



Vehicle Sales Authority
of British Columbia

Investigation File: 19-05-278
Hearing File: 20-03-001

**IN THE MATTER OF THE MOTOR DEALER ACT, R.S.B.C., 1996, c.316, and the
BUSINESS PRACTICES AND CONSUMER PROTECTION ACT, S.B.C., 2004, c.2**

MOTOR VEHICLE SALES AUTHORITY OF BRITISH COLUMBIA

(the "Authority")

AND

LGN ENTERPRISES INC. dba AUTO CLEARANCE CENTRE

(Motor Dealer Licence # 40289)

(Respondent)

AND

**A&A AUTO SALES LTD dba
AUTO CLEARANCE DOWNTOWN HASTINGS**

(Motor Dealer Licence #40660)

(Respondent)

AND

AYKUT (ALEX) BILGIN

(Salesperson Licence #201174)

(Respondent)

AND

DUSEAN DAVID LEBLANC

(Salesperson Licence #209336)

(Respondent)

AND

MOHAMMAD (GEORGE) LATEEF

(Salesperson Licence #203435)

(Respondent)

DECISION OF THE REGISTRAR OF MOTOR DEALERS

Respondent Application to Dismiss Hearing

Authority Application to Amend Affidavit and Hearing Notice

Date and place of decision: May 7, 2021 at Langley, British Columbia

By way of written submissions

I. Introduction

[1] The Respondents LGN Enterprises Inc. dba LGN Auto Clearance Center ("LGN"), A&A Auto Sales Ltd. dba Auto Clearance Downtown Hastings ("A&A"), and Aykut (Alex) Bilgin (collectively the "Applying Respondents"), apply to have this case dismissed as against them due to inordinate delay in prosecuting this case on the part of the Authority. The Authority objects to the application to dismiss.

[2] By cross-application, the Authority seeks to amend the Affidavit of Bill Manhas, an investigator with the Authority, as well as to amend the Notice of Hearing in this matter. The Applying Respondents object to the Authority amending the Affidavit of Bill Manhas and its Hearing Notice.

[3] The procedural history is summarized in the submissions of the Parties. In summary, this matter has been ongoing for some 24 months since the Authority first imposed conditions on the registration of LGN on May 24, 2019. Those conditions were imposed as the Authority was investigating claims that the Applying Respondents were selling vehicles that were not compliant with the safety requirements of the *Motor Vehicle Act*. The imposition of the conditions were a protective measure put in place while the Authority's investigation was ongoing.

[4] This case has had a variety of interim applications and Registrar decisions and letters of direction as it has progressed along.

II. Position of the Parties

[5] I will briefly summarize and paraphrase each party's position below.

(a) The Applying Respondents

[6] Regarding their motion to dismiss, the Applying Respondents:

- (a) Set out the chronology of proceedings and note but for one delay so that Mr. Bilgin could travel to attend his brother's funeral with the COVID-19 restrictions, the Applying Respondents have diligently participated in this process,
- (b) Most of the delay in this case is due to the Authority finishing its investigation, and taking an inordinate and unexplained length of time to complete its investigation report as well as the Affidavit of Bill Manhas, as well as having an external lawyer take over the file on behalf of the Authority,
- (c) The Authority twice sought an extension of time to provide their Affidavit evidence, once with success and one without,

- (d) There are two witnesses for cross-examination with dates provided by the Applying Respondents for Mr. Bilgin's cross-examination, but the Authority has yet to provide dates for their witness Mr. Leblanc's cross-examination,
- (e) Comparing this case to a selection of other reported cases of the Registrar, shows this case has already taken one-third time longer from when a proceeding was commenced or transaction occurred to a final decision of the Registrar, and
- (f) The Applying Respondents are negatively impacted by the delay because of the restrictive sanctions placed on their business for some 24 months.

[7] In support of its application to dismiss, the Applying Respondent's rely on the legal principles in *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44 (CanLII), [2000] 2 SCR 307 (Supreme Court of Canada)¹. The Applying Respondents say that the facts of this case show hearing fairness is impacted and emphasize that there is an impact on the community's sense of fairness due to the delay.

[8] Regarding the Authority's motion to amend the Affidavit of Bill Manhas and the Hearing Notice, the Applying Respondents say:

- (a) The Authority has had plenty of time to amend the Affidavit of Bill Manhas,
- (b) The Authority's suggested amendments to the Hearing Notice would change the substance of the allegations, and
- (c) I infer from these points that the Applying Respondent's also believe this would further delay the process.

[9] In support of objecting to the amendments, the Applying Respondent's rely on Registrar's Rule 6 and the commentary to that Rule. A reading of Rule 6 and its commentary suggests amendments are allowed when there is new information or a new claim. Not about clarifying issues or allegations, as the Authority seeks to do.

(b)The Authority

[10] Regarding the Applying Respondent's application to dismiss, the Authority's position is:

- (a) That the delay is not inordinate such that it impacts hearing fairness or the community's standards of fairness, nor is it an abuse of process,
- (b) There have been minor delays due to various interim applications and Registrar's decision, which is not unexpected and COVID-19 restrictions have not helped,

¹ They also cite *Robertson v. British Columbia (Teachers Act, Commissioner)*, 2014 BCCA 331 (B.C. Court of Appeal) and *R. v. Jordan* 2016 SCC 27 (Supreme Court of Canada).

- (c) Some of the delay can be attributed to the Applying Respondents. Not just Mr. Bilgin's needed absence, but the Applying Respondents objected to the Affidavit of Mr. Leblanc which needed to be addressed by the Registrar,
- (d) The Authority notes these proceedings commenced by Notice of Hearing on March 9, 2020, while the Applying Respondents focus on May 24, 2019, when conditions were placed on LGN's registration pending the conclusion of the investigation in this matter, and
- (e) As to the impact of the delay being the conditions placed on LGN, the May 24, 2019 letter from the Authority noted the conditions could be reviewed after November 24, 2019 and LGN has not asked that those conditions be reviewed.

[11] In support of their position, the Authority also cites *Blencoe*, as well as *R v. Babos*, 2014 SCC 16 (Supreme Court of Canada).

[12] Regarding the Authority's application to amend their Hearing Notice and the Affidavit of Bill Manhas, their position is simply that the amendments would not substantively add to the allegations or evidence but to put them into proper form to ensure clarity and procedural fairness. The Authority states that these amendments are intended to address the Applying Respondents complaints about those documents, and the Applying Respondents should not both complain about their form and then object when that form is to be corrected.

III. Legal Principles

[13] I now turn to discuss the applicable legal principles.

(a) Dismissal for Delay

[14] Both the Applying Respondent's and the Authority cite *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44 (CanLII), [2000] 2 SCR 307 (Supreme Court of Canada) as the leading authority on dismissing a claim for delay within the administrative law context. The applicable principles from the majority decision in *Blencoe* are:

- (a) state-caused delay without more, will not warrant a stay of proceedings, and
- (b) there must be proof of significant prejudice which results from an unacceptable delay.

[15] The majority decision in *Blencoe* went on to consider the types of prejudice that may warrant a stay of proceedings, and noted the following types of prejudice:

- (a) the inability to defend against the allegations because of fading memories, loss of witnesses, or the loss of evidence (para. 102), and
- (b) through significant psychological harm amounting to a stigma attached to the person under review (para. 115).

[16] The majority decision in *Blencoe* went on to accept a stay due to a delay could be granted where to continue with the process would be oppressive amounting to an abuse of

process. In order to make such a finding, “the damage to the public interest in the fairness of the administrative process should the proceeding go ahead would exceed the harm to the public interest in the enforcement of the legislation if the proceedings were halted” and that damage to a fair process must be one of the clearest of cases (para. 120).

[17] Finally, the majority decision in *Blencoe* made clear that the assessment of the delay is contextual and dependent on the facts of each individual case. That also means that where there are multiple respondents, that assessment needs to be individualized to their circumstances:

122 The determination of whether a delay has become inordinate depends on the nature of the case and its complexity, the facts and issues, the purpose and nature of the proceedings, whether the respondent contributed to the delay or waived the delay, and other circumstances of the case. As previously mentioned, the determination of whether a delay is inordinate is not based on the length of the delay alone, but on contextual factors, including the nature of the various rights at stake in the proceedings, in the attempt to determine whether the community’s sense of fairness would be offended by the delay.

[18] The Authority also cites *R. v. Babos*, 2014 SCC 16 (CanLII), [2014] 1 SCR 309 (Supreme Court of Canada) which discusses a delay amounting to an abuse of process warranting a stay. *Babos* was a criminal law case and did not directly consider *Blencoe*. A review of the majority decision in *Babos*, however, shows the same legal principles being applied as in *Blencoe*. Regarding dismissing a case for an abuse of process due to a delay, *Babos* also states it must be the clearest of cases showing:

- (a) Prejudice to the accused’s right to a fair proceeding or to the integrity of the justice system that will be manifest, perpetuated or aggravated through conducting the proceeding,
- (b) There is no alternative remedy capable of redressing the prejudice, and
- (c) Where consideration of (a) and (b) leaves uncertainty whether a stay is warranted, the stay should be granted.

[underlining added]

[19] Considering the principles in *Blencoe* and in *Babos*, I accept the same principles are being articulated and that *Babos* adds that the court or tribunal should also consider if another remedy is available to redress any prejudice. *Babos* further adds that if after balancing the considerations the tribunal remains in doubt, a stay should be granted.

(b) Amendments

[20] It is trite law that an administrative tribunal is master of its own proceedings, so long as that process is procedurally fair and complies with any legislative requirements.

[21] In this case, Registrar Rule 6 does allow amending applications. The general time limit is to allow amendments up to 30 days after the initial filing of an application: Rule 6(1). Rule 6(2) grants the Registrar discretion to extend the time to make an amendment where it is necessary to ensure a fair process. This is consistent with Rule 1(3), which says

that the Rules are to be read in addition to any statutory or common law powers of the Registrar to ensure a fair process.

[22] The commentary to Rules 6(1) and (2) does indicate that the 30-day limitation is to ensure the process moves along. That commentary also suggests amendments are allowed if new information or new claims are discovered and allowing the amendment may be necessary to ensure a fair process, which must be balanced against any undue prejudice to another person if the amendments are allowed.

[23] Based on the commentary to Rule 6, I am to consider the Authority's request to Amend their Hearing Notice (which is the Authority's complaint or "application"), and balance moving this case forward with the need to ensure procedural fairness in a way that will not unduly prejudice another person.

[24] The Affidavit of Bill Manhas is not an "application" as defined in section 1 of the Registrar's Rules. That definition adopts the definition of "application" in the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 ("ATA") and adds two items unique to the Registrar's legislation. A combined reading provides the following definition of "application" in the Registrar's Rules:

ATA

"application" includes an appeal, a review or a complaint but excludes any interim or preliminary matter or an application to the court;

Registrar's Rules

...and includes:

- (a) a complaint against a licensee or unlicensed person for a breach of the MDA or the BPCPA, or
- (b) a request for reconsideration.

[underlining added]

[25] In short, an "application" is an originating process before the Registrar.

[26] The Affidavit of Bill Manhas is not an originating process but is evidence in support of such a process. The proper Rule to consider is Rule 30.3. That Rule does not provide for amending evidence but applying for an extension of time to provide submissions or evidence. This makes sense as one generally does not amend evidence that has been submitted. If I were to grant the Authority an extension of time to file another Affidavit of Bill Manhas, to correct any procedural fairness issues as the Authority states, then I am to consider:

- (a) Any prejudice to any party or consumer complainant,
- (b) The need for a timely, cost-effective, and efficient process,
- (c) The protection of the public and the public interest, and
- (d) Ensuring a fair process.

IV. Discussion

[27] I now turn to discuss each of the applications.

(a) Dismissal due to delay?

(i) When did this proceeding commence?

[28] To start, it is important to identify when this proceeding commenced. For the Applying Respondent's they view May 24, 2019 as when this process started as against them. It was at that time the Authority's Manager of Licensing advised the Applying Respondents of an active investigation which was of concern, such that imposing certain conditions on LGN's registration was necessary to protect the public while the investigation was ongoing. At that time, the Manager of Licensing put LGN, and Mr. Bilgin, on notice of the nature of the complaint, being the sale of unsafe vehicles, and that the Applying Respondents were under investigation.

[29] The Authority focuses on March 9, 2020 as the date the proceedings in this matter commenced. It was at that time that the Authority issued its Hearing Notice with its varied allegations against the various Respondents. Of note, is that one allegation, which seems of central concern, is that the Applying Respondent's filed a false police report against a VSA investigator during the course of the investigation. Based on the facts currently before me, it appears that the filing of the alleged false police report occurred sometime after the May 24, 2019 imposition of the conditions.

[30] In reviewing the Hearing Notice, all but the allegation of filing a false police report relate to the original consumer complaint alleging the sale of unsafe vehicles. The Authority's investigation alleges more incidents of selling unsafe vehicles were found during its investigation, but it is still the same allegation.

[31] With the Authority taking a formal interim step on May 24, 2019 to protect the public regarding the allegations against at least LGN that are now in the Hearing Notice, I am satisfied that I should accept March 9, 2019 as the date these proceedings commenced against at least LGN on the issue of selling unsafe vehicles. There was formal communication from the Authority on that date about the conditions being imposed and why. The allegations were then formalized in the Hearing Notice on March 9, 2020, starting the formal discipline process before the Registrar.

[32] I accept that for this case that the Hearing Notice issued on March 9, 2020 was the commencing of the proceedings as against Dusean David Leblanc, Mohammad (George) Lateef, and Aykut Bilgin². They were not personally affected by the imposition of the conditions on LGN on May 24, 2019.

² It is in the Hearing Notice when the allegation against Aykut Bilgin falsifying a police report and having any personal involvement with the sale of unsafe vehicles is first made. More on this later in the decision.

(ii) Right to a Fair Hearing

[33] The right to a fair hearing focuses on the hearing itself and asks questions such as: Has witnesses been lost? Is there a risk of fading memories? Has evidence been lost? Will the Respondent's be prejudiced in defending against the allegations? Has the ability of the Respondents to be heard been prejudiced?

[34] Under this heading, I have two concerns involving hearing fairness.

[35] First, by letter of direction, the Applying Respondents and the Authority were to identify witnesses they wished to cross-examine and identify dates when that was to occur. In their submissions, the Applying Respondents note they have provided dates for Mr. Bilgin to be cross-examined, but the Authority has not provided dates for Mr. Leblanc to be cross-examined. The Authority has not denied that to be the case.

[36] The evidence of Mr. Bilgin and Mr. Leblanc go to a central issue of this case of whether a false police report was filed and by whom. The Authority alleges Mr. Leblanc filed that report on the direction of Mr. Bilgin and was incentivized by Mr. Bilgin to do so. Mr. Bilgin denies this to be the case. Therefore, witness credibility is at issue on this central point which is why I ultimately directed the hybrid process of obtaining oral evidence from these witnesses and having written evidence and submissions on the balance. At this point, it can be said that the delay on the part of the Authority in providing dates for Mr. Leblanc's cross-examination currently does prejudice Mr. Bilgin's³ ability to make full answer and defence to this key allegation. As the days go by, so does the memories of those two witnesses.

[37] Second, in reviewing the procedural history of this case, much of the interim applications and resulting decisions involved the Authority and the Applying Respondents who are represented by lawyers. It does not appear that Mr. Leblanc or Mr. Lateef, also Respondents in this case, were served those interim applications and given an opportunity to participate. Certainly, an application to dismiss the allegations is of interest to the both of them. Also is, whether the Affidavit of Bill Manhas and the Hearing Notice should be amended as doing so may substantively change the allegations (we'd have to wait and see if that is the case) and would also cause a delay. Those two documents are central to the allegations against all of the Respondents.

[38] I would say these two considerations does bring into issue the fairness of the hearing and can be tied into the noted delay or anticipated further delay. These will form part of my overall considerations.

(iii) Community sense of fairness

[39] The next consideration is whether the delay to date would impact the community's sense of fairness.

³ Paragraphs 40 and 41 of the Hearing Notice only questions Mr. Bilgin and Mr. Leblanc's conduct on this allegation.

[40] The Applying Respondents have provided seven examples of Registrar decisions where the processes in those case moved along quicker than in the present case. As noted in *Blencoe*, care must be given to such comparisons and the unique facts of this case must be considered.

[41] After reviewing those reported cases, none indicate that interim applications were made to have an oral hearing, supplemental affidavits being filed with objections to that filing, and letters of directions regarding identification of witnesses for oral testimony and cross-examination. One case, *Dubois v. Preferred Auto Inc. et al* (2020-BCRMD-005) was a short 5-page decision looking to the question of jurisdiction to hear the case. Another decision, *Re:Plosz* (2019-BCRMD-017) was a review of an application to be licensed as a salesperson. There was no allegations of unsafe vehicles to be investigated or any interim applications regarding witness testimony or evidence production. These seven cases are not good comparators to this one.

[42] I agree with the Authority that some of the delay can be attributed to moving the process along due to COVID-19, especially as the Hearing Notice was issued around the same time as Provincial Health Orders restricting contact among people first started being issued. The Applying Respondents agree and also noted the delay for Mr. Bilgin to attend his brother's funeral should not be consider as part of the delay.

[43] I also agree with the Authority that there were many steps taken during this case to move the matter along that required exchange of submissions and awaiting my decisions or letters of directions. There was also the filing of the Affidavit of Mr. Leblanc and the objections to that filing with a decision from myself to resolve those objections. Delay to allow party's to object to certain processes and to allow a procedurally fair process to unfold is not a state-caused delay *Blencoe* was getting at. That said, I would say that one aspect of delay on the part of the Authority and its request for a further delay cannot be readily explained.

[44] The Authority issued its Hearing Notice and the Investigation Report of Bill Manhas on March 9, 2020. The Hearing was automatically set by the Rules for a written hearing and the Authority applied for an oral hearing. In my Letter of Direction of August 21, 2020, I agreed that a written hearing was preferred but we would accommodate oral witness testimony if after the exchange of evidence, oral testimony was necessary. The Authority was to provide its affidavit first, and it twice requested an extension of time to provide that evidence. The first being granted the second being denied. The Authority appended the investigation report of Bill Manhas to an affidavit and also submitted the affidavit of Mr. Leblanc. The evidence of Bill Manhas and that of Mr. Leblanc were already contained in the Investigation Report of Bill Manhas last dated February 10, 2020.

[45] As I noted in my interim decision of November 27, 2020, when the Authority served the Hearing Notice and Investigation Report of Bill Manhas, it must be taken as "ready to go" with the review of the allegations on the evidence it submitted. The Authority knew that the Registrar's Rules defaulted all hearings to written form and there could be no guarantee that their request for an oral hearing would be granted. Therefore, the Authority needed to be prepared to move their case forward in accordance with the Registrar's Rules on March 9, 2020.

[46] From March 9, 2020, the Authority has known the allegations it is advancing and the evidence it must produce to meet its burden. As of this decisions date, some 13-14 months later, the Authority is asking to amend its Notice of Hearing and its evidence, without identifying any new allegations or new evidence needing to be submitted. Even as all the interim processes were unfolding, the Authority was not precluded from preparing its case and being prepared to go.

[47] The fact that an alleging party is to have its case prepared and ready to go upon filing is consistent with the purpose of Registrar's Rule 6. It is also consistent with the BC Supreme Court Rules for civil proceedings: Rule 1-3. It is consistent with the decision in *Blencoe* and *Babos*, and the underlying principles stated in *R v. Jordan*, supra:

[24] Timely trials allow victims and witnesses to make the best possible contribution to the trial and minimize the "worry and frustration [they experience] until they have given their testimony" (*Askov*, at p. 1220). Repeated delays interrupt their personal, employment or business activities, creating inconvenience that may present a disincentive to their participation.

[25] Last but certainly not least, timely trials are important to maintaining overall public confidence in the administration of justice. As McLachlin J. (as she then was) put it in *Morin*, "delays are of consequence not only to the accused, but may affect the public interest in the prompt and fair administration of justice" (p. 810). Crime is of serious concern to all members of the community. Unreasonable delay leaves the innocent in limbo and the guilty unpunished, thereby offending the community's sense of justice (see *Askov*, at p. 1220). Failure "to deal fairly, quickly and efficiently with criminal trials inevitably leads to the community's frustration with the judicial system and eventually to a feeling of contempt for court procedures" (p. 1221).

...

[28] In short, timely trials further the interests of justice. They ensure that the system functions in a fair and efficient manner; tolerating trials after long delays does not. Swift, predictable justice, "the most powerful deterrent of crime" is seriously undermined and in some cases rendered illusory by delayed trials (McLachlin C.J., "The Challenges We Face", remarks to the Empire Club of Canada, published in (2007), 40 *U.B.C. L. Rev.* 819, at p. 825).

[underlining added]

[48] While *R. v. Jordan* is in the criminal context, the above stated underlying principles can be found in *Blencoe*, and in *Babos*. In *Jordan*, delay is presumptively unreasonable in the provincial court after 18 months delay before trial⁴ or 30 months going to trial in provincial court after a preliminary inquiry or 30 months going to trial in superior court (BC Supreme Court). The Registrar is a tribunal not easily equated to the courts. However, as the decisions of the Registrar may be reviewed by the BC Supreme Court and that Court's decisions are binding on the Registrar, the closest equivalent would be to the provincial court. This is helpful guidance in rendering my decision on this point.

⁴ From when charges are laid.

[49] I am satisfied under the *Blencoe* principles that a 13 to 14 month delay without excuse since filing the Hearing Notice and requesting it be amended along with its supporting evidence would impact the community's sense of fairness. A regulator that formalizes and serves a complaint along with the evidence it relies on is taken by the community as ready to go forward and to have the allegations reviewed. To allow it to amend the Hearing Notice, after several interim processes and the passage of time in which it could have made those amendments, would be viewed by the community as unfair. The community would ask: When does it end? When does the state have to stand by the process it undertook, the allegations it has made and the evidence it gathered? How much longer should the Applying Respondents have to wait to have their guilt or innocence determined, all the while under interim conditions placed on them for some 24 months without the allegations yet being proven? How much longer should Mr. Leblanc and Mr. Lateef have to wait?

[50] It is important to remember that the Authority is submitting that the amendments will not substantively change the Hearing Notice or evidence of Bill Manhas but place them into an appropriate form to be procedurally fair. So, this is not a case of new information coming to light, which may warrant a delay. This begs the question of why was the request to amend not brought sooner? Certainly, my decision of November 27, 2020, where I noted the Authority should be viewed as ready to go as of March 9, 2020, should have alerted the Authority that it should be ready to go.

[51] I find this one aspect of the delay on the part of the Authority and requested further delay is not explainable, such that the community would be concerned about hearing fairness. However, this is not the end of the enquiry as I must also consider any possible remedies to redress these concerns as well as whether the public interest in hearing this case on its merits outweighs the community's concern of hearing fairness.

(iv) Other remedies available to address any prejudice & the public interest

[52] It is important to consider fairness in relation to the circumstances of each of the respondents, the allegations made against them and any concern for the public interest in relation to them. I will consider each of the Respondents' unique circumstances in turn.

(A) Mohammed George Lateef

[53] To recap, my first concern with hearing fairness is that Mr. Leblanc and Mr. Lateef have not had an opportunity to fully participate in the hearing process to date. What is especially concerning is that they do not appear to have been served with the application to set aside this case as well as the Authority's request to amend its Hearing Notice and the Affidavit of Bill Manhas, which could constitute a further delay and both those documents impact all the named Respondents.

[54] Starting with Mohammad Lateef, the Hearing Notice asks to suspend or cancel his salesperson licence and/or impose an administrative penalty in relation to his alleged conduct.

[55] The Hearing Notice alleges Mr. Lateef shows a disregard for the safety of consumers in the manner that 'they' advertise and sell motor vehicles: paragraph 22 of the Hearing Notice. The Hearing Notice then refers to the investigation report of Bill Manhas for the evidence in support. In reviewing the investigation report of Bill Manhas on this issue, Mr. Lateef is mentioned as the General Manager of LGN Auto, who responded to the Authority in relation to the initial consumer complaint. It does not clearly state how Mr. Lateef, personally, was involved in the advertising and selling of the alleged unsafe vehicles.

[56] Under the legislation, it is the motor dealer who is responsible for properly declaring and advertising vehicles as "not suitable for transportation" when the vehicles do not meet the safety standards of the *Motor Vehicle Act*: sections 21(2)(e) and (f), 22, and 27(b) of the *Motor Dealer Act Regulation*, B.C. Reg. 447/78. The Hearing Notice does particularize these allegations as against LGN and or Auto Clearance: see paragraphs 24 to 39 of the Hearing Notice. There is no evidence to show, nor is it alleged, that Mr. Lateef is or was personally involved in the advertising and sale of these alleged unsafe vehicles or that he has condoned, permitted, or acquiesced in such conduct. This would explain why he is only alleged to have breached the Code of Conduct, and not these disclosure requirements of the *Motor Dealer Act Regulation*: paragraph 43 of the Notice of Hearing.

[57] There is some evidence to suggest Mr. Lateef has knowledge of whether the filing of the police report was at the behest of Mr. Bilgin or not. The Investigation Report suggests Mr. Lateef assisted in convincing Mr. Leblanc to file a false police report. The Notice of Hearing does not with particularity attribute any misconduct against Mr. Lateef on this point. The filing of the false police report is alleged as fact in paragraphs 40 and 41 of the Notice of Hearing. Those paragraphs attribute that misconduct to Mr. Leblanc and Mr. Bilgin. Absent some clear allegation against Mr. Lateef regarding the filing of a false police report, it would be procedurally unfair for me to consider such an allegation against him as he did not have proper notice: *Best Import Auto Ltd. v Motor Dealer Council of British Columbia*, 2018 BCSC 834 (BC Supreme Court) at paragraph 38.

[58] I am also mindful that the Authority imposed conditions on LGN to address the sale of unsafe vehicles. I have not been advised that LGN is operating outside those conditions, or that there has been an incident of selling an unsafe vehicle since.

[59] Generally, the remedy to address the procedural unfairness in the lack of notice to Mr. Lateef of the interim processes to date, and especially this application, would be to allow that participation and repeat the varied processes: *Chandler v. Alberta Association of Architects*, 1989 CanLII 41 (SCC), [1989] 2 SCR 848 (Supreme Court of Canada). That would yield an unreasonable delay to all parties concerned and to the public interest in having these allegations addressed.

[60] Given the concern of hearing fairness specific to Mr. Lateef as noted, the delay in having the allegations against him addressed, that the allegations that have been made against him are not very particular and well defined, there being no allegation against him on filing a false police report, and that the safety concerns for the public appear to be abated and responsibility ultimately lying with the dealer Respondents on that point and as alleged; on balance I believe fairness requires the allegations against Mr. Lateef be dismissed and that the public interest would not be negatively impacted in a meaningful way in doing so.

(B) Dusean David Leblanc

[61] As noted, Mr. Leblanc does not appear to have been given notice of all interim applications in this case, and particularly the application to dismiss this case and for the Authority to Amend its Notice of Hearing and the Affidavit of Bill Manhas.

[62] On the issue of vehicle safety, paragraphs 55 and 56 above apply equally to Mr. Leblanc. Mr. Leblanc is not alleged to have been a part of those vehicle safety issues in any particularity, nor does the Investigation Report of Mr. Manhas indicate that being the case.

[63] On the issue of filing a false police report, there are clear allegations made against him in the Hearing Notice. The Investigation Report of Bill Manhas has sufficient evidence, if believed, to indicate Mr. Leblanc's involvement with that issue.

[64] A regulated person who tries to deflect review of their conduct by filing a false police report is of concern to the public interest. Allowing that type of conduct to be allowed without review opens the door to it re-occurring, it would inhibit investigations if regulated persons could make such false accusations which would undermine the community's faith in the regulation of the industry. If allegations of that conduct are brought forth, the community would favour having those allegations addressed on their merits, over any concerns due to a delay in the proceedings as described in this case.

[65] I find that the allegation of filing a false police report against Dusean David Leblanc should move forward despite any delay in these proceedings. I will discuss ameliorating Mr. Leblanc's lack of notice and involvement on the interim procedural matters when I discuss the Authority's request to amend its Hearing Notice and the Affidavit of Bill Manhas.

(C) Aykut (Alex) Bilgin

[66] Aykut Bilgin is a licensed salesperson and the Hearing Notice states he is the dealer principal (owner) of both the Respondents LGN and A&A.

[67] The Allegations of advertising and selling unsafe vehicles are levied against the two motor dealers. Paragraph 22 of the Hearing Notice does allege Mr. Bilgin's conduct of the business of the two dealerships shows disregard for the safety of consumers in the manner in which vehicles were advertised and sold. As noted in paragraphs 55 and 56 above, Mr. Bilgin's specific conduct is not clearly alleged in relation to this issue, nor that he acquiesced, condoned, or permitted the dealerships that he owns in doing so. At paragraph 43 of the Hearing Notice, the claim is that Mr. Bilgin, in his personal capacity, breached only the Code of Conduct and not the disclosure requirements of the *Motor Dealer Act Regulation* referred to in paragraph 56 above. So, while there is a general allegation against Mr. Bilgin at paragraph 22 of the Notice of Hearing on this issue, there are no specific facts alleged in the remainder of the Notice of Hearing, and the breaches of the legislation attributed to him at paragraph 43 of the Notice of Hearing relate only to him not acting with honesty and integrity.

[68] Given that the Hearing Notice does not well particularize how Mr. Bilgin, personally, should be liable for the issues involving vehicle safety, I believe dismissing any allegations against Mr. Bilgin, personally about vehicle safety strikes a balance between the public

interest and hearing fairness stemming from any delay in this case: *Best Import Auto Ltd., supra.*

[69] As with Mr. Leblanc, Mr. Bilgin is central to the allegation of filing a false police report. That is clearly alleged against him. As with Mr. Leblanc, the community would expect such an allegation be determined on its merits over the delay that has occurred in this case. That allegation against Mr. Bilgin should move forward despite the delay that has occurred in this case.

(D) LGN Enterprises Inc. (LGN)

[70] LGN has been operating under conditions to its registration since May 24, 2019. They have not asked to have those conditions reviewed.

[71] The allegations against LGN are the selling of unsafe vehicles. There is no allegation of LGN participating in the filing of a false police report. The allegations against LGN have been known since May 24, 2019, and the evidence in support gathered by February 10, 2020. The allegations and supporting evidence were formally presented by way of Notice of Hearing dated March 9, 2020.

[72] The allegation of a dealer selling vehicles that are not compliant with the *Motor Vehicle Act* is of grave concern to the public interest. The risk of harm is significant with both bodily injury or death and financial harm evident. The community would be concerned that such allegations were not reviewed on their merits due to the potential harm. While there has been much delay moving this case forward that has negatively impacted LGN, I believe a remedy short of a stay on these allegations can alleviate some of that impact.

[73] In its submissions, LGN focuses heavily on the impact operating for 24 months under conditions has had on its business operations. The conditions were put in place while an investigation into the selling of motor vehicles not complaint with the *Motor Vehicle Act* ensued. Unlike the case of *Best Imports, supra*, there has been no concern raised since the imposition of those conditions of LGN continuing to sell such vehicles. If that had been the case, the Authority would have brought on an application to suspend LGN as it did in *Best Import.*

[74] Given the risk of LGN continuing to sell vehicles that are not compliant with the *Motor Vehicle Act* appears to now be low, and given LGN was able to ask for a review of those conditions anytime after November 24, 2019, removing the conditions on its registration would be a remedy to balance the negative impact it feels from the delay in these proceedings, while preserving the hearing of the allegations on its merits.

[75] LGN is warned that it has a legal obligation to ensure motor vehicles it offers for sale, displays for sale and does sell (including leasing) for use on the highways meet the minimum safety standards of the *Motor Vehicle Act* and all its regulations: section 222 of the *Motor Vehicle Act* and sections 8.01 and 8.02 of the *Motor Vehicle Act Regulation*. A motor dealer has a legal duty to declare the vehicle does meet those requirements, or if it does not, the motor vehicle may not be sold for use on the highway and may only be sold as "not suitable for transportation" and declared appropriately as such: sections 21(2)(e) and (f), 22, and 27(b) of the *Motor Dealer Act Regulation*.

(E) A&A Auto Sales Ltd. (A&A)

[76] A&A is similarly situated as LGN although it does not appear to be operating under any conditions. Allegations of offering for sale, displaying for sale, or selling motor vehicles that are non-compliant with the *Motor Vehicle Act* are serious to the community and the public interest would require those allegations be heard on their merits instead of staying the allegations against A&A due to the delay that has occurred.

[77] A&A is warned that it has a legal obligation to ensure motor vehicles it offers for sale, displays for sale and does sell (including leasing) for use on the highways meet the minimum safety standards of the *Motor Vehicle Act* and all its regulations: section 222 of the *Motor Vehicle Act*, and sections 8.01 and 8.02 of the *Motor Vehicle Act Regulation*. A motor dealer has a legal duty to declare the vehicle does meet those requirements, or if it does not, the motor vehicle may not be sold for use on the highway and may only be sold as "not suitable for transportation" and declared appropriately as such: sections 21(2)(e) and (f), 22, and 27(b) of the *Motor Dealer Act Regulation*.

(b) Amending the Hearing Notice

[78] The Authority seeks to amend the Hearing Notice. They say it is to add clarity to the case and ensure procedural fairness. The Applying Respondent's say the amendments may substantively alter the allegations and an amendment this late would be inconsistent with Registrar's Rule 6. I also note that Mr. Leblanc was not given notice of the request to amend the Hearing Notice and I need to protect his procedural rights.

[79] The exchange of submissions between the lawyers for the Authority and Applying Respondents on these applications indicates there is no fog over the allegations in this case. Further, my discussion in this decision also clarifies the issues.

[80] If the Authority were to file an amended Hearing Notice, the Respondents must be afforded time to review those amendments and may object to some of the amendments, which is their right. So, amending the Hearing Notice does come with some additional delay.

[81] Finally, the Authority must be taken as ready to go regarding the Hearing Notice as of March 9, 2020 absent new information and new allegations. Such a late amendment to clarify issues is hard to justify under Registrar's Rule 6.

[82] Therefore, there is no need for further delay by allowing the Notice of Hearing to be amended. By refusing that amendment, Mr. Leblanc's lack of notice of this application and non-participation in this interlocutory application will not have been prejudicial to him as the Hearing Notice will remain in the same form as initially served on him.

(c) Amending the Affidavit of Bill Manhas

[83] As I have noted throughout these reasons, the Investigation Report of Bill Manhas was completed February 10, 2020 and served on March 9, 2020. Upon service, the Authority is taken to know the hearing was to be in written form.

[84] After my decision to have a hybrid hearing of part in writing and receiving oral testimony from key witnesses, the Authority did take some time to place Mr. Manhas' evidence into proper form. They continue to say its is not in proper form and seek its amendment.

[85] In my interlocutory decision of November 27, 2020 I noted that as an administrative tribunal I may receive and rely on hearsay evidence: *Cambie Hotel (Nanaimo) Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2006 BCCA 119 (BC Court of Appeal) at paragraphs 28 to 36, and see also *Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia*, 2014 BCSC 894 (BC Supreme Court). Therefore, I can receive Mr. Manhas's affidavit in its current form, subject to any objections the Respondent's may have on specific aspects of that evidence or arguments they may advance on the weight to be attributed to the evidence.

[86] As with the Hearing Notice, if the Authority is permitted to amend the Affidavit, the Respondent's must have an opportunity to review the amendments and raise any objections they may have, which is their right to do. So, allowing the Affidavit to be amended does come with some inherent delay.

[87] Again, Mr. Leblanc was not given notice of the Authority's application to amend the Affidavit of Bill Manhas and I have to protect his procedural rights. I would note that Mr. Leblanc's affidavit was served after that of Bill Manhas and is in some way in support of that Affidavit. So, I am satisfied Mr. Leblanc was aware of the nature of the hearing moving forward as a hybrid hearing. Mr. Leblanc would also be aware he is to be cross-examined.

[88] With the above in mind, I find there is no need for a further delay in this hearing to allow the Authority time to amend (resubmit actually) the Affidavit of Bill Manhas. Mr. Manhas' evidence will predominantly be the same as first served on Mr. Leblanc and he would not be prejudiced due to a lack of notice.

V. Other issues

[89] The Authority was to have obtained dates for the cross-examination of its witness, Dusean David Leblanc. It has not done so. The Authority is to obtain several optional dates for June (other than June 3, 4, 7 or 18) for at least a full day of questioning. Those dates are to be provided to the Applying Respondent's lawyer. The Applying Respondent's will do the same for Mr. Bilgin.

[90] Dates are to be exchanged and communicated to me at hearings@mvsabc.com by May 14, 2021 at 4pm. If the parties cannot agree on dates – one day for Mr. Leblanc and one day for Mr. Bilgin - I will set the dates from the options presented.

[91] As it appears the Authority has been delinquent in complying with this direction in the past, if the Authority does not provide dates for the cross-examination of Mr. Leblanc by the specified date and time, the allegation of filing a false police report will be stayed to ensure fairness to Mr. Bilgin and ensure the other serious allegation about vehicle safety moves forward: Registrar's Rule 3(1).

VI. Decision

[92] For the above reasons, it is my decision and it is order that:

- (a) the procedurally fair order as it relates to the specific circumstances of Mohammad (George) Lateef is to strike all allegations as against him. Mohammad (George) Lateef is struck from the Hearing Notice,
- (b) the procedurally fair order as it relates to the specific circumstances of Dusean David Leblanc is to confine the allegations against him to the allegation and related conduct of filing a false police report,
- (c) the procedurally fair order as it relates to the specific circumstances of Aykut (Alex) Bilgin is to confine the allegations against him to the allegation and related conduct of filing a false police report,
- (d) the procedurally fair order as it relates to LGN Enterprises Inc. is to confirm that the allegation against it is the allegation and related conduct regarding the sale of motor vehicles that are not compliant with the *Motor Vehicle Act*, and to remove the conditions placed on its registration by the Manager of Licensing on May 24, 2019,
- (e) the procedurally fair order as it relates to A&A Auto Sales Ltd. is to confirm that the allegation against it is the allegation and related conduct regarding the sale of motor vehicles that are not compliant with the *Motor Vehicle Act*,
- (f) the procedurally fair order as it relates to the Respondents and especially to Dusean David Leblanc is to deny the Authority its request to Amend the Hearing Notice and the Affidavit of Bill Manhas, and
- (g) The Authority and the Applying Respondents are to exchange dates and times in June for the cross-examination of Dusean David Leblanc and of Aykut (Alex) Bilgin. If the Authority does not provide dates within the time required, the allegation of filing a false police report will be stayed.

"Original is signed"

Ian Christman, JD
Registrar of Motor Dealers