

CITATION: Haulage Network Driving Academy Inc. v. Ontario (Superintendent of Career Colleges), 2024 ONSC 5231
DIVISIONAL COURT FILE NO.: 120/24
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**SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT**

RE: HAULAGE NETWORK DRIVING ACADEMY INC., Appellant

AND:

ONTARIO (SUPERINTENDENT OF THE CAREER COLLEGES), Respondents

BEFORE: Shore J.

COUNSEL: *Alexandra Evangelista*, for the Appellant

Teresa-Anne Martin & Antonin Pribetic, for the Respondents

HEARD at Toronto: August 16, 2024

ENDORSEMENT

[1] The Applicant, Haulage Network Driving Academy Inc. (“Haulage”), brought this motion for an extension of time to apply for judicial review of Ontario (Superintendent of Career Colleges)’s (the “Superintendent”) decision wherein the Superintendent deemed Haulage’s \$97,000 performance bond forfeited.

[2] Haulage is a family-owned trucking school that operated across three campuses in three cities. To operate as a private career college, Haulage was required under statute to post a security bond, which it did through letters of credit held by the Royal Bank of Canada.

[3] On June 26, 2023, Haulage learned that the Superintendent had forfeited its security bond on June 1, 2023. Haulage seeks judicial review of this security bond decision.

[4] The decision to forfeit Haulage’s security bond and my decision extending the time for applying for judicial review, can only be understood in its context. Specifically, it is important to understand the events that occurred between the Superintendent and Haulage, both before and after the decision to forfeit was made by the Superintendent. As such, the series of events that led to the motion before this court must be set out.

Background:

[5] Haulage is a private career college. It operates under the *Private Career Colleges Act, 2005*, S.O. 2005, c. 28, Sched. L (the “PCCA”), now known as the *Ontario Career Colleges Act 2005*, S.O., c. 28, Sched. L (the “OCCA”).

[6] Haulage is a truck driving school for Class A truck drivers licenses. Its first campus opened in February 2020, shortly before the COVID-19 pandemic. It subsequently opened two additional campuses, one in London and the other in Mississauga.

[7] When Haulage opened each of its campuses the Superintendent directed Haulage to pay a security bond for each of the three campuses, totaling \$97,000. These security bonds went towards the training assurance completion fund (the “Fund”). This is a standard requirement made of new registrants under the then PCCA and its regulations. This requirement is oriented towards consumer protection and protecting the financial interests of a career college’s students.

[8] The Superintendent is appointed by the Minister of Colleges and Universities under s. 2 of the OCCA. The Superintendent exercises its powers and duties conferred upon it by the OCCA. The Ministry of Colleges and Universities (the “Ministry”) is a ministry of the Government of Ontario.

[9] On May 25, 2023, the Superintendent delivered a notice of contravention, a notice of immediate suspension, and a notice of proposal to refuse to renew registration. The Superintendent issued the notices following a standard general compliance investigation by the Ministry’s Private Career Colleges Branch, conducted just over two years into Haulage’s operations.

[10] Haulage was forced to close its three campuses and shut down its operations pending appeal of the notices of immediate suspension and refusal to renew registration. Immediately upon receiving the notices, Haulage retained counsel.

[11] On June 1, 2023, less than a week after issuing the notices, the Superintendent contacted the Royal Bank of Canada. The Superintendent advised that she had exercised her discretion to declare the bond forfeited and that Haulage must pay the forfeited funds within two days.

[12] On June 9th, 2023, Haulage served a notice of appeal challenging the notices to the Licencing Appeal Tribunal (“LAT”).

[13] Haulage did not receive notice of the forfeiture of their bond, until June 26, 2023, when RBC forwarded a copy of the Superintendent’s letter dated June 1, 2023.

[14] In October 2023, LAT Adjudicator Keith Lundy heard the seven-day hearing of Haulage’s appeal. On November 27, 2023, the Adjudicator released his decision. The Adjudicator directed the Superintendent to lift the suspension, to permit Haulage’s registration and to register Haulage with a set of conditions.

[15] In his reasons, the Adjudicator found that:

- a. The Superintendent directed the investigation towards inevitable refusal to renew rather than communicate with Haulage regarding its proposals,
- b. The Superintendent relied on confirmation biases that Haulage conducted training in breach of required ratios and willfully obstructed its inquiries rather than thoroughly investigate the details of Haulage's operations in accordance with its own progressive enforcement model,
- c. One of the alleged contraventions was based on an unverified presumption,
- d. Haulage was extremely responsive to taking steps to rectify the other two safety contraventions alleged by the Ministry and had a demonstrated record of resolving safety related issues,
- e. By the time of the hearing, Haulage has either resolved the issues on administrative issues or proposed a reasonable resolution in its Action Plan,
- f. None of the issues identified by the investigator rose to the level of severity that warranted the refusal to renew Haulage's registration and that the Superintendent's allegations of safety contraventions were founded upon multiple assumptions and substantial confirmation bias,
- g. The Superintendent failed to demonstrate more serious safety issues, and
- h. Haulage's remaining administrative contraventions did not warrant refusal or its registration.

[16] Following the LAT's decision, Haulage reopened its Hamilton campus after being forced to close for seven months while the appeal process was underway. However, it had to find new locations for its London and Mississauga campuses.

[17] After receiving the decision, Haulage's counsel inquired to the Superintendent about the security bond, writing "[o]ur clients trust that it will not be required to replenish the bond given the suspension was set aside and the proposal was directed not to be carried out."

[18] On December 19, 2023, the Superintendent wrote directly to Palwinder Gill, one of the owners of Haulage, instead of responding to counsel. In the letter, the Superintendent advised that they would be seeking instructions.

[19] A month later, on January 18, 2024, the Superintendent wrote to Mr. Gill again. The Superintendent advised that she declared the forfeiture on June 6, 2023, and that because of the claims paid out to the students there was only \$1,572.22 left as security. The Superintendent required that Haulage deposit another \$10,000 while the Ministry complete an assessment into additional amounts owing for security.

[20] On February 15, 2024, after exchanging a series of letters on the issue of whether the forfeiture would be reversed based on the outcome of the appeal, Haulage attempted to issue a Notice of Application to Divisional Court for Judicial Review. They requested an order quashing the forfeiture and remitting the forfeiture decision to the Superintendent for reconsideration. The Divisional Court rejected the material for filed being late, indicating that the initial decision date was June 2023.

[21] On February 22, 2024, Haulage served its materials for this motion to extend.

Law and Analysis:

[22] Under s. 5 of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1, a party shall make an application for judicial review no later than 30 days after the date of the underlying decision. However, the court may, on terms it considers proper, extend the time for making an application for judicial review if satisfied that:

- a. There are apparent grounds for relief; and
- b. No substantial prejudice or hardship will result to any person affected by reason of the delay.

[23] In determining whether there are apparent grounds for the relief sought, relevant factors for the court to consider include whether the applicant formed an intention to apply for judicial review within the applicable timeline, the length of the delay, any explanation offered for the delay, and the substantive merits of the application for judicial review. The Court must balance these factors.

[24] For the reasons set out below, I find that there are apparent grounds for relief and that no substantial prejudice or hardship to any person will result by reason of the delay.

[25] The length of the delay was approximately eight months. I accept the explanation offered for the delay. A review of the forfeiture decision had to follow the LAT's decision regarding the notices. If the notices were not set aside, the chance of success in the review of the forfeiture would be negligible in this case. Likewise, if the LAT deemed the notices improper, I understand why Haulage would likewise expect their security returned. I understand why Haulage thought addressing the issue of the forfeiture was premature.

[26] Further, the Superintendent's authority regarding the forfeiture of security only flows from its decision that Haulage cease operations. I agree with Haulage that without a finding on whether the notices were issued improperly, a review of the decision to forfeit the security would have been premature.

[27] The consequences of the improper notices were substantial to Haulage. Haulage lost seven months of business, incurred legal fees to challenge the notices, lost \$95,000 in security, was asked to post a further \$10,000 and may be asked to post additional security.

[28] The Adjudicator set aside the decision to issue the notices, for reasons that included confirmation bias, and that none of the Superintendent's concerns rose to the level of severity that warranted the decision to refuse to renew the license. Separating the decision to forfeit the bonds, from the decision to issue the notices is hard given that they took place shortly after one another and one was dependent on the other. The appeal period had not even passed when the Superintendent made the decision regarding the security.

[29] I therefore find that they are apparent grounds for relief. Whether they will be successful will be up to the panel hearing the application.

[30] For the reasons set out above, I grant an extension of the time to serve and file the Notice of Application for judicial review. The period of extension is for ten days from release of this endorsement.

[31] The parties were strongly encouraged to agree on a quantum of costs to be awarded to the successful party. They could not. The practice direction requires parties to file a bill of costs in advance of the motion. They did not. As such, I am not making an order for costs on this motion.

A handwritten signature in black ink, appearing to be 'J. Shore', written above a horizontal line.

Shore J.

Date: September 9, 2024