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Appeal
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January 12, 2009

MEMORANDUM

***Re: Holstead, David B.v.
Registrar, Motor Vehicles Dealers Act***

Enclosed herewith please find a copy of the Decision of the Licence Appeal Tribunal with respect to this matter.

DISTRIBUTION LIST:

Anthony H. Little - Counsel representing the Applicant
Chris Ezrin - Representative for MTO

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5044-MVDA-DAVID B. HOLSTEAD

APPEAL FROM A PROPOSAL OF THE REGISTRAR UNDER
THE *MOTOR VEHICLE DEALERS ACT*, R.S.O. 1990, c. M.42

TO REFUSE REGISTRATION

TRIBUNAL: KENNETH W. KOPROWSKI, Vice-Chair

APPEARANCES: ANTHONY H. LITTLE, Counsel, representing the Applicant

CHRIS EZRIN, Counsel, representing the Registrar,
Motor Vehicle Dealers Act

DATE OF
HEARING: December 18, 2008

London

REASONS FOR DECISION AND ORDER

BACKGROUND:

This hearing arises out of a written Notice of Proposal (the "Proposal") dated August 20, 2008, issued by the Registrar under the *Motor Vehicle Dealers Act* R.S.O. 1990 c. M. 42 (the "Registrar" and the "Act" respectively) to refuse the registration of David B. Holstead (the "Applicant") as a motor vehicle salesperson.

The reasons that the Registrar issued the Proposal, and the Particulars thereof, are stated in the Proposal itself, found at Tab 1 of Exhibit 3, which is the Respondent's Book of Documents.

The Reasons are as follows:

The intention and objective of the Act is to protect the public interest. The requirements of the Act include that Registrants be financially responsible in the conduct of business and that Registrants carry on business in accordance with the law and with integrity and honesty. The Registrant's past conduct is inconsistent with the intention and objective of the Act, and therefore warrants disentitlement to registration under the Act. Therefore, the Registrar is unwilling to register David Holstead under the Motor Vehicle Dealers Act.

The Particulars are set out as follows:

The reasons for this proposal are:

1) David Holstead (hereinafter referred to as "Holstead"), was previously registered on terms and conditions as a motor vehicle salesperson from on or about April 15, 2004 until on or about June 15, 2006. Terms and conditions attached as Schedule "A".

2) Holstead applied for registration as a motor vehicle salesperson on or about April 22, 2008. He proposes to work for [name of dealer deleted by this Tribunal].

3) On the application to become a registered salesperson Holstead disclosed the following convictions:

June 6, 2006	Simple Assault
April 10, 2007	Assault Causing Bodily Harm

4) A criminal record search found that Holstead engaged in conduct which resulted in the following finding of guilt:

January 12, 1998	Possession of property Obtained by Crime Under \$5000.
October 27, 2006	Assault
April 10, 2007	Assault Causing Bodily Harm
	Fail to Comply with Recognizance

5) A criminal record search found that Holstead engaged in conduct which resulted in the following charges:

April 11, 2008	Assault
	Mischief/Damage Property Under

6) The charges listed in paragraph 5 were not disclosed in the April 22, 2008 application.

Since the Registrar's proposal was based partly on the Applicant's alleged breach of some of the terms and conditions under which the Applicant had been registered previously, it is worthwhile setting out those terms and conditions in full. They are found in Schedule "A" attached to the Proposal:

TO The Registrar
 Motor Vehicle Dealers Act
 Ontario Motor Vehicle Industry Council
 789 Don Mills Road Suite #800
 Toronto, Ontario.
 M3C 1T5

Further to subsection 5(2) of the Motor Vehicle Dealers Act, I consent to the following terms and conditions to my registration as a motor vehicle Salesperson:

1) I agree, if I am criminally charged in the future, to immediately notify the Registrar, Motor vehicle Dealer's (*sic*) Act in writing of the charges against me.

2) I agree, if I am criminally charged in the future, to immediately notify my employer of the charges against me.

ISSUE

The issue that this Tribunal is called upon to determine is as follows:

Whether the past conduct of the Applicant affords reasonable grounds for belief that the Applicant will not carry on business in accordance with law and with integrity and honesty?

FINDING

This Tribunal finds, on the evidence before it, that the past conduct of the Applicant affords reasonable grounds for belief that he will not carry on business in accordance with the law and with integrity and honesty.

EVIDENCE

The facts are not substantially in dispute.

EVIDENCE ON BEHALF OF THE REGISTRAR

Evidence of Carey Smith

Mr. Smith is the director of investigations for the Ontario Motor Vehicle Industry Council ("OMVIC"). OMVIC is the motor vehicle dealer industry's self-management body and is responsible for administering the Act. In his position, Mr. Smith oversees the investigative function of OMVIC. He reports to the Registrar himself and oversees many of the operations of OMVIC.

Before joining OMVIC, Mr. Smith had spent thirty years with the Halton Regional Police, where he performed criminal investigations and was part of the fraud squad whose specialty was automotive related crime.

Disclosure Requirements

Counsel for the Registrar first had Mr. Smith review the Registrar's disclosure requirements under the Act. Mr. Smith testified that disclosure is fundamental to the automotive business. The Act is consumer protection legislation and contains many requirements to disclose to consumers all material facts about an automobile before its sale to a purchaser. There are almost forty thousand motor vehicle salespersons in Ontario. The Registrar must be confident that they all treat customers honestly and disclose all material facts about a vehicle even if the result of such disclosure results in the vehicle not being sold. That is why OMVIC treats very seriously the disclosure requirement.

The application form to be registered as a salesperson is the first "test", to use Mr. Smith's terminology, of the applicant's honesty and integrity. The Registrar expects full and frank disclosure of all details about prior convictions without the Registrar having to make enquiries. The disclosure must be in writing and can be included on additional sheets of paper attached to the application form if the form itself does not have enough space for that information.

Evidence of Failure to Disclosure and Breach of Terms and conditions

Mr. Smith referred to paragraphs 3, 4 and 5 of the Proposal, found at Tab 1 of Exhibit 3, which was the Respondent's book of documents.

Paragraph 3 of the Proposal

Paragraph 3 of the Proposal confirmed that the Applicant disclosed a conviction for assault in June, 2006, although, as the evidence at this hearing subsequently revealed, the conviction date was actually October 27, 2006. This difference in dates is explained in a letter from the Applicant's lawyer. It is attached as Schedule "A" to the Applicant's Notice of Appeal, found at Tab 2 of Exhibit 3. The subsequent evidence also revealed that the conviction had arisen out of a charge in October, 2005. The date of the charge is significant because, contrary to paragraph 1 of the terms and conditions under which the Applicant had previously been registered under the Act, and which were set out in detail earlier in these reasons, the Applicant failed to disclose this charge to the Registrar. He was required to make such disclosure because he was still registered as a sales person in October, 2005, and, therefore, was still bound by the terms and conditions. Paragraph 1 specifically states:

- 1) I agree, if I am criminally charged in the future, to immediately notify the Registrar, Motor vehicle Dealer's (*sic*) Act in writing of the charges against me.

The terms and conditions are found at Tab 1 of Exhibit 3, on page 4 thereof. The Applicant ceased his work as a salesperson only in June, 2006, as noted in Section D of his application form, found at Tab 3 of Exhibit 3.

There was, initially, some question as to when those terms and conditions were signed because there is no date written on them; however, this Tribunal is satisfied on the evidence before it that they were signed in April, 2004. The Applicant, in his cross-examination, admitted that they were signed in April, 2004. In addition the facsimile transmission information printed on both the top and bottom of the page containing the terms and conditions confirm that they were not only sent on behalf of the Applicant from a dealership on April 16, 2004, but also were also received at OMVIC on that date. Finally, paragraph 1 of Schedule "A" attached to the Applicant's Notice of Appeal would also lead to the conclusion that the terms and conditions were signed in April, 2004, because that paragraph states as follows:

1. The undersigned agrees that he had been registered on Terms and Conditions as a Motor Vehicle salesperson from on or about April 15, 2004 until on or about June 15, 2006. In fact, he may have been similarly registered for earlier periods of time.

The Applicant also disclosed his conviction for assault causing bodily harm on April 10, 2007. However, of relevance, the Applicant failed to disclose the conviction for possession of property obtained by crime on January 12, 1998. Paragraph 4 of the Proposal confirmed that a criminal record search of the Applicant's record, found at Tab 4 of Exhibit 3, revealed that he had been convicted on January 12, 1998, of that offence. The letter from the Applicant's lawyer attached as Schedule "A" to the Notice of Appeal explains that this omission was due to "inadvertence and oversight." However, in his cross-examination, Mr. Smith acknowledged that the Registrar was not placing much emphasis on that conviction, in and of itself, but did consider it of some significance in reviewing the Applicant's entire history of his breaches of the law. The Registrar was mainly concerned with the more recent convictions for assault on October 27, 2006 and for assault causing bodily harm and failing to comply with a recognizance on April 10, 2007.

Paragraph 4 of the Proposal

Paragraph 4 of the Proposal refers specifically to the information obtained about the Applicant from the criminal records search. It states that the criminal record search noted the conviction on January 12, 1998, already referred to, but which the Applicant failed to disclose. It also noted a conviction for assault on October 27, 2006. This was the conviction that the Applicant incorrectly stated occurred in June, 2006, as explained above.

However, of great significance to the Registrar, the criminal record search also confirmed that, on April 10, 2007, the Applicant was convicted of the offence of Assault Causing Bodily Harm and Failing to Comply with a Recognizance. Although the Applicant listed the former conviction in his application form, he failed to disclose the latter. Again, the letter from his lawyer explains this by saying that the Applicant focused on what he considered to be the more serious of those two convictions [Assault Causing Bodily Harm], and "forgot that [the other charge] had occurred", to use the wording in his lawyer's letter.

The sentence imposed on April 10, 2007 on the above offences was one day in jail on each charge, to be served concurrently, because the Applicant had already spent 59 days in pre-trial custody. Also imposed was a period of probation for 18 months that began on April 10, 2007 and ended on October 9, 2008. The Applicant, therefore, was still on probation at the time he signed the application form on April 4, 2008.

Paragraph 5 of the Proposal

Finally, paragraph 5 of the Proposal states that the criminal record search also revealed that the Applicant had been charged on April 11, 2008, with the two offences of Assault and "Mischief/Damage property under," to use the terminology in the criminal record

search. This is significant because OMVIC received the Applicant's application form on April 22, 2008, but those two charges were not listed in response to Question 9 of the application which required the applicant to provide that disclosure in answering this question:

Have you ever been found guilty or convicted of an offence under any law **or are any charges pending?** (This includes those instances where a conditional or absolute discharge has been ordered). If yes, list all charges and/or convictions, and the circumstances surrounding each (attach additional sheets if necessary).

(Emphasis is added)

The Applicant did, however, after he filled in his application, provide additional written explanations of his previous brushes with the law in undated letters found on pages 27 and 28 of Tab 3 of Exhibit 3, but he did not disclose the above two charges in those letters.

In fairness to the Applicant, he himself signed the application form on April 4, 2008; that is, before he was charged on April 11. But the authorized person at the dealership at which he was seeking employment did not sign the form until April 15, 2008; that is, after the charges on April 11. However, that still begs the question as to what the Applicant disclosed to the dealer before the dealer signed because the paragraph that appears immediately above the dealer's signature line requires that the Applicant make disclosure of such charges to the dealer:

I certify that I have personally and fully discussed the response to each question on the completed application with the applicant prior to signing this document and am satisfied that the information given by the applicant is, to the best of my knowledge and belief true, and request that the application be approved. I certify that I am an authorized representative of the dealer (i.e. and officer or director, partner or sole proprietor). I further certify that the applicant will be authorized to purchase and sell vehicles on the dealer's behalf.

(Emphasis is added)

As it turns out, the charges from April 11, 2008, did not proceed. The letter dated July 4, 2008 to the Applicant from his lawyer, and found at Tab 5 of Exhibit 3, explains that the charges were withdrawn at the request of the Crown Attorney because the complainant, the Crown witness, did not appear for trial. Regardless, the Registrar was still concerned over the fact that the Applicant had not revealed those charges in his application, especially since the charges were not withdrawn until July 4, 2008.

Results of Failure to Disclose and of Breach of Terms and conditions

Counsel for the Registrar then questioned Mr. Smith about the practice of imposing terms and conditions in granting an application for registration. Mr. Smith explained that, as was the case with the Applicant in April 2004, the Registrar will agree to register some applicants where the Registrar feels "uncomfortable," to quote Mr. Smith's testimony. The terms and conditions are imposed to give an applicant a chance. An

applicant, therefore, can be registered on condition that he or she follows the provisions of the terms and conditions. Compliance with them is another "test" of the person's honesty and integrity. Terms and conditions are often imposed in cases where the applicant has had convictions registered against him or her or if the applicant has ever declared bankruptcy.

The terms and conditions imposed on the Applicant's previous registration were specific to his circumstances.

On the question of the nature of the offences that the Applicant committed, Mr. Smith acknowledged that the recent convictions in 2006 (assault) and 2007 (assault causing bodily harm and failing to comply with a recognizance) were domestic offences. However, the Registrar still had concerns because the charges indicated a willingness to break the law. In addition, the conviction for failing to comply with a recognizance indicates to the Registrar that the Applicant is unwilling to comply with a Court Order. Therefore, the Registrar questions whether he can have faith that the Applicant, if registered, will comply with the Act and other related legislation.

Furthermore, the Applicant was still on probation until October 9, 2008 at the time he signed his application for registration on April 4, 2008. That period ended slightly more than two months before this hearing. Therefore, the Registrar has not seen the Applicant in any prolonged period of unsupervised positive conduct.

Concerning the two undated letters that the Applicant sent to OMVIC and which OMVIC received on April 22, 2008, and found at pages 27 and 28 of Exhibit 3, Mr. Smith expressed concern that the Applicant did not disclose the conviction for possession of property in January, 1998, regardless of the weight that the Registrar might put on that conviction. Furthermore, the Applicant did not, in those letters, disclose the conviction for failing to comply with a recognizance in April, 2007. He also did not disclose in those letters the charges from April 11, 2008, even though the application form specifically requested him to provide that information. All these omissions are significant to the Registrar because the Registrar feels that disclosure is of paramount importance for a salesperson. The fact that some disclosure was given is not enough. More should have been provided without prompting from the Registrar. As well, the Registrar is entitled to observe a period of unsupervised positive conduct in an applicant. A period of two months after the completion of a supervised period of probation, as in this case, is not sufficient. On cross-examination, Mr. Smith stated that the Registrar would like to see a period of one year to eighteen months of unsupervised positive conduct.

The fact that the Applicant's lawyer stated that the Applicant did not disclose such information because of inadvertence or because of oversight is of little significance to the Registrar inasmuch as such after-the-fact explanations of any wrong-doing under the Act are not accepted in the motor vehicle sales business. Therefore, neither are such explanations accepted at the application stage. The Registrar expects complete and open frankness from the very beginning of the registration process.

In other portions of his cross-examination, Mr. Smith acknowledged that there were no complaints about the Applicant during the time he was registered as a salesperson under the terms and conditions, referred to earlier.

As for the charges against the Applicant on April 11, 2008, Mr. Smith stated that the Registrar is not relying on them in making the Proposal, but is not discounting them, either. The Registrar placed most reliance on the convictions in 2006 and 2007. Mr. Smith also testified that he did not know if the Applicant had complied with or violated any of the terms of the Probation Order imposed on the Applicant.

He further stated that the Registrar looks at the "entirety of the matter", to quote Mr. Smith's testimony. Therefore, even though the charges from April 11, 2008, were withdrawn, it was still significant to the Registrar that the Applicant did not at least refer to them in his application form, inasmuch as they were still outstanding at the time he signed it and he was required to reveal them. Nor did he reveal them in his explanatory letters.

EVIDENCE ON BEHALF OF THE APPLICANT

Evidence of the Applicant

The Applicant was the only person to testify on his behalf.

He confirmed that the 1998 conviction arose out of a charge on October 23, 1997, just twenty-two days after his eighteenth birthday. He was not represented by a lawyer on that charge.

On June 6, 2006, he ended his employment at the motor vehicle dealership at which he had been working for two years. On June 11, 2006, he was charged with the offences that led to the convictions on April 10, 2007.

Regarding the two charges on April 11, 2008, he stated that, on April 4, 2008, he completed the application for registration. He was charged with the offences on April 11. After the dealer signed the application on April 15, 2008, the Applicant sent it in to OMVIC. There were further delays surrounding the payment of the application fee but these were subsequently resolved. The Applicant did not know what to do about the application after he was charged on April 11, so that, after OMVIC received the application on April 22, 2008, the Applicant spoke to a representative of OMVIC and to one of its lawyers. He stated that he gave particulars of his charges to the persons to whom he spoke. The Applicant testified that he was told that his application was pending and that he should wait to receive further word on it. The next communication he received, he stated, was the Proposal which is the subject of this appeal.

He testified that, while he was registered as a salesperson for the period April, 2004, until June, 2006, he had no difficulties with his honesty and integrity. He got along well

with the general manager and the son of the dealership's owner and further stated that he was unsupervised during those two years.

Regarding the period of probation of 18 months, imposed on April 10, 2007, he was supervised, and attended a 16-week anger management course on domestic violence prevention. He attended once a week for about one and a half to one and three-quarter hours each time. Although he stated that he completed the course, he did not receive a certificate of completion. He also attended at meetings of the John Howard Society and of Alcoholics Anonymous, but did not give details as to how often he attended or what the results were of his attendances there.

Regarding the events leading up to the convictions on April 10, 2007, he stated that, after he was arrested, he remained in police custody for 59 days. He was then released on August 9, 2006, on what he called "strenuous terms." He also pointed out to this Tribunal that he complied with those terms, although he gave no details as to what those terms were. He stated that the subsequent terms imposed for his period of probation were less onerous.

As for his failing to disclose to the Registrar his conviction on April 10, 2007, for failing to comply with a recognizance, the Applicant explained that he wanted to provide to the Registrar all the details of the conviction for assault causing bodily harm on the same date. He focused on that conviction and, by inadvertence, failed to provide details of the failing to comply conviction. He believed that the conviction for assault causing bodily harm was the more important of the two.

On cross-examination, he confirmed with counsel for the Registrar that he had his own business. He owned two rental properties which he rented out. Therefore, he acknowledged, he was familiar with legal documents such as leases and tenancy agreements. He also acknowledged that he worked for two years as a motor vehicle salesperson and, as a result, had no difficulties in understanding just what he had to do in that capacity.

He also acknowledged that he was familiar with the terms and conditions that were imposed at the time he was registered in 2004. He was clear on their meaning, and had an opportunity to seek legal advice or to discuss them with representatives from OMVIC if he did not understand any of them. He acknowledged that he knew that he was required to disclose to the Registrar and to his employer any future criminal charges. He also knew that he had to disclose them on all future applications. He admitted signing the terms and conditions in 2004 and knew that they were important for his registration.

He further admitted that he did not disclose to the Registrar and to his employer the criminal assault charge laid against him in October, 2005. But, he was obligated to disclose them because he was still bound by the terms and conditions at that time. He admitted that he mistakenly gave the charge date as October, 2006, (and not October, 2005) in his letter found at page 27 of Exhibit 3. He stated that the reason that he did

not disclose that charge was that "I did not review [the terms and conditions] as often as I should have," to quote his testimony.

Counsel for the Registrar also had the Applicant acknowledge that the Applicant breached one of his bail provisions in June, 2006, by having contact with the complainant from the previous criminal assault charge. This occurred despite the non-association clause in the bail provisions and despite the fact that the Applicant knew what the clause meant.

Counsel for the Registrar then dealt with the criminal charges on April 11, 2008. The Applicant did not disclose those charges to the Registrar in the application even though question 9 of the application, referred to earlier specifically asked the applicant to note any pending charges. Nor did the Applicant disclose the charges to the dealer who signed his application on April 15, 2008, even though the Applicant knew that he was supposed to make such disclosure.

The Applicant also confirmed that, while on probation for 18 months, he was supervised closely. Although he attended anger management courses and Alcoholics Anonymous meetings, he had no documents to confirm his attendances there.

THE LAW:

The provision under which the Registrar proposes to refuse the registration of the Applicant is section 5(1)(b) the Act, which states:

5. (1) An applicant is entitled to registration or renewal of registration by the Registrar except where,

....

(b) the past conduct of the applicant affords reasonable grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty; ...

(Emphasis is added)

The authority to refuse the Applicant's registration is found in section 6 of the Act, where it states:

6. (1) Subject to section 7, the Registrar may refuse to register an applicant where in the Registrar's opinion the applicant is disentitled to registration under section 5.

Once the Registrar proposes to refuse to grant a registration, section 7 of the Act states that the applicant must be given reasons for the refusal and must be informed of his right to appeal the Proposal:

7 (1) Where the Registrar proposes to refuse to grant or renew a registration or proposes to suspend or revoke a registration, the Registrar shall serve notice of the proposal, together with written reasons therefor, on the applicant or registrant.

(2) A notice under subsection (1) shall state that the applicant or registrant is entitled to a hearing by the Tribunal if the applicant or registrant mails or delivers, within fifteen days after service of the notice under subsection (1), notice in writing requiring a hearing to the Registrar and the Tribunal, and the applicant or registrant may so require a hearing.

Once the applicant appeals to this Tribunal, sections 7(4) and 7(5) of the Act set out the powers that this Tribunal has:

7. (4) Where an applicant or registrant requires a hearing by the Tribunal in accordance with subsection (2), the Tribunal shall appoint a time for and hold the hearing and, on the application of the Registrar at the hearing, may by order direct the Registrar to carry out the Registrar's proposal or refrain from carrying it out and to take such action as the Tribunal considers the Registrar ought to take in accordance with this Act and the regulations, and for such purposes the Tribunal may substitute its opinion for that of the Registrar.

7. (5) The Tribunal may attach such terms and conditions to its order or to the registration as it considers proper to give effect to the purposes of this Act.

The proper question for this Tribunal in a matter such as this one is clearly set out in the case *Brenner v. Ontario (Registrar of Motor Vehicle Dealers and Salesmen)* [1983] O.J. No. 1017. In considering the same section 5(1)(b) and section 7(4) that are now before this Tribunal for consideration, Southey J. states, at paragraph 12 of that decision:

The proper question at the rehearing remains, however, **whether the past conduct of the applicant affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty.** Unless the Tribunal can find that it does not, the Tribunal should not order the Registrar to refrain from carrying out his proposal.

(Emphasis is added)

APPLICATION OF LAW TO FACTS:

This Tribunal accepts as fact that the Applicant knew and understood the provisions of the terms and conditions imposed on him at the time of his registration as a salesperson in April, 2004. He breached the provisions of those terms and conditions by not disclosing to the Registrar, or to his employer, the fact that he had been charged with assault in October, 2005.

The Applicant also failed to make complete disclosure, on his application for registration, of the following required information:

1. His conviction on January 12, 1998, for the criminal offence of possession of property obtained by crime.

2. His conviction on April 10, 2007, for the criminal offence of failing to comply with a recognizance.
3. The two criminal charges against him on April 11, 2008, for assault and mischief.

Counsel for the Registrar argued that the conviction of failing to comply with a recognizance shows the Applicant's willingness to disobey the law. Such a conviction could result in a term of incarceration. However, the Registrar, who has no such incarceration capabilities, is concerned with whether the Applicant would obey the law relating to his registration as a salesperson if, in fact, the Applicant was willing to disobey a Court Order.

Counsel for the Registrar also argued that the Applicant failed to make complete disclosure to the Registrar, and that such a failure affords reasonable grounds for belief that the Applicant will not carry on business in accordance with law and with integrity and honesty. With that submission, this Tribunal agrees, especially considering that the Act is consumer protection legislation, and that it is the public that the Registrar has the responsibility to safeguard.

Counsel for the Registrar also argued that the Applicant's breach of the terms and conditions imposed in 2004 is enough to refuse registration. For this principle, he referred this Tribunal to the case *102265 Ontario Inc. (c.o.b. Tri-Star Sales and Leasing) v. Ontario (Motor Vehicle Dealers Act, Registrar)* [2004] O.J. No. 900, ("*Tri-Star*") a Judgment of the Divisional Court of the Ontario Superior Court of Justice dated January 28, 2004. The facts of that case are summarized in the head note as follows:

Appeal by the appellant dealers from a decision revoking their registration under the *Motor Vehicle Dealers Act*. The dealers' registration had originally been revoked and they had appealed. The appeal was not heard as the parties settled the matter with a consent order allowing the dealers to keep their registration provided they complied with its terms. Less than two years later, the Registrar again gave notice of an intention to revoke the dealers' registration because they breached the terms of the consent order. The Commercial Registration Appeal Tribunal determined the dealer had breached one or more conditions of the order.

The Court held, among other things, that it was not necessary for the Registrar to prove willful deliberate conduct of the appellants in breaching the terms, and that it was necessary only to prove a breach of those terms to revoke the appellants' registration. At paragraph 4 of the decision, the Court states:

4 We are all of the view that the Tribunal made no error in respect of formal admissions as is alleged. Counsel for the Registrar took the position that she did not need to prove willful deliberate conduct on the part of the appellants. In our view, it was sufficient to merely demonstrate a breach.

And again, at paragraph 7 of the decision, the court states:

7 With respect to the appellant Parthenia Mitropoulos, there was evidence to support the factual findings made by the tribunal concerning her. **In our view, however, breach of the consent order alone -- by anyone -- was sufficient to result in the revocation of her registration.**

(Emphasis is added)

At paragraph 5 of the decision, the Court confirmed that one of the terms that it considered in that case provided for revocation upon a breach of the terms and conditions that the appellants in that case had agreed to. That term stated as follows:

5 The consent order, signed by both personal registrants, provides that if any of its terms are breached, the registration of the dealer and salespersons are to be revoked.

Compare that provision with paragraph 7 of the terms and conditions that the Applicant signed in the instant case, and the similarities are readily apparent:

7) I acknowledge that my registration is subject to be revoked if I, in the opinion of the Registrar, breach any of the terms and conditions set out in this document.

Therefore, this Tribunal accepts the reasoning in the *Tri-Star* case as applicable to the facts now before it and agrees with the Registrar's position that a breach of the terms and conditions is enough to warrant a refusal of the Applicant's registration. This Tribunal holds that there is no significant difference in the above principle in the fact that, in *Tri-Star*, the Court was dealing with a revocation of a registration, whereas, in the case now before this Tribunal, the Registrar is dealing with a refusal to register, inasmuch as the Applicant's breach could not have been discovered, in this case, until he actually submitted his application, long after any revocation could have occurred.

The *Tri-Star* case was followed in the decision of this Tribunal in *Re: Islam* [2005] O.L.A.T.D No. 217. The *Islam* case also involved a proposal by the Registrar to refuse the application of the Applicant to be registered as a motor vehicle salesperson. The refusal was based on the Applicant's breach of terms and conditions imposed by the Licence Appeal Tribunal.

The facts in *Islam* are as set out in the particulars of the proposal in that case as follows, and are similar to the facts in the case now before this Tribunal:

2 The particulars relating to the refusal were stated as follows:

1. The Applicant Islam Rashedul (hereinafter referred to as the "Applicant") was originally registered as a motor vehicle salesperson from on or about December 6, 2002 until on about December 6, 2004. The Applicant's registration was subject to terms and conditions imposed by the Licence Appeal Tribunal.

2. The Applicant submitted an application to renew his registration on or about December 8, 2004.

3. On the application for registration, Section A, question (1)(a) asks:

"Are there currently any charges pending or has the applicant ever been found guilty or convicted under any law?" The Section goes on to state:

"If yes to any of the above questions and you have not previously disclosed this information in writing, attach particulars on a signed and dated statement."

The Applicant answered "No".

4. A criminal record search found that the Applicant has been found guilty of the following offences:

July 29, 1998	Drive with more than 80 mg. Of alcohol in blood
March 4, 1999	Assault Causing Bodily Harm
November 7, 2000	Assault

5. A criminal record search further found that the Applicant engaged in conduct which resulted in the following charge:

August 14, 2004	Assault
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6. The Applicant has failed to disclose on this and previous applications submitted to the Registrar.

The Tribunal in that case, as in the present case, considered the effect of section 5(1)(b) of the Act in ordering the Registrar to carry out the proposal. At paragraph 28 of the decision, approving *Tri-Star*, the decision reads:

[...]In the case of 102265 Ontario Inc. (c.o.b. Tri-Star Sales and Leasing) v. Ontario (Motor Vehicle Dealers Act, Registrar) [2004] O.J. No. 900 (Quicklaw) a salesperson's registration was revoked by the former Commercial Registration Appeal Tribunal because the salesperson violated two of the terms and conditions attached to her registration. In dismissing the salesperson's appeal the Ontario Superior Court of Justice, Divisional Court held that the breach of the terms of the consent order permitting registration on terms and conditions was sufficient to result in the revocation of the salesperson's registration. *Moodie (Re)* [1998] O.C.R.A.T.D. No. 120.

Furthermore, Counsel for the Registrar argued that it is necessary for the Applicant in this matter, and for all applicants, to be honest about their background when completing the application form. For this principle, counsel referred this Tribunal to an earlier decision of this Tribunal in *Yves Boivin*, released March 17, 2004.

The *Boivin* case also considered the effect of section 5(1)(b) of the Act arising from the failure of the applicant in that case to disclose in his application for registration a pending criminal charge against him. The Tribunal ordered the Registrar to carry out the refusal of registration.

At page 5 of the decision, the Vice Chair states:

The Registrar is, however, charged with the responsibility of safeguarding the public in the area of retail car sales. As such he should look at indications of the honesty of applicants for registration. There is a line of cases emanating from this Tribunal that state that as the application form is the first contact with the Regulator of the industry one wants to enter, it is incumbent upon applicants to be up front about their background. Failure to do so must weigh very negatively in the decision of the Registrar. These cases include *Re Cook [1999] O.C.R.A.T.D. No. 4* and *Re Moodie [1998] O.C.R.A.T.D. No. 120*.

This Tribunal agrees with and adopts the reasoning in the *Boivin* case as applicable to the case now before it.

Counsel for the Applicant argued that the *Islam* and *Boivin* cases are decisions of this Tribunal and, therefore, whereas they may be persuasive, they are not binding on this Tribunal.

Although this Tribunal is not bound by previous decisions of the Tribunal, nevertheless, it would be prudent to consider the reasoning in past decisions in order to create consistency in decision-making and certainty for the parties in similar cases. This is especially true in cases that involve similar fact situations and that consider legislation which is identical to the legislation currently before the Tribunal in this case.

As authority for this principle, this Tribunal relies on the Ontario Divisional Court decision in *Duval v. College of Nurses of Ontario [2007] O.J. No. 3992*. That case involved an appeal and cross-appeal from a decision of and the imposition of a penalty by a panel of the Discipline Committee of the College of Nurses ("Panel") in respect of certain findings of professional misconduct made against the appellant. In allowing the appeal and reducing the penalty imposed as being too high when compared to previous cases involving similar facts, the three-member Court stated the following, among other things, in paragraph 11:

...In addition, we are also of the view that in so far as it was practicable, the Panel should have had regard to past decisions of the Discipline Committee in similar circumstances in an effort to place the instant case within a range of previously imposed penalties for comparable misconduct.

This Tribunal agrees with that reasoning, and considers to be significant the previous decisions of this Tribunal, or its predecessors, in cases that involve similar facts and the same legislation.

Counsel for the Registrar also argued that insufficient time had passed from the end of the Applicant's period of probation to allow the Registrar to observe the Applicant's unsupervised positive conduct before granting him his application. The Applicant should demonstrate a period of reformation. Although counsel did not refer this Tribunal to any authority on that principle, nevertheless, it is a principle that has been long recognized by this Tribunal. In the case before this Tribunal involving the applicant, *Jean C.J.*

Laprise, found at [2007] O.L.A.T.D. No. 530, Vice Chair Wallace states, at paragraphs 19 and 20:

19 Additional authority for the proposition that some time must elapse between the expiration of any period of probation and an application for registration may be found in the decisions of this Tribunal in *Rubin (c.o.b. as Affordable Auto Sales)*, [2000] O.L.A.T.D. No. 377, *Colafranceschi*, [2005] O.L.A.T. (sic), *Kenny (Re)* [2005] O.L.A.T.D. No. 60. and *Goddard (Re)*, [2005] O.L.A.T.D. No. 50.

20 Indeed, the principle has been so consistently applied that this Tribunal has been unable to find a single instance where registration has been granted to an Applicant who was still on probation.

Counsel for the Applicant argued that, if this Tribunal were to Order the Registrar to carry out its Proposal to refuse the Applicant's registration, then this Tribunal would be "taking him out of his field" and the Applicant would be "out of the game forever," to use counsel's terminology. Presumably, this refers to the Applicant's resultant inability to earn a livelihood from the sale of motor vehicles.

With those submissions, this Tribunal respectfully disagrees, for two reasons. First, the Applicant would still be able to apply to be registered as a salesperson upon producing new or other evidence or by showing a change in material circumstances. Section 8 of the Act states as much:

8. A further application for registration may be made upon new or other evidence or where it is clear that material circumstances have changed.

Secondly, this Tribunal has previously held that, in a proceeding in which section 5(1)(b) of the Act is considered, possible future financial repercussions are not proper considerations in coming to a decision which could result in the refusal of the Applicant's registration. See *Russell John Bolton* [2008] O.L.A.T.D. No. 58.

Finally, the Tribunal questioned Counsel for the Registrar about the appropriateness of imposing further terms and conditions on the registration of the Applicant, as this Tribunal is authorized to do by section 7(5) of the Act, referred to earlier. Counsel for the Registrar submitted that the imposition of terms would be inappropriate in this case. Inasmuch as the Applicant had already breached the previous terms and conditions that had been imposed, the Registrar could not be satisfied that the Applicant would be any more willing to comply with further terms and conditions imposed at this time.

This Tribunal considers that position to be reasonable, considering the facts of this case.

CONCLUSION

This Tribunal accepts the evidence that the Applicant failed to advise the Registrar and his employer of the Criminal Code, charge of assault in October, 2005, even though he

knew that he was required do to so by the terms and conditions associated with his registration.

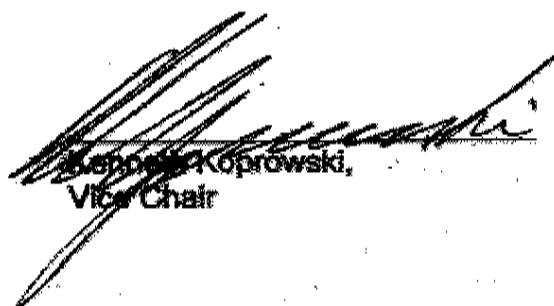
This Tribunal also accepts the evidence that the Applicant failed to disclose, in his application, the Criminal Code conviction in January, 1998, and his conviction for failing to comply with a recognizance on April 10, 2007. He also failed to disclose in his application the two Criminal charges against him on April 11, 2008.

Considering these facts, and for the reasons stated in this decision, and relying on the statutory and case authorities cited, this Tribunal concludes that the Registrar has satisfied the onus of proving on a balance of probabilities that the past conduct of the Applicant affords reasonable grounds for belief that he will not carry on business in accordance with the law and with integrity and honesty.

DECISION:

Accordingly, pursuant to the authority vested in it by section 7 (4) of the *Motor Vehicle Dealers Act*, the Tribunal directs the Registrar to carry out his Proposal of August 20, 2008, to refuse the registration of David B. Holstead.

LICENCE APPEAL TRIBUNAL



Stephen Koprowski,
Vice Chair

RELEASED: January 12, 2009

The hearing was recorded. Transcripts can be made available at your expense. The period to appeal a decision to the Superior Court of Justice or Divisional Court is 30 calendar days from the date of release of the decision. Please arrange to pick up your Exhibits within 30 days after that period has passed. The Tribunal requires seven days notice prior to releasing Exhibits.

This decision, which is being released to the parties in this proceeding, may also be posted on the Licence Appeal Tribunal's website <http://www.lat.gov.on.ca/> in approximately three weeks time. The decision may also be available on Quicklaw at a later date.