Tribunals Ontario
Licence Appeal Tribunal

Tribunaux décisionnels Ontario
Tribunal d'appel en matière de permis

Citation: Irani and Khan v. Registrar, Motor Vehicle Dealers Act, 2002, 2022 ONLAT MVDA 13303/13307

Date: 2022-10-31
File Number: 13303/13307MVDA

Appeals under s. 9(5) of the Motor Vehicle Dealers Act, 2002, S.O. 2002, c. 30, Sch. B. from a Notice of Proposal to Refuse a Registration

Between:

Habib Irani and Shaffat Khan

Appellant

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

DECISION & ORDER ON COSTS

ADJUDICATOR: Jennifer Friedland, Member

APPEARANCES:

For Mr. Khan	Justin Jakubiak, Counsel
For Mr. Irani	Self Represented
For the Respondent	Husein Panju, Counsel

A. Overview

[1] This is a costs application brought by the appellants pursuant to Rule 19.1 of the *Common Rules of the Licence Appeal Tribunal, Animal Care Review Board, and Fire Safety Commission* ("the Rules").

[2] The appellants, Habib Irani and Shaffat Khan, had appealed from a Notice of Proposal (NOP) issued by the Registrar under the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sch. B. (the "Act" or "MVDA") on April 27, 2021 to refuse their registrations as salespeople under the Act.

[3] The appellants were successful on their appeal. The Registrar was directed not to carry out its proposal and to forthwith register the appellants as salespersons under the Act without conditions.

[4] Both appellants request $15,000 in costs representing the maximum amount payable under the Rules for each day of hearing including pre-trial conferences. Mr. Irani is also seeking an order requiring the Registrar to pay his 2022 OMVIC registration fees.

B. Issue

[5] The issue on this application is whether the respondent's conduct in the proceeding was unreasonable, frivolous, vexatious or in bad faith; and

[6] If so, are costs appropriate and in what amount?

C. Result

[7] For the reasons given below, I find the Registrar's conduct sufficiently unreasonable to warrant a cost award in the amount of $4,000 to each appellant.

D. Background

[8] The facts of this case are amply laid out in the original decision and will not be repeated here at any length. The decision can be found at 2022 CanLII 68317 (ON LAT) | Irani and Khan v. Registrar, Motor Vehicle Dealers Act, 2002 | CanLII.

[9] In brief, the Registrar proposed to refuse the appellants' application to transfer their registrations to a new dealership, under s. 6(1)(a)(ii) of the MVDA on the basis that the appellants' past conduct afforded reasonable grounds to believe

they would not carry on business in accordance with law and with integrity and honesty.

[10] The alleged past conduct relied on by the Registrar occurred at Ontario Hyundai (OH) where the appellants previously worked. Mr. Khan was in place as the General Manager (GM) at OH and Mr. Irani was a Financial Services Manager (FSM).

[11] OH is owned by Alpha Auto Group (AAG) which owns a number of dealerships in Ontario and elsewhere. Mr. Robert Walker was the head of compliance for AAG and was the Registrar's primary witness.

[12] It was information provided to OMVIC by Mr. Walker that led to the NOP against the appellants. Mr. Walker never interviewed the appellants in relation to his purported concerns; nor did the Registrar seek any information from the appellants before issuing its NOP, as it is entitled to have done pursuant to s. 6(1.1) of the Act.

[13] The allegations underlying the Registrar's NOP related to two areas of purported wrongdoing: 1) alleged misconduct with respect to early loan terminations (ELTs) and 2) various consumer trade issues.

[14] With respect to the allegations regarding the ELTs, the allegation was that the appellants had embarked on a "scheme" to direct loans to RBC and collect the commissions for doing so when they knew or had reason to suspect that some if not many of those loans would terminate early. The bank was entitled to claw back the commissions paid on loans that terminated early but during the impugned period the bank was not doing so.

[15] The majority of the profits for these commissions went to the dealership – owned by AAG. In the fall of 2020, Mr. Walker entered into unspecified negotiations with RBC to address the increase in ELTs and then fired the FSMs said to have been involved in the purported scheme, one of whom was Mr. Irani. Mr. Walker then informed OMVIC by letter of the purported issue and subsequently also fired Mr. Khan. When the appellants applied for a transfer of their registration, the Registrar proposed to refuse their applications.

[16] With respect to the consumer trade issues, Mr. Irani was said to have engaged in two consumer trades that raised concerns.

[17] Another FSM (GP) had originally also been party to these proceedings, but withdrew his appeal prior to the hearing. It was conceded that GP had

engaged in various improper consumer trades, which included significant overcharges.

[18] Mr. Khan's past conduct was impugned because he was the acting GM during the relevant period.

[19] The result of the appeal was that I ordered that both the appellants be registered forthwith without conditions.

E. The Law

[20] The authority to grant costs following a hearing stems from s. 17.1 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 (SPPA) and Rule 19.1 of the Rules.

[21] Section 17.1 (2)(a) of the SPPA limits the payment of costs to circumstances where "the conduct or course of conduct of a party has been unreasonable, frivolous or vexatious or a party has acted in bad faith."

[22] Rule 19 further limits the availability of costs, allowing a party to bring an application only where it believes that a party in a proceeding has acted unreasonably, frivolously, vexatiously or in bad faith.

[23] A "proceeding" is defined in section 2.17 of the Rules as meaning "the entire Tribunal process from the start of an appeal to the time a matter is finally resolved."

[24] In deciding whether costs should be paid and in what amount, Rule 19.5 requires the Tribunal to consider "all relevant factors" including:

- the seriousness of the misconduct;
- whether the conduct was in breach of a direction or order issued by the Tribunal;
- whether or not a party's behaviour interfered with the Tribunal's ability to carry out a fair, efficient, and effective process;
- prejudice to other parties; and
- the potential impact an order for costs would have on individuals accessing the Tribunal system.

[25] Pursuant to Rule 19.6, the maximum amount that the Tribunal may order in costs is $1,000 for each full day of attendance at a motion, case conference or hearing.

F. The Position of the Parties

[26] Submissions were received in writing by both parties.

[27] The appellants each made similar arguments. They rely on their success following the hearing to argue that the Registrar acted unreasonably, frivolously, vexatiously and in bad faith by pursuing its case in the first place and through 13 days of evidence and by refusing reasonable offers to settle made before and during the hearing.

[28] In support of their argument, the appellants each point to phrases used in my decision which were to their favour.

[29] For example, Mr. Jakubiak, for the appellant Khan, points to my decision at paragraph 179 where I found that the Registrar's case against Mr. Khan was "wanting." I further stated at paragraph 198 that "the evidence does not persuade me – or leave me with even a "mere suspicion" – that he will not act in accordance with law and with integrity and honesty as a salesperson."

[30] Mr. Irani, who was self-represented by the time of the hearing, noted my finding that Mr. Cosentino (who was the Registrar's representative at the hearing) had agreed that "it was a little ambiguous" as to whether Mr. Irani had overcharged a consumer, which was one of the Registrar's allegations; and that OMVIC may have benefited from interviewing Mr. Irani, which it never did. Mr. Irani also pointed to a number of other factors suggesting that the Registrar failed to properly investigate the facts of its case or conduct due diligence before proceeding to a hearing.

[31] Both appellants also include excerpts of correspondence showing their ongoing requests to discuss settlement with the Registrar. They also included their offer to resolve the Registrar's alleged concerns without a hearing by registering the appellants with terms and conditions.

[32] The Registrar's position is that neither party meets the test for costs as set out in the Tribunal's Rules. The Registrar further objects to the appellants relying on settlement discussions as a basis for costs. It submits that such discussions are privileged and confidential and that by referring to them the

appellants' conduct is worse than any conduct that could be impugned on the part of the Registrar.

G. Analysis

[33] There is no presumption that costs will be awarded to the successful party in Tribunal proceedings. Thus, the fact that I found the evidence against the appellants to be "wanting" is not sufficient to trigger a costs award. In all cases where an appellant succeeds on appeal, the evidence brought by the respondent will in some sense have been wanting.

[34] The appellants ask me to conclude that the Registrar's case against the appellants was *always* wanting. They submit that "to proceed when the Registrar knows, or ought to know, that its case is wanting is in and of itself behaviour that is frivolous, vexatious and obviously unreasonable."

[35] I do not find anything frivolous, vexatious or in bad faith about the Registrar's conduct.

[36] I do however, find that the Registrar's conduct was unreasonable, at least to some extent in this particular case, for the following reasons:

Reliance on the allegations of Robert Walker

[37] First, it is apparent from the evidence at the hearing, that the Registrar relied heavily on Robert Walker's communications to OMVIC about the appellants' purported past conduct in forming its opinion that there were reasonable grounds to believe they would not carry out business in accordance with the law and with honesty and integrity.

[38] As noted above, Robert Walker was the head of compliance for AAG, which owned the numbered company operating as OH and reaped the lion's share of the profits acquired through what it alleged was wrongdoing on the part of the appellants.

[39] Under s. 23 of the Act, it is the dealer's responsibility to ensure that its employees are carrying out their duties in compliance with the Act. In my view, it is clear that Mr. Walker and AAG had at least some interest in focusing the blame for any alleged wrongdoing on the appellants.

[40] The appellants raised concerns about relying on information from the dealer in their notices of appeal.

[41] Mr. Jakubiak also raised this concern early on in the proceedings with Mr. Panju, counsel for the Registrar. On August 17, 2021 he wrote:

> *I am quite surprised that OMVIC decided to pursue the employees of the dealership, rather than the dealership itself – the principal beneficiary of the purported RBC "scheme". It seems quite unfair that my client, a long time OMVIC member with an unblemished record, is caught up in this mess and the dealer is not.*

[42] As I shall further describe below, I raised a similar concern in my decision.

[43] I find it was unreasonable for the Registrar to have relied on information from Mr. Walker while not seeking any information from the appellants before issuing its NOP or after the proceedings had commenced.

Weaknesses in the case against Mr. Khan

[44] The Registrar's basis for issuing its NOP against Mr. Khan was his role as acting GM. I say acting, as I did in my decision at para 31, because he was not in fact hired by AAG in that role. Rather, his contract was for Sales Manager. In answer to questions raised by me at the hearing when the contract between AAG and Mr. Khan was made an exhibit, Mr. Walker explained why Mr. Khan was being described as a GM when his contract said Sales Manager: it was so that AAG could skirt the vetting process required by Hyundai Canada when hiring a GM.

[45] The above fact, which hardly inured to the honesty or integrity of AAG, was available to the Registrar to uncover prior to the hearing.

[46] Also available for the Registrar to have learned prior to the hearing was that Mr. Khan was placed in the role of overseeing the dealership without any training and with no prior experience in the role.

[47] As set out in my decision at paragraphs 37 and 38, in addition to having no training, there were multiple other factors that provided context to Mr. Khan's role as "acting GM" that made any perceived lack of adequate oversight understandable.

Increasingly weak case against Mr. Khan

[48] The Registrar did not adduce evidence that improved its case against Mr. Khan as time went on. If anything, the case against both appellants weakened over the course of the proceedings.

[49] For example, the Registrar initially alleged consumer harm with respect to the ELTs. The NOP states that some customers "were unaware of, or did not fully understand that loans were being arranged for them." In its Notice of Further and Other Particulars dated September 30, 2021 the Registrar deleted this allegation. There was thus no allegation of consumer harm in relation to the ELTs. This factor alone might have caused the Registrar to reconsider its case.

[50] At the hearing, the Registrar called Jeff Brandes, one of the FSMs who worked with the appellants during the relevant period. Presumably he was called to support the Registrar's portrayal of the appellants' wrongdoing. Yet rather than lend credence to the Registrar's portrayal of the ELT process as a dishonest scheme, the witness supported the appellants' explanation of that conduct.

[51] I agree with the appellant's submission "that it is problematic that the Registrar continued the hearing to completion (a startling 13 days of evidence), despite the case as against Mr. Khan showing multiple weaknesses early on and throughout the hearing."

[52] My conclusion with respect to Mr. Khan reflects the concerns raised by the appellants in their Notices of Appeal and following, particularly vis-à-vis the role of Mr. Walker and AAG. At paragraphs 190 to 193 I wrote the following:

> [190] I find that anything that might be said against Mr. Khan would be equally true against the dealership who put him in a supervisory role without training, during a crisis, and while short staffed. AAG was Mr. Khan's employer. AAG decided to put Mr. Khan in charge of a 97-person, high volume, high profit dealership with no training and no experience as a GM. AAG had a Chief Compliance Officer who did not once attend OH to see whether this brand new untrained inexperienced GM was handling everything adequately or had the right systems in place to ensure compliance.
>
> [191] I find that it hardly lies in the mouth of AAG or OMVIC to complain about Mr. Khan's failure to keep an eye on every single

> aspect of the dealership when those in charge of the dealership and who benefited from the lion's share of all profit generated by that dealership themselves fully abandoned all such supervision.
>
> [192] I am aware that AAG is not the subject of these proceedings. I refer to AAG's lack of oversight as a comparison point. Mr. Walker has 30 years of experience, half of which was as a GM and he was the Chief Compliance Officer at AAG, a role that is presumably created for a reason. AAG obviously also had access to the records and books at its dealership. Further, it is clear that AAG was extremely interested in the profitability of OH. It strikes me that AAG, as the owner of the numbered company operating as OH and registered as a dealer under the Act, might also have overseen its employees and compliance issues at its dealership instead of passing the buck to an untrained, unofficial GM, left in charge of one of its most high volume dealerships, without adequate support, in the midst of a pandemic.
>
> [193] In conclusion, even if I were to take the alleged past conduct of Mr. Khan at its height, I might conclude that he ought not to take on the job of GM going forward – at least not until he has been properly trained for the role. But I cannot conclude that his past conduct affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty. Even with respect to whether he should act in the future as a GM, I would leave that decision to his next employer. I see no reason to impose any prohibition against him taking on that role as a condition to his registration.

Weakening case against Mr. Irani

[53] With respect to the allegations against Mr. Irani beyond his participation in the ELT process (which I found was not a "scheme" and did not involve dishonesty that raised concerns about Mr. Irani's future conduct), the Registrar also alleged wrongdoing in relation to two of Mr. Irani's consumer trades. In one, he was alleged to have added a product that the consumer had not agreed to and to have failed to provide the Bill of Sale at the time required under the Act. In the other, it was alleged that the consumer had been overcharged for a product. I found neither allegation particularly compelling.

[54] With respect to one of the impugned transactions, the Registrar did not produce the consumer as a witness. As well, Mr. Irani was able to show that

this consumer had likely been undercharged not overcharged. At the hearing, Mr. Cosentino, who sat in for the Registrar at the hearing (and about whom I will have more to say below), agreed that the facts were more "ambiguous" than alleged.

[55] The other consumer was called as a witness but ultimately I found the context of this allegedly untoward transaction too murky to conclude there was wrongdoing on the part of Mr. Irani.

[56] I agree with the submissions of the appellants that these further weaknesses in the Registrar's case were there to be discovered prior to the hearing.

[57] I have already noted that the Registrar did not request any information from the appellants before issuing its NOP. In December 2021, before the start of the hearing, Mr. Irani's then-counsel raised the issue again. He wrote to Mr. Panju on December 15, 2021 asking if his client could have the opportunity to provide his explanations for the allegations against him before having to proceed to a hearing. On December 15, 2021 he wrote:

> *My client has expressed a strong desire to participate in a without prejudice conference call between you and I, Mr. Irani, and if your client is willing, a representative from OMVIC, as soon as possible. Prior to advancing to a hearing, I believe it would be beneficial for you and your client to speak with Mr. Irani and see that he is an honest person who cares about consumers, and takes his ethical obligations seriously. He has credible explanations for the allegations against him, which should remove much of your clients concerns about him continuing to be registered as a motor vehicle dealer. I believe that his oral evidence, in the context of his otherwise clean record, will both facilitate an early resolution, alternatively, will result in registration subject to conditions (at worst) at the hearing. Please advise if you would be willing to have a without prejudice teleconference.*

[58] Mr. Cosentino admitted during his testimony at the hearing that OMVIC may have benefited from speaking to Mr. Irani to understand his version of events. In my view, this concession alone supports a finding of unreasonableness on the part of the Registrar.

[59] In response to the appellants' submission that proceeding in the face of a weak case was unreasonable, the Registrar submits that, "the parties in an administrative proceeding are entitled to a hearing to have all the evidence

tested by an impartial adjudicator." However, this is not true. It is the person who disagrees with a decision of the Registrar who is entitled to a hearing. The Registrar ought to have already assessed the strength of its position prior to issuing the NOP and ought to continue to assess the strength of its case during the course of the proceedings.

[60] The Registrar also states that an "administrative hearing is a unique truth-seeking exercise where an impartial adjudicator tests the evidence of the parties."

[61] In my view, a Registrar who simply proceeds just to "play it out" or take its chances at a hearing – risks a finding that it has acted unreasonably.

Offers to Settle

[62] The submissions from Mr. Jakubiak include a draft of terms and conditions that his client was prepared to agree to. The draft is not dated though there is a reference to the draft having been provided in "the fall" of 2021. Mr. Jakubiak followed up in December expressing surprise that there had been no back-and-forth on those terms and asking again to discuss settlement. On at least four subsequent occasions after the hearing had commenced, he suggested to counsel for the Registrar that they discuss settlement.

[63] Mr. Irani's counsel – while he still had counsel – also proposed terms and conditions as a way to settle the appeal without a hearing.

[64] The Registrar objects to the appellants referring to these proposals to settle for terms and conditions, submitting that they are privileged and should remain confidential.

[65] I do not find it necessary to consider the terms of the appellants' settlement proposals for the purposes of this decision. The appellants both referred to the possibility of settling for terms and conditions in their Notices of Appeal. As well, Mr. Cosentino, purportedly speaking on behalf of the Registrar, was asked during his testimony his position vis-à-vis registering the appellants on terms and conditions. He testified that he did not think *any* terms and conditions would be appropriate.

[66] In light of the frailties in the Registrar's case which were open for it to have assessed prior to the hearing, and in light of my ultimate conclusion after 13 days of evidence, that the appellants should be registered forthwith without

any terms and conditions, I find Mr. Cosentino's unwillingness to even *consider* registering the appellants on terms and conditions unreasonable.

Registrar improperly delegating its authority

[67] A further factor relevant to the reasonableness of the Registrar's conduct during the proceedings is the Registrar's delegation of duties to Mr. Cosentino, who was a Manager of Investigations.

[68] The Registrar did not attend the hearing. In his stead, Mr. Cosentino was introduced as counsel's "instructing client." The evidence and submissions at the hearing, as well as the correspondence included on this application, showed that Mr. Cosentino was delegated to make decisions on the Registrar's behalf during the course of the proceedings, including on the question of whether to settle.

[69] However, I see no avenue where the Registrar was entitled to delegate his duties in this way. There is no provision in the MVDA that allows the Registrar to delegate his powers to a person other than a Deputy Registrar[1]. Mr. Cosentino was not a Deputy Registrar.

[70] Office holders such as the Registrar receive their authority to act from the Legislature by statute. Consequently, any delegation of authority must likewise be found in statute, without which any purported delegation amounts to an improper exercise of authority.

[71] While recognizing that the Legislature has designated OMVIC to administer the MVDA pursuant to s. 3 of the *Safety and Consumer Statutes Administration Act, 1996* (SCSAA), s. 7(1) of that Act expressly requires OMVIC to carry out the administration of the MVDA in accordance with, among others, the SCSAA and the MVDA, having regard to the intent of those laws. In other words, OMVIC, including the Registrar, may not act in contradiction to the Act that it administers.

[72] By comparison, other provincial statutes specifically allow a registrar to delegate his or her duties more broadly. For example, s. 3(4) of the *Highway Traffic Act* allows for the delegation of the Registrar of Motor Vehicles' powers to a public servant or servants in the Ministry. This is a clear expression of the

[1] Section 3 (3) of the MVDA establishes the powers and duties of the Registrar. It states that: "The registrar shall exercise the powers and perform the duties imposed on him or her under this Act and a deputy registrar shall perform such duties as are assigned by the registrar and shall act as the registrar in the registrar's absence."

Legislature authorizing a delegation of authority to someone other than the designated office holder. There is no such provision under the MVDA.

[73] Under the MVDA, the authority to propose to refuse an applicant's registration vests with the Registrar or, as the circumstances may permit, the Deputy Registrar. It cannot be delegated to a Manager, unless the Manager is also appointed a Deputy Registrar. The Registrar's improper delegation of authority in this case was unreasonable, if not illegal, in my view.

[74] Even if I am wrong about the Registrar being able to delegate its duties to a Manager, I nonetheless would find it unreasonable for the Registrar to have delegated that authority to Mr. Cosentino specifically in this case. With all due respect to Mr. Cosentino's qualifications to be a Manager of Investigations, he had only been in the job for a year when the hearing commenced. He was formerly a police officer but had no prior experience with OMVIC. He had never worked in a dealership. He had never been a salesperson. He had not even attended a single OMVIC inspection by the time of the hearing. All of this was established through Mr. Jakubiak's cross-examination of Mr. Cosentino at the hearing.

[75] As well, Mr. Cosentino was not involved in this particular investigation. He came on afterward, in the role of "instructing client."

[76] I find that that it was not reasonable for the Registrar to have relied on an inexperienced, new Manager of Investigations to decide whether the case should continue against the appellants.

Summary of Registrar's conduct

[77] I have found various instances of unreasonable conduct on the part of the Registrar as described above. These include continuing to rely on evidence from an interested party without having sought any information from the appellants; continuing the proceedings once the allegation of consumer harm in relation to the ELTs had been withdrawn; continuing against Mr. Khan given the circumstances of AAG having putting him in charge of the dealership with no training or experience while abandoning all oversight of the dealership itself; and continuing against Mr Irani without appreciating the facts or context of the transactions it was impugning. While each of these alone may not warrant costs, taken together when viewed in light of the Registrar also giving the decision-making over to Mr. Cosentino — improperly, if not illegally — this

amounts to conduct sufficiently unreasonable to warrant a costs award, in my view.

Application of Rule 19.5 Factors

[78] I am required under the Tribunal's cost rules to consider "all relevant factors" in deciding whether to award costs and in what amount. I have outlined above a number of examples of where the Registrar's conduct during the course of the proceedings can be seen to have been unreasonable. Pursuant to Rule 19.5, I am also required to consider the following specific factors:

Seriousness of the Misconduct

[79] I have not found "misconduct" on the part of the Registrar, but I have found unreasonable conduct as outlined above.

[80] I find that the aggregate of this conduct is serious due to the impact it had on the appellants *in this particular case*. This was not an NOP to revoke an existing registration – in most of which cases the registrant continues to work in their registered capacity pending the outcome of an appeal of that NOP. Here the appellants had applied to transfer their registrations to a new dealer, which meant they were unable to work in the industry as salespeople at all throughout the lengthy course of the proceedings.

[81] It is not the Tribunal's task to suggest legislative changes (for example, to have a provision whereby an application to transfer a registration to a new dealership is treated like a renewal application under s. 9(8) of the Act – which would have allowed the appellants' registration to continue at the new dealership pending the outcome of this hearing). However, I do find that the current structure of the Act does invite the Registrar to be even more certain of its position before proposing to refuse a transfer application. As outlined above, I find the Registrar was not overly diligent in this particular case.

Whether the conduct was in breach of a direction or order issued by the Tribunal;

[82] The conduct was not in breach of a direction or order.

Whether or not a party's behaviour interfered with the Tribunal's ability to carry out a fair, efficient, and effective process;

[83] As noted above, a hearing should not be pursued as a means for the Registrar to "test" its decision to propose to refuse a person's registration under the Act.

That assessment ought to take place prior to the hearing (or even earlier before issuing the NOP) by the person whose duty it is under the MVDA to make that assessment, not a delegate. It is neither a fair, efficient or effective process to spend 14 days in a hearing in the face of an ever weakening case.

Prejudice to other parties

[84] The Registrar's conduct caused prejudice to the appellants insofar as they incurred costs of litigation while unable to work in the industry during the course of the proceedings.

The potential impact an order for costs would have on individuals accessing the Tribunal system.

[85] The Registrar submits that awarding costs on the basis that the Tribunal ultimately disagreed with the Registrar's position would

> … lead to a bizarre precedent. For example, if a Tribunal gave little weight to an applicant's evidence and upheld a regulator's proposal to revoke the applicant's registrant, it would be concerning for the Tribunal to also saddle the applicant with costs.

[86] I do not agree that a costs award against a regulator would serve as a precedent for costs against an appellant who challenges the regulator's decision and loses. As noted above, it is an appellant who has the right to a hearing, and it would indeed be inappropriate to saddle an appellant with costs simply for exercising that right under the Act. Further, a Rule 19 costs order is discretionary and therefore dependent on the circumstances of each case.

[87] With respect to costs against a regulator, I find it is appropriate to allow costs in circumstances where a Registrar has conducted itself unreasonably in the proceedings as I have found to be the case here, as outlined above.

H. Conclusion

[88] For the reasons stated above, I find this is an appropriate case for costs.

[89] In terms of quantum, I am entitled, pursuant to Rule 19.6 "to deny or grant the request for costs or award a different amount than requested."

[90] I do not find that the Registrar's conduct warrants a maximum cost award.

[91] I am choosing to award costs in the amount of $4,000 to each appellant.

[92] With respect to Mr. Irani's request that I also order the Registrar to pay for his registration this year, I do not have the authority to make such an order.

ORDER

[93] The Registrar shall pay the appellant, Shaffat Khan, $4,000 in costs.

[94] The Registrar shall pay the appellant Habib Irani, $4,000 in costs.

Licence Appeal Tribunal

Jennifer Friedland, Member

Released: *October 31, 2022*