



Hearing File 20-12-014
Investigation File 20-09-233

**IN THE MATTER OF THE *MOTOR DEALER ACT* R.S.B.C. 1996, C. 316
AND THE *WHOLESALE LICENSING REGULATION*, B.C. REG. 203/2017**

Re:

**PRO-EDGE CANADA LTD.
(proposed Wholesaler # W41815)**

Applicant

And

MIKHAIL SEROV

Applicant Associate/Representative

And

THE MOTOR VEHICLE SALES AUTHORITY OF BRITISH COLUMBIA

The " Authority"

**DECISION OF THE REGISTRAR
ON APPLICATION FOR WHOLESALE LICENCE**

Date and place of decision: June 21, 2021 at Langley, British Columbia

By way of written submissions

I. Introduction

[1] Mikhail Serov applied to have Pro-Edge Canada Ltd. ("Pro-Edge") licensed as a wholesaler pursuant to the *Wholesaler Licensing Regulation*, B.C. Reg. 203/17 ("WL-Reg"). Mikhail Serov is listed in the application materials as the owner and the sole employee of Pro-Edge. This means Mikhail Serov will be carrying out the wholesaling tasks. Mikhail Serov is an "associate" and a "representative" of Pro-Edge as those two terms are defined in the WL-Reg.

[2] The Authority completed its background check of the application. An investigation was commenced due to the prior criminal convictions of Mikhail Serov. Investigation Officer Ross Cote completed an Investigation Report which is before me. There are concerns about the criminal convictions as well as a concern that Mikhail Serov was less than candid and withheld information on the wholesaler application materials.

[3] On December 3, 2020, the Authority issued a Hearing Notice where they propose refusing a wholesaler licence for Pro-Edge. The Authority also seeks to deem Mikhail Serov as unsuitable to be a wholesaler representative and seeks a prohibition against Mikhail Serov re-applying for a licence for a period of two years (collectively the "Hearing Notice").

II. Procedural History

[4] The Hearing Notice was served on both Pro-Edge and Mikhail Serov on December 8, 2020. The Hearing Notice identified that this hearing was being conducted by way of written submissions and advised Pro-Edge and Mr. Serov they had 21 days to file any evidence and written submissions. The Hearing Notice also advised that they could request an oral hearing.

[5] Mr. Serov did request an oral hearing but did not provide reasons for that request. There was some back-and-forth communications over the coming months about the requested oral hearing.

[6] On April 26, 2021, I issued a decision stating this hearing would be conducted by written submissions. I directed a timeline for when submissions and any evidence had to be filed, which closed on May 28, 2021.

[7] Mr. Serov, for himself and for Pro-Edge, have not filed any further submissions or evidence for my consideration. I am satisfied that Pro-Edge and Mr. Serov were properly served the Hearing Notice and the evidence relied on by the Authority. That is evident in Mr. Serov's subsequent emails after that service. I am also satisfied that Pro-Edge and Mr. Serov have had an opportunity to be heard. I can move forward with a decision.

III. The Law

[8] Section 6(1) of the WL-Reg. grants authority to refuse a wholesaler licence if it would not be in the public interest to issue such a licence having regard to:

(a) the financial responsibility of the applicant and, if applicable, the applicant's associates, or

(b) the conduct of the applicant, and, if applicable, the applicant's associates and representatives.

[Underlining added.]

[9] In considering granting or refusing a licence, I am to be mindful of the applicant's desire to earn a livelihood as a wholesaler. However, if there are concerns for the public interest in granting the licence, the public interest is paramount. In reviewing past conduct, I am not limited by time, type of, or location in which the

conduct occurred. The issue is whether the conduct is a concern to the public interest, such that the licence should be refused: *Re: Best Import Auto Ltd. et al.* (Hearing file 17-08-002, Registrar, November 28, 2017) at paragraphs 32 to 34; varied but not on this point by *Best Import Auto Ltd. v Motor Dealer Council of British Columbia*, 2018 BCSC 834 (BC Supreme Court), and also see *Re: Best Auto Ltd. & Shokohi* (October 12, 2018, Hearing File 18-06-005, Registrar).

[10] In reviewing the conduct of a corporation, I am to have regard to the conduct of its directing minds to understand the realities of the corporation's operations. Corporations make decisions and act through people: *Re Best Import Auto Ltd. et al.* (BC Supreme Court). This legal principal is embodied in sub-sections 6(1) and 11(2) of the WL-Reg.

[11] When the considerations involve prior criminal records, I am mindful of the B.C. *Human Rights Code* and the need to assess the application on its individual merits. As noted in *Fryer v. Motor Vehicle Sales Authority of British Columbia*, 2015 BCSC 279 (BC Supreme Court):

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

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

[12] It is important that applicants for a licence be honest and candid when providing the requested information so their backgrounds can be checked. As noted in the above passage, past conduct is how one gauges potential future conduct of an applicant and assess whether they are a risk to the public should they be licensed. Failing to provide truthful answers on a licence application raises concerns of the applicant's honesty and integrity, as well as their governability. As noted in *Fryer*, supra:

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

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

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

...

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

[underlining added]

[13] In applying similar legislation in Ontario for a vehicle salesperson licence, the Ontario Superior Court of Justice was of the opinion that Ontario’s *Motor Vehicle Dealer’s Act* disentitled a person from being licensed (registered) where the applicant was not honest in the application process and specifically in showing a lack of candour in describing his past criminal convictions:

[13] The respondent was required to be honest in the application process. Clearly, he was untruthful with respect to important facts underlying the plea bargain and conviction. His lack of candour is highly relevant to the issue whether his past conduct gave rise to reasonable grounds for belief that he would not carry on business in accordance with law and with integrity and honesty. The Tribunal’s failure to consider this aspect of his behaviour renders its finding on [s. 6\(1\)\(a\)\(ii\)](#) unreasonable as well.

[14] Accordingly, the appeal is allowed and the decision of the Tribunal is set aside. Normally, on an appeal from an administrative tribunal, the matter is referred back to the Tribunal for a new hearing. However, in the

present case, there is no reason to send this matter back, as the only reasonable conclusion on this record is that the false information provided by the respondent disentitles him from registration under s. 6(1)(a)(iii) and, taking into account the criminal conviction as well, disentitles him under s. 6(1)(a)(ii). Therefore, the Registrar is directed to carry out the proposal to refuse the respondent's registration.

[Underlining added]

- *Registrar, Motor Vehicle Dealers Act v Vernon*, 2016 ONSC 304 (Ontario Superior Court of Justice)

[14] These legal principles are considered in the discussion that follows.

IV. Discussion

A. Wholesaler's work and duties

[15] As defined, a wholesaler engages in the sale, exchange or other disposition of motor vehicles to other wholesalers or motor dealers, as part of their business: section 1(1) of the *Motor Dealer Act* (the "MDA").

[16] A wholesaler is required to make the same motor vehicle history declarations in an agreement of purchase and sale that a motor dealer must make to a consumer under section 23 of the *Motor Dealer Act Regulation*, B.C. Reg. 447/78 ("MDA-R"): section 9(e) of the WL-Reg. This includes making declarations about prior accident damage.

[17] A wholesaler must also declare whether a motor vehicle offered for sale is "not suitable for transportation," meaning that it does not comply with the safety requirements of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318: section 9(e) of the WL-Reg.

[18] A wholesaler is required to pass along this information in order to allow a motor dealer to make their declarations to consumers. The importance of acting with honesty and integrity as a wholesaler cannot be understated. What a wholesaler does and says in relation to a motor vehicle eventually passes along to consumers as many used motor vehicles move through wholesalers in British Columbia's motor vehicle sales supply chain.

B. Past Conduct of Pro-Edge

[19] The Investigation Report of Ross Cote does not identify any past concerns about Pro-Edge Canada Ltd. As noted above, a review of a corporate applicant also includes a review of its associates.

C. Past conduct of Mikhail Serov

(a) *Not being candid and transparent with regulators*

[20] On the wholesaler application form, Mr. Serov was asked:

“Have you ever had a motor dealer license, wholesale license, or a salesperson license in the motor vehicle industry, or a license in another regulated industry (e.g. real estate) suspended or revoked in Canada or elsewhere under your current name or any other legal name or alias?”

Mr. Serov checked the box “no”.

[21] In fact, Mr. Serov had been disciplined by the Insurance Council of British Columbia and had had his insurance adjuster licence suspended. The reason for the suspension was that Mr. Serov failed to advise the Insurance Council of the 2013 criminal charges he faced, within 5 days of becoming aware of those charges, as required by the Insurance Council rules. This was after Mr. Serov had failed to disclose criminal charges that he faced in 2011 and after the Insurance Council had recently reminded Mr. Serov of his duty to disclose criminal charges to the Insurance Council.

[22] In an interview with Investigation Officer Ross Cote, Mr. Serov stated he misunderstood the question on the wholesaler application form, as related only to the car industry. The question asked is very clear about a suspension in another regulated industry and provides as an example - real estate. Given Mr. Serov’s lack of candour with the Insurance Council and with the question asked being as clear as it is, I do not accept Mikhail Serov’s explanation. I find he was being disingenuous in his response.

[23] I find Mikhail Serov was not being candid and honest in answering the above noted question on the wholesaler application. I find Mr. Serov has a history of this lack of honesty and transparency in dealing with his regulator as evidenced by his interactions with the Insurance Council and his misleading response on the VSA wholesaler application. This gives great concern that Mr. Serov will not act with honesty and integrity when operating in the industry, which is a requirement of the Code of Conduct: section 33(2)(a) MDA-R.

[24] I find this lack of honesty and transparency has continued for some 10 years (since the 2011 incident with the Insurance Council) and continues today. This indicates Mr. Serov, despite being warned by the Insurance Council, is willing to ignore the rules that attach to a licence, indicating that he would not be governable. This alone would disentitle him to being approved as a wholesaler representative. As Mr. Serov is an associate of Pro-Edge, he would be directing Pro-Edge’s operations and this past conduct would also disentitle Pro-Edge from being licensed as a wholesaler as it indicates Pro-Edge would also be ungovernable.

(b) Criminal conviction

[25] In 2015 Mikhail Serov was convicted on two indictable offences involving marijuana production and possession for the purpose of trafficking. Mikhail Serov was charged in relation to a bar fight in 2011, but those charges were apparently stayed.

[26] In his interview with Investigation Officer Ross Cote, Mr. Serov explains why he was charged and that he had rented some trailers to someone only accepting a driver's licence and being paid in cash for the rent. According to Mr. Serov, it was the renter's grow-up. I may not re-litigate Mr. Serov's criminal conviction. A criminal court's findings are final and conclusive unless or until they are set aside on appeal: *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 (CanLII), [2003] 3 SCR 77 (Supreme Court of Canada). Mikhail Serov is taken as having committed the crimes he has been convicted of.

[27] In applying the *Human Rights Code* criteria as noted in *Best Imports*, supra, and in *Fryer*, supra; to only the criminal convictions in this case, it may have been permissible to allow Mr. Serov to act as a wholesaler representative under the supervision of someone else and under some strict conditions. This would have allowed Mr. Serov to prove his trustworthiness within the industry under controlled circumstances.

[28] However, the criminal convictions cannot be viewed in isolation of Mr. Serov's lack of honesty and transparency with the Authority and the Insurance Council. The combined conduct of the criminal convictions and the misconduct with the Insurance Council and with the Authority shows a continued history of not abiding by the law and the rules governing a licence. This combined conduct would also disentitle Mr. Serov from being a wholesaler representative. It would also disentitle Mr. Serov from being an associate of a wholesaler and seeking the licensing of a wholesaler. Further, Mr. Serov's explanation to Investigation Officer Ross Cote regarding the criminal convictions, shows he does not take responsibility for his past conduct.

[29] The criminal convictions, combined with Mr. Serov's lack of honesty and transparency with two regulators, and Mr. Serov continuing to deny his criminal conduct as explained to Investigation Officer Ross Cote, shows Mr. Serov cannot be trusted to act with honesty and integrity within this industry, that Mr. Serov would not be governable and that the application for a wholesaler license be denied and Mr. Serov not be approved as a wholesaler representative.

(c) Prohibition on re-applying

[30] The Authority seeks a two-year prohibition on Mikhail Serov being able to re-apply for a wholesaler licence or to be considered for vetting as a wholesaler representative. By necessary implication, the Registrar has the authority to issue such a prohibition in order to protect the Registrar's administrative process and the public's interest in an efficient and cost-effective administrative process.

- *Best Import Auto Ltd. v Motor Dealer Council of British Columbia*, 2018 BCSC 834 (BC Supreme Court) at paragraphs 60-61.
- Section 27(2) of the *Interpretation Act*, R.S.B.C. 1996, c. 238

[31] The prohibition period also serves as an opportunity for the individual to rebuild a history of good conduct to be evaluated in the future. A significant history of good conduct provides some assurances to the public of an applicant's character and some gauge to assess how they will act in the future.

[32] In reviewing the below cases where a ban was imposed, I find Mikhail Serov's facts are most similar to *Re: Justin Plosz*. In that case a three-year ban was considered appropriate for Mr. Plosz not being transparent and not cooperating with the review of his salesperson licence. In the case of Mr. Serov, he was given notice of a potential two-year ban and to impose a ban greater than that may be viewed as procedurally unfair for lack of notice.

(a) *Re: Justin Plosz* (October 22, 2019, 19-05-004, Registrar) reconsideration denied (April 9, 2020)

A three-year prohibition on re-applying for not being transparent when providing information to the Authority and not cooperating with the Authority's review of his salesperson licence application. The finding was that Mr. Plosz was not governable and would not abide by the Code of Conduct.

(b) *Re: Bob Shokohi* (October 12, 2018, 18-06-005, Registrar)

Denied a wholesaler licence with a ten-year ban on re-applying due to conduct as a motor dealer including (a) selling unsafe vehicles, (b) not obeying lawful orders, and (c) misleading the Registrar during a hearing.

(c) *Re: Carmel Custom Contracting Ltd. & Jason Coburn* (April 5, 2018, 18-03-001, Registrar)

Coburn's salesperson licence was revoked and a five-year ban on re-applying was imposed. Coburn had misled consumers in consumer transactions, misappropriated consumer money, acted in breach of the law and his licence when conducting consignment sales when not licensed to do so, and was already under a prior undertaking for prior transgressions. Coburn did not cooperate with the review of his licence and was viewed as ungovernable.

[33] I find for the reasons already stated it would be appropriate to order a two-year prohibition on Mikhail Serov applying for licensing as a wholesaler, to being an associate of a wholesaler, or being reviewed as a representative of a wholesaler. Whether Mikhail Serov would be licensed or approved in the future depends on the facts that exist at the time any future application is received.

V. Decision

[34] Based on the forgoing:

- (a) I am refusing to licence Pro-Edge Canada Ltd. as a wholesaler,
- (b) I find Mikhail Serov is unacceptable as an associate or as a representative of a wholesaler, and
- (c) I am ordering a two-year prohibition on Mikhail Serov applying to obtain a licence as a wholesaler, either personally or as an associate, or being accepted as a wholesaler representative.

VI. Review of this decision

[35] This decision may be reconsidered under the provisions of sections 26.11 and 26.12 of the MDA. A request for reconsideration must be made in writing within 30 days of receiving these written reasons. The request for reconsideration must identify the grounds for reconsideration and be accompanied with the required new evidence (as defined in those sections) and meet any other requirements of those two provisions.

[36] This decision may also be reconsidered by petitioning the B.C. Supreme Court for judicial review pursuant to the *Judicial Review Procedure Act* R.S.B.C. 1996, c. 241. Such a petition must be filed within 60 days of this decision being issued: section 7.1(t) of the MDA.

"Original is signed"

Ian Christman, J.D.
Registrar of Motor Dealers