IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Best Import Auto Ltd. v. Motor Dealer Council of British Columbia,* 2018 BCSC 834

Date: 20180522
Docket: S181370
Registry: Vancouver

Between:

Best Import Auto Ltd.; Bob Shokohi

Petitioners

And

Ian Christman, in his capacity as Registrar of Motor Dealers; Motor Dealer Council of British Columbia

Respondents

Before: The Honourable Mr. Justice Branch

Reasons for Judgment

Counsel for the Petitioners:	S. Coulson
Counsel for the Respondents:	R. Hrabinsky
Place and Date of Hearing:	Vancouver, B.C. April 17-18, 2018
Place and Date of Judgment:	Vancouver, B.C. May 22, 2018

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I. INTRODUCTION

[1] The corporate petitioner is a used car dealer, and the individual petitioner is the dealer's owner. The respondent registrar revoked the corporate petitioner's registration as a motor dealer under the *Motor Dealer Act*, R.S.B.C. 1996, c. 316, and imposed a 10-year ban on reapplication against both petitioners. The petitioners challenge these decisions under the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241.

[2] The petitioners say the process that led to these penalties was unfair: the individual petitioner was not separately notified that a ban might be imposed on him, and there was no separate hearing to determine penalty. They also complain that the penalty was excessive and based on irrelevant considerations.

[3] As a result of concessions during the hearing, the petitioners no longer challenge the revocation of the corporation's registration, nor do they challenge the jurisdiction of the respondents to make the orders. But they do still seek to quash the 10-year ban against both petitioners.

[4] For the reasons that follow, I do quash the order against the individual petitioner based on a lack of proper notice. The petition is otherwise dismissed.

II. BACKGROUND

[5] Best Import Auto Ltd. ("Best Import") buys and sells used vehicles. It has been doing so since 2006.

[6] Bob Shokohi is the director and sole shareholder of Best Import. Best Import is his primary source of income. He is 80 years old.

[7] Best Import is regulated under the *Motor Dealer Act*. The regulatory scheme was neatly summarized by Sharma J. in *Fryer v. Motor Vehicle Sales Authority of British Columbia*, 2015 BCSC 279:

> [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 Protect* [sic] *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.

[8] The Registrar of Motor Dealers received a number of complaints from customers that Best Import was selling vehicles unsuitable for transportation. As a result, on July 17, 2017, a compliance officer from the Motor Dealer Council of B.C., who is authorized by the Registrar of Motor Dealers to exercise certain rights and powers of the Registrar of Motor Dealers (the "Registrar Delegate"), initiated an investigation pursuant to s. 7 of the *Motor Dealer Act*.

[9] The Registrar Delegate, as well as the B.C. Ministry of Transportation and Infrastructure's Commercial Vehicle Safety Enforcement Division ("CVSE"),

inspected six motor vehicles owned by Best Import that were being advertised for sale. They found that five of these vehicles were not compliant with the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318. Two of the vehicles were ordered removed from the highway until they complied. Three vehicles were ordered to be inspected at a designated inspection facility. The Registrar Delegate also noted other concerns, such as:

a) three vehicles being sold which appeared to be on consignment, when Best Import was not authorized to sell consigned motor vehicles;

b) vehicle prices advertised on the lot being higher than on active internet advertising; and

c) advertisements describing vehicles as being in “excellent condition, clean inside and out”, in “excellent running condition" and having “low kilometers”, when in fact the vehicles were salvaged and rebuilt vehicles, and where the “low kilometer” vehicle had 240,532 km on it.

[10] Given these concerns, on July 24, 2017 the Registrar Delegate added certain terms and conditions to Best Import’s registration, specifically: (a) motor vehicles at Best Import had to be inspected by a “red seal mechanic” or designated provincial inspection facility; and (b) consumers who purchased vehicles were to be given a copy of this inspection report.

[11] On August 17, 2017, Best Import was served with a Hearing Notice by the Registrar Delegate for a hearing to be held before the Registrar on September 21, 2017. Mr. Shokohi was not named in this notice. Two individual salespersons were named, but Mr. Shokohi is not a salesperson. The Hearing Notice alleged that misrepresentations had been made by Best Import and the salespersons about the quality of vehicles being sold. It also alleged that Best Import had an unlicensed salesperson conducting business (whom the parties agree was Bob Shokohi’s son).

[12] The Hearing Notice detailed the potential outcomes that could flow from this September 21, 2017 hearing. Given its importance for the arguments that follow, I set out this aspect of the Hearing Notice in full:

> **AT THE CONLCUSION [SIC] OF THE HEARING** and after a review of the merits of the case and the evidence presented, the Registrar may make various orders – pursuant to the Motor Dealer Act, R.S.B.C. 1996, c. 316 ("the MDA"), Section 7 of the *Salesperson Regulations B.C. Reg 241/2004 (the MDA-Salesperson Reg.)*, Sections 29(3) of the MDA – Regulations B.C. Reg. 264/2006 and/or Sections 154, 155 and 164 of the Business Practices and Consumer Protection Act S.B.C. 2004 c. 2 (the "BPCPA").
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> Without limiting the authority or discretion of the Registrar, the Registrar may take any or all of the following types of actions:
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> (a) Dismiss the complaint against the motor dealer and/or salesperson without costs;
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> (b) Make a **Compliance Order** requiring the motor dealer and/or salesperson to: comply with the BPCPA; unwind a transaction; reimburse and/or compensate a consumer; reimburse and/or compensate other persons who have suffered a loss or damage; reimburse and/or compensate the VSA for investigation, legal and hearing costs pursuant to Section 155 of the BPCPA;
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> (c) Make an order freezing the assets of the motor dealer – pursuant to Section 27 of the MDA and/or Section 159 of the BPCPA as the case may be;
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> (d) Make an order to pay an **Administrative Penalty** in an amount up to and including $50,000.00 for a corporation and $5,000 for an individual – pursuant to Sections 164 and 165 of the BPCPA;
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> (e) Place a condition/restriction on the Motor Dealer Registration – pursuant to Section 4(6) of the MDA and/or Salesperson Licence – pursuant to Section 4 MDA – Salesperson Reg.; and/or
>
> (f) Cancel or suspend the applicable Motor Dealer Registration – pursuant to Section 5 of the MDA and/or the applicable Salesperson Licence pursuant to Section 6 MDA – Salesperson Reg.
>
> [Emphasis in original.]

[13] On August 18, 2017, the Registrar Delegate performed a follow-up inspection, and concluded that Best Import was not in compliance with the conditions imposed on July 24, 2017. In particular:

a) Not all the required inspections were being conducted in a timely or proper fashion.

b) Best Import had not maintained proper records of repairs.

c) At least one customer had not received an inspection report.

d) One vehicle indicated on its inspection report that it had a loose ball joint, but Best Import did not repair this item before selling the vehicle. The vehicle was subsequently inspected by a red seal mechanic who noted safety concerns.

[14] In response, on August 30, 2017, the Registrar Delegate gave notice to Best Import that it would be conducting an interim or preliminary hearing on September 1, 2017. This notice detailed a list of interim actions that could be taken at this hearing, actions that were more limited than those provided for in the full Hearing Notice outlined above. A hearing took place on September 1, 2017 pursuant to this notice, at which the Registrar made an interim registration suspension order.

[15] The full hearing took place on September 21, 2017, and carried over to September 26 and October 4, 2017.

[16] Following the hearing, the Registrar invited written submissions. Both sets of submissions did touch on penalty, but in a limited fashion. The brief from the Motor Dealer Council of B.C. stated:

> It is my opinion that Best Import is unmanageable and a threat to the orderly sale of vehicles to consumers in the Province of B.C. The management and ownership have proven that they are not compliant with the legislation, regulation and policy or their Undertaking. Their actions have proven that they have no intention of being compliant. I request that the Registrar take steps to cancel the license of Best Import permanently.

[17] The brief from Best Import stated:

> Since the interim order of September 2, 2017, [Best Import] has been shut down for over a month and a half. Best Import provides for the livelihood of a number of employees, including its sales staff, lot persons, and Mr. Bob Shokohi. While the VSA has not formally set out what it is seeking at the outcome of this hearing, Best Import submits in light of the evidence presented and these submissions making the interim order a final order would be extreme and certainly would be an improper response to the allegations that the VSA is seeking pursuant to the hearing notice.

[18] The Registrar provided a written decision on November 28, 2017. The Registrar made the following findings after reviewing the evidence:

> [114] Based on the forgoing, I make the following findings:
>
> (a) Best Import advertised five motor vehicles for sale without representing them as "not suitable for transportation" in its advertisement as required by the legislation. This is a failure to state a material fact contrary to section 5(1) of the BPCPA. I have found that conduct to be reckless amounting to deliberate conduct.
>
> (b) Best Import re-advertised motor vehicles for sale, which were not compliant with the *Motor Vehicle Act* and after being advised by the Ministry of Transportation's Commercial Vehicle Safety Enforcement Branch of that fact. This conduct was also a breach of section 5(1) of the BPCPA and was deliberate conduct.
>
> (c) Best Import misrepresented a motor vehicle as having "no accident" when it knew that to be untrue. This conduct was also a breach of section 5(1) of the BPCPA and was deliberate conduct.
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> (d) Best Import allowed an unlicensed person to act as a salesperson contrary to section 13.1 of the *Motor Dealer Act*.
>
> (e) I find that Best Import was in breach of the conditions placed on its registration to have motor vehicles inspected by a red seal mechanic or a designated inspection facility.
>
> (f) I find that Bob Shokohi, the directing mind of Best Import, intentionally tried to mislead the Registrar during the course of the hearing.
>
> (g) I find that the cumulative conduct of Best Import disregarding lawful orders and Bob Shokohi attempting to mislead the hearing, make Best Import ungovernable.

[19] The petitioners do not challenge findings (a) through (e), but contest the last two findings, as discussed further below.

[20] Based on these findings, the Registrar concluded as follows:

> [115] Given the findings, I must consider the best way to address these contraventions with a view to protecting the public from potential future harm.
>
> [116] The tools at my disposal to try to regain the motor dealer's future compliance and to deter non-compliance are to impose conditions on its registration, suspend the dealer for a time, or issue administrative penalties. If I am not reasonably satisfied that Best Import will comply with the law in the future and will continue to pose a risk to the public, then revocation of its registration will be necessary to protect the public.
>
> [117] I am not satisfied that adding conditions to its registration, suspending its registration, or even imposing administrative penalties on Best Import's

registration is sufficient deterrence and assurance of Best Import's future compliance.

[118] Best Import did not follow the conditions placed on its registration by the Authority on July 24, 2017. CVSE Peace Officer and Inspector Grossling gave evidence that Best Import did not have the Mercedes inspected at a Mercedes dealership as required by the Notice and Order. Peace Officer and Inspector Grossling had to reissue the Notice and Order for the Mercedes.

[119] Best Imports has also received at least two prior warning letters for misrepresenting the condition of motor vehicles. Both warning letters were recently issued in December of 2016: pages 132 and 133 of the Affidavit Exhibits.

[120] Best Import essentially is saying that it will now abide by the law and has hired a new person to manage Best Import. I would note that at the September 1, 2017 hearing Best Import advised me that it had fired Mr. Anvari as manager and hired Ahmad Rezaei as Best Import's manager. On October 4, 2017, I was informed that Sid Mirhashemy was now to be the manager of Best Import. Mr. Anvari had been with Best Import's only 18 months before he was let go. It appears Best Import does not have stability in the manager's position.

[121] Best Import had every opportunity to abide by the law for some time now, but refused to do so. It deliberately disregarded lawful orders of its regulator and orders from the Ministry of Transportation's Commercial Vehicle Safety Enforcement branch. Simply because it has now appeared before me, I am to believe that it has had a change of heart. A promise to obey the law and the passage of time alone (especially only a few short months) is not sufficient evidence to overcome the worrisome past conduct noted in this case. What is necessary is evidence of rehabilitation and of good conduct over a period of time: see *Re: A Vancouver Auto Ltd. and Shahram Moghaddam* (April 3, 2017, File 17-02-002, Registrar).

[122] Best Imports has shown a propensity for not obeying warning letters, conditions placed on its registration, and lawful orders of the Ministry of Transportation - all within the past year. I have found the conduct of Bob Shokohi, the guiding mind of Best Import, during the hearing troublesome. I specifically note his attempt to mislead the hearing, regarding the ownership of the property occupied by Best Import. I find that this evidence shows Best Import to be ungovernable.

[123] Based on Best Import's past conduct, it is my opinion that adding conditions to the registration of Best Import, suspending the registration of Best Import, or issuing administrative penalties against Best Import will not achieve future compliance and deter non-compliance. Given the nature of the transgressions of advertising and offering motor vehicles for sale that were not suitable for transportation and not compliant with the *Motor Vehicle Act* and failing to state that material fact, the potential harm to consumers is very high - death, personal injury and/or financial damages.

[124] In order to protect the public from future harm, I hereby revoke Best Import’s motor dealer registration effective the date of this decision. I do not need to consider Best Import’s use of an unlicensed salesperson in arriving at

> this decision. Best Import's willingness to (a) ignore lawful orders - being ungovernable, (b) failing to state material facts in breach of the BPCPC, and (c) place consumers at risk of financial and personal harm by making motor vehicles available to consumers for purchase that are not compliant with the *Motor Vehicle Act* are sufficient grounds.
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> …
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> [131] The *Motor Dealer Act* would allow Best Import to re-apply for registration at any time. In order to protect the Registrar's process, to save administrative time and costs, and to provide certainty regarding the cancelation of Best Import's registration, I find it necessary to set a length of time during which I would not accept such an application from Best Import or its principle Bob Shokohi: *Pugliese v. Clark*, 2008 BCCA 130 (BC Court of Appeal), and see *B.C. College of Optics Inc. v. The College of Opticians of British Columbia*, 2016 BCCA 85 (BC Court of Appeal).
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> …
>
> [136] Given my finding that Best Import is ungovernable, attempted to mislead the hearing, and willfully disobeyed orders from its regulator and the Ministry of Transportation, I would set a time of ten years before I would even accept an application and consider registering Best Import as a motor dealer. Additionally, I would set the same time bar against any motor dealer application in which Mr. Bob Shokohi is involved.
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> [Emphasis added.]

[21] The Registrar appeared through counsel at this petition. There is no dispute that the Registrar could properly make submissions (a) on his jurisdiction, (b) on the appropriate standard of review, (c) explaining those facts that are within his expertise, (d) explaining facts that the petitioners did not, (e) explaining the record; and (f) explaining the law on issues pertinent to this judicial review: *Judicial Review Procedure Act*, s. 15(1); *Fryer* at paras. 3-7.

III. ISSUES

[22] Three issues require consideration:

a) Was the Hearing Notice process unfair to Mr. Shokohi?

b) Was it procedurally unfair to hold a single hearing that determined both breach and penalty?

c) Was the decision to impose a ten-year ban on reapplication for registration unreasonable?

IV. STANDARD OF REVIEW

A. Notice and Single Hearing

[23] Setting out the standard of review on issues of procedural fairness is more complex than one would expect, as illustrated by both the submissions of the parties and the case law: see *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69 at paras. 34-56, for a helpful review of the debate. The petitioners submit that the standard of review on the procedural matters is either fairness or correctness. The respondents say that while a more accurate formulation would be that there is no standard of review at all, they do not object to the application of a correctness standard.

[24] In *Crown Auto Body and Auto Sales Ltd. v. British Columbia (Motor Vehicle Sales Authority),* 2014 BCSC 894 at paras. 88-89, the court suggested that the simple question for the court is whether the process was fair. A more recent review from our Court of Appeal in *The Cambie Malone's Corporation v. British Columbia (Liquor Control and Licensing Branch)*, 2016 BCCA 165 puts the issue as follows:

> [14] … On the issue of procedural fairness, the standard of review is, indeed, correctness (*Mission Institution v. Khela*, 2014 SCC 24 at para. 79), a standard that has also been described simply as "fairness": *Silverfox v. Chief Coroner*, 2013 YKCA 11 at para. 33-38; *Seaspan Ferries Corporation v. British Columbia Ferry Services Inc.*, 2013 BCCA 55 at paras. 49 and 52.

[25] Given this statement, and the positions of the parties, I have applied a correctness standard to the procedural objections.

B. Challenge to Penalty

[26] As to the standard of review for the substantive decision on penalty, the parties agree that the reasonableness standard applies. I agree, adopting the following analysis from *Fryer*:

> [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.
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> [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.
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> [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.

V. DISCUSSION AND ANALYSIS

A. Notice

[27] *In Dunsmuir v. New Brunswick*, 2008 SCC 9, the Supreme Court of Canada stated:

> [79] Procedural fairness is a cornerstone of modern Canadian administrative law. Public decision makers are required to act fairly in coming to decisions that affect the rights, privileges or interests of an individual. Thus stated the principle is easy to grasp. It is not, however, always easy to apply. As has been noted many times, "the concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case" (*Knight*, at p. 682; *Baker*, at para. 21; *Moreau-Bérubé v. New Brunswick (Judicial Council)*, [2002] 1 S.C.R. 249, 2002 SCC 11, at paras. 74-75).

[28] The right to a fair hearing will render a decision invalid if it is breached: *Murray Purcha & Son Ltd. v. Barriere (District),* 2018 BCSC 428 at paras. 33-34. In *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643, the court put the issue as follows:

> [23] … the denial of a right to a fair hearing must always render a decision invalid, whether or not it may appear to a reviewing court that the hearing would likely have resulted in a different decision. The right to a fair hearing must be regarded as an independent, unqualified right which finds its essential justification in the sense of procedural justice which any person

> affected by an administrative decision is entitled to have. It is not for a court to deny that right and sense of justice on the basis of speculation as to what the result might have been had there been a hearing.

[29] Mr. Shokohi raises a procedural concern that the Hearing Notice did not name him, yet an order was made against him personally. He argues that the purpose of notice is to afford an individual a reasonable opportunity to be heard and answer the case against him: Donald J.M. Brown & John M. Evans, *Judicial Review of Administrative Action in Canada* (Toronto: Carswell, 2013) (loose-leaf updated July 2017), ch. 9 at 31. This requirement is designed to protect against "hearing by ambush": *R.G. Facilities (Victoria) Ltd. v. Liquor Control and Licensing Branch*, 2009 BCSC 630 at para. 46.

[30] The Registrar says that its decision to "look behind the corporate veil" to impose an additional penalty on Mr. Shokohi was necessary to achieve its public interest responsibility, and was properly explained in its reasons as follows:

> [33] Section 5 of the *Motor Dealer Act* specifically contemplates looking behind the corporate veil. Common law principals also note that a regulator needs to look at the realities surrounding a licensee or an applicant for a licence, if it is going to meet its public mandate of protecting the public from potential future harm. A licensing body is not blinded by the legal doctrine of the corporate veil.
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> - *Re: Key Track Auto Sales & Detailing Ltd.* (May 11, 2010, Hearing File 10-013, Registrar) at paragraphs 16 -19.

[31] However, the present question is not whether the Registrar could look behind the corporate veil, but rather whether it should have given notice that it might look behind the corporate veil. For the reasons expressed below, I find that such notice was required in the circumstances.

[32] There is no question that Mr. Shokohi was not named personally in the Hearing Notice. Furthermore, the Hearing Notice purported to set out the implications of the hearing, but did not identify that Mr. Shokohi could be personally barred from any involvement with a dealer. It spoke only of implications for "Suppliers", defined as the corporation and two identified salespersons, and not for the shareholder of the corporation.

[33] Mr. Shokohi was not represented personally at the hearing. This was specifically noted on the record. If Mr. Shokohi had been given notice, he may well have conducted his individual defence differently than the corporation.

[34] The Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at para. 22, stated that the purpose of procedural fairness is to:

> …ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker.

[35] The court continued, at paras. 23-28, to outline a number of non-exhaustive factors relevant to determining the context of procedural fairness:

a) The nature of the decision being made and the process followed in making it.

b) The nature of the statutory scheme and the terms of the statute pursuant to which the body operates. Greater procedural protection is called for when no appeal procedure is provided within the statute, or when the decision is determinative of the issue and further requests cannot be submitted.

c) The importance of the decision to the individual or individuals affected. The more important the decision is to the lives of those affected and the greater its impact on that person or those persons, the more stringent the procedural protections that will be mandated. In particular, “A high standard of justice is required when the right to continue in one’s profession or employment is at stake…. A disciplinary suspension can have grave and permanent consequences upon a professional career”: *Kane v. Board of Governors of the University of British Columbia*, [1980] 1 S.C.R. 1105 at 1113.

d) The legitimate expectations of the person challenging the decision.

e) The choices of procedure made by the agency itself, particularly when the agency has expertise in determining what procedures are appropriate in the circumstances.

[36] Applying this list of factors to the present question:

a) The decision being made was weighty. It decided whether a long-standing business would be permitted to continue to operate, and whether its principal would be allowed to be involved with motor dealers in the future. The Registrar recognized the corresponding weight required for the process, ensuring that it was close to judicial, with counsel on both sides, witnesses called, written arguments submitted, and a written decision issuing thereafter.

b) As to the nature of the statutory scheme, the statute does not provide for an internal right of appeal, heightening the need for the original decision maker to provide due process: *Baker* at para. 24. As to notice, s. 6 of the *Motor Dealer Act* provides that if the Registrar proposes to cancel a registration, "the registrar must notify the applicant, or the holder of a certificate of registration". As such, the statute recognizes the importance of notice. Although it does not speak directly to the provision of notice to the shareholder of a holder of a certificate, I find that the uniqueness of the remedy imposed here only heightens the need for principles of natural justice to step in when the final remedy granted goes beyond the strict statutory provisions. The statute's failure to expressly specify the notice requirement in these unique circumstances does not limit or negate the right to a fair hearing: *Alberta (Funeral Services Regulatory Board) v. Strong*, 2006 ABQB 873 at para. 26.

c) The implications of the ban weigh in favour of express notice. Best Import was Mr. Shokohi's primary source of income. The ten-year ban is especially significant given his advanced age. The ban on any

"involvement" with a dealer is also extremely broad. The Registrar agreed, for example, that it would extend to owning a share in a publicly traded company that is a dealer. This is a serious restriction. Mr. Shokohi should have been notified that such a penalty could be imposed, even if it was only viewed, from the perspective of the Registrar, as collateral to the primary penalty to be imposed on the corporation.

d) Mr. Shokohi had a legitimate expectation of receiving some notice that his future ownership and investment options were going to be narrowed by any order, particularly given that counsel had made it clear on the record that he was not represented personally, and where he chose to give evidence as a witness for the corporation, evidence that was eventually used against him personally.

e) The petitioners admit that the Registrar qualifies as a decision-maker possessed of expertise. However, there is no evidence as to whether the Registrar had or had not provided notice to shareholders before issuing similar bans in the past, or indeed whether it had ever issued such a shareholder ban. The Registrar noted that the ownership of a corporate holder of a certificate of registration will not always be known to the Registrar. That may be so, but this is not germane to the present case, where ownership was known. The assessment of the degree of procedural protection is always dependent on the particular facts of the case. It may be that there would be other procedural steps required to accommodate cases where ownership is unknown.

[37] Looking to case law, although the facts before the court are somewhat unique, there are parallels with the decision in *Honkoop v. Summerside Raceway Presiding Judge (Daniels) and Racing and Sports Commission (P.E.I.)* (1984), 50 Nfld. & P.E.I.R. 181 (S.C.). In an application for an order to quash decisions of the Prince Edward Island Racing and Sports Commission, the P.E.I. Supreme Court

held that a penalty imposed against a horse trainer for drugging a horse was unfair given that only the horse's owner had been given notice. The court held as follows:

> [17] (3) The plaintiff was the only person who was informed that there was to be a hearing on August 30th. Regulation 18(1) stipulates that "anyone charged . . . shall be asked to attend a hearing". If the plaintiff was charged, he was not found guilty of any infraction. The person who was found guilty was William MacLeod and he was never asked to attend the hearing. It was as a result of his suspension, as the alleged trainer of "B.J. Beauty", that the horse was suspended. Because William MacLeod was never asked to attend, his suspension and consequently the suspension of the horse was invalid. However, the defendant points out that although William MacLeod was not told to be present, he was, in fact, present at the hearing. The plaintiff in his affidavit states that he brought Mr. MacLeod as a witness. The mere fact that Mr. MacLeod happened to show up at the meeting cannot help the defendants. It was a denial of natural justice not to have informed Mr. MacLeod previous to the hearing that he was liable to be fined and suspended, without giving him prior notice. In my opinion this, in itself, renders the "hearing" *void ab initio.*
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> …
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> [27] The jurisdictional errors made in the present case were of a most serious nature. In a case based on very similar facts, Haines, J., in *R. v. Ontario Racing Commission, Ex parte Morrissey* (1970), 8 D.L.R. (3d) 624, granted an order quashing the decision of the Ontario Racing Commission on the grounds that the person suspended had not received written notice setting out the date and subject matter of the hearing, the grounds of the complaint, the basic facts in issue and the potential seriousness of the possible result of the hearing. At p. 629 Haines, J., stated:
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> > "I find that this type of notice is the minimum which would satisfy the requirements of natural justice, especially in the case where a man's occupation and livelihood is placed in jeopardy and he has no forewarning of the case he must prepare to meet the accusations against him."
>
> [Emphasis added.]

[38] This failure to give notice is sufficient on its own to support quashing the orders made against Mr. Shokohi personally.

B. Single Hearing

[39] Both petitioners argue that there should have been a separate hearing on penalty.

[40] Section 6 of the *Motor Dealer Act* provides as follows:

> **Hearing if requested**
>
> **6** If the registrar proposes to
>
> (a) refuse to register or refuse to renew registration,
>
> (b) cancel the registration, or
>
> (c) suspend the registration,
>
> the registrar must notify the applicant, or the holder of a certificate of registration, that
>
> (d) he or she has the right to be heard at a date and place specified in the notice, and
>
> (e) if the applicant or holder does not attend at that time and place, the matter may be disposed of in the absence of the applicant or holder.

[41] Nothing in this section implies that there will be multiple hearings. First, I note that the heading describes a "hearing" in the singular: *R. v. Lohnes,* [1992] 1 S.C.R. 167 at 179. It also provides for the right to be heard "at a date and place specified in the notice", again stated in the singular. Finally, I note that the section refers to the fact that if the applicant or holder does not attend the hearing, "the matter may be disposed of". This language all suggests that the matter may be fully considered at a single hearing.

[42] The petitioners rely on two professional licensing cases that required a second hearing on penalty: *Brock-Berry v. Registered Nurses Assn. of British Columbia* (1995), 12 B.C.L.R. (3d) 169 (C.A.) and *Finch v. Association of Professional Engineers and Geoscientists of British Columbia* (1994), 90 B.C.L.R. (2d) 98 (C.A.).

[43] However, in *Brock-Berry*, the applicable statute provided as follows:

> 23. (1) An inquiry under section 22(4) shall be by a hearing commenced by a citation issued at the direction of the chairman of the professional conduct committee and served on the person whose conduct is under inquiry.
>
> …
>
> 26. (1) ...
>
> (2) The professional conduct committee may, <u>after a hearing under section 23,</u>
>
> (a) determine that the member is or has been guilty of

. . . . .

(i) …

(ii) conduct contrary to the ethical standards of the profession of nursing,

27. (1) The professional conduct committee, after making a decision under section 26(2), may

(a) reprimand or censure the member;

(b) suspend the membership…

(c) impose conditions on the continuance of the membership…

(d) terminate the member's membership…

[Emphasis added.]

[44] In *Finch*, the statute required as follows:

24.5(1) The discipline committee may, after an inquiry under section 24.4, determine that the member or licensee

(a) has been convicted in Canada or elsewhere of an offence that, if committed in British Columbia, would be an offence under an enactment of the Province or of Canada, and that the nature or circumstances of the offence render the person unsuitable for registration or licensing,

(b) has contravened this Act or the bylaws or the code of ethics of the association, or

(c) has demonstrated incompetence, negligence or unprofessional conduct,

(2) Where the discipline committee makes a determination under subsection (1), it may, by order, do one or more of the following:

(a) reprimand;

(b) impose conditions on the membership or licence of;

(c) suspend the membership or licence of;

(d) revoke the membership or licence of the member or licensee,

(3) The discipline committee shall give written reasons for any action it takes under subsection (2).

(4) Where a member or a licensee is suspended from practice, the registration or licence shall be deemed cancelled during the term of the suspension and the suspended member or suspended licensee is not entitled to any of the rights or privileges of membership and shall not be considered a member while the suspension continues.

[Emphasis added.]

[45] In *Finch*, Cumming J.A. concluded as follows:

> [48] The appellant had no reason to suspect that such a procedure would be followed when he decided not to attend the hearing. To the contrary, the respondent supplied him with a suggested procedure which expressly provided that evidence would not be led on sentence before verdict, unless the appellant agreed to it.
>
> [49] The discipline procedure mandated by the Act contemplates a two step process: the line is drawn between s. 24.5(1) and 24.5(2). Only where the Panel has first made a finding of guilt with respect to the misconduct alleged under subsection (1) may it then proceed to deal with the matter of penalty. A finding of guilt is a condition precedent to the imposition of a penalty.

[46] The petitioners seek to draw parallels between the statutes at play in *Brock-Berry* and *Finch*, relying on the language of s. 5 of the *Motor Dealer Act*:

> **5** If the financial responsibility or past conduct of an applicant or person registered, or its officers or directors if the applicant or person registered is a corporation, is, in the opinion of the registrar, such that it would not be in the public interest for the applicant or person to be registered or continue to be registered, the registrar may,
>
> (a) if the application is made under section 4, refuse to register, or refuse to renew registration, or
>
> (b) if a person is registered,
>
> (i) cancel the registration, or
>
> (ii) suspend the registration for a period of time and subject to conditions the registrar considers necessary.

[47] The petitioners argue that this section has two distinct elements. First, the Registrar must assess whether the "financial responsibility" or the "past conduct" of a "person registered" is "such that it would not be in the public interest for the applicant or person to be registered or continue to be registered". They suggest that this first assessment is, effectively, a determination of liability. Then, the choice of penalty constitutes a second distinct element that should be considered in a separate hearing.

[48] I do not agree with this interpretation. From a grammatical sense, s. 5 is written as one continuous clause, i.e., if the Registrar finds a breach, then the Registrar may impose a penalty. It differs materially from the statutes in *Brock-Berry* and *Finch*, which make it far clearer that the analysis must occur in two stages. In *Brock-Berry* the statute expressly uses the words "after making a decision". In *Finch*,

the sections provide for an initial “determination” before penalty is considered. Conversely, I do not see anything in the language of s. 5 that requires that there should or must be two separate hearings.

[49] I agree that the language of the statute is not the beginning and end of the required analysis. But it is clear from the authorities that the statute is a highly material aspect of the inquiry. Although the court in *New Brunswick Real Estate Association v. Moore*, 2007 NBCA 64 at para. 2, recognized that there may be certain instances where the duty of fairness alone will require a two-hearing process, this is not such a case.

[50] Turning to the broader fairness factors, I see nothing about the present fact pattern that requires a different conclusion than that suggested by the statutory construction above. In particular, I note the following:

a) Unlike the situation in *Finch* at paras. 10 and 48, there was no representation by the Registrar that there would be two separate hearings. Rather, the Hearing Notice provided clear notice as to the potential outcome of the scheduled single hearing. As a matter of reasonable expectations, the language is quite clear that the hearing may end in the outcomes identified. From the notice that preceded the interim order, we can see that the notice is tailored to only provide notice of penalties that may be “on the table”.

b) There is no evidence that the Registrar normally holds two hearings, and deviated from its standard practice here.

c) The parties did address penalty in their written submissions, although in a cursory fashion, showing some cognizance of the implications of the single hearing.

d) Although certainly still a weighty decision, this case did not involve professional licensing directly affecting an individual’s ability to pursue their chosen livelihood, as in the cases cited above. As it relates to Best

Import, I conclude that it had every opportunity to call evidence relevant to penalty, and they had a clear opportunity to make submissions on the appropriate penalty.

e) Imposing a mandatory two-hearing process could impose a substantial administrative burden on the Registrar: *Piros v. Newfoundland (Dental Board)* (1993), 116 Nfld. & P.E.I.R. 73 at para. 41.

[51] Best Import's suggestion that it was unable to know exactly how to properly address potential penalties without knowing the precise findings on liability is belied by submissions made at trial every day in these courts, as well as before an array of other administrative tribunals. Any suggestion to the contrary sought to be derived from Lambert J.A.'s oral reasons in *Watson v. British Columbia Securities Commission*, 1999 BCCA 625, is distinguishable based on the more penal aspects of the securities violations at issue in that case, where the issue was characterized as one of "guilt" (para. 11). I also note that counsel for the commission in that case essentially conceded the general entitlement to a separate hearing, and was relying primarily on waiver to avoid the suggestion that two hearings needed to occur in the case before the court (para. 12).

[52] In conclusion, I find that there was no need for the Registrar to require an additional second hearing to address penalty.

C. Reasonableness of the Penalty

[53] My concerns regarding the penalty imposed on Mr. Shokohi are addressed above, in finding that the orders against him should be quashed due to a failure to give proper notice. Rather than potentially pre-judge any future proceeding that may take place if the Registrar seeks to now commence a fresh proceeding for a remedy against Mr. Shokohi personally, I decline to comment on the reasonableness of the order made against him, particularly as the evidence and submissions may change if and when that proceeding is heard.

[54] As to Best Import, it now only seeks to challenge the ten-year ban on reapplication. In that respect, its argument at the hearing was quite narrow. The core of its concern is that the ten-year ban was based primarily on two findings that it argues were not supported by the evidence. As noted above, the Registrar found, at para. 114:

> (f) I find that Bob Shokohi, the directing mind of Best Import, intentionally tried to mislead the Registrar during the course of the hearing.
>
> (g) I find that the cumulative conduct of Best Import disregarding lawful orders and Bob Shokohi attempting to mislead the hearing, make Best Import ungovernable.

[55] The petitioners accept that if I conclude that Best Import's ten-year ban on reapplication was reasonable based only on the accepted findings at (a) through (e) in para. 114 of the reasons set out above, then the penalty could be upheld even if there was no basis for findings (f) and (g). I find that this is indeed the case. Those findings reflect serious concerns about the public interest. Imposing a ten-year ban on reapplication for Best Import on those grounds alone "falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *Dunsmuir* at para. 47.

[56] Furthermore, on a review of the entire reasons, rather than the "parsing" approach proposed by the petitioners, I cannot find that it was unreasonable for the Registrar to have made the challenged findings. It is important to review the decision "as a whole": *Cooper v. British Columbia (Liquor Control and Licensing Branch)*, 2017 BCCA 451 at para. 54. The specific findings were not outside the bounds of available reasonable inferences from the evidence provided by Mr. Shokohi, either in his own testimony or through his corporation's counsel. There was sufficient evidence to conclude that the corporation and its witnesses had wrongly represented to the Registrar that:

a) a police officer told Mr. Shokohi's son that he need not be present at the hearing on the day he was scheduled to appear;

b) the Registrar Delegate had improperly detained one of Best Import's employees in a vehicle; and

c) Mr. Shokohi's son was not involved in the ownership of the property on which Best Import was located.

[57] It was within the reasonable latitude afforded to the Registrar to arrive at these findings, drawing reasonable inferences, and assigning reasonable weight to each piece of evidence. While this Court may not have drawn the same inferences, or come to precisely the same conclusions on relevance, that is not the test. I cannot conclude that the Registrar's reasoning process was manifestly flawed: *Cooper* at paras. 37-42.

[58] The petitioners also raise a concern that the Registrar's characterization and use of Best Import's earlier complaint history was inaccurate or irrelevant. However, the petitioners' approach to this issue also seeks to artificially isolate particular sentences in the Registrar's reasons, rather than assessing the reasons as a whole: *Kenyon v. British Columbia (Superintendent of Motor Vehicles)*, 2015 BCCA 485 at paras. 53-55. The Registrar's concerns about Best Import's past conduct were summarized as follows:

> [118] Best Import did not follow the conditions placed on its registration by the Authority on July 24, 2017. CVSE Peace Officer and Inspector Grossling gave evidence that Best Import did not have the Mercedes inspected at a Mercedes dealership as required by the Notice and Order. Peace Officer and Inspector Grossling had to reissue the Notice and Order for the Mercedes.
>
> [119] Best Imports has also received at least two prior warning letters for misrepresenting the condition of motor vehicles. Both warning letters were recently issued in December of 2016: pages 132 and 133 of the Affidavit Exhibits.
>
> [120] Best Import essentially is saying that it will now abide by the law and has hired a new person to manage Best Import. I would note that at the September 1, 2017 hearing Best Import advised me that it had fired Mr. Anvari as manager and hired Ahmad Rezaei as Best Import's manager. On October 4, 2017, I was informed that Sid Mirhashemy was now to be the manager of Best Import. Mr. Anvari had been with Best Import's only 18 months before he was let go. It appears Best Import does not have stability in the manager's position.

> [121] Best Import had every opportunity to abide by the law for some time now, but refused to do so. It deliberately disregarded lawful orders of its regulator and orders from the Ministry of Transportation's Commercial Vehicle Safety Enforcement branch. Simply because it has now appeared before me, I am to believe that it has had a change of heart. A promise to obey the law and the passage of time alone (especially only a few short months) is not sufficient evidence to overcome the worrisome past conduct noted in this case. What is necessary is evidence of rehabilitation and of good conduct over a period of time: see *Re: A Vancouver Auto Ltd. and Shahram Moghaddam* (April 3, 2017, File 17-02-002, Registrar).

[59] There was certainly an adequate basis stated here for the Registrar to be concerned about Best Import's past conduct. I note that information about the prior customer complaints, and the warnings issued in response, were provided to Best Import in advance of the hearing through the affidavit of Compliance Officer Dan McGrath. As such, Best Import had sufficient notice that it may need to address these complaints.

[60] Finally, I conclude that the Registrar did have the ability to impose the ban on further applications for a period of ten years, relying on the decision in *Pugliese v. Clark,* 2008 BCCA 130. In *Pugliese*, Prowse J.A. concluded that the statutory authority of a regulator extends to powers that exist by necessary implication from the words of the legislation, its structure, and its purpose. The court concluded that the regulator had implicit jurisdiction to impose a forward-looking limitation, as it was practically necessary for the regulator to be able to control the licensing process by precluding repeated applications from a candidate whose present condition of unsuitability supported such an order:

> [30] In this case, the parties agree that there is no explicit, or express, power in the *Act* enabling the Registrar to make the order under appeal and that it is necessary for the Court to go on to consider whether the power is implicit, in the sense of being "practically necessary", to enable the Registrar to effectively and efficiently carry out his legislative role.
>
> [31] In making that determination, it is useful to have regard to the purpose of the regulatory scheme and the nature of the Registrar's role within that scheme as described by the Supreme Court of Canada in *Cooper v. Hobart*, 2001 SCC 79, [2001] 3 S.C.R. 537. There, after reviewing the overall scope of the *Act* (at paras. 45-48), the court stated (at para. 49):
>
> > The regulatory scheme governing mortgage brokers provides a general framework to ensure the efficient operation of the mortgage

> marketplace. The Registrar must balance a myriad of competing interests, ensuring that the public has access to capital through mortgage financing while at the same time instilling public confidence in the system by determining who is "suitable" and whose proposed registration as a broker is "not objectionable". All of the powers or tools conferred by the Act on the Registrar are necessary to undertake this delicate balancing. Even though to some degree the provisions of the Act serve to protect the interest of investors, *the overall scheme of the Act mandates that the Registrar's duty of care is not owed to investors exclusively but to the public as a whole.*
>
> [Emphasis added.]
>
> [32] Similarly, while the Registrar undoubtedly has a duty to act fairly in relation to applicants for registration under the *Act*, it is apparent that the principal object or purpose of the licensing provisions under the *Act* is to protect the public interest by ensuring that those who are registered as mortgage or submortgage brokers are "in the opinion of the Registrar" both "suitable" and "unobjectionable". Thus, while Mr. Pugliese's arguments, emphasizing the need to recognize an applicant's capacity for rehabilitation and the importance of employment, cannot be gainsaid, these considerations cannot prevail over the overriding duty of the Registrar to protect the public interest and the integrity of the industry. In my view, Mr. Pugliese's arguments in this regard do not cut to the heart of the question of whether it is practically necessary in the public interest that the Registrar have the implicit power to impose time limits on his consideration of further applications for registration by an applicant who has been found "unsuitable" and/or "objectionable" in circumstances such as these.
>
> [Underline emphasis added.]

[61] To the extent that this latter concern is properly characterized as one of jurisdiction, I find that the Registrar's decision on its authority to issue a ten-year ban was correct.

VI. CONCLUSION

[62] The penalties imposed on the individual petitioner are quashed. The petition is otherwise dismissed. If the parties cannot agree on costs, they may make further written submissions.

"Branch J"
The Honourable Mr. Justice Branch