CITATION: Veerasingam v. Licence Appeal Tribunal, 2025 ONSC 290
DIVISIONAL COURT FILE NO.: 683/23
DATE: 20250121

SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT

RE: BEASHEMA VEERASINGAM, Appellant

AND:

LICENCE APPEAL TRIBUNAL and ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL, Respondents

BEFORE: Lococo, Matheson and O'Brien JJ.

COUNSEL: *Avin Persad-Ford*, for the Appellant

Rishi Nageshar, for the Ontario Motor Vehicle Industry Council

Douglas Lee, for the Licence Appeal Tribunal

HEARD at Toronto: January 14, 2025

ENDORSEMENT

[1] Beashema Veerasingam appeals from the decision of the Licence Appeal Tribunal (LAT) dated August 8, 2023 (the Decision), and the related reconsideration decision dated November 2, 2023. The Decision required that the Registrar of the respondent Ontario Motor Vehicle Industry Council (OMVIC) carry out its proposal to refuse the registration of the appellant as a motor vehicle salesperson under the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sched. B (*MVDA*), due to misconduct. The request for reconsideration was dismissed.

[2] This appeal is dismissed for the reasons set out below. The appellant has not shown a denial of procedural fairness or other error that would result in allowing the appeal.

Background

[3] The appellant had been registered under the *MVDA* from mid-2010 until June 2022, when his registration terminated because his employment had been terminated. He then applied to be registered, proposing to work for a different motor vehicle dealer.

[4] Under s. 8 of the *MVDA*, the Registrar may refuse to register an applicant if, in the Registrar's opinion, the applicant is not entitled to registration. Under s. 6(1)(a)((ii), a person will

not be registered if 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".

[5] The Registrar must notify an applicant if the Registrar intends to refuse registration. In this case, the Registrar notified the appellant of the intention to do so because of incidents of sexual harassment in 2021 and 2022. The appellant then exercised his right to a hearing before the LAT, giving rise to the Decision.

[6] The issues before the LAT were whether the past conduct of the appellant precluded registration under s. 6(1)(a)(ii) and, if so, whether the public interest could be adequately protected through granting registration with conditions.

[7] The past conduct at issue related to the following:

(1) sending a sexually explicit video of himself and 23 text messages to a former co-worker, GP, in June 2021;

(2) sending suggestive Instagram messages to a customer in December 2021 and January 2022; and,

(3) sending sexually explicit messages to a former co-worker, NK, in July 2022.

[8] At the hearing, the Registrar called three witnesses: Mr. Sibal, a manager at the dealership who was involved in the first complaint; Mr. Beharry, one of the two customers (a couple) who had purchased two cars together giving rise to the second complaint; and, Mr. Rusek, for the Registrar. Mr. Rusek testified instead of the investigator, who had unexpectedly gone on an extended leave. Two other witnesses who had been on the Registrar's witness list – GP and NK – were not called. The Registrar's counsel indicated at the hearing that they had not responded to the summonses. Mr. Beharry's fiancée, MS, was not on the witness list.

[9] With respect to the first incident involving GP, the appellant admitted that the video was offensive. The text messages started with an apology saying it was the wrong person, saying he was drunk, but by the end of the stream of messages there was a message that said, "Luv u" and emojis with winks and blowing kisses.

[10] Mr. Sibal testified about receiving the complaint from GP about the sexually explicit video and text messages from the appellant. Mr. Sibal testified about confronting the appellant, saying that the appellant admitted sending those materials. Neither the appellant nor Mr. Sibal testified that the appellant told Mr. Sibal that he had sent all of the messages by mistake. However, in connection with the LAT hearing, the appellant said that he did send the video of himself and the texts but sent them to the wrong person. He also pointed out and relied on the timing. They were sent after midnight. He also took the position that the Registrar had not proved that they were unwanted, especially because GP did not testify at the hearing.

[11] The second incident arose from two car purchases. Mr Beharry and his fiancée MS went together to the dealership and each bought a car. The appellant was their salesperson. Mr. Beharry testified that shortly after the purchases the appellant sent direct Instagram messages to MS. Mr. Beharry testified that he confronted the appellant, who said that the messages were intended for someone else and that he mistakenly sent them to MS because he was drunk. However, after Mr. Beharry complained to the appellant's employer, the appellant said that the messages were actually sent by someone else who hacked into his account – a jealous husband of a former co-worker who had been harassing him. At the hearing, the appellant testified that the inappropriate messages were sent by the harasser. He said that he did not want Mr. Beharry to know about the hacker so he said he was drunk. He testified that he notified the police about the harassment.

[12] The third incident related to communications with another former employee, NK. However, no findings were made about NK.

[13] As set out in the Decision, Vice-Chair Osterberg found that the Registrar had satisfied the burden of proving that the past conduct of the appellant afforded reasonable grounds for belief that he would not carry on business as a motor vehicle salesperson in accordance with s. 6(1)(a(ii) of the *MVDA* and that the appropriate remedy was to refuse registration rather than grant it with conditions.

[14] There is no issue that the Vice-Chair set out the correct legal principles that establish the standard of proof with respect to reasonable grounds for belief. The belief must be more than a mere suspicion but it does not need to be shown that it is more likely than not that the appellant would not carry on business as required. There must be an objective basis for the belief based on compelling and credible information and there must be a nexus between the past conduct and the appellant's ability to conduct business as a motor vehicle salesperson serving the interests of the public.

[15] In summary, the Decision provides as follows:

(i) The Vice-Chair found that the appellant was not a credible witness and gave detailed reasons for this finding in relation to both the first and second incidents. Those reasons were based upon the appellant's own conduct and evidence. The Vice-Chair found the appellant's answers to questions were often rambling and unresponsive. With respect to the first incident, there was no evidence that he told his employer that the messages were sent to GP by mistake. He initially agreed that he sent them. He did not dispute his termination for cause. These actions were inconsistent with his allegation that they were sent by mistake. The Vice-Chair found, on a balance of probabilities, that the appellant intentionally sent an explicit video of himself to GP, a former co-worker, and falsely alleged that it was done by mistake. The appellant's explanation was unplausible and his evidence was unreliable and unsupported by other evidence.

(ii) The Vice-Chair disagreed with the appellant's submission that the Registrar failed to prove the communications were unwanted because GP did not testify. The Vice-Chair relied on the uncontradicted evidence that GP had complained after the messages were sent, and had pursued a civil action, and noted that the suggestion that the communications may have been wanted was unreasonable in the face of the appellant's position that they were sent by mistake.

(iii) The Vice-Chair also disagreed with the submission that the course of conduct was irrelevant because GP was no longer an employee. The appellant knew GP through his employment and accepted his termination as a consequence of his conduct.

(iv) With respect to the Instagram messages, the Vice-Chair did not find the appellant's evidence that his account had been hacked was credible. The appellant testified that in 2021 a co-worker's husband had begun harassing him. However, he put forward no examples of fake messages and did not change his account in response to the incidents. He did not summons the alleged hacker/harasser to testify despite knowing who he was. Although the appellant went into significant detail when telling the police about the harasser, he never told the police that the harasser had hacked into his Instagram account. Further, the appellant first admitted to Mr. Beharry that he sent the messages, saying he was drunk and the messages were intended for someone else. Later he said it was a hacker.

(v) The Vice-Chair found that the appellant did send the inappropriate messages to a customer late at night, which were harassing in nature, and then lied about it. The Vice-Chair found that the appellant knew that the messages were inappropriate. The Vice-Chair concluded that sending a customer a series of inappropriate messages late at night and then fabricating a story about it lacked honesty and integrity and was conduct directly connected to his business as a motor vehicle salesperson.

(vi) The Vice-Chair also made adverse findings about the pattern of misrepresentations made by the appellant, but expressly provided that they were not necessary to his finding that there were reasonable grounds for the belief that the appellant would not carry on business in accordance with the law and with integrity and honesty.

(vii) The Vice-Chair considered conditions and found that there was no basis to conclude that registration with conditions would be appropriate or adequately protect the public.

[16] The appellant's request for reconsideration was dismissed and the Decision was confirmed.

Issues and Standard of Review

[17] The appellant has an unrestricted right of appeal under s. 11 of the *Licence Appeal Tribunal Act, 1999*, S.O. 1999, c 12, Sched. G.

[18] The appellate standard of review applies, as set out in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at paras. 8, 10, 36. On questions of law, the standard of review is correctness. On questions of fact, the standard of review is palpable and overriding error. On questions of mixed fact and law, the standard of review is also palpable and overriding error except for extricable errors of law, which are reviewed on the standard of correctness. Issues of procedural fairness are reviewed on the standard of correctness: *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29, 470 D.L.R. (4th) 328, at para. 30.

[19] The appellant submits that the Decision was unfair because of the following:

(i) ineffective assistance of counsel;

(ii) by accepting evidence from Mr. Sibal and Mr. Beharry, instead of rejecting it as hearsay and proceeding without the testimony of GP and CS; and,

(iii) by permitting Mr. Rusek to testify instead of the investigator and permitting him to include argument in his evidence.

[20] The appellant characterizes all of the above issues as issues of procedural fairness. In reaching our conclusions below, we have had regard for the factors relevant to procedural fairness, as set out in *Baker v. Canada (Minister of Citizenship and Immigration),* [1999] 2 S.C.R. 817, at paras. 23-28. We agree with the appellant that the decision was important to him, which is relevant to the level of procedural fairness to be provided to him.

[21] The appellant raised other issues in his factum that were not pursued either in the written outline of oral argument or in oral submissions and are therefore not addressed below.

Analysis

[22] In the amended notice of appeal, the appellant raised, for the first time, ineffective assistance of counsel. Leaving aside the issue of raising this for the first time on this appeal, the appellant has not met the test to show unfairness on this basis.

[23] As set out in *Deokaran v. Law Society of Ontario*, 2023 ONSC 1702 (Div. Ct.), at para. 27, citing *R. v. G.D.B.*, 2000 SCC 22, [2000] 1 S.C.R. 520, at para. 26, and *Gligorevic v. McMaster*, 2012 ONCA 115, 109 O.R. (3d) 321, at para. 66:

> Three components or preconditions are required to establish a claim of ineffective assistance by counsel:

1. The underlying facts on which the claim of incompetence is based must be established on a balance of probabilities (the factual component).

2. Incompetent representation must be established (the performance component).

3. The incompetent representation caused a miscarriage of justice (the prejudice component).

[24] At the LAT hearing, the appellant was represented by a paralegal, Zeeshan Rahman. The appellant has not brought a motion to adduce fresh evidence about his instructions to or dealings with Mr. Rahman. An exchange of letters between the appellant's counsel and Mr. Rahman has been inserted in the appellant's compendium.

[25] As submitted by the OMVIC, the appellant must establish the facts to succeed in a claim for ineffective assistance of counsel. The letters are not evidence properly before the Court. Yet, relying on those letters, the appellant asks this Court to prefer the appellant's account of what took place between him and Mr. Rahman (as set out in his counsel's letter) over the account by Mr. Rahman (in his responding letter) on what are described as areas of major disagreement. For example, they disagree about the extent to which the appellant instructed Mr. Rahman to make settlement negotiations the priority and they disagree about the extent to which Mr. Rahman was prepared for the hearing.

[26] These letters do show disagreement and they raise various issues, including some pursued by the appellant on this appeal. However, they are not evidence before this Court. This evidentiary issue was raised in the OMVIC factum and also by the Court with counsel in the course of oral submissions. The appellant had the opportunity to bring a motion to admit fresh evidence and did not do so.

[27] The letters are not a foundation for this Court to make rulings about which version of the events to believe or from which to conclude that there was incompetence.

[28] The appellant also relies on transcript excerpts setting out submissions made by Mr. Rahman about the extent of his preparation and excerpts from the evidence. Those transcripts are before the Court. A number of the statements relied upon are also predicated on whether the instructions were to put a priority on attempting a settlement, rather than preparing for a disputed hearing, discussed above. Others are the starting point for more general criticisms by the appellant about the amount of preparation and choices made during the hearing. The transcript excerpts fall short of establishing incompetence. The first precondition of the above test has not been met.

[29] The appellant then submits that the LAT's admission of hearsay evidence was unfair. The appellant has also not established this ground of appeal. Most importantly, the key facts received in that way were the appellant's own admissions against interest – an exception to the hearsay rule. Second, as a tribunal under the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S. 22, s. 15, the LAT may admit evidence, whether or not admissible in court, including hearsay. In this case, the admission of hearsay did not lead to unfairness.

[30] The appellant focuses on his position that he did not actually send all the messages. He submits that Mr. Sibal should not have been permitted to testify about them and GP should have been called to testify. Similarly, he submits that Mr. Beharry should not have been permitted to testify about the Instagram messages and MS should have been called. However, both Mr. Sibal and Mr. Beharry testified about their direct discussions with the appellant, who admitted sending the messages. The additional witnesses were not needed to show authenticity. In any event, it is

hard to see how the recipients of the messages could, themselves, say more than that they appeared to come from the appellant.

[31] The Vice-Chair properly considered the appellant's admissions against interest along with his other evidence. It was open to the appellant to challenge authenticity with more than his own evidence if he wished to do so.

[32] The appellant further submits that GP ought to have testified about the impact of the messages on her and been made available for cross-examination about the reasons that she decided to settle rather her civil claim. However, it was for the Registrar to decide whether that evidence to call for its case. If the appellant wanted to, he could have summonsed those witnesses himself.

[33] With respect to MS, Mr. Beharry was permitted to testify about not only his reaction but also MS's reaction to the messages, which was hearsay. The LAT may receive hearsay. Having regard for the circumstances here, we do not find the admission of this hearsay rendered the hearing unfair.

[34] The appellant further submits that the Vice-Chair ought not to have made credibility findings about him without giving him the opportunity to challenge the evidence of GP, MS and the investigator. However, those credibility findings were based upon the appellant's own course of conduct in response to the complaints and his evidence at the hearing, not on another basis.

[35] The appellant has also raised the issue of Mr. Rusek, who testified instead of the investigator who had gone on leave unexpectedly just before the hearing. Mr. Rusek was permitted to testify despite little involvement and relied on documents, despite no new will say statement. The appellant submits that Mr. Rusek gave little proper evidence and did not testify about authenticity, which had been listed as a topic in the investigator's will say. However, as discussed above, the authenticity findings upon which the Decision was based were founded on the appellant's own admissions.

[36] The appellant further submits that it was unfair that Mr. Rusek was permitted to essentially make oral submissions in his testimony, giving the position and opinion of the Registrar, rather than just in the final written submissions. The appellant submits that he too should have been permitted to make argument orally.

[37] At the outset of the hearing, counsel to the Registrar expressly identified Mr. Rusek as the client. A reason was given for the change and it was within the Vice-Chair's procedural discretion to permit the change. The Vice-Chair was not only told of Mr. Rusek's role when the hearing commenced but Mr. Rusek noted that role repeatedly in the transcript excerpts that are before this Court. Mr. Rusek's testimony is not referred to in the Decision, nor does it appear that it was given any significant weight. The appellant had the opportunity to comprehensively address Mr. Rusek's role and any limits that should be placed on his evidence in his final submissions.

[38] We do not find that the issues raised by the appellant resulted in an unfair hearing.

Disposition

[39] This appeal is therefore dismissed. The appellant shall pay the OMVIC costs fixed at the agreed-upon amount of $15,000, all inclusive. Costs of the unsuccessful stay motion shall be addressed by the motion judge as set out in his endorsement.

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Justice Lococo

_____
Justice Matheson

_____
Justice O'Brien

Date: January 21, 2025