

**Licence  
Appeal  
Tribunal**

12<sup>th</sup> Floor  
1 St. Clair Ave. W.  
Toronto ON M4V 1K6

Telephone: (416) 314-4260  
1-800-255-2214

Fax: (416) 314-4270  
(416) 314-6307  
1-800-720-5292

**Tribunal  
d'appel en  
matière de permis**

12<sup>e</sup> étage  
1 av St. Clair O  
Toronto ON M4V 1K6

Téléphone : (416) 314-4260  
1-800-255-2214

Télécopieur : (416) 314-4270  
(416) 314-6307  
1-800-720-5292



July 15, 2005

**MEMORANDUM**



***Re: Colin Johnson v. Registrar, Motor Vehicle Dealers Act***

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

**DISTRIBUTION LIST:**

Colin Johnson, Applicant  
A. Michael Rothe, Counsel for OMVIC

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COLIN JOHNSON

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

TO REFUSE REGISTRATION

TRIBUNAL: DEREK ISRAEL, Vice-Chair

APPEARANCES: COLIN JOHNSON, appearing on his own behalf

A. MICHAEL ROTHE, Counsel, appearing for the Registrar, *Motor  
Vehicle Dealers Act*

DATES OF  
HEARING:

April 7, 2005 and July 6, 2005

Toronto

### REASONS FOR DECISION AND ORDER

#### BACKGROUND:

This hearing arises out of a Notice of Proposal (the "Proposal") dated November 26, 2004, issued by the Registrar under the Motor Vehicle Dealers Act (the "Registrar" and the "Act" respectively) to refuse the registration of Colin Johnson (the "Applicant") as a motor vehicle salesperson under the provisions of the Act.

The Registrar's proposal is brought pursuant to section 7 of the Act as read with section 5.(1)(b) and section 6.(1) of the Act.

The reasons given by the Registrar in his proposal were stated 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 Applicant's past conduct is inconsistent with the intention and objective of the Act, and therefore warrants disentanglement of registration under the Act. Therefore, the Registrar is unwilling to register Colin Johnson under the Motor Vehicle Dealers Act.

(Exhibit 1)

In support of the Registrar's proposal the following particulars are stated:

- 1) Colin Johnson (hereinafter referred to as the "Applicant") was registered as a motor vehicle salesperson from or about December 29, 1997 to on or about September 22, 2003.
- 2) The Applicant submitted an individual application for registration on or about August 3, 2004.
- 3) On the individual application for registration submitted by the Applicant, question 9 asks:

"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.)

The Applicant answered, "No."

- 4) A criminal record search found that the Applicant has the following convictions:

September 3, 1986	Assault
January 21, 2003	Obstruct Peace Officer

- 5) The Applicant failed to disclose his convictions on this and previous applications for registration submitted to the Registrar.

(Exhibit 1)

## **THE EVIDENCE:**

The evidence introduced by the Registrar consisted of the testimony of Ms. Louise Gingras and Constable Mark Neill while the evidence introduced by the Applicant consisted of his testimony. In addition to the testimony of the above persons, the Registrar introduced documentary evidence.

### Testimony of Louise Gingras

Gingras testified that she is currently Manager of Inspections with the Ontario Motor Vehicle Industry Council ("OMVIC") and she explained that OMVIC has been designated to administer the Act and its regulations. She stated further what the criteria are for the registration of applicants as salespersons of motor vehicles and referred the Tribunal to sections 5, 6 and 7 of the Act.

In referring to her function as Manager of Inspections she also stated that she has the duty and obligation to oversee applications to OMVIC by persons for registration as motor vehicle dealers and salespersons under the Act. In her capacity as Manager of Inspections she became familiar with the Applicant and his application for registration as a salesperson of motor vehicles.

Gingras further testified that the Applicant was originally registered as a salesperson under the Act in December 1997 until the lapse of such registration on September 22, 2003. On August 3, 2004 the applicant submitted to OMVIC a new written application for registration as a salesperson. Question 9 of the application stated:

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 is necessary).

Note: Applicants are subject to background and criminal record searches. Submitting a false or incomplete disclosure is an offence under the MVDA and will result in disqualification. Do not assume that convictions are automatically deleted from your record. If you have any questions about the information you must disclose please call OMVIC.

In answer to this question the Applicant answered "No."

(Exhibit 3, tab 3)

Subsequent to the receipt of this application OMVIC applied to the Ontario Provincial Police for a CPIC report regarding the Applicant and in response thereto received a report dated August 23, 2004 which stated as follows.

THE CRIMINAL RECORD HELD IN THE CPIC IDENTIFICATION DATA BANKS AS OF: AUGUST 23, 2004  
NAME: JOHNSON, COLIN  
D.O.B: AUGUST 11, 1956

<u>DATE &amp; PLACE</u>	<u>CHARGE</u>	<u>DISPOSITION</u>
SEP 03 1986 LA SALLE QUE	ASSAULT SEC 245(B) CC	FINED \$100 & COSTS 1-D 8 DAYS
JAN 21 2003 KITCHENER	OBSTRUCT PEACE OFFICER SEC 129(A) CC	FINED \$300

(Exhibit 3, tab 4)

OMVIC also applied for and obtained information from the Kitchener Court regarding the Applicant's January 21, 2003 conviction when the Applicant pled guilty to and was found guilty of obstructing a police officer under section 129(A) of the *Criminal Code* and section 606(4) of the *Code*. Pursuant to such conviction the Applicant was fined \$300.00 plus \$45.00 costs. The conviction related to the Applicant resisting a peace officer in the execution of his duty.

(Exhibit 3, tab 5)

Gingras further stated in her testimony that in correspondence with the Applicant, the latter contended in a letter dated September 1, 2004, addressed to OMVIC that he had been "wrongfully charged" with the above offence and had "successfully defended" himself on such charge.

(Exhibit 3, tab 10)

Furthermore, in a letter to OMVIC dated September 7, 2004 the Applicant stated that he had successfully "fought the case in court with his lawyer and won."

(Exhibit 3, tab 11)

Finally, Gingras stated that the Applicant contended in an earlier letter to OMVIC in September 1997 that he was unaware that he had to disclose his 1986 conviction as it was for a "domestic altercation" and in regard to that conviction he had received "a pardon."

(Exhibit 3, tab 17)

### Testimony of Mark Neill

Constable Neill testified that he is with the Waterloo Regional Police and is familiar with the Applicant.

He went on to state that on April 22, 2001 at 1:45 a.m. he was on patrol in a police cruiser when he observed that the driver of a vehicle bearing dealer plates had failed to give a signal. He followed the vehicle and stopped it. The driver of the vehicle he had stopped was the Applicant who then approached Neill's cruiser. Neill asked the Applicant for his driver's licence, insurance papers and ownership papers of the vehicle he was driving.

The Applicant refused to identify himself or give Neill any documentation as requested although Neill had informed him why he had stopped the Applicant. The Applicant then proceeded to walk away from Neill and the cruiser. Neill then followed the Applicant in his police cruiser and when the Applicant entered a gas station Neill spoke with him again. Neill informed the Applicant he had the right to apprehend him if he continued to refuse to cooperate with Neill and continued to refuse to identify himself and hand Neill the requested documents.

Unsuccessful in his efforts Neill attempted to apprehend the Applicant who resisted. A tussle ensued. Neill had by then called for backup after the Applicant's initial refusal to cooperate with Neill. He had called for backup as the area where he stopped the Applicant was not lit by street lights, was deserted, and because Neill was alone in his cruiser.

When a backup officer arrived at the gas station the Applicant was restrained by both officers, placed in handcuffs and taken to the police station where he was charged with assaulting a police officer. He was also charged under the *Highway Traffic Act* for refusing to identify himself, driving when his driver's licence was under suspension and for using a motor vehicle dealer's plate when he was not authorized to use such a plate.

### Testimony of Colin Johnson (the "Applicant")

The Applicant stated in his testimony that he had no documentation to show to the Tribunal that he has been pardoned in respect of the assault conviction of September 3, 1986 in the La Salle, Quebec court. He went on to state that the application to OMVIC for registration as a salesperson dated May 20, 2004 was completed by him, signed by him and understood by him. He had no difficulty in understanding question 9 in that application (Exhibit 3, tab 3). Because he had received a pardon for the conviction of September 3, 1986 he did not think it necessary to disclose it in his May 20, 2004 application. In regard to question 10 on his July 29, 1997 application to OMVIC for a salesperson registration in which he answered "no" to whether he had convictions against him, he stated that he did not make disclosure as he had been given a pardon for his September 3, 1986 conviction for assault (Exhibit 3, tab 15). For the same reason he did not disclose his 1986 conviction in his March 2004 application to OMVIC (Exhibit 3, tab 12).

In commenting on his January 21, 2003 conviction he stated that he was originally charged with assaulting Constable Neill but at trial he pled guilty to and was convicted of resisting arrest. He further stated that the first time he disclosed that particular charge was when he sent OMVIC his letter of September 1, 2004 (Exhibit 3, tab 10).

### **FACTS FOUND PROVEN:**

The following are the facts found proven by the Tribunal:

1. The Applicant was registered under the Act as a motor vehicle salesperson from December 1997 until September 22, 2003 when his registration lapsed.
2. By written application dated May 20, 2004 and received by OMVIC on August 3, 2004 the Applicant applied in writing for registration as a salesperson under the Act. The application was completed and signed by the Applicant.
3. The answer given by the Applicant to question 9 on the above application was false.
4. The Applicant was charged with and on September 3, 1986 convicted of assault under section 245(B) of the *Criminal Code of Canada*. The Applicant was on January 21, 2003 further convicted of the offence of obstructing a police officer in the execution of the latter's lawful duties under section 129(A) of the *Criminal Code of Canada*.
5. Between February 1998 and March 2003 the Applicant was convicted under the *Highway Traffic Act* of 21 offences including using plates not authorized for the vehicle he was driving (3 convictions) and driving while his driver's licence was under suspension (2 convictions.)

## THE LAW:

The *Motor Vehicle Dealers Act* R.S.O., 1990 Chapter 42 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
  
6. (1) Subject to section 7, the Registrar may refuse to register an applicant where in the Registrars opinion the applicant is disentitled to registration under section 5.
  
- 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 reasons therefore, on the applicant or registrant

## DECISION AND REASONS:

The onus of proof rests on the Registrar to satisfy the Tribunal that he has reasonable grounds to believe that the registration of the Applicant ought to be refused based upon the past conduct of the Applicant and which conduct affords reasonable grounds for belief that the Applicant will in the future not carry on business in compliance with section 5 of the Act:

In *Brenner v. Ontario (Registrar of Motor Vehicle Dealers and Salesmen)* 1983 O.J. No. 1017 Southey J. stated:

The Tribunal should only have refused to direct the Registrar to carry out his proposal if it thought the Registrar was in error concluding that the past conduct of the Applicant afforded reasonable grounds for belief that he would not carry on business in accordance with law and with integrity and honesty.

When referring the matter back for rehearing to the Tribunal Southey J. stated:

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 the 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.

In the decision in the matter of *Registrar, Motor Vehicle Dealers Act v. Shine Car Sales and Omar Hassan Rahim* Lane J. stated in a decision of the Divisional Court that *Brenner* "remains the proper test" but it does not establish a rule that the Registrar must be shown to be wrong. The *Shine* decision went on to state that "the Tribunal

approaches the matter uninhibited in any way and owes no deference to the Registrar's decision as the Registrar is the investigator and is not the trier of fact whose opinion is based upon a hearing and so entitled to deference".

The Tribunal is also cognizant of the decision in the matter of *Registrar, Motor Vehicle Dealers Act and Taghi Vahlid Shabidi* a decision of the Divisional Court released on March 4, 2003 in which that court stated:

While this court might have arrived at a different decision than that of the Tribunal, it is not for us to put ourselves in the shoes of the Tribunal. As a reviewing Court, it is for us to determine whether the Tribunal identified the proper test and whether it applied it correctly. Clearly, the Tribunal has discretionary power under the Motor Vehicle Dealers Act. Their function is not simply to rubberstamp the Registrar's proposal. It is for the Tribunal to consider the reasonableness of the Registrar's decision and act accordingly.

Having analysed the evidence in this matter and based on the facts found proven the Tribunal's conclusions follow.

#### Convictions of the Applicant

The Applicant has two convictions under the *Criminal Code of Canada*. The one relates to a 1986 conviction for assault. The second relates to a 2003 conviction for obstructing a peace officer. In regard to the charges that lead to the latter conviction the Applicant pled guilty and was found guilty. The evidence given before the Tribunal by Constable Neill regarding the incident that lead to the second charge and conviction was not disputed by the Applicant and indicates that the Applicant has a reluctance to abide by the law. He refused a reasonable and justified request by Constable Neill to identify himself. He resisted Constable Neill and another police officer when they attempted to make a lawful arrest. The evidence surrounding the second charge and conviction paints a picture of an individual who is ungovernable and who treats the law with contempt.

The Tribunal is satisfied that the Applicant has not obtained a pardon regarding the 1986 conviction for assault. No documentary or other satisfactory proof was placed before the Tribunal to substantiate the Applicant's assertion that he has received a pardon.

In addition to the above two criminal convictions the Applicant has accumulated some twenty-one convictions under the *Highway Traffic Act* for driving related offences including driving with a suspended driver's licence.

Collectively the criminal convictions and *Highway Traffic Act* convictions cover a period of many years (1995 to 2003) and indicate a course of ongoing conduct that does not reflect the Applicant's preparedness or propensity to accept the laws of a regulated society. His recent past affords reasonable grounds for belief that the Applicant will not in the future carry on business in accordance with law and with integrity.

### The Applicant's Failure to Disclose his Convictions

The Registrar is entitled to depend upon the Applicant to make full and accurate disclosure statements in his various applications to the Registrar. Such disclosure is, as the Registrar has often stated, the initial test of the honesty and integrity of an applicant. In regulating the motor vehicle industry the Legislature clearly had in mind the protection of the public from the improper activities of both applicants and registrants.

The Tribunal finds that as far back as September 3, 1997 OMVIC was made aware of the Applicant's 1986 conviction for assault (Exhibit 3, tab 17). It is true that in subsequent applications by the Applicant for registration he failed to disclose the 1986 conviction, but the Tribunal is satisfied that the Registrar was aware after September 3, 1997 of that conviction. For the Registrar to therefore assert that the Applicant failed to disclose this conviction is not correct.

The Tribunal, however, finds that the Applicant was in fact convicted of obstructing Constable Neill on January 21, 2003. Despite this conviction – the Applicant pled guilty to the charge that led to his being found guilty, and being convicted – the Applicant failed to disclose such conviction in his May 20, 2004 application for registration. When asked by OMVIC regarding the non-disclosure of this conviction the Applicant wrote to OMVIC that "I successfully defended myself" and "won the case in court" (Exhibit 3, tab 10). This attempt to justify his failure to disclose this conviction is not a true reflection of the facts and was, in the Tribunal's opinion, an attempt by the Applicant to not fully, truly and accurately disclose the crime for which he was convicted.

Additionally, the Tribunal finds the Applicant did not disclose his twenty-one convictions under the *Highway Traffic Act*, which convictions (Exhibit 3, tab 6) were recent in time and ongoing.

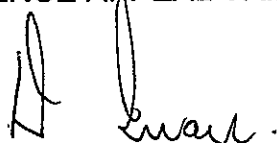
The Tribunal has the duty to determine, on the basis of the evidence placed before it, whether the Registrar was correct in concluding that the past conduct of the Applicant affords reasonable grounds for belief under section 5.(1)(b) of the Act. The Tribunal is satisfied that the Registrar was correct in his conclusions as far as the Applicant is concerned. Such convictions reflect a consistent disrespect for the law and authority and a lack of commitment to comply with the requirements of the Act and its regulations.

The Tribunal accordingly finds the Applicant's past conduct affords the Registrar reasonable grounds for belief that the Applicant will not in the future carry on business in accordance with 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 dated November 26, 2004 to refuse the registration of Colin Johnson as a motor vehicle salesperson under the Act.

LICENCE APPEAL TRIBUNAL



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Derek Israel, Vice Chair

*Released: July 15, 2005*

Filename: 2745.mvda.C\_Johnson.doc

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.