Belanger (“Belanger”) in respect of his registration as motor vehicle salesperson, and to Tilbury Auto Sales and RV Inc. (“Tilbury”) with respect to its registration as a motor vehicle dealer.
- [2] The appellants appealed the NOP to the Licence Appeal Tribunal (the “Tribunal”).
- [3] Belanger is the business manager, an officer and Person-in-Charge of the day-to-day activities of Tilbury.
- [4] The hearing commenced on August 11, 2025, at which point the parties presented evidence and made submissions related to the possible extension of the ITSO. It was confirmed by the parties at the commencement of the hearing that the evidence presented for the purposes of the extension of the ITSO is not automatically evidence for the purposes of the hearing of the NOP appeal and will have to be presented again in its entirety should the hearing of the NOP appeal proceed. Further, since the determinations I must make with respect to the ITSO extension are to be based on an incomplete presentation of the evidence, my factual determinations are not binding on the adjudicator who conducts the NOP appeal.
- [5] At the conclusion of the hearing, and for clarity, I ordered that the ITSO continue until my decision was released.

Extension of the ITSO

- [6] I find that the ITSO should be extended pursuant to section 10(3) of the *Act* until the conclusion of the hearing.
- [7] Under subsection 10(3)(a) of the *Act*, an ITSO expires 15 days after the Tribunal receives a written request for a hearing under section 9 of the *Act* unless the Tribunal extends the time of expiration until the hearing is concluded.

- [8] The Registrar bears the onus to establish that it is in the public interest that the ITSO be extended pending the outcome of the hearing of the appeal of the NOP. To satisfy its onus, the Registrar must establish that the conduct on which it relies occurred and forms a reasonable basis for the NOP and that the nature of the conduct and the circumstances are such that it is a matter of public interest that the registration remain suspended pending the outcome of the NOP hearing.
- [9] The respondent requests an extension of the ITSO until the hearing is concluded.
- [10] The appellants oppose the extension of the ITSO.
- [11] Neither party called any witnesses at the hearing. Each party submitted documents into evidence and together filed an Agreed Statement of Facts which was entered into evidence.
- [12] At the hearing, the Registrar raised four broad issues which it says establish that it is in the public interest that the ITSO remain in effect until the conclusion of the hearing of the appeal:
- a. The Registrar alleges that, the appellants failed to pay out a lien as they were required to do;
 - b. The Registrar alleges that the appellants retained the proceeds of a sale which was the subject of a consignment agreement;
 - c. The Registrar alleges that the appellant failed to respond to requests for information and documentation made by the regulator; and
 - d. Inspections which took place in 2024 and 2025 found multiple significant violations of the appellants' obligations under the Act and regulations.

Failure to pay out a lien

- [13] According to the Agreed Statement of Facts, on or about September 15, 2023, a consumer traded in a 2022 Ford Mustang for the purchase of a 2023 Nexus Phantom. As part of the transaction, the appellants agreed to pay out the lien on the 2022 Mustang in the amount of \$84,876.90 and to arrange for the lien to be discharged.
- [14] On or about September 19, 2023, Tilbury sold the 2022 Mustang.
- [15] Despite having agreed to pay out and discharge the lien, and despite having received funds on the sale of the Mustang, the appellants never fully paid out the

lien or had it discharged. As of today, \$58,371.89 remains outstanding on the consumer's account.

- [16] Further, the affected consumer was never advised that the lien had not been removed or that the debt remained outstanding until he made an inquiry to the lender almost a year later. According to the consumer, the appellants' actions in this transaction adversely impacted his credit.
- [17] Despite demands by the consumer and the Ontario Motor Vehicle Industry Council ("OMVIC") to do so, the appellants have not discharged the lien.
- [18] The appellants do not deny the facts set out above. The appellants say that they have been in business for 30 years and never had any issues with respect to regulatory compliance until a certain CFO was hired in 2022. They allege that the CFO did not do what he was supposed to do and that he eventually was terminated a few weeks before the Tribunal hearing.
- [19] The appellants allege that they have tried to have the lien removed from the consumer's name and transferred into the name of Tilbury, but the lender refuses to agree to that. The lender requires payment of the loan in full before releasing the consumer from its indebtedness.
- [20] The appellants say that a new CFO has been hired and they expect no further compliance issues. They also submitted a letter from the consumer involved which states that he understands that problems occur and that he wants the lien paid out over time as needed by Tilbury who he knows is working hard to do so.
- [21] In my view, this incident forms a reasonable basis for the NOP and the nature of the conduct, and the circumstances are such that it is a matter of public interest that the registration remain suspended pending the outcome of the NOP hearing. The conduct involves the misappropriation of significant funds that were supposed to be used to pay out a lien resulting in an ongoing liability in the name of a consumer for over two years. There appears to have been no action taken for over a year even after the consumer and OMVIC demanded that the issue be rectified.
- [22] Further, the appellant Belanger was the Person-in-Charge of the day-to-day operations of Tilbury at all material times. Although he purports to have delegated the duties associated with Tilbury to the CFO, the responsibility to operate the dealership in a manner that is in compliance with, and not contrary to the public

protection purposes of, the *Act*, and in a way that is not contrary to the public interest, remains with Belanger.

- [23] While the incident may have initially been caused by a CFO who is no longer employed by the appellants, the fact that the appellants did not have systems in place in order to detect that behaviour and that it did not take, and still has not taken, immediate action to pay out the loan and remove the lien form a reasonable basis to conclude that consumer protection and the public interest require that the ITSO remain in place until the conclusion of the hearing.

Failure to honour consignment agreement

- [24] On or around May 6, 2024, Tilbury and a consumer entered into a consignment agreement wherein Tilbury agreed to sell a vehicle on the consumer's behalf and to pay the consumer \$107,000 on the last business day of the month the vehicle was sold.
- [25] The vehicle that was the subject of the consignment agreement was sold on February 10, 2025, for \$98,899. No money was paid to the consumer and on March 14, 2025, Tilbury and the consumer entered into a payment agreement which provided that Tilbury would pay the consumer \$85,000 rather than the \$107,000 that was agreed upon previously. The parties agreed that Tilbury would pay the consumer the sum of \$85,000 on March 31, 2025.
- [26] On March 31, 2025, Tilbury paid the consumer \$25,000. The consumer declined to accept the cheque and made a complaint to OMVIC. According to the consumer, he had obtained a personal loan to finance his purchase of the vehicle and was still making payments on that loan while Tilbury continued to withhold the proceeds from the sale of the vehicle.
- [27] Again, the appellants do not deny the above facts relating to the consignment agreement. It was the appellants' position at the hearing that, because the ITSO was issued, they no longer have access to their line of credit and cannot pay the full amount of the monies owing under the consignment agreement. The appellants also take the position that the CFO who was fired was responsible for the failure to pay the consumer under the consignment agreement and that, if the appellants can avoid the ITSO they will be able to pay the consumer the full amount owing.

- [28] Given that the NOP and ITSO were not issued until July 11, 2025, more than three months after the appellants had agreed to pay the consumer \$85,000, and more than five months after the appellants received payment on the sale of the vehicle in question, I do not accept that the suspension had any significant impact on the appellants' failure to honour the consignment agreement.
- [29] Further, as noted above, although the CFO may have acted improperly in the circumstances, the responsibility belonged to Belanger as the Person-in-Charge, and I find that this incident forms a reasonable basis to conclude that consumer protection and the public interest require that the ITSO remain in place until the conclusion of the hearing.

Failure to comply with requests for information

- [30] The respondent also submits that the appellants failed to comply with its information requests after the above complaints were received and that this failure to comply is concerning given the public protection mandate of the regulator and the impact that the failure to comply with inspections has on its ability to perform this function.
- [31] With respect to both of the above incidents, multiple requests by the respondent for information and documentation went unanswered by the appellants. The respondent argues that the regulator requires compliance with requests for information in order to carry out its mandate to protect the public and failure to comply on the part of the appellants prevents that from happening and forms a further basis to conclude that the public interest in this case requires that the ITSO be extended until the conclusion of the hearing.
- [32] The appellants agree that they did not comply with the respondent's requests for information and documentation as alleged but, in addition to suggesting that the rogue CFO was at fault, allege, without evidence, that the appellants have taken steps to ensure that they are in compliance with their responsibilities as licensees and can be expected to be compliant in the future.
- [33] In my view, the respondent has satisfied its onus to establish that the conduct on which it relies occurred and forms a reasonable basis for the NOP and that the nature of the conduct and the circumstances are such that it is a matter of public interest that the registration remain suspended pending the outcome of the NOP hearing.

[34] I accept, and it was not seriously contradicted, that a failure by a licensee to comply with requests for documentation and other information is likely to prevent the regulator, in this case OMVIC, from carrying out its mandate and protecting the public. I am not satisfied that the appellants have shown that they have taken steps to either remedy past failures in this regard or to ensure that they will be compliant in the future. I heard no evidence that the past requests for information, documentation, or compliance, have been satisfied even at the time of the hearing and I am satisfied that the appellants' failure to comply with those requests establishes that the public interest requires that the ITSO be extended until the conclusion of the hearing.

Results of inspections

[35] In addition to the above incidents, the respondent points to the findings relating to two inspections conducted by OMVIC, one in October 2024 and the other in May 2025, in support of its request that the ITSO be extended. Again, the findings are undisputed and are set out in the Agreed Statement of Facts.

[36] The findings in the two inspections include the following:

- a. Failure to maintain a trust account contrary to s. 25 of the *Act* and section 58(5) of O. Reg. 333/08 under the *Act* (the "Regulation");
- b. Failure to include mandatory information in a consignment agreement contrary to s. 45(4) of the Regulation;
- c. Failure to disclose incentives received by Tilbury for facilitating financing applications on two transactions contrary to ss. 39(2) and 39(21) of the Regulation;
- d. Failing to disclose that a vehicle was previously registered outside of Ontario contrary to s. 42(22) of the Regulation;
- e. Failing to disclose prior accident damage contrary to s. 42(19) of the Regulation;
- f. Failing to remit proceeds from warranty sales contrary to s. 47(7) of the Regulation;
- g. Failing to produce documents requested by the inspector contrary to s. 15(4) of the *Act*;
- h. Issuing cheques that we later returned for non-sufficient funds;
- i. Failing to execute consignment agreements prior to the sale of four vehicles contrary to s. 45 of the Regulation;

- j. Failure to maintain a trust account with respect to vehicles sold on consignment and co-mingling funds received on such sales with its own funds contrary to s. 25 of the *Act* and s. 58(5) of the Regulation; and
- k. Failing to indicate in advertisements that six vehicles were being sold on consignment contrary to s. 45(7) of the Regulation.

[37] The appellants acknowledge the above concerns and submit that they are taking steps to correct deficiencies and to ensure they do not happen again. There was very little evidence of what specific actions are being taken in this regard other than to have fired the previous CFO and hired another. The appellant submitted in argument, although not in evidence, that several family members have been terminated. It was not made clear at the hearing how that might go to ensuring future compliance.

[38] The appellants also submit, without providing evidence in support of the submission, that the appellants' dealership operated for 30 years without incident and that things began "falling apart" from 2022 through 2024 due to the apparently incompetent CFO who has since been terminated. As noted above, the Person-in-Charge was the appellant, Belanger, and in my view casting the blame for past improper actions in the operation of Tilbury at others is insufficient to satisfy Belanger's obligations under the *Act* or to excuse the above concerns. I find the breaches which were discovered in the inspections were serious and primarily involved failures which impacted, or could impact, consumers.

[39] The appellants submit, again without providing evidence, that many of the concerns raised by the respondent related to financial problems experienced by the appellants in the two-year period between 2022 and 2024 which they say were caused by the errant CFO, the COVID-19 pandemic, and several other financial "incidents" during that time. The appellants submit that the new CFO is putting the appellants' finances back in order and have submitted into evidence letters from two of their lenders stating that Tilbury has been a good customer and has always honoured its financial commitments in the past.

[40] In my view, the appellants' assertions that their financial issues are getting back in order are of little assistance given the lack of specifics, or evidence, that might indicate how those changes might ameliorate the concerns relating to the public interest established by the respondent. Likewise, the letters from the appellants' lenders do not provide any comment with respect to the respondent's concerns and do not say anything about their knowledge of the state of the appellants' finances or whether they were aware of the respondent's concerns prior to

providing those letters. One of the letters indicates that Tilbury has been approved for a \$1 million line of credit but qualifies this by stating that due diligence is still required.

- [41] I find that the multiple breaches of the *Act* and Regulation set out above provide further support for the respondent's position that the allegations in the NOP have a reasonable basis and that the nature of the conduct and the circumstances are such that it is a matter of public interest that the registration remain suspended pending the outcome of the NOP hearing.

Conclusion

- [42] In my view, in all the circumstances, it is in the public interest that the ITSO remain in effect until the conclusion of the NOP appeal.

ORDERS

- [43] The ITSO is extended pursuant to section 10(3) of the *Act* until the conclusion of the hearing.
- [44] The hearing is adjourned and will proceed with a case conference to be scheduled by the Tribunal.
- [45] The Tribunal will issue a Notice of Case Conference to the parties to confirm the specific date and time.
- [46] I am not seized of this matter.



Colin Osterberg

Vice-Chair

Released: August 21, 2025