Tribunals Ontario
**Licence Appeal Tribunal**

Tribunaux décisionnels Ontario
**Tribunal d'appel en matière de permis**



**Citation: Charles Cadman, Bobby Wilkinson, and 2631273 Ontario Inc. o/a 2nd Chance Auto Sales v. Registrar, *Motor Vehicle Dealers Act, 2002*, 2024 ONLAT 15085-R**

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## RECONSIDERATION DECISION

**Before:** Rebecca Hines, Adjudicator

**Licence Appeal Tribunal File Number:** 15085/MVDA

**Case Name:** Charles Cadman, Bobby Wilkinson, and 2631273 Ontario Inc. o/a 2nd Chance Auto Sales v. Registrar, Motor Vehicle Dealers Act, 2002

**Written Submissions by:**

**For the Appellant:** Justin M. Jukubiak, Counsel

Jonathan Gross, Counsel

**For the Respondent:** Rishi Nageshar, Counsel

## BACKGROUND

[1] The respondent is seeking a reconsideration of my decision released on May 28, 2024 (“decision”). The decision addressed an appeal of the Notice of Proposal issued by the Registrar, *Motor Vehicle Dealers Act*, *2002* (the “Act”) to revoke the appellants’ registrations as motor vehicle salespersons and motor vehicle dealership. In that decision, I determined that the past conduct of the appellants affords reasonable grounds for belief that the appellants will not carry on business in accordance with the law and act with honesty and integrity. However, I found that the public interest could be adequately protected by attaching terms and conditions to the appellants’ registrations as motor vehicle salespersons and motor vehicle dealership and ordered the Registrar not to carry out its notice of proposal (“NOP”).

[2] The grounds for a reconsideration to be allowed are set out in Rule 18.2 of the *Licence Appeal Tribunal Rules 2023* (the “Rules”). To grant a request for reconsideration, the Tribunal must be satisfied that one or more of the following criteria are met:

a. the Tribunal acted outside its jurisdiction or committed a material breach of procedural fairness;
b. the Tribunal made an error of law or fact such that the Tribunal would likely have reached a different result had the error not been made; or
c. there is evidence that was not before the Tribunal when rendering its decision, could not have been obtained previously by the party now seeking to introduce it, and would likely have affected the result.

[3] In its request for reconsideration, the respondent identifies criteria a) and b) of Rule 18.2 as the basis for the reconsideration request. The respondent requested that my decision be varied and that I order the Registrar to carry out its NOP and revoke all three appellants’ registrations as motor vehicle salespersons and motor vehicle dealership.

## RESULT

[4] The respondent’s request for reconsideration is dismissed.

## ANALYSIS

[5] Under Rule 18.2, the threshold for reconsideration is high. Reconsideration is a limited, error-correcting exercise, not a new hearing or an appeal of a hearing decision. The party requesting reconsideration must demonstrate how or why my decision falls into one or more of the criteria set out in Rule 18.2.

[6] The respondent argues that I acted outside of my jurisdiction and made errors of fact and law in paragraph [78] of my decision by making the following findings:

i) That the Ontario Motor Vehicle Industry Council ("OMVIC") did not conduct a balanced investigation, and the appellants were not provided with timely disclosure; and
ii) That once the appellants became aware of the false insurance letters, they took appropriate steps; and they mitigated harm in two consumer transactions; and
iii) That the appellants had an unblemished history and were not directly involved in the misconduct outlined in the NOP.

**The Tribunal did not act outside of its jurisdiction or commit a material breach of procedural fairness in rendering its decision.**

[7] Section 9(5) of the *Act* provides the Tribunal with the jurisdiction to hold a hearing and by order direct the Registrar to carry out the Registrar's proposal or substitute its opinion for that of the Registrar and the Tribunal may attach conditions to its order of registration.

[8] The respondent argues that I acted outside of my jurisdiction in paragraph 78 (ii) of my decision, where I stated that revocation of the appellants' registration was not appropriate because OMVIC did not conduct a balanced investigation because the investigator did not interview the appellants, salespeople and employees involved in the transactions and did not provide timely disclosure. The respondent submits that this is not proper rationale for not revoking the appellants registration. It submits that it was outside my jurisdiction to impugn OMVIC's investigation since it has no bearing on a) whether there are reasonable grounds for the belief that the appellants would not carry on business with honesty and integrity and, b) if conditions are an appropriate alternative.

[9] The respondent asserts that nothing in the *Act* requires OMVIC investigators to interview the appellants or their employees. The Tribunal is the decision maker, and it is in this forum that the appellants were entitled to respond to allegations, not the investigation.

[10] The appellants argue that I did not act outside of my jurisdiction in my finding that OMVIC did not conduct a balanced investigation which was an argument they raised. Further, the appellants submit that this was just one factor (out of many) that I considered when evaluating the weight to afford the testimony of certain witnesses called by the respondent. The appellants highlighted paragraph [77] of my decision where I note that the OMVIC investigator did not interview the employee responsible for the misconduct or current employees of the dealership. The appellants submit that I was simply highlighting the evidence that was and was not before the Tribunal which formed part of the basis for my decision.

[11] The appellants also argue that OMVIC's investigation process is relevant to the issues I was asked to decide. Further, it is completely within the Tribunal's discretion to consider the investigative process in weighing the evidence presented by the respondent and the appellants' conduct at the relevant times. Further, the Tribunal owes no deference to the Registrar or its fact-finding processes and if it did the Tribunal's independence would be lost.

[12] I find that I did not act outside of my jurisdiction in considering OMVIC's investigation of this matter as a reason for not revoking the appellant's registration and substituting it with terms and conditions. I considered the evidence and testimony of the witnesses and made findings of fact based on the evidence that was or was not before me. Although the quality of the investigation was not an issue that was directly before me, I find the investigation is the foundation for the allegations outlined in the NOP and the onus is on the respondent to prove those allegations.

[13] Although I agree that paragraph [78] (ii) of my decision could have been clearer, in paragraphs [36] and [37] of my decision, I highlighted that OMVIC had conflicting information about whether Consumer H's lien had been paid out because they had two letters from Auto Capital, one which supported that the lien had been paid out and one that supported the opposite. Further, the respondent relied on a cheque confirming that payment had been made. Consequently, I determined that the respondent did not meet their onus in proving the allegation. In my view, where the respondent had conflicting information about whether the lien had been paid out by the appellants further inquiries should be made. As a result, the findings of the investigation and the basis for those findings are directly relevant to the issues I was asked to decide. Further, if a decision is being made by the Registrar to revoke registration, best efforts should be made by an investigator to gather all relevant information from all the parties involved, regardless of if it is or is not a legal requirement under the *Act.* Moreover, even the respondent's representative agreed during cross-examination that the appellants should have been interviewed.

[14] The respondent relies on the Supreme Court of Canada's decision in *R. v. Jarvis*, 2002 SCC 73 (CanLII), [2002] 3 SCR 757 ("*Jarvis*"), in support of its position that it is not appropriate to use the complaints process to obtain information where it is expected that charges may be laid. It submits that this is consistent with the distinction in regulatory and penal law where in the latter, an individual has a *Charter* right to not self-incriminate but in the former, they may be compelled to comply. It submits that in this case, provincial offence charges were laid against the appellants arising from the transaction involving Consumer L. I do not find this decision helpful in support of the respondent's position that I acted outside of my jurisdiction in considering the investigation in this matter. While *Jarvis may stand for the principle that once charges are laid, a regulator cannot use its inspection powers to obtain more evidence in support of prosecution, this did not prevent the respondent from interviewing the other salespeople involved in the transactions where provincial offence charges were not pending.* Further, the

respondent could have requested an interview with the appellants (who could have declined) but did not even try.

[15] The respondent also relies on the decision in *Boua v. Office of the Independent Police Review Director*, 2024 ONSC 2172 (CanLII) ("*Boua*"), which it maintains supports that "the law does not require a perfect investigation and should not interfere with the investigative process unless there is bad faith or patent unfairness." I find this decision is also distinguishable from the case before me because it involved a judicial review of a decision of the office of the Independent Police Review Director which concluded that there was no legal requirement for the police service to interview a complainant during an investigation. Of significance, in *Boua*, the police had a detailed statement and a video of the claimant which OMVIC did not have from the appellants in this case. While I agree with the respondent that an investigation does not need to be perfect, I find that it should be fair. Further, I find Boua does not support that I cannot assign weight to the evidence that was produced, based on the quality of the investigation. In this case, there were gaps in the evidence which left me wondering. As a result, I concluded that terms and conditions were appropriate because of the gaps in the evidence.

[16] The respondent also maintains that I acted outside of my jurisdiction in my finding that OMVIC did not provide timely disclosure. It submits that this finding implies that the regulator is responsible for the registrant's misconduct. I agree that I could have been more specific in paragraph [78] (ii) of my decision, to clarify that this is related to my analysis regarding the false insurance letters in paragraphs [18] to [20] of my decision. However, I find that I did not act outside of my jurisdiction in providing this as a reason for why revocation of the appellants' registration was not appropriate in the case before me.

[17] Finally, I agree with the appellants that the investigation and disclosure issues were not the only factors I considered in finding the terms and conditions were appropriate, which was within my authority and jurisdiction to make pursuant to s. 9(5) of the *Act.*

**The Tribunal did not make an error of law or fact such that the Tribunal would likely have reached a different result had the error not been made.**

[18] The respondent's main point of contention on this reconsideration request was that I attached terms and conditions to the appellant's registration rather than ordering the Registrar to carry out its NOP revoking registration. I find I considered the unique facts of the case and evidence before me in determining that terms and conditions were appropriate and I provided reasons for my decision. The respondent submits that my reasons were flawed and were based on mixed errors of fact and law. I will now address the main allegations in turn.

*False Insurance Letters*

[19] The respondent submits I made an error of fact in my finding that once the appellants became aware of the false insurance letters, they took appropriate steps to address the misconduct. Further, I did not give proper consideration to the former employee's testimony about Wilkinson supporting this misconduct because Wilkinson did not testify to rebut the former employee's testimony.

[20] The appellants submit that I made no error of fact or law in making this determination as in paragraph [19] of my decision, I acknowledged that the former employee confirmed during his testimony that the appellants had a meeting to communicate with employees that this conduct was not allowed and was being taken seriously. I agree.

[21] I found the former employee's testimony unhelpful regarding this allegation as it was inconsistent with the appellants' actions in response to it. It is well established law that a decision maker does not need to summarize all the evidence or provide every reason for its decision. I find that in paragraphs [17] to [20] of my decision, I outlined my findings of fact regarding how the appellants handled the false insurance letters and I indicated that I found Cadman's testimony credible. In paragraph [67], I also stated that I found the former employee's testimony about another allegation unreliable and provided the reasons why. Based on the evidence before me I find I made no error of fact or law regarding this issue.

*Mitigation of Harm*

[22] The respondent submits that I erred in fact in my determination that the appellants mitigated harm in two consumer transactions in paragraph [78](i) in determining that terms and conditions were appropriate. I agree with the respondent that my decision could have been clearer regarding what consumers I was referring to in this paragraph because I did not specifically identify that the appellants mitigated harm involving the transactions involving consumer H and L. However, I find that when the decision is read as a whole, both parties understood which transactions I was referring to.

[23] I agree with the respondent that I made a factual error in paragraph [38] of my decision because I stated that the appellants cancelled the transaction, whereas they refunded money paid by the consumer for the warranty and gap insurance. Nonetheless, I find that this factual error would not affect the result of my decision. Further, the appellants rescinded the contract following consumer L's complaint. I find it was not an error of fact or law in considering the appellants' response to the complaints of consumers H and L in finding that revocation was not the appropriate penalty.

*Appellants accepted responsibility*

[24] The respondent also argues that I made a factual error in paragraph [78] (i) of my decision where I stated that the appellants accepted responsibility by closing the dealership. The respondent maintains that this was not accurate. Instead, the evidence before me was that the appellants intended to make the dealership a larger Canada-wide dealership and that they closed it because it was not scalable. It submits that closing a business due to scalability issues is not taking responsibility for misconduct.

[25] The appellants submit that the respondent's submissions did not fully address Cadman's testimony at the hearing. I agree. At the hearing, Cadman testified that in light of the consumer complaints, he and Wilkinson decided to close the dealership because the business was not scalable, and it would be too difficult to ensure adequate compliance with the *Act* if the business expanded. Consequently, I agree that I did not make any factual error in concluding that they accepted responsibility by deciding to close the dealership.

*Appellants had an unblemished history*

[26] The respondent argues that I erred in fact in my finding in paragraph [78] (iii) of my decision where I determined that revocation was not appropriate because the appellants had an unblemished history. It submits that my finding was a factual error because the appellants were previously subject to a Notice of Proposal to suspend their registration which was resolved by a consent order. Further, even if they previously complied with the law, it does not excuse breaking it.

[27] Ultimately, I did not find the consent order relied on by the respondent at the hearing helpful in establishing that the appellants had a pattern of non-compliance with the law because no context was provided for the allegations which led to the consent order. There was no evidence about the appellants admitting to dishonest conduct or non-compliance with the *Act.* Although describing the appellants' history as unblemished was not an accurate description, this would not impact my decision to impose terms and conditions.

*Appellants not directly involved in the transactions*

[28] The respondent asserts that I erred in law by considering that the appellants were not directly involved in the transactions which were the subject of the NOP as a reason for finding terms and conditions appropriate. The respondent argues the appellants' misconduct stems from the failure to prevent their employees from engaging in misconduct. Further, all owners could insulate themselves from being held accountable if they are not responsible for their employees' conduct. The respondent submits that the rationale for my decision was inconsistent with this Tribunal's decision in *Pilon, Easywheels.ca Inc., Main Street Auto Importers Ltd. o/a Gold Street Subaru & Main Street Auto Importers Ltd. o/a Easywheels.ca v. Registrar, Motor Vehicle Dealers Act, 2002*, 2023 ONLAT MVDA 13540 ("*Pilon*") where the adjudicator revoked the appellant's registration. Further, I did not discuss *Pilon* at all in my decision, which was in the respondent's book of authorities.

[29] I find that I did not err in law in considering the fact that the appellants were not involved in any of the consumer transactions in my determination that terms and conditions were appropriate. First, as highlighted above, a decision maker does not need to highlight every piece evidence or case law relied upon by a party in a decision. Second, I am not bound by this Tribunal's decisions, and third, I did not refer to *Pilon* in my decision because I found the facts in that case irrelevant to the case before me.

[30] Overall, I find that the respondent disagrees with my decision or is asking that I reweigh evidence or arguments that I already considered in the initial hearing. As highlighted above, this is not the purpose of a reconsideration request. I find that in paragraphs [13] to [70] of my decision, I provided very detailed reasons where I fairly analyzed the testimony of the witnesses and evidence pertaining to the transactions involving the various consumer complaints outlined in the NOP. Further, if I did make any errors of fact, I find they were inconsequential and would not have led to a different result. The respondent has not persuaded me that I made any error of law or fact such that the Tribunal would have reached a different result had the error not been made.

**The appellants are not entitled to costs.**

[31] Rule 19.1 of the Rules provides that a party may request costs of the proceeding, if they believe that the other party has acted unreasonably, frivolously, vexatiously, or in bad faith during the proceedings. Rule 19.2 provides that a request for costs may be made to the Tribunal in writing or orally at a case conference or hearing, at any time before the decision or order is released. Rule 19.4 further sets out the requirements for that request, which must include the reasons for the request and the particulars of the alleged conduct.

[32] The purpose of Rule 19.1 is to deter conduct by parties that is unreasonable, frivolous, vexatious, or in bad faith. This is a high bar for conduct to attract a cost award and is an exceptional remedy.

[33] The appellants requested costs in their submissions on this reconsideration request, however, they did not address how the respondent's conduct meets the threshold of being unreasonable, frivolous, vexatious or in bad faith. I conclude that the appellants have not proven that costs are warranted in this case. As a result, the appellant's request for costs is dismissed.

## CONCLUSION

[34] For the reasons noted above, I dismiss the respondent's request for reconsideration.

**Released:** September 18, 2024

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**Rebecca Hines**
**Adjudicator**

Tribunals Ontario – Licence Appeal Tribunal