

**Licence  
Appeal  
Tribunal**

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January 11, 2005

**MEMORANDUM**

**RE: *Andrew Dominic Colafranceschi v. Registrar, Motor Vehicle Dealers Act***

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

**DISTRIBUTION LIST:**

Andrew Dominic Colafranceschi, Applicant  
A. Michael Rothe, Counsel for OMVIC

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matière de permis**



**ANDREW DOMINIC COLAFRANCESCHI**

**APPEAL FROM A PROPOSAL OF THE REGISTRAR UNDER THE  
*MOTOR VEHICLE DEALERS ACT***

**TO REFUSE REGISTRATION**

**TRIBUNAL:** SIMON DANN, Presiding Member

**APPEARANCES:** ANDREW DOMINIC COLAFRANCESCHI, the Applicant, in person  
A. MICHAEL ROTHE, Counsel, representing the Registrar, *Motor  
Vehicle Dealers Act*

**DATE OF  
HEARING:** December 29, 2004 Toronto

### **REASONS FOR DECISION AND ORDER**

#### **BACKGROUND:**

This is a hearing that arises out of a Notice of Proposal (the "Proposal") dated August 6, 2004, issued by the Registrar under the *Motor Vehicle Dealers Act* (the "Registrar" and the "Act" respectively) under which the Registrar seeks to refuse the registration of Andrew Dominic Colafranceschi (the "Applicant") as a motor vehicle salesperson under the Act. The Registrar based his proposal to refuse the registration of the Applicant under section 7 of the Act for the following reasons:

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 their business and that Registrants carry on business in accordance with the law and with integrity and honesty. The Applicant'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 Andrew Dominic Colafranceschi under the *Motor Vehicle Dealers Act*.

In support of his proposal the Registrar noted the following:

1. The Applicant applied for registration as a motor vehicle salesperson on or about June 21, 2004.
2. In response to question 9 of the application to become a registered salesperson, the Applicant answered, "yes", that he had engaged in conduct resulting in charges being laid against him.
3. The Applicant attached a copy of his police criminal information to the application showing the following convictions:  
January 19, 2004    Fail to Comply with Recognizance  
                          Attempt to Commit Indictable Offence  
                          Mischief Under \$5000  
                          Public Mischief/General/Divert Suspicion
4. A criminal record search found that the Applicant has the following convictions:  
January 19, 2004    Fail to Comply with Recognizance  
                          Mischief Under \$5000  
                          Attempt to Commit an Offence  
                          Public Mischief  
                          Mischief Under \$5000  
                          Fail to Appear
5. The Applicant is currently on probation.

**Preliminary Matters:**        None

**Exhibits:**

1. Notice of Proposal
2. Notice of Appeal
3. Respondent's Book of Documents

**Opening Statements:**

Mr. Rothe, Counsel for the Registrar, stated that the proposal to refuse registration was based on the Applicant's past conduct and for two reasons specifically.

The first, which is of real concern to the Registrar, is with regard to the convictions and that they are recent in time and the Applicant is currently on probation.

The second reason, which is of lesser concern, has to do with the partial disclosure of convictions on the application for registration, as submitted by the Applicant.

The Applicant had no opening statement.

**Evidence Given on Behalf of The Registrar:****Laura Gordon**

Laura Gordon is the Director of Compliance for OMVIC and is familiar with the Applicant's application for registration. Ms Gordon stated that OMVIC is a non-profit corporation that administers a statute designed to protect the public.

Ms Gordon referred to the Applicant's application (Exhibit 3, Tab 3) and that the Applicant had ticked off the "yes" reply to question 9 of the form. The Applicant had written in "see attached" and provided OMVIC with a copy of a London Police report (Exhibit 3, Tab 4) dated May 20, 2004.

Ms. Gordon stated that OMVIC then did their own check through a CPIC search and received a report (Exhibit 3, Tab 5), showing six (6) charges for the Applicant. Of these charges, when compared with the London Police record, items #5 and #6 of the CPIC record, were not with the Applicant's information.

In response to OMVIC's inquiry for further information, the Applicant sent a brief reply saying that the criminal charges on his record were from two years earlier (Exhibit 3, Tab 6, page 2).

Ms. Gordon stated that the Applicant's reply was unsigned and was viewed by OMVIC as incomplete. It was also seen as the Applicant's minimization of the matter and that he did not express responsibility for his actions. This reflected negatively, to the Registrar, of the Applicant's integrity.

The letter on page 1 of Exhibit 3, Tab 6, was OMVIC's subsequent notice to Prime Motors advising them that the Applicant's application for registration as a salesperson had been refused.

**The Applicant's Evidence:****Andrew Dominic Colafranceschi**

The Applicant did not dispute his record. He added that the mischief charge was from his youth and he had to pay a \$300 fine as well as send a written letter of apology.

The Applicant confirmed that he was on probation and that it will end on January 18, 2005. He said he had also completed community service.

On cross-examination by Mr. Rothe, the Applicant confirmed that he had completed the application form and that the police record contained in Exhibit 3, Tab 5 was an accurate reflection of his convictions. He acknowledged his understanding that an employer and the Registrar would rely on the application information.

**Closing Arguments:**

Mr. Rothe, argued that the application form is the first test of integrity and the applicant failed this test by not providing complete information. The Applicant also failed to provide a sufficient explanation when asked for more information about his record and the circumstances surrounding the charges.

Mr. Rothe argued that while the record listed in Exhibit 3, Tab 5 does not represent serious offences, nor is it industry specific, the convictions still speak to the Applicant's conduct and integrity and raise concern about whether he will discharge his obligations as required.

Mr. Rothe cited case law as follows:

- Moodie (Re) [1998] O.C.R.A.T.D. No. 120, page 5, para 12:  
"While the subsequent failure to provide complete disclosure may also have been due to the lack of thoroughness on the part of the Applicant rather than an attempt to mislead, this too raises doubts about the Applicant's ability to carry on the business of a salesperson in accordance with the law."
- Rubin (c.o.b. Affordable Auto Sales) (Re) [2000] O.L.A.T.D. No. 377, page 4, para 16, 17:

(16) The Tribunal notes that it has only been a matter of weeks since Mr. Rubin has not been on parole... In Ripani, 18 C.R.A.T. 356, the Commercial Registration Appeal Tribunal discussed a number of cases dealing with this issue, and stated:

What all these cases indicate is that where past conduct includes criminal convictions, generally, unless exceptional circumstances exist, no registration will be permitted until some time after the sentence has been served and parole or probation have been completed; then a period of reformation has been exhibited; even then, certain terms and conditions will be imposed.

(17) The evidence submitted at the hearing shows that the Applicant is unwilling to accept responsibility for his criminal activities. His explanations for his involvement leading to various guilty pleas before various courts are not credible.

- Christopher Alman v. Registrar, MVDA, [Oct. 2004] L.A.T, page 5:  
To permit the Applicant to become a member of that industry would, in view of his recent conviction and the fact that he is still on probation, send the incorrect message to the public at large. The Applicant should be required to redeem himself before he would be considered for registration as a motor vehicle salesperson.

Mr. Rothe argued, in summary that based on the recent dates of the Applicant's record the application is premature and the Tribunal should confirm the Registrar's proposal to refuse the Applicant's registration as a salesperson.

Mr. Colafranceschi's response was to make the following points:

- he accepted responsibility for all the charges;
- he acknowledged they are recent but his probation period is over in the middle of January (2005);
- he believes he has paid his 'dues';
- he did try to fully complete the application form and also followed up with OMVIC.

#### **THE LAW:**

The *Motor Vehicle Dealers Act* (the 'Act'), states as follows;

4. A motor vehicle dealer shall not retain the services of a salesperson who is not registered under this Act.

5(1) An applicant is entitled to 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.

#### **ANALYSIS:**

The only issue to be determined is whether the Applicant's past conduct provides sufficient grounds for the belief that he will not carry on business in accordance with law and with integrity and honesty. The onus was upon the Registrar who relied upon the documentary evidence and testimony of Ms. Gordon.

The Applicant, in his testimony, confirmed the facts presented by the Registrar, as contained in Exhibit 3, Tabs 3, 4, 5 and 6. The Applicant's testimony included some explanation about the events listed in the police records and that he did not attempt to hide his record. He said that he felt he had paid his "dues".

The Tribunal wishes to recognize that the Applicant has been open and honest in his dealings with OMVIC and that he would like to have his past remain behind him.

The Tribunal, at the same time, accepts the Registrar's view, as cited from *Alman v. Registrar, MVDA*, that the Applicant's record from 2004 is too recent and some time "should be required to redeem himself before he would be considered for registration as a motor vehicle salesperson".

The Applicant's recent conduct does not, at this time, provide sufficient confidence that he will fulfill the statutory obligations incumbent upon salespersons as found in section 7 of the Act. This having been said, the Tribunal encourages the Applicant in his efforts and would encourage him, if he so desires, to seek registration at a future date.

**DECISION:**

Pursuant the authority vested in it under section 7(4) of the *Motor Vehicle Dealers Act*, the Licence Appeal Tribunal directs the Registrar to carry out his Proposal dated August 6, 2004 to refuse the registration of the Applicant as a motor vehicle salesperson under the *Motor Vehicle Dealers Act*.

## LICENCE APPEAL TRIBUNAL



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Simon Dann, Presiding Member

*Released: January 10, 2005*

Filename: 2560.mvda.colafranceschi

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.