

**Licence  
Appeal  
Tribunal**

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January 24, 2006

**MEMORANDUM**

***Re: Zbigniew Mroz o/a Mroz's Auto Sales 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:**

Jason E. Bogle, Counsel for Applicant  
Aviva Harari, Counsel for OMVIC



## PARTICULARS

The Reasons for this proposal are:

1. Zbigniew Mroz o/a Mroz's Auto Sales was registered as a motor vehicle dealer. The registration lapsed on June 5, 2005. A reinstatement application was received by the Registrar's office on June 15, 2005.
2. On the application submitted to the Registrar's office on June 15, 2005, the applicant indicated that he had been convicted of an offence involving stolen property.
3. A criminal record search revealed that the applicant was convicted of possession of property obtained by crime over \$5,000.00 on November 27, 2002.
4. On an application for renewal of registration received by the Registrar's office, from the applicant, on June 17, 2003, the applicant failed to disclose the conviction.
5. Representatives of the Registrar's office have made numerous attempts to conduct a books and records inspection of the applicant, but to date, have been unable to complete the inspection.<sup>1</sup>

## GROUND FOR APPEAL:

The Notice of Appeal, Exhibit 2, simply states that the Applicant wishes to appeal the refusal to register without going into any reasons.<sup>2</sup>

## ISSUES:

1. Does the past conduct of the Applicant afford reasonable grounds for believing that the Applicant will not be financially responsible in the conduct of business and that he will not carry on business in accordance with the law and with integrity and honesty?
2. Should the Tribunal confirm, modify or set aside the Registrar's order?

## STATUTORY AUTHORITY:

The statutory authority for the actions of the Registrar and the jurisdiction of the Tribunal are set out in sections 5, 6 and 7 of the *Motor Vehicle Dealers Act*. For ease of reference they are set out below.

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<sup>1</sup> Exhibit 1

<sup>2</sup> Exhibit 2

**Registration**

5. (1) An applicant is entitled to registration or renewal of registration by the Registrar except where,
- (a) having regard to the financial position of the applicant, the applicant cannot reasonably be expected to be financially responsible in the conduct of business; or
  - (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; or
  - (c) the applicant is a corporation and,
    - (i) having regard to its financial position, it cannot reasonably be expected to be financially responsible in the conduct of its business, or
    - (ii) the past conduct of its officers or directors affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty; or
  - (d) the applicant is carrying on activities that are, or will be, if the applicant is registered, in contravention of this Act or the regulations.

**Conditions of registration**

- (2) A registration is subject to such terms and conditions to give effect to the purposes of this Act as are consented to by the applicant, imposed by the Tribunal or prescribed by the regulations.

**Refusal to register**

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.

**Suspension or revocation**

- (2) Subject to section 7, the Registrar may refuse to renew or may suspend or revoke a registration for any reason that would disentitle the registrant to registration under section 5 if the registrant were an applicant, or where the registrant is in breach of a term or condition of the registration.

**Notice of proposal to refuse or revoke**

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.

**Notice requiring hearing**

- (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.

**Powers of Registrar where no hearing**

- (3) Where an applicant or registrant does not require a hearing by the Tribunal in accordance with subsection (2), the Registrar may carry out the proposal stated in the notice under subsection (1).

**Powers of Tribunal where hearing**

- (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.

**Conditions of order**

- (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.

**Parties**

- (6) The Registrar, the applicant or registrant who has required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section.

**EXHIBITS:**

The following exhibits were entered at the hearing:

- Exhibit 1 Notice of Proposal to Refuse the Registration of the Registrar dated the 18<sup>th</sup> day of July, 2005;
- Exhibit 2 Notice of Appeal of the Applicant dated July 08, 2005 and received by the Tribunal on August 08, 2005;
- Exhibit 3 Respondent's Book of Documents
- Exhibit 4 Applicant's Book of Documents
- Exhibit 5 Certified Copy of the Charge Sheet dated April 7, 2004

**FACTS:**

The Tribunal heard evidence from three witnesses in the following order, Tim Hines, formerly an inspector for the Ontario Motor Vehicle Industry Council ("OMVIC), Carey

Smith, OMVIC's Head of Investigation and Acting Head of Compliance, and the Applicant, Zbigniew Mroz. Because Mr. Smith provided historical background, the Tribunal will review his evidence first.

Mr. Smith has been the Head of Investigation at OMVIC for three years. He is also currently the Acting Head of Compliance. Prior to his involvement with OMVIC, Mr. Smith was with the Halton Police where he held the rank of Detective Sergeant. Shortly before he left the Halton Police force he had been the head of a task force that had conducted an extensive investigation into motor vehicle dealer fraud.

Mr. Smith's testimony covered OMVIC's mission. He stated that OMVIC has a mandate to oversee the registration of motor vehicle dealers, to conduct inspections of dealers and to investigate dealers as necessary. Its final role is to provide a complaint mediation service. Mr. Smith then reviewed the Applicant's registration history.

According to the evidence of Mr. Smith, dealer record keeping is of crucial importance to the regulation of motor vehicle sales. The dealer must keep detailed records of the repair and damage history and mileage so consumers can be given full disclosure of a vehicle's history when they purchase a used vehicle. Given that the Applicant trades in salvaged vehicles it is crucial that he keep detailed records and pass that information on to subsequent dealers with whom he conducts most of his trade. Without proper records the whole system becomes exposed to criminal activity, an area where Mr. Smith is eminently qualified as a result of his role as the head of the task force with the Halton Police.

The Applicant was first registered in 1996. There is no record of any inspection of the Applicant prior to August 28, 2000. At that time an OMVIC Inspector, Jean Cameron, attended at the Applicant's premises and asked to see his books and records. Ms Cameron's notes, dated September 5, 2000 state:

Attended the registered premises at 20-24 St. Paul St. Brantford on August 28/00. I met with the Dealer Principle. He advised that his books and records were not at the registered premises. He said that he has not done any business for the last month or so. His brother Tom who is also registered was killed in a drowning accident. He hasn't been able to do anything since then. He asked if I could cancel Tom's registration for him. We discussed the fact that books and records are to be kept at the registered premises for a period of two years. We agreed that I will return in a couple of weeks to review books and records.<sup>3</sup>

It appears from the record that Ms Cameron did not return "in a couple of weeks." She re-attended approximately six weeks later, on October 4, 2000, but the Applicant was not at the premises.<sup>4</sup> She attended the Applicant's premises again on December 13, 2000 and this time she met with the Applicant. Again the Applicant did not have his books and records available for immediate inspection. Ms Cameron left an "inspection

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<sup>3</sup> Exhibit 3 Tab 12

<sup>4</sup> Exhibit 3 Tab 10

findings" regarding the books and records of the Applicant and left.<sup>5</sup> It was the evidence of Mr. Smith that the August visit resulted in a friendly warning that books and records should be kept on the licensed premises and that the December visit resulted in a deficiency being noted against the Applicant for failure to produce books and records on demand.

The record indicates that, notwithstanding the fact that there had been no successful inspection of the Applicant's books and records since 1996 and that a "deficiency" had been recorded in December 2000, OMVIC took no further steps to inspect the Applicant's books and records until a visit by inspector David Lee almost two years later on November 6, 2002. Mr. Lee's comments were as follows:

I attended at 20-24 St Paul Ave in Brantford to inspect Mroz's Auto Sales on November 06, 2002. Lot office and sign are in compliance. There was no one present at the time of my inspection. There were several vehicles in the yard without plates. I left an inspection notice and business card in the mailbox for the dealer. I recommend a books and records inspection as the dealer hasn't been thoroughly inspected to date and sells write offs.<sup>6</sup>

Notwithstanding the clear recommendation in Mr. Lee's notes, no further steps were taken to conduct an inspection until the visit of Mr. Hines in 2004, again a lapse of almost two years.

The Tribunal was directed to the criminal conviction of the Applicant and his failure to disclose it in his 2003 renewal. The Applicant was charged on September 5, 2001 with four counts of being in possession of property over \$5,000 obtained by the commission of an indictable offence and two counts of possession under \$5,000. He pleaded guilty to one count on November 27, 2002 and the remaining five counts were withdrawn.<sup>7</sup> In June 2003 his registration came up for renewal and he submitted a renewal form to OMVIC, which is dated June 6, 2003 and was received on June 9, 2003. In this form the Applicant had not answered the six questions set out in Section A of the Application so it was sent back to him to be completed. The completed form was received on June 17. In answer to the question 1 (a) in Section A, which asked if the Applicant had any pending charges, findings of guilt or convictions, the Applicant answered "No."<sup>8</sup> This statement was untrue, as he had been convicted in November of the previous year of an indictable offence. It was the position of Mr. Smith that the Applicant had "failed the first test of honesty and integrity."

Mr. Smith reviewed the June 2005 application.<sup>9</sup> In answer to question 1 (a) in that form the Applicant had answered, "Yes." It appears that OMVIC requested the Applicant to provide more information as on June 15 the Applicant wrote to OMVIC in exculpatory terms setting out the circumstances surrounding his conviction. His letter states:

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<sup>5</sup> Exhibit 3 Tab 11

<sup>6</sup> Exhibit 3 Tab 9

<sup>7</sup> Exhibit 3 Tab 4

<sup>8</sup> Exhibit 3 Tab 5

<sup>9</sup> Exhibit 3 Tab 3

I have operated a construction business in the past for which I have purchased several pieces of heavy construction equipment. Due to my inexperience with purchasing heavy equipment later on I have found out that one of the items that I have purchased from a private individual has been stolen. Due to the fact that police couldn't locate the seller I have purchased this item from I have been fined \$3,000. If you require any additional information please feel free to contact me at (519) 774-1779.

On receipt of the disclosure provided by the Applicant in June 2005, the application was reviewed and a decision was made by OMVIC not to allow the Applicant to register. In making this decision, the Registrar relied solely on the documentary evidence supplied by the Applicant. No independent interview or hearing was conducted prior to issuing the Notice of Proposal.

On cross-examination Mr. Smith admitted that he had no knowledge concerning notice with respect to the visits of Jean Cameron and David Lee. The Tribunal notes that there are certainly no letters in the Respondent's Book of Documents that would indicate that the Applicant did receive notice of any visit prior to 2004. He also admitted that there were no complaints filed against the Applicant since he started in business in 1996. He was of the view that this was because the public is generally unaware of their right to complain to OMVIC and that complaints are rare, but given the fact that the Applicant sells mainly to other dealers the Tribunal finds it hard to accept that industry insiders would not know of the full range of OMVIC's services. Mr. Smith acknowledged that if full disclosure is made there is no basis for complaints.

The Tribunal also heard from Tim Hines with respect to his visit to the Applicant's premises on September 14, 2004. Mr. Hines has been with OMVIC for 4 years. In September 2004 he was employed as an inspector. He attended the Applicant's premises together with Ralph Bayley. It had been decided to spend some time in the Brantford area conducting inspections and accordingly Mr. Hines had sent or caused to have been sent a letter to the Applicant advising him that Mr. Hines would visit him in and around September 14. When Mr. Hines attended the Applicant was not at his place of business. He was apparently in Mississauga on business. Mr. Hines called the Applicant on his cell phone and talked with him. The Applicant advised him that he had his records with him. Mr. Hines advised him that he had to keep them at his place of business.

On cross-examination Mr. Hines remembered that the letter may have set out two dates. He further recalled that the dates may have been September 13 to 17. He recalled that when he talked to the Applicant he advised him that there would be another opportunity to inspect the books. He gave the Applicant his direct line but does not recall receiving a call. The record discloses that there were no further attempts to inspect the Applicant's books and records.

The Applicant gave evidence on his own behalf. He testified that he had come to Canada approximately 15 years ago from his native Poland. He has been in a stable relationship for 14 years and has children. He has operated his used car dealership

since 1996 and made in the region of \$32,000 in his last year. He stated that early in 2000 his brother died in a drowning accident. He had been very close to his brother. His brother had worked in the business and was going to become a full partner. After the shock of his brother's death he had conducted no business for a number of months. It was during this time that Ms Cameron had shown up on August 28, 2000. He stated that he and Ms Cameron had a friendly chat during which she mentioned that he had to keep the books and records at his place of business. He stated that he keeps his records in the trunk of his car because the car lot is in a bad neighbourhood and he does not want his records stolen.

In cross-examination the Applicant stated that during a second visit from Ms Cameron, he does not recall which month, he had advised Ms Cameron that his records were at another office and he could produce them if she would wait for a short period of time. She refused to wait. The Applicant acknowledged, however, that he had not advised the Registrar that his records were at another location.

With respect to the criminal conviction for the possession of stolen property, the Applicant testified that in 2000 he had purchased a lot and intended to build a house on it. He was offered a back hoe by Angel Excavating and he purchased it. He produced an invoice for \$57,500 from Angel Excavating indicating a total paid of \$36,500 which he said was part cash and part cheque. He produced no cancelled cheque to support his position but went on to state that it had never been cashed. He stated that he then decided to try and do a little excavating business. One day the police appeared and informed him the back hoe was stolen. He says he was subsequently charged.

Of his court appearance, the accused testified that his lawyer informed him that the prosecution had agreed to a deal whereby the Applicant would pay \$3,000 to charity and the matter would "go away." While he acknowledged attending court on November 27, 2002 and pleading guilty, he stated that he thought no conviction had been entered. He stated that the first time that he understood that a conviction had been entered against him was when he was crossing into the United States and was denied entry because of his criminal record. His business took him to the United States frequently to purchase salvaged vehicles. His recollection was that some time in early 2004 he was denied entry. His evidence was that he returned to Brantford and immediately ordered his court record from the Brantford courthouse. He produced as Exhibit 5 a certified copy of the court record dated April 7, 2004. On cross-examination Counsel for the Registrar asked the Applicant how he had paid the \$3,000 to charity. He admitted that he had attended the Brantford courthouse and paid it to the clerk there and not to any designated charity.

With respect to the September 14, 2004 visit of Mr. Hines, the Applicant stated that he had received a letter from OMVIC stating that inspectors would be in the Brantford area between September 13 and 17. Neither party produced the letter but in light of Mr. Hines acknowledgement in cross-examination that such a letter was sent and may well have had the dates as recalled by the Applicant, the Tribunal accepts the Applicant's evidence in this regard. The Applicant further stated that he waited at his office with his

records all day on September 13. On September 14 he had to attend to some urgent business in Mississauga. He left the premises in the care of his brother but, since his brother was not a registrant and the Applicant believed he could not leave his records with an unregistered person, he took them with him in the trunk of his car. After he had talked with Mr. Hines on his cell phone on the 14<sup>th</sup>, the Applicant fully expected Mr. Hines to re-attend and had his records available for inspection. As already stated there was no further contact with the Applicant.

#### **REVIEW OF EVIDENCE:**

It was urged on the Tribunal by Counsel for the Registrar that, taken in its entirety, the past conduct of the Applicant establishes that he is unlikely to carry on business in a financially responsible manner, with honesty, integrity and in accordance with the law. It was her submission that an ongoing failure to produce books and records on demand coupled with a criminal conviction and a subsequent failure to disclose that conviction on his June 2003 application for renewal, indicates ungovernability. Counsel for the Registrar asserts that there is an implied statutory requirement for records to be kept in the business premises since any other interpretation denies inspectors the ability to see records on demand. Her reasoning was that, since section 10 of the *Motor Vehicle Dealers Act* ("MVDA") permits inspectors to see records on demand, and since inspectors only have a right of entry into a registrant's registered business premises, it follows that business records must be kept, during business hours, at the registered premises. She did concede that, outside business hours, records may be taken to some other location to be updated. She suggested a possible location might be the kitchen table.

Counsel for the Applicant submitted that the Registrar had failed to establish the Applicant's ungovernability on a balance of probabilities. He submitted that to immediately proceed to a denial of licencing without taking some interim measure such as suspension or imposition of conditions was unacceptable. He submitted that the Applicant had a 9 year record in the industry with no complaints registered against him, which indicated that he does in fact and would in the future carry on business in a financially responsible manner, with honesty, integrity and in accordance with the law.

It is clear from the wording of section 5 of the MVDA that the Registrar bears the onus of establishing that the Applicant should not be registered. The section starts with an entitlement to registration and then sets out grounds where such entitlement may be negated. By virtue of section 6 the Registrar may deny registration only where satisfied that one or more of the conditions for denial in section 5 are present. The Registrar's decision may then be appealed to this Tribunal. It remains for the Tribunal to determine if the Registrar has satisfied the onus of establishing that the Applicant runs afoul of the provisions of section 5 of the Act. Counsel for the Applicant conceded in his submissions that the onus on the Registrar is to the civil standard of balance of probabilities as opposed to the criminal standard of beyond a reasonable doubt.

At the outset of this analysis, the Tribunal must point out that no evidence whatsoever was advanced concerning the ability of the Applicant to carry on business in a financially responsible manner. The whole focus of the Registrar's case addressed the issue of the Applicant's honesty, integrity and ability to carry on business in accordance with the law. Accordingly the Tribunal will not address the test in section 5 (1) (a) of the MVDA.

The Tribunal found all of the witnesses to be credible and to have given evidence within their knowledge in a sincere and forthright manner. There was no conflicting evidence. With respect to the Applicant, the Tribunal determined that he was obviously intelligent. While he appeared to have some minor difficulty with the English language his overall command of English was good and he understood all questions put to him fully once they were suitably rephrased. Overall the Tribunal found him to be honest and believable.

The Tribunal accepts the submission of Counsel for the Registrar that in determining if the likely future conduct of the Applicant, it is necessary to examine his past conduct. This approach mirrors the wording of section 5 (1) (b) of MVDA. To do so, however, it is also necessary to examine each of the alleged grounds individually. The statutory use of "past conduct", however, is not limited solely to past wrong conduct and the Tribunal may consider conduct that mitigates the impact of any wrong conduct. Once the totality of the past conduct is examined the Tribunal must then apply the test as set out in *Brenner v. Ontario (Registrar of Motor Vehicles Dealers and Salesmen* [1983] O. J. No. 1017. At paragraph 9 of the decision, Mr. Justice Southey encapsulates the test as follows:

The effect of s. 7 (4) is that the Tribunal should only have refused to direct the Registrar to carry out his proposal if it thought the Registrar was in error in 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.

The first ground in support of the Registrar's position is the continual failure to produce books and records for inspection. A close look at the evidence for this ground indicates that the circumstances are much less dire than the Registrar would suggest.

The evidence discloses and the Tribunal accepts that the Applicant failed to produce his records as required on only one occasion, that is, the first attendance of Ms Cameron on August 28, 2000. Of three visits by Ms Cameron, one by Mr. Lee and one by Mr. Hines, the Applicant was not at his premises on three of those occasions. He cannot be expected to produce records if he is not present during a surprise visit. During the December 2000 visit of Ms Cameron the Applicant's evidence was that he offered to produce the records if Ms Cameron would give him a few minutes to go to his other office. She refused. While Counsel for the Registrar urged on the Tribunal the position that she believed Ms Cameron would have given the Applicant some time to produce his records, this urging is not evidence and the Tribunal accepts the Applicant's uncontradicted evidence in this regard. The Tribunal also finds that, by virtue of his offer to produce the records after a short wait, the Applicant was not in breach of his

duty to produce in section 10 of the MVDA on that occasion. Thus, the Tribunal finds that the Applicant failed to produce his records to Ms Cameron only on her visit of August 28, 2000. Ms Cameron's response to that appearance was to give him a friendly reminder to have his records available. It is not appropriate for the Tribunal, some five years after the event, to elevate her friendly warning into something punitive.

It remains to examine the visit of Mr. Hines on September 14. Again the Tribunal finds it difficult to agree with the Registrar's view of the matter. Had Mr. Hines' letter stated that he would visit the Applicant on September 14 between certain hours, then the matter may have been viewed differently. However, the evidence regarding the letter was that several weeks before his attendance a letter was sent to the Applicant stating that sometime during a four day period Mr. Hines would visit. The Applicant can hardly be expected to put his business dealings on hold for four days, and Mr. Hines must have contemplated the possibility that the Applicant would be elsewhere when he decided to attend. The Applicant waited all day on the 13<sup>th</sup> and expected Mr. Hines to arrange a new appointment as a result of their telephone discussion on the 14<sup>th</sup>. His actions to protect his records were not unreasonable. In hindsight he may wish to make other arrangements that are more in keeping with OMVIC's expectations but the Tribunal does not find that his actions on September 14<sup>th</sup> indicate a disregard for his statutory obligations. Taken individually, the various dealings with inspectors over the last five years would not, in the Tribunal's opinion, support such an extreme measure as refusal to licence.

The Applicant appears to be having some difficulty dealing with his criminal conviction in November 2002. The Tribunal had the opportunity to observe him closely during his testimony. In both his letter to OMVIC<sup>10</sup> and his testimony before the Tribunal, the Applicant's language and stance was that he was the victim and not really guilty. It was clear from the Applicant's demeanour during this part of his testimony that he had no wish to be involved in the criminal law process again. Counsel for the Registrar objected to much of the evidence on the basis that the guilty plea and conviction are not to be retried before the Tribunal. The Tribunal allowed the evidence, as it was relevant to the Applicant's state of mind when he filled out the June 2003 application for renewal. It is also open to the Tribunal to take a fresh look at the circumstances giving rise to the criminal charges in the context of mitigation<sup>11</sup>. The matter for the Tribunal to consider is not whether the Applicant was somehow a poor dupe who was wrongfully convicted, but whether, in light of his conviction, it is reasonable to assume that he will not conduct himself with honesty and integrity in the future and in accordance with the law. In that consideration conviction on a crime of moral turpitude, an indictable offence no less, weighs heavily against him. The Tribunal accepts on its face the conviction, that the Applicant knowingly or with wilful blindness received stolen property in excess of \$5,000, being a back hoe valued at approximately \$50,000.

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<sup>10</sup> Exhibit 3 Tab 3

<sup>11</sup> See the decision of Justice A. Campbell in *Registrar, Motor Vehicles Act v. Jacobs* (2004) 69 O. R. (3d) 462

The last issue is the June 2003 renewal wherein the Applicant failed to disclose his November 2002 conviction, the first test of integrity and honesty as stated earlier. In the normal course it would strain credibility to believe that the Applicant was unaware that he had pleaded guilty to a criminal offence just seven months earlier and had a conviction entered against him. Appearances in court are solemn occasions dealing as they do with the rights of citizens versus the state. From the robed judge on the bench to counsel at bar, it is an experience which leaves a lasting impression. On cross-examination the Applicant admitted to Counsel for the Registrar that he had stood in the dock, had had the charges read to him, had entered his plea and had agreed the facts. He was then directed to pay \$3,000. It is unlikely that in sentencing the Applicant the judge did not make some comments from the bench although there is no evidence of that. In light of these facts it is necessary to look at the Applicant's evidence very critically.

The Applicant stated that his Counsel had told him that everything was agreed and all he had to do was to appear in court and make a \$3,000 payment to charity. In light of the solemnity of the occasion as set out above, it is not unreasonable to assume that the Applicant must have understood the nature of the proceeding. Yet the evidence also discloses the Applicant's surprise that he was stopped when he attempted to cross into the United States in April 2004. In support of this there is Exhibit 5, the certified court record dated April 7, 2004. This evidence strongly supports the Applicant's belief that a conviction had not been entered against him.

Support is given to this position by the subsequent behaviour of the Applicant. It is frequently the case where a criminal record has not been disclosed, that an Applicant only makes a clean breast of the failure after the Registrar has conducted a criminal record check and written for details. Once caught red-handed in a lie, Applicants then attempt to offset their lie by cooperation with the Registrar. In the current case, however, it was the Applicant who volunteered his criminal record in 2005 without prompting. The 2005 application was the first renewal after the Applicant received the certified court record in 2004. Accordingly the Tribunal accepts the Applicant's evidence that when he completed the June 2003 renewal he did so in good faith in the mistaken belief that no conviction had been entered against him.

On a review of the totality of the Applicant's past conduct, the Tribunal concludes that two of the allegations of improper conduct do not bear close scrutiny, the allegation of repeated failure to produce books and records, and the allegation concerning falsifying the June 2003 application for renewal. There remains the criminal conviction.

#### **FINDINGS OF FACT:**

1. The Applicant has been registered as a dealer under the MVDA and in business since 1996 without complaints being registered against him.

2. On August 28, 2000 OMVIC inspector Jean Cameron attended at the Applicant's premises without notice to inspect his business records. The Applicant was unable to produce his business records. Ms Cameron gave the Applicant a friendly warning that the records should be kept on the premises. Ms Cameron advised the Applicant she would return in a couple of weeks but did not do so.
3. On October 4, 2000 Jean Cameron attended at the Applicant's business premises on a second occasion, again without notice. The Applicant was not in.
4. On December 13, 2000 Jean Cameron attended once more at the Applicant's premises and met with the Applicant. The Applicant offered to fetch his business records but Ms Cameron refused to wait and issued the Applicant with a deficiency notice.
5. The Applicant's offer on December 13, 2000 to produce his records was sufficient to satisfy his obligations under section 10 of the MVDA.
6. On June 21, 2001 the Applicant was charged with six counts of possession of property obtained by the commission of a crime.
7. On November 6, 2002 OMVIC inspector David Lee attended at the Applicant's premises to conduct an inspection of books and records. No one was at the premises. Mr. Lee departed and recommended that an inspection be done. There was no follow up to Mr. Lee's recommendation.
8. On November 27, 2002 the Applicant pleaded guilty to and was convicted of one count of possession of property obtained by the commission of a crime.
9. On or about June 16, 2003 the Applicant failed to answer question 1 (a) on his Application for Renewal correctly.
10. At the time the Applicant wrongly answered question 1 (a) on his Application for Renewal he mistakenly believed a conviction had not been entered against him.
11. In and around April 7, 2004 the Applicant was refused entry into the United States as a result of his criminal conviction. He immediately attended at the Brantford courthouse and determined that a conviction had, in fact, been registered against him in November 2002.
12. Several weeks before September 14, 2004, OMVIC sent the Applicant a letter advising him that inspectors would be in the Brantford area from September 13 to 17 and would come to inspect his books and records.
13. The Applicant stayed at his place of business with his books and records all day on September 13, 2004 waiting for an inspection.

14. On September 14, 2004 the Applicant had urgent business out of town and took his books and records with him for safekeeping. OMVIC inspector Tim Hines attended at the Applicant's place of business while he was out. The Applicant and Mr. Hines talked on the cell phone and the Applicant was left with the impression that Mr. Hines would make another appointment to meet with him. No new appointment was ever made.
15. On his June 2005 Application the Applicant answered question 1 (a) correctly and volunteered details of his criminal conviction when asked.
16. On July 18, 2005 OMVIC served a Notice of Proposal to Refuse Registration after a review of the Applicant's file and his written explanation concerning his conviction.

### **ANALYSIS:**

As stated above the test to be applied is set out in *Brenner*. On the above review of the evidence it remains to determine whether the November 2002 criminal conviction represents past conduct that affords reasonable grounds for a belief that the Applicant will not carry on business with honesty and integrity and in accordance with law.

It is clear from the caselaw that a single criminal conviction in an otherwise spotless record may be sufficient to support a finding that the Applicant will not carry on business as required by the MVDA. In the 1974 Divisional Court decision, *Ontario (Registrar of Motor Vehicle Dealers and Salesmen) v. Clermont*, [1974] O. J. No. 1028, Madam Justice Van Camp stated at paragraph 7:

The past conduct referred to in sec. 5 (1) of the Act may in certain circumstances consist of one isolated mistake, if it is of such a nature and in circumstances that there are reasonable grounds for the belief that the person applying to be registered would not carry on business in accordance with law and with integrity and honesty.

In that case, the Respondent, Clermont, while acting as a real estate agent had diverted deposit funds to his own account. His first attempt to pay the funds back resulted in an NSF cheque. He was fired and let his real estate licence lapse. Several months later he applied for registration as a motor vehicle salesman and disclosed the above facts. The Registrar proposed to deny him registration and he appealed to the Tribunal. The Tribunal found for Clermont and the Registrar appealed to Divisional Court. Notwithstanding the above quote, the appeal was dismissed and the decision of the Tribunal was confirmed. What can be distilled from the *Clermont* decision is that the fact of previous misconduct, even as grievous as diverting trust funds, does not automatically result in reasonable grounds to refuse licencing. The Tribunal must consider all of the circumstances.

In the circumstances of this case the Tribunal is satisfied that the Registrar was in error in concluding that there were reasonable grounds for believing that the Applicant will not

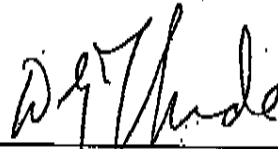
carry on business with honesty and integrity and in accordance with the law. The criminal conviction of the Applicant is a very serious matter and is a crime of moral turpitude. It relates, however, to events that occurred in 2001. In the 4½ years since and in the 10 years before the charge, the Applicant did not have any problems with the law. There is also no evidence that he conducted his business from 1996 onwards in a manner that lacked honesty or integrity or was not in accordance with the law. His full disclosure on the June 2005 application is indicative that he has passed the "first test of integrity and honesty." He disclosed his conviction as soon as required after it was known to him and he came to fully understand the impact of his court appearance on November 27, 2002.

Accordingly the Tribunal is of the opinion that the Applicant is entitled to registration as a motor vehicle dealer.

### DECISION:

By virtue of the authority in it pursuant to the provisions of section 7 (4) of the *Motor Vehicle Dealers Act*, the Tribunal directs the Registrar to refrain from carrying out the proposal dated July 18, 2005 to refuse the Applicant's registration.

LICENCE APPEAL TRIBUNAL



D. Gregory Flude, Vice-Chair

*Released: January 24, 2006*

Name: 3104.mvda.Mroz.doc

The hearing was recorded. Transcripts can be made available at your expense. The period to appeal a decision to the 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, will also be posted on the Licence Appeal Tribunal's website <http://www.lat.gov.on.ca/> in approximately two weeks time. The decision will also be available on Quicklaw at a later date.