



**IN THE MATTER OF THE *MOTOR DEALER ACT R.S.B.C. 1996 C. 316*
AND THE *SALESPERSON LICENSING REGULATION B.C. REG. 241/2004***

RE:

**Stephen Albert Ironside
(Proposed Salesperson Licence #202624)**

Applicant

DECISION OF THE REGISTRAR OF MOTOR DEALERS

Date and Place of Hearing: February 10, 2016 at Surrey, British Columbia

Appearances

For the Applicant	Stephen Albert Ironside
For the Authority	Hong Wong, Manager of Licensing Juwli Ireland, Licensing Officer Ross Cote, Compliance Officer

INTRODUCTION

[1] Stephen Albert Ironside applied for a salesperson licence from the Authority. On February 10, 2016, a hearing was held because I denied Mr. Ironside a salesperson licence in my decision issued on May 27, 2011, on the basis of his conduct at the hearing of March 30, 2011, and Mr. Ironside's criminal conviction in the USA for telemarketing fraud. See Registrar's Decision, Re: Stephen Albert Ironside File No. 11-026, May 27, 2011. In my May 27, 2011, decision I determined I would not accept an application from Mr. Ironside for a period of three years. I also noted in that decision that whether or not Mr. Ironside would be granted a decision would depend on the facts that exist at the time of the application.

[2] The Authority's Manager of Licensing, Hong Wong, wrote to Mr. Ironside issuing him a Notice of Hearing. In that Notice, Mr. Ironside was advised that he had not provided sufficient information in his application materials to show he had rehabilitated since my decision in 2011. Stephen Ironside wrote to Mr. Wong for clarification on what information he should be providing and Mr. Wong replied.

[3] At the conclusion of the hearing I asked Mr. Ironside if he had any persons who could be contacted as references. Mr. Ironside initially said he only had a few

persons as he has been self-employed. Authority Compliance Officer, Ross Cote, contacted these persons. Mr. Cote contacted Mr. Ironside asking if he had any other persons and Mr. Ironside provided him a few more people with whom to speak. Overall, Mr. Cote contacted six persons, two of whom were businesses that Mr. Ironside had provided contract work as a chauffeur. Mr. Cote provided a short report on his findings and I am advised that Mr. Ironside has seen that report and has no comments.

THE LAW

[4] In my decision of May 2011, I detailed the law that applies to a licensing review involving an applicant with a prior criminal record. Not much has changed since then. The same law was more recently considered in *Re: Peter Fryer* (Registrar of Motor Dealers, Hearing File 13-11-005, December 13, 2015) affirmed by *Fryer v. Motor Vehicle Sales Authority of British Columbia*, 2015 BCSC 279 (BC Supreme Court). In upholding the Registrar's decision, Justice Sharma of the B.C. Supreme Court in *Fryer* noted and agreed with the following:

[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.

[5] The fact that a certain amount of time has passed along with a history of good conduct, does not mean a person is now suitable to be licensed. This was expressly noted by Ontario's Licence Appeal Tribunal upholding a decision to refuse a licence by the Ontario Registrar of Motor Vehicle Dealers: *Re Alfa Motors Inc. and Amrish Gathani* (LAT, December 6, 2011, unreported) applying a decision of the Ontario Divisional Court in *Ontario (Registrar of Real Estate and Business Brokers) v. Faccenda* [1994] O.J. No. 954 (Divisional Court), where the Ontario Court noted one must conduct an assessment of all the facts that have occurred since the transgression:

... we have the concern that the Tribunal appears not to have made the requisite qualitative assessment of the respondent's conduct in light of all the evidence placed before it and the standards of "integrity" and "honesty", as well as "law" imposed by (the) section .. .We are also troubled that the Tribunal appears to have found that a period of time during which no violation of the law is established automatically meets the required standard, presumably as a matter of law or on the basis of a principle of rehabilitation, notwithstanding the nature of established past misconduct and the possible absence of positive and material exemplary conduct. Clearly (the) section requires a more qualitative assessment of the entire conduct of an applicant to determine whether past conduct affords reasonable grounds for belief that he or she will not carry on business in accordance with the law and with honesty and integrity.

[6] It is therefore important to review conduct of the person applying to see whether since the transgression there are indications of rehabilitation, remorse, acceptance of their past conduct, restitution (where appropriate), and positive steps taken to address any aggravating factors that played a part in the persons decision to break the law. Again, returning to the *Fryer* case, Justice Sharma noted:

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

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

[32] I agree entirely with the Registrar's statement that "Mr. Fryer's criminal history spans 38 years and there is no indication Mr. Fryer has or will rehabilitate himself". I also agree with the respondent that Mr. Fryer's criminal record is sufficient on its own to uphold the opinion of the Registrar that it is not in the public interest to grant Mr. Fryer a license, and on that

basis alone I dismiss the petition. Nevertheless, in the event I am wrong, I will also briefly address the other issues raised by Mr. Fryer.

DISCUSSION

[7] At the hearing, Mr. Ironside apologized for his conduct at the March 30, 2011 hearing. Mr. Ironside states that at the time of that hearing he felt his position was correct, but also agrees he was aggressive in presenting his case. He admits to his issues in the U.S.A. and that he respects what the Authority is trying to accomplish and its authority. Mr. Ironside said he has had several years to think about all of this. He understands that his licence may be issued with conditions which he fully understands and does not object to. The Authority witnesses stated Mr. Ironside was cooperative with their review of Mr. Ironside's application and that his application was complete and to the best of their review accurate and true.

[8] Mr. Ironside addressed the issue of rehabilitation. Mr. Ironside noted the conduct of concern occurred 13 years ago and there has been no recidivism. Mr. Ironside's Canadian criminal record check came back clean.

[9] Mr. Ironside spoke about remorse. He said remorse is easy to speak of but the true assessment is in actions showing remorse. Mr. Ironside notes that he accepted guilt immediately for his actions in the U.S.A. and did not blame anyone else. At the hearing, Mr. Ironside's demeanor and words sounded genuine in his remorse. Mr. Ironside said that the victims have paid a price and he is now also paying a price, and he understands that he must pay that price.

[10] Mr. Ironside spoke about restitution. Mr. Ironside placed the Stipulated Judgement with the US Federal Trade Commission before me. It was noted Mr. Ironside's requirement for restitution was stayed so long as assets already seized were provided to Consumer Protection B.C. who would then make those available for compensation to consumers. This occurred.

[11] Mr. Ironside was asked about any courses he took to assist his personal growth and deal with his past transgressions. Mr. Ironside provided details about his family personal responsibilities and how those responsibilities along with working for himself provide him with no additional time. He agrees continuing education and courses to promote personal growth are important.

[12] Mr. Ironside spoke of past events indicating he has rebuilt his trustworthiness, since the 2011 hearing. Mr. Ironside spoke of driving (chauffeur) for an important person that would require that he be vetted. In order to be a chauffeur, Mr. Ironside also must obtain a police certificate from the RCMP and I am advised that he has received such a certificate since his transgressions in the U.S.A.

[13] All the references Mr. Cote contacted provided Mr. Ironside with a good reference. This includes two companies where Mr. Ironside provided chauffeur services on contract. One company relayed that clients ask specifically for Mr. Ironside's services as a driver. Other references included persons who stated they

would be willing to hire Mr. Ironside as a salesperson should he obtain his licence. Mr. Cote advises me those persons are aware of Mr. Ironside's past as disclosed to them by Mr. Ironside.

[14] During the hearing I asked Mr. Ironside about a condition on his licence that he could only work for a franchised dealer under the supervision of a manager. Mr. Ironside said he intended to only work for franchise dealers and that condition would not be of concern.

DECISION

[15] Based on the evidence before me, the testimony of Mr. Ironside and in consideration of the law, I will grant Stephen Albert Ironside a conditional salesperson licence. I find that Mr. Ironside has shown signs of rehabilitation to a degree that he should be allowed to show he has earned the trust of the public to be a licensed salesperson: *Woodward Stores (British Columbia) Ltd. v. McCartney*, 1983 CanLII 444 (B.C. Supreme Court).

[16] In order to mitigate any concerns about Mr. Ironside's trustworthiness and to protect the public interest, I add the following conditions to his licence:

- (a) To successfully complete the salesperson certification course within the time required by his licence and any continuing education requirements.
- (b) To be employed only at a franchise dealership.
- (c) To advise the VSA of the dealership(s) where he is employed.
- (d) To have all transactions reviewed by a manager.
- (e) Not to handle consumer money.
- (f) To obtain prior approval of the VSA if he changes employment at a dealership.
- (g) Not to hold a management position without the prior written approval of the VSA.
- (h) To abide by all other legal requirements of a licensed salesperson.

[17] These conditions can be reviewed in one year's time when Mr. Ironside is renewing his salesperson licence. The Manager of Licensing, Hong Wong, is authorized to remove any of these conditions at that time.

[18] This decision is reviewable by way of Petition to the B.C. Supreme Court pursuant to the *Judicial Review Procedure Act*. In accordance with the recent addition of section 7.1(t) of the *Motor Dealer Act*, referencing section 57 of the *Administrative Tribunals Act*, such a Petition must be filed within 60 days of this decision being issued.

February 23, 2016



Ian Christman, Registrar of Motor Dealers