

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Fryer v. Motor Vehicle Sales Authority of  
British Columbia,*  
2015 BCSC 279

Date: 20150213  
Docket: S150212  
Registry: Vancouver

Between:

**Peter John Fryer**

Petitioner

And

**Motor Vehicle Sales Authority of British Columbia**

Respondent

Before: The Honourable Madam Justice Sharma

On judicial review from a decision of the Registrar of  
Motor Dealers dated December 13, 2013  
(*Re: Peter Fryer*, Hearing File No. 13-11-005)

## **Oral Reasons for Judgment**

The Petitioner, Peter John Fryer:

appearing in person

Counsel for the Respondent:

R.P. Hrabinsky

Place and Date of Hearing:

Vancouver, B.C.  
February 13, 2015

Place and Date of Judgment:

Vancouver, B.C.  
February 13, 2015

ORIGINAL

[1] This is an application for judicial review of the December 13, 2013 decision (the "Decision") of the Registrar of Motor Dealers (the "Registrar"). The petitioner, Peter Fryer, filed the petition because he was refused a salesperson's license. Mr. Fryer represented himself.

[2] The respondent is the Motor Vehicle Authority of B.C. who appeared and provided the record of the Decision.

### **I. THE STANDING AND ROLE OF COUNSEL FOR THE AUTHORITY**

[3] Appropriately, counsel addressed the standing and role of the respondent on this application, noting the restrictions that are typically placed on the role a decision maker can take in a hearing challenging one of its decisions.

[4] Section 15 of the *Judicial Review Procedure Act* stipulates the person exercising statutory authority whose decision is being challenged must be served with an application for judicial review, and that person may be a party to the application. When the decision maker chooses to participate in the hearing, case law has circumscribed the limits of its participation in recognition that it would be unseemly for it to "defend" its own decision. In some cases, the only appropriate role is to provide to the court the record of the decision being challenged.

[5] However that same case law also identifies an important exception when participation should not be so limited. Smith J.A. describes circumstances that may justify an expansion of the role of tribunal counsel beyond providing the record in *Barker v. Hayes*, 2007 BCCA 51 at para 20:

. . .when the tribunal, by reason of its specialized jurisdiction and expertise, may be in a position to draw the attention of the appellate court to relevant considerations that might otherwise escape the court's attention, such as when the question concerns the tribunal's jurisdiction or its procedures or the appropriate standard of review of its decisions . . . .

[6] This expanded role is also triggered where there is a lack of participation by other parties such that there is risk the court will not be fully informed, an exception more important when the public interest is a main issue and the tribunal has

specialized expertise: *Pacific Newspaper Group Inc. v. Communications, Energy and Paperworks Union of Canada, Local 2000*, 2009 BCSC 962 at para. 40; and *Crown Auto Body and Auto Sales Ltd. v. B.C.*, 2014 BCSC 894.

[7] Counsel for the respondent provided very helpful written submissions and did not in any way overstep the appropriate role of a tribunal's counsel; I am satisfied that his participation was necessary in order to ensure I was fully informed of the necessary statutory scheme underlying the Decision.

## **II. THE STATUTORY SCHEME**

[8] In an effort to address the goals of efficacy and efficiency, reduced regulatory costs and robust consumer protection, it was decided that an organization with delegated administrative authority would be created in the motor dealer industry. This organization is the Motor Dealer Council of B.C. (the "Council") which has the statutory authority to administer the *Motor Dealer Act*, R.S.B.C. 1996, c. 316 (the "Act") and relevant Regulations.

[9] Its mandate is to administer licensing, standards and enforcement, consumer complaint resolution, consumer protection and public education for the industry. Under section 1.1 of the *Act*, the minister is responsible for the administration of the *Act*, except to the extent any portion of the legislation has been delegated pursuant to s. 24.2: that section states that if the minister enters into an administrative agreement (which the minister has done with the Council in this case), cabinet may, by regulation, delegate to the Council the power to administer any portion of the *Act*. Pursuant to subsections 1(1) and 1(2) of the *Motor Dealer Delegation Regulation* (B.C. Reg. 129/2004), cabinet has made that delegation. The relevant statutory instruments also confirm the Registrar (appointed by the Council) has the authority and powers as assigned to him or her as set out in the *Act*.

[10] The administrative agreement between the Crown and the Council prescribes a minimum standard of experience and skill that the Registrar must possess which, among other things, includes demonstrable skill in and experience with a similar

regulatory field, exercising unfettered discretion, and the application of principles of administrative fairness in regulatory decision-making and the performance of statutory duties. The agreement also recognizes that because the Registrar exercises independent duties under the statute, the board will not interfere with that independence.

[11] In addition to powers under the *Act*, the Registrar has also been conferred with powers under the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 which include significant investigatory rights and the ability to file a notice of administrative penalty in the Provincial Court or Supreme Court that can be enforced as if it was an order of the respective court.

[12] These statutory instruments have given the Registrar extensive authority and powers for a number of things, including what is most relevant to this case: (i) approving, or not, applications for or placing conditions on motor dealer registrations and salespersons licenses; (ii) investigations and (iii) adjudicative hearings.

#### **A. Licensing Salespersons**

[13] The crux of this case turns on s. 6 of the *Salesperson Licensing Regulation* (B.C. Reg. 241/2004) (the "*Regulation*"). A salesperson is defined in s. 1 of the *Act* to mean:

- (a) an individual, other than a motor dealer, who, on behalf of a motor dealer and for or in the expectation of a fee, gain or reward,
  - (i) solicits, negotiates or arranges for the sale of a motor vehicle to a person, or
  - (ii) in any way participates in the soliciting, negotiating or arranging for the sale of a motor vehicle to a person, or
- (b) an individual who is a motor dealer and who
  - (i) solicits, negotiates or arranges for the sale of a motor vehicle to a person, or
  - (ii) in any way participates in the soliciting, negotiating or arranging for the sale of a motor vehicle to a person.

[14] A motor dealer is also defined and in general terms, it means someone who in the course of business: engages in the sale or exchange of motor vehicles

whether on their own account or for another; holds himself or herself out as engaging in that business, or, solicits, advertises or promotes himself or herself with respect to the sale or exchange of motor vehicles.

[15] Section 6 of the *Regulation* outlines the authority of the Registrar to issue or refuse to issue a license:

6 If the conduct of an applicant or licensee is, in the opinion of the authority, such that it would not be in the public interest for the applicant or licensee to be licensed or continue to be licensed, the authority may:

- (a) refuse to issue the licence, or
- (b) if a person is licensed,
  - (i) cancel the licence, or
  - (ii) suspend the licence for a period of time and subject to conditions the authority considers necessary.

### **C. The Standard of Review**

[16] I am obliged to address the issue of standard of review. Respondent's counsel fairly and fully set out the applicable law on standard of review as it has been applied to decisions of the Registrar. In general, "[t]he role of the court on judicial review is not to second guess the decision of the tribunal or substitute its own views. Rather, the court's function is to determine whether the tribunal's decision meets the standard of justification, intelligibility and transparency": *Windmill Auto Sales & Detailing Ltd. v. B.C. (Registrar)*, 2014 BCSC 903.

[17] The respondent cited four cases to me where "reasonableness" was found to be the applicable standard of review for issues where the legal and factual issues were intertwined: *Applewood Motors Inc. v. Ratte and The Registrar of the Motor Dealer Council of British Columbia* (13 April 2010), Vancouver Registry, No. S094126 (BCSC), paragraphs 25 - 31; *Cash Store Financial Services v. Consumer Protection British Columbia*, 2014 BCSC 149, paragraphs 14-22; *Windmill Auto Sales & Detailing Ltd. v. British Columbia (Registrar of Motor Dealers)*, [2014] B.C.J. No. 1005; *Crown Auto Body and Auto Sales Ltd. v. British Columbia (Motor Vehicle Sales Authority)*, [2014] B.C.J. No. 996.

[18] In addition, the respondent referred to about ten cases in support of the general principle that the court should defer to decisions of the Registrar, and apply the reasonableness standard. Time does not permit me to extensively review those cases, but I have no reason to disagree with the proposition forwarded by the respondent that a standard of reasonableness should apply to the issue in this case.

[19] Of primary importance, in my view, is the fact that the pertinent statutory section (s. 6) explicitly engages the Registrar's specialized knowledge and expertise because the question is whether "in the opinion" of the respondent, the conduct of a person, in light of the public interest, is compatible with issuing a license. The phrase "in the opinion" and explicit reliance on the public interest are strong indicators that the legislative intent was the Registrar bring to licensing decisions his or her unique experience and specialized knowledge. Apart from a thorough standard of review analysis, this statutory language is a clear indication that the court should proceed with deference when reviewing the granting or refusal to grant a salesperson license.

[20] I therefore agree with the respondent that the standard of review of a Registrar's decision under s. 6 of the *Regulation* as to whether it is in the public interest to issue, with or without conditions, cancel, suspend or refuse a salesperson license is reasonableness. I add that in the event I am wrong and the proper standard of review is correctness the result in this case would not change because I have concluded the Decision is correct.

### **III. MR. FRYER'S CHALLENGE TO THE DECISION**

[21] The Registrar identifies at the beginning of the Decision the concerns raised by the respondent with regard to Mr. Fryer's application to be licensed as a salesperson: (a) Mr. Fryer's criminal record; (b) whether Mr. Fryer provided false or incomplete declarations on his application; (c) whether Mr. Fryer worked as a salesperson in B.C. or Alberta when unlicensed to do so. I will address each in turn referring to Mr. Fryer's objections under each heading.

**(a) Criminal Convictions**

[22] The Registrar points out that refusing to issue a license because of a criminal conviction that is unrelated to the intended license is prohibited under s. 14 of the *Human Rights Code*, RSBC 1996, c. 210. Case law has determined that whether or not convictions are related must be looked at in context, considering all the circumstances of the case: *B.C. Council of Licensed Practical Nurses v. Mans & Humphreys v. B.C. Council of Human Rights*, 1993 CanLII 1501 (B.C. Court of Appeal) and *Woodward Stores (British Columbia) Ltd. v. McCartney*, 1983 CanLII 444 (B.C. Supreme Court).

[23] The Registrar states that the requirement to examine a person's past conduct demonstrates an overarching concern with public safety. Past conduct is the statutory tool by which the Registrar can determine if applicants will be governable, act in accordance with the law and conduct themselves with honesty and integrity. Salespersons are in a position of trust with the buying public who rely on them to give clear and honest information about buying motor vehicles. The public also expects safety to be a priority if taking a test drive with a salesperson. Lastly, integrity is important because salespersons may be privy to customer's confidential personal information including home address and financial information.

[24] After reviewing Mr. Fryer's criminal record, the Registrar decided the criminal convictions were related to fitness as a salesperson and on that basis, his criminal record was sufficient to deny him a license. Mr. Fryer argues that determination is wrong and unreasonable. He says that his convictions are not related to being a salesperson because none involve fraud or stealing money from customers. He points out people with criminal backgrounds have been granted licenses with conditions.

[25] Mr. Fryer has an extensive criminal record dating back to 1975 and his most recent conviction (at the time of the Decision) was in July 2012. He has convictions for offences including armed robbery, kidnapping, forcible confinement and extortion, five convictions related to driving under the influence of alcohol, and a number of

narcotic related offences including trafficking and cultivation. There are also charges for theft over \$5,000, possession of stolen property and break and entering. He has been convicted of sexual assault and has over 10 convictions for either failing to comply with a recognizance or probation, or failing to appear in court.

[26] With regard to the most recent conviction, he described the incident trying to portray himself as an unwitting accomplice (although he does take responsibility). He also suggests there are no convictions involving "violence". But he was convicted of sexual assault and extortion which are suggestive of violence. Mr. Fryer emphasizes that many of his convictions are from years ago and should not be considered. It is true many convictions were a number of years ago but they are accompanied by a continuous history of criminal conduct.

[27] Mr. Fryer also says his convictions are unrelated to his license application because they did not arise from his interaction with customers. He contrasts his situation to other people who were granted licenses even though, apparently, they had criminal convictions for fraud and, apparently, mishandling customer funds. Mr. Fryer handed up extracts from Registrar's licensing decisions referring to Anwar Badshah, Edward Chieduch and Phillip Curtain.

[28] I was not given the complete case report but even the extracts I was given, illustrate an important distinction between them and Mr. Fryer's situation. In each of those cases, the Registrar was satisfied that with conditions, the risk posed to the public by the applicant's past criminal conduct could be managed. Also, in one case, the Registrar notes that the applicant showed remorse and signs that he was rehabilitating himself. Another applicant had taken counselling and training. All applicants were supported by employers with whom they had to stay employed and who had to report to the Registrar.

[29] In contrast, Mr. Fryer is not apologetic or remorseful for his criminal past, although I certainly do commend him for being open and honest about it with the court and before the Registrar. But while taking responsibility, Mr. Fryer also downplays the convictions (such as discussed in relation to the most recent



conviction). In relation to a number of convictions in Alberta (many for failing to abide by recognizance and failing to attend court), he characterized the situation as the police “bugging him”. Lastly, he was candid in admitting that he has had difficulty with substance abuse and drugs, describing several relapses. He gave no indication whatsoever that he has taken any steps to avoid another relapse. Nor is there any reliable evidence that a motor dealer would be prepared to hire Mr. Fryer, even with conditions.

[30] Not only do I find the Decision reasonable, I find it is correct. In my view, it would have been unreasonable to find that Mr. Fryer is suitable to be a salesperson given his extensive criminal record.

[31] Several things about Mr. Fryer’s situation stand out. There is no indication that Mr. Fryer has undertaken or is interested in undertaking any counselling for substance abuse despite his admitted history with relapses. Mr. Fryer downplays the number and severity of his criminal convictions. This is particular relevant given the number of times he has been convicted for failing to obey court orders, whether probation, promise to appear or conditions of recognizance. In my mind, that is directly relevant to the confidence the Registrar could have that Mr. Fryer is governable or accountable. In fact, it was very telling that Mr. Fryer said he moved away from Edmonton to “put all of that behind him”. In other words, he has not atoned for his criminal conduct in Edmonton but simply moved away from it.

[32] I agree entirely with the Registrar’s statement that “Mr. Fryer’s criminal history spans 38 years and there is no indication Mr. Fryer has or will rehabilitate himself”. I also agree with the respondent that Mr. Fryer’s criminal record is sufficient on its own to uphold the opinion of the Registrar that it is not in the public interest to grant Mr. Fryer a license, and on that basis alone I dismiss the petition. Nevertheless, in the event I am wrong, I will also briefly address the other issues raised by Mr. Fryer.

***(b) Other Reasons for Upholding the Refusal***

[33] Mr. Fryer took the position that the Registrar’s finding that that he gave false or misleading information on his application is unreasonable. Mr. Fryer says that he

eventually fixed mistakes and provided any missing information on his application so it should not matter whether his initial statements were true or incomplete. I do not agree.

[34] With regard to work history, he initially said on his application that from 2005 to 2013 he was an “author” and he failed to list his employment history in Alberta. The Registrar found: “Mr. Fryer stated he was not trying to be deceitful [in omitting his complete work history] but he was being lazy”. Mr. Fryer confirmed this characterization. He does not think it is necessary for him to reveal that for a few days (according to him) he worked at a Kia dealership in Alberta while he was unlicensed. Mr. Fryer is mistaken when he thinks his assessment of what is important to list in his employment history should govern. Contrary to his belief, it is a “big deal” that he failed to disclose his prior work in Alberta as an unlicensed salesperson.

[35] He also argued that he was in good standing in Alberta and thus his license should just “transfer” over. I understood him to rely, in part, on the *Charter of Rights and Freedoms* for this proposition.

[36] I note that it appears the Attorney General was served with the petition and chose not to participate in this matter. The Attorney General must be served with every petition for judicial review, but it is not clear to me if a Notice of Constitutional Question was served, nor do I know if it would have been required in this case. I simply point out that service of the petition in compliance with the *Judicial Review Procedure Act*, RSBC 1996, c. 241 is not necessarily sufficient to satisfy the requirements of the *Constitutional Question Act*, RSBC 1996, c. 68.

[37] Mr. Fryer was licensed at one time in Alberta. His license lapsed for non-payment of fees. That fact, however, is not relevant to the decision the Registrar has to make under s. 6 of the *Regulation*. The Registrar is obliged to look at an applicant’s past conduct and is not bound in any way by the fact that at one time the applicant was properly licensed in another jurisdiction. Any *Charter* right of mobility (which I do not agree arises in these circumstances, or was properly raised in the

pleadings) necessarily would be subject to and analyzed in the context of a legislative scheme to regulate industries for the benefit of the public interest. There is no merit to Mr. Fryer's argument based on the *Charter*, even if it were properly raised.

[38] Mr. Fryer does argue that he did not intentionally lie or fail to disclose information in his application because he relied on his former employers who said they were dealing with it. Mr. Fryer then complains those employers mislead him about the status of his application, and potentially lied to the Registrar about the amount of time he worked at the dealership.

[39] I do not understand how this point helps Mr. Fryer since he is merely quibbling with the timing and amount of time the employer claimed he was working; he does not dispute that he was working without being licensed.

[40] Mr. Fryer then argues that the statute is structured so that one cannot apply for a license unless one is employed by a dealer; he should not be faulted for working without a license so long as he had an application being processed. I reject that argument. The wording of the statute is very clear that one cannot engage in activity under the definition of salesperson unless licensed.

[41] Mr. Fryer did refer to a policy and it is my understanding that the Council does have a policy not to approve salespersons' licenses unless they are hired or have a valid offer of an employment at a licensed motor dealer. The intent of that policy is obvious. It would be inconsistent with the purposes of the regulatory scheme to hand out salesperson licenses without an assurance or an indication that the person will work at a licensed motor dealer. Overall though, this point has minimal relevance because it was not a basis upon which the license was refused.

[42] Moreover, in answer to all Mr. Fryer's complaints about the behaviour of former employers, Mr. Fryer is ultimately responsible for his application because it is his past conduct that is considered under s. 6.

[43] Mr. Fryer also suggested that it is “common” that unlicensed salespeople will be hired and work, getting their license during (but not before) their employment. He says that was his expectation whenever he was hired and worked for a dealer. This is not a fact in evidence; it is simply Mr. Fryer’s belief. However, even if I were to assume that was common practice, what he asserts is not necessarily inconsistent with the licensing scheme. What is prohibited is a person is engaging in activity that falls under definition of “salesperson” without a license. It may be people are hired and perform other tasks that do not fall within that definition before they are licensed.

[44] Even if that was not the case, the “practice” Mr. Fryer describes is clearly contrary to the statute and I assume the Registrar would take action. With regard to these incidents, his ultimate position essentially boils down to asking “if other people do it, why is it wrong?” It is wrong because the statute, not industry practice, is what governs. Mr. Fryer admits that he was working as a salesperson without license for period of time in Alberta and B.C. Combined with his criminal conduct, that conduct is sufficient to deny him a license.

[45] Mr. Fryer also suggests the refusal is unreasonable because the Registrar had the option to issue him a license with conditions. He repeats here that eventually he did disclose all the information the Registrar required. What Mr. Fryer does not seem to appreciate is that his initial failure to disclose is relevant. The fact that after being confronted, he admitted the further history does not diminish the Registrar’s lack of confidence that Mr. Fryer understands the importance of honesty and integrity in his industry. But with regard to work in Alberta, Mr. Fryer simply does not accept that his non-disclosure of that work is material to the considerations under s. 6 because he says it was for such a short period of time.

[46] Lastly, Mr. Fryer complained that the respondent would not “let him appeal” and he had no option but to come to court. He thinks this is unconstitutional. There is certainly no basis for me to consider such a constitutional challenge but more to the point, the issue does not arise. The statute does not provide for an appeal and so the respondent has no ability to perform one. Once a decision is made, the Registrar

is functus and the recourse for someone wanting to challenge the decision is, as stated in the decision itself, an application for judicial review.

[47] For all those reasons, I find the Decision is not only reasonable, it was correct. I dismiss the petition. No costs are awarded.

A handwritten signature in black ink, consisting of several overlapping, fluid lines that form a stylized, elongated shape.

Sharma J.