



**Citation: 1407476 Ontario Ltd. o/a Proway Tours and Transportation v. Registrar,  
*Travel Industry Act, 2002*, 2024 ONLAT TIA 15272**

**Licence Appeal Tribunal File Number: 15272/TIA**

In the matter of an appeal from a Notice of Proposal issued by the Registrar, *Travel Industry Act, 2002* to revoke registration.

Between:

**1407476 Ontario Ltd. o/a Proway Tours and Transportation**

**Appellant**

and

**Registrar, *Travel Industry Act, 2002***

**Respondent**

**DECISION and ORDER**

**ADJUDICATOR: Bruce Stanton**

**APPEARANCES:**

For the Appellant: Doug Matthews, self-represented

For the Respondent: Dorian Werda, Registrar  
Husein Panju, Counsel  
Karan Sharma, Counsel

**Heard by videoconference: February 2, 2024**

## OVERVIEW

- [1] Pursuant to s. 11(5) of the *Travel Industry Act, 2002*, S.O. 2002, c. 30, Sched. D (the “Act”), 1407476 Ontario Ltd. o/a Proway Tours & Transportation (the “appellant”), appeals from a Notice of Proposal (“NOP”) issued to it from the Registrar, *Travel Industry Act, 2002* (the “Registrar”) on September 18, 2023, to revoke its registration.
- [2] The Registrar issued its NOP pursuant to s. 11(1) and 11(2) of the Act because it claims the appellant has routinely and repeatedly ignored filing due dates for financial statements and that the appellant’s inattention to these obligations of registration disentitle it to registration. The NOP cited the appellant’s non-compliance with filing its 2022 financial statements within the required timeframe.

## PRELIMINARY ISSUE

- [3] The parties did not raise a preliminary issue; however, at the outset of the hearing, I sought submissions from the parties on a question of possible procedural prejudice against the appellant.

### ***Will the Registrar’s addendums to the NOP prejudice the appellant?***

- [4] The grounds for disentitlement alleged in the NOP are that the appellant did not file its financial statements for 2022 and has been habitually late filing financial disclosures during the majority of years since it has been a registrant.
- [5] The appellant has since filed its 2022 financial statements and the Registrar is no longer relying on that ground.
- [6] Notices of Further and Other Particulars (“NFAOP”), dated October 23, 2023 and October 27, 2023, allege new grounds for revocation: that the appellant breached a Consent Order of the Tribunal from 2009 and a Conditions of Continued Registration Agreement from March 2023; and there are reasonable grounds for the belief that the appellant’s business will not be carried on in accordance with the law and with integrity and honesty, pursuant to s. 8(1)(d)(iv), and that it breached a condition of registration, pursuant to s. 8(1)(f).
- [7] In the NFAOP dated October 27, 2023, the respondent also withdrew the ground for disentitlement to registration pursuant to s. 8(1)(d)(ii), that it had initially relied on in the NOP. The s. 8(1)(d)(ii) ground would require the Registrar to prove that, in regard to the financial position of the corporation, the appellant could not reasonably be expected to be financially responsible in the conduct of its

business. The same NFAOP notes that the appellant filed its 2022 financial statements on or about October 21, 2023.

- [8] The appellant objects to the Registrar's reliance on these new grounds. The representative for the appellant, Mr. Matthews, submits that he did not review the NFAOPs prior to the case conference or today's hearing and he expected the hearing would now be moot considering that he has submitted the 2022 financial statements. He submits that the history of late filing is due to the incompetent accountants he has relied on over the years, and he goes on to note that the late filings were, in every case, resolved within several months after the due date.
- [9] The Registrar argues that the two NFAOPs are addendums to its NOP of September 18, 2023. It directs me to the second last paragraph of the NOP which states the Registrar "may provide further and other particulars in respect of any other matters herein or in respect to any other matter including further grounds for revocation of registration."
- [10] The Registrar submits that later in October 2023, issues of the appellant's conduct, beyond those alleged in the NOP, as noted above, became apparent.
- [11] The Registrar's two NFAOPs were filed prior to a case conference in this matter, although the Case Conference Report and Order ("CCRO") from it, dated November 3, 2023, seems not to have captured the two additional issues in dispute.
- [12] The Registrar submits that although the non-compliance issue (2022 financial statement filing) in the NOP has been resolved, the history of non-compliance remains an underlying issue and is further reinforced by its NFAOPs.
- [13] I find that, although the specific non-compliance issue in the NOP has been resolved and issue one of the CCRO was withdrawn by the Registrar, the additional allegations of past conduct submitted in the two NFAOPs is properly before the Tribunal. The appellant was given ample notice of the allegations against it so that it could prepare for the hearing, including arranging for legal representation if needed. The issues in the NFAOPs elaborate on the same allegations contained in the NOP, including the appellant's inattention to filing obligations and its unresponsiveness to the Registrar's notices aimed at ensuring compliance with the Act.
- [14] The conduct alleged in the NFAOPs is broader than the NOP claims; however, I find that the Registrar may rely on the conduct described in the NFAOPs in the hearing because doing so does not prejudice the appellant. The appellant had

reasonable notice of what the Registrar intended to rely on, and the conduct alleged in the NFAOPs follows a similar theme as those alleged in the NOP (failure to meet financial obligation and comply with registration provisions of the Act). I find this proceeding is an efficient and appropriate means to adjudicate the merits of the issues in dispute.

- [15] I find the Registrar's NFAOP submissions do not prejudice the appellant because they were filed in advance of the case conference and the appellant has had a reasonable amount time to prepare to meet the Registrar's allegations at the hearing.

### **ISSUES IN DISPUTE**

- [16] The issues in dispute are:
1. Is the appellant disentitled to registration because it is carrying on activities that are, or will be, if the applicant is registered, in contravention of the Act or the Regulations?
  2. Does the past conduct of the appellant's officers or directors afford reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty?
  3. Is the appellant disentitled to registration because it breached a condition of registration?

### **RESULT**

- [17] The appellant is not disentitled to registration for carrying on activities that are in contravention of the Act or Regulations; however, the Registrar has proven there are reasonable grounds for belief that the appellant's business will not be carried on in accordance with the law and with integrity and honesty.
- [18] I did not analyse whether the appellant is disentitled to registration on the ground of breaching a condition of registration because I found that it is disentitled on the ground cited in issue two.
- [19] I am satisfied that continued registration with conditions is not appropriate. The Registrar is ordered to carry out the revocation of the appellant's registration.

## ANALYSIS

### ***Issue 1: Carrying on activities in contravention of the Act***

- [20] The NOP included the ground in s. 8(1)(e) of the Act, i.e. that the appellant is carrying on activities that are in contravention of the Act. Neither of the Registrar's NFAOPs withdrew this ground. It remains an issue in dispute.
- [21] At the hearing, the Registrar addressed its submissions to issues two and three, issues that are discussed below. The appellant did not make submissions on the ground relating to issue one.
- [22] I find that issue one has become irrelevant because it has been, in a practical sense, replaced by issues two and three. The respondent's witness and its submissions were focussed only on issues two and three as a basis for disentitling the appellant to registration.
- [23] I find issue one is no longer relevant to the proceeding because neither party relied on the ground in s. 8(1)(e) in their submissions and oral evidence at the hearing. I find the appellant's registration cannot be revoked on the basis of s. 8(1)(e).

### ***Issue 2: Does the past conduct of an officer or director afford reasonable grounds for the belief that the business will not be carried on in accordance with the law and with integrity and honesty?***

- [24] I find the past conduct of the business's sole director/officer affords reasonable grounds for the belief that the business will not be carried on in accordance with the law and with integrity and honesty. Although the respondent submits it has no concerns with the appellant's integrity and honesty, I find the ground is satisfied by the appellant's inattention to its obligations under the Act.
- [25] The Registrar submits, in both NFAOPs, that the appellant has repeatedly and habitually ignored its obligations under the Act to make financial disclosures, including financial statements and trust reconciliations. The submissions in the NFAOPs, including a breach of a Conditions of Continued Registration Agreement dated April 21, 2023, the breach of a Consent Order of this Tribunal dated September 18, 2009, and failure to file financial statements and deliver trust reconciliations on time, were unrefuted by the appellant.
- [26] A witness for the respondent, Dorian Werda, testified that the Travel Industry Council of Ontario ("TICO"), of which she is the Chief Operating Officer, is

constituted under the Act to regulate the activities of all travel service retailers and wholesalers in Ontario. Ms. Werda is also the Registrar under the Act.

- [27] TICO enforces the Act and Ontario Regulation 26/05 (the "Regulation") under the Act and works to build consumer confidence and the professional conduct of travel service businesses, staff and owners. Werda testified that there is potential financial harm to consumers from having to leave significant funds on deposit with travel agents when booking future travel. That is why the financial disclosures mandated in s. 22 of the Regulation are an important tool for TICO in maintaining professionalism and consumer confidence.
- [28] Registration of travel businesses is also a tool for building confidence and maintaining professionalism. Werda described registration as a gate-keeping function that sets a standard of conduct below which a business could no longer sell travel services in Ontario. Werda testified that revoking the registration of a business or individual that continually ignores its obligations under the Act respects the diligence and attention the vast majority of registrants give to meeting their obligations. She testified that out of 2,000 businesses under its authority, only a dozen or so registrations might be revoked in a typical year. That said, she testified that TICO sees revocation as a last resort. It prefers to work with registrants on compliance and that is why it sends reminders, extends deadlines, and offers training and programs to registrants.
- [29] Ms. Werda testified that when their attempts to notify a registrant about a compliance issue go unanswered, they regrettably are left using the NOP to revoke registration. Even if a NOP to revoke has been issued, TICO can withdraw the NOP in favour of an agreement to meet the conditions of registration. She testified that such an agreement had been made with the appellant earlier in 2023, in respect to the late filing of its 2021 financial statements. The appellant's undertakings in that agreement were breached however, by its failure to file its 2022 financial statements on time.
- [30] Ms. Werda testified that Mr. Matthews is listed as the sole director and the president of the appellant corporation. She testified that Mr. Matthews has habitually missed filing deadlines and never responds to TICO's communications (reminders, warnings of revocation) until a NOP to revoke has been issued. Since the appellant was registered in 2000, the appellant has been issued four separate NOPs to revoke registration, each of them for a failure to file financial statements on time.

- [31] The Registrar submits that since the registrant is a corporation, it is the directors or officers who are responsible for compliance with the Act and Regulations, not the corporation's accountant. Any issues the appellant has with its accounting services are internal and not within the Registrar's purview.
- [32] On behalf of the appellant, Mr. Matthews acknowledges that the due dates for financial disclosures are administrative obligations the appellant has failed to meet, but he states that the appellant has always been honest and straight-forward in its dealings with customers. Mr. Matthews testified that there has never been a problem with the integrity of its finances. The Registrar acknowledges that there have been no consumer complaints about the appellant, and it has no issues with the financial integrity of the appellant.
- [33] Mr. Matthews testified that the delays in the appellant filing its financial statements were a result of its bookkeeper being late with providing materials to the accountant who, in turn, became delayed in filing with TICO. He testified that there were occasions when the accountant would contact the account representative at TICO and make arrangements to file after the due date. On other occasions, Mr. Matthews testified, TICO did not return their calls or inquiries. Mr. Matthews did not direct me to any documents or evidence to support its reports of missed or unreturned communications with TICO.
- [34] Mr. Matthews testified that he was aware of the reminders and notices but that he forwarded them to his accountant and assumed they would be dealt with. That they were not responded to appropriately, he stated, was why he has gone through four accountants in the last 10 years. Although Mr. Matthews testified that he knew compliance was his responsibility and that he made commitments under the Tribunal Consent Order and Conditions of Registration Agreement, he also stated that he did not think TICO would go through with it [the NOP to revoke registration].
- [35] Mr. Matthews testified that he considers the most recent NOP regarding the 2022 financial statements to be a minor, administrative infraction that is now rectified. The appellant's new accountant prepared the 2021 and 2022 financial statements and Mr. Matthews is confident that, with this new accountant, the appellant will meet its financial disclosure obligations going forward. Mr. Matthews promises to voluntarily withdraw the appellant's registration if that commitment is not met.
- [36] Although I found Mr. Matthews to be forthcoming and credible in his testimony at the hearing, his past conduct affords reasonable grounds for belief that the appellant's business activities, and specifically, financial disclosures, will not be

carried on in accordance with the law. The conduct that informs my finding follows:

- (a) Mr. Matthews, on behalf of the appellant, ignored TICO's reminder and warning letters or dismissed them as unimportant. The appellant has not provided any documents to support its contention that inquiries were made to TICO in response to their numerous reminders and warning letters. The Registrar submitted that it has no record of any correspondence from the appellant arising from its compliance letters going back to 2009. Mr. Matthews' oral evidence leads me to conclude the numerous reminders and communications aimed at assisting his business with compliance were not taken seriously. It was only when threatened with revocation that the appellant responded and took steps to avoid revocation.
- (b) To avoid revocation on two previous occasions, Matthews made commitments to comply with financial disclosures going forward and then failed to meet them. The appellant disregarded the disclosure commitments it agreed to under the Tribunal Consent Order 2009 and the Conditions of Continued Registration Agreement.
- (c) Mr. Matthews dismisses the appellant's financial disclosure obligations as merely minor administrative issues, believing that TICO would not actually follow through on its NOP to revoke registration. The indifference Mr. Matthews shows to these obligations is echoed in his treatment of this proceeding. Despite having ample time and notice, he had not reviewed the Registrar's NFAOPs of October 23 and 27, 2023 and was consequently unaware of the nature and breadth of the Registrar's conduct allegations.

[37] Although no fault can be found in the appellant's financial integrity and there have been no complaints to TICO from customers of the appellant, I find the pattern of dismissing financial disclosure obligations displays a disregard for the standard of professionalism and conduct expected of registrants.

[38] I find the Registrar has met its burden to prove it has reasonable grounds for belief that the appellant will not carry on business in accordance with the law and with integrity and honesty.



### **Issue 3: Breach of a condition of registration**

- [39] Because I have found that the Registrar has met its burden to prove it has reasonable grounds for belief that the appellant will not carry on business in accordance with the law and with integrity and honesty, I do not need to analyse the third issue. The Registrar need only prove one of the grounds in s. 8 of the Act to revoke a registration.

### **CONCLUSION**

- [40] The Registrar has proven there are reasonable grounds for belief that the appellant's business will not be carried on in accordance with the law and with integrity and honesty.

#### ***Would conditions of registration vs. revocation be appropriate?***

- [41] Under s. 11(5) of the Act the Tribunal has the discretion to substitute its opinion for that of the Registrar's proposal and the Tribunal may attach conditions to its order or to a registration.
- [42] Since I found that the Registrar has reasonable grounds for the belief that the appellant's business will not be carried on in accordance with the law and with integrity and honesty, I considered whether imposing conditions on the appellant's registration would be more appropriate than ordering the Registrar to carry out its proposed revocation.
- [43] I find that ordering the Registrar to carry out its NOP and NFAOPs is more appropriate in this case because the appellant has demonstrated it does not take these kinds of commitments (complying with Tribunal conditions) earnestly. The public has the right to expect that those who participate (or wish to) in a regulated sphere of activity will do so and abide by every obligation, regardless of it being a statutory condition or one that is voluntarily entered into, and regardless of the party's subjective views of the magnitude of such obligation. The appellant's past conduct and stated view that financial disclosures are minor administrative matters that are best left with accountants and that TICO wouldn't actually go through with the compliance measures it proposes, leads me to conclude that imposing conditions on the appellant's registration would be ineffective in ensuring it complies with financial disclosure obligations going forward.
- [44] Accordingly, the Registrar shall carry out the revocation of the appellant's registration.

**ORDER**

[45] Pursuant to s. 11(5) of the Act, I order the Registrar to carry out the NOP and NFAOPs revoking the registration of the appellant.

**Released: February 20, 2024**



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**Bruce Stanton  
Adjudicator**