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Appeal
Tribunal**

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June 1, 2006

MEMORANDUM***Re: Allright Automotive Repair Inc. and Bruce Anderson v. Registrar, Motor
Vehicle Dealers Act***

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

DISTRIBUTION LIST:

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A. Michael Rothe, Counsel for OMVIC

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ALLRIGHT AUTOMOTIVE REPAIR INC. AND
BRUCE ANDERSON

MOTION TO CONSIDER A STAY OF AN ORDER OF THE
LICENCE APPEAL TRIBUNAL

TRIBUNAL: DEREK ISRAEL, Vice Chair

APPEARANCES: GREG FARNAND, Counsel for the Applicants

A. MICHAEL ROTHE, Counsel, Ontario Motor Vehicle
Industry Council

DATE OF HEARING: May 26, 2006 *by teleconference*

REASONS FOR RULING

BACKGROUND:

The Applicants, Allright Automotive Repair Inc. and Bruce Anderson bring a motion to this Tribunal in which they seek an order granting the stay of the Tribunal's decision released on April 27, 2006 until such time as the Applicants' appeals are heard and a decision rendered. The Tribunal's decision, which the Applicants appeal, directs the Registrar under the *Motor Vehicle Dealers Act* (the "Act") to carry out his Proposal dated September 15, 2005 to revoke the Applicants' registrations as dealer and salesperson respectively under the Act.

FACTS:

The Applicants have filed Notice of Appeal with the Superior Court of Justice, Divisional Court.

A. Affidavit Evidence and Findings of the Tribunal

In support of the Applicants' Motion to Stay dated April 28, 2006 are two affidavits deposed to by Bruce Anderson on May 2, 2006. Bruce Anderson deposed the

affidavits in his personal capacity and in his capacity as President of the Corporate Applicant. In those affidavits, which are identical in content, Bruce Anderson deposes as follows:

1. I am both the personal Appellant in this matter, and the President and controlling mind of the corporate Appellant Allright Automotive Repair Inc.

2. The Notice of Appeal was filed in this matter on Monday May 1, 2006 at the Divisional Court, at Ottawa; pursuant to my instructions. The thirteen (13) separate grounds for appeal as contained in the Notice of Appeal are in my opinion valid and accurate; and I verily believe that under all the circumstances that the Decision of the Vice-Chair is unfair and unjust.

3. Both my spouse Patrice Anderson and myself were present for all three (3) days of the testimony and submissions at the Licence Appeal Tribunal Hearing in this matter as held on January 24, 25, and 26, 2006. My spouse and I have carefully read the Reasons for Decision and Order of Daniel Laurin, Vice-Chair in this matter as released on April 27, 2006. We verily believe that the Vice-Chair has misconstrued and misapprehended parts of the evidence, and the eventual receipt of the transcripts of all the evidence from the Hearing will clearly demonstrate his misapprehension.

4. I understand that the Decision and Reasons of the Licence Appeal Tribunal is not stayed notwithstanding the filing of an appeal to the Divisional Court (and Mary Jane South, the Deputy Registrar at the Ontario Motor Vehicle Industry Council ["OMVIC"], confirmed this to me in a telephone call on the day that the Decision was released). It is therefore necessary to have this motion heard by the Licence Appeal Tribunal. The release of the Decision on April 27, 2006 therefore prevents my car dealership and myself from immediately being able to sell any motor vehicles to the public. Any transfer of ownership to the public of any of the motor vehicles within the control of my car dealership can now only be made to other car dealers, (not to the public) and must be individually approved by OMVIC.

5. I verily believe that the Appellants meet each of the three (3) criteria established by the Supreme Court of Canada in the case of *R.J.R. MacDonald v. Canada (Attorney General)* [1994] 1 SCR 311 as follows:

- (a) There must be a serious issue to be determined;
- (b) It must be determined whether the Applicant would suffer irreparable harm if the application were refused; and
- (c) An assessment must be made as to which of the parties would suffer greater harm from the granting of the remedy pending a decision on the merits.

6. My company and I have been registered as a motor dealer and salesperson respectively with OMVIC for many years, with no prior disciplinary history, and throughout my working life I have always been associated with the automobile business. To comply with the Tribunal's Order I would have to immediately stop selling to the public and I would either have to liquidate my inventory or leave same untouched for the time that it would take for my appeal to be heard by the Divisional Court (estimated by my lawyer at six to nine months). My income would therefore drop considerably and I would not be able to service the ongoing debt on the dealership. The implementation of the Tribunal Order would also cause me to layoff or terminate all of my staff involved in the car dealership, and

would significantly affect my business reputation and would cause me irreparable hardship.

7. I acknowledge that I exercised poor judgment by permitting an unregistered salesperson to work for my car dealership and I have since that time imposed various controls to ensure that there will not be any repeat occurrence of that unfortunate matter. I do not anticipate that the Registrar would compensate me for my costs and/or loss of income and/or damage to business reputation if the Tribunal's Order is overturned by higher court.

8. There have not been any findings against me of dishonesty or a lack of integrity, or other (sic). All of the issues dealt with by the Tribunal were caused by the actions of the rogue employee and my ensuing negligent supervision of a person whom I had trusted implicitly.

9. a) I verily believe that the stay should therefore be granted because I meet each of the three (3) requirements for the granting of the stay. The revocation of my dealership licence is a very serious issue. I am certain that if this motion is granted, that OMVIC will be monitoring the activities of my dealership very, very closely pending the hearing of the appeal, which monitoring I am very willing to endure. Far greater harm will be caused to me than to OMVIC if the stay is not granted, than would be caused to OMVIC if the stay is granted.
- b) I further verily believe that my appeal to the Division Court is neither frivolous nor vexatious, and that I have raised a serious issue of law. My statutory violation of permitting the employment of an unregistered salesperson is, in my opinion, an isolated matter that is not determinative in predicting my future business conduct, and this misconduct does not equate to dishonesty or to a lack of integrity.
- c) I verily submit that the balance of convenience [between balancing the public interest against my conduct and the Reasons for Decision of Vice-Chair Laurin] rests in the making of the stay order as requested by me.

Prior to the hearing of this motion the Registrar filed a responding affidavit deposed to by Mary Jane South on May 10, 2006. That affidavit stated as follows:

1. I am employed by the Ontario Motor Vehicle Industry Council (hereinafter referred to as "OMVIC"), as the Deputy Registrar, *Motor Vehicle Dealers Act*. I have held this position since January 1997 and as such, I have knowledge of the matters hereinafter deposed.

2. By Proposal dated September 15, 2005 the Registrar sought to revoke the registration of Allright Automotive Repair Inc.; (the "Dealer") and Bruce Anderson ("Anderson") as a motor vehicle dealer and salesperson.

3. Following a three day hearing before the Licence Appeal Tribunal (the "Tribunal"), on January 24,25 and 26, 2005 at Which the Dealer and Anderson were represented by counsel, the Tribunal directed the Registrar to carry out the Proposal to revoke their registration of the (sic) as a motor vehicle dealer and salesperson. Annexed hereto and attached as Exhibit "A" is a true copy of the Tribunal's decision dated April 27 2006.

4. I was personally present on January 24 and 25, 2006 for hearing of this matter before the Licence Appeal Tribunal and; do verily believe that Anderson in addition to his motor vehicle dealership also operates a motor vehicle repair facility which is the primary source of his business.

5. Anderson further testified during the Licence Appeal Tribunal hearing in this matter that prior to the registration of the Dealer on or about April 7, 1998 he solely operated a motor vehicle repair facility and rented out a portion of his premises to other third-party motor vehicle dealers.

6. The Dealer had only a maximum of two other registered motor vehicle sales people in addition to Anderson prior to its revocation on April 27, 2006.

7. Now shown to me is a true copy of Anderson's affidavit sworn May 2, 2006 which does not include any financial detail what so ever and does not sufficiently demonstrate that he would suffer irreparable harm should the stay motion be refused.

8. Anderson while the operating mind of the Dealer knowingly allowed an unregistered salesperson, Peter Rockwell (the "Unregistered Salesperson"), to buy and sell motor vehicles on behalf of the Dealer.

9. Anderson while the operating mind of the Dealer ignored written warnings regarding the alleged previous criminal fraud activities of the Unregistered Salesperson.

10. Anderson while the operating mind of the Dealer failed to put in place even minimal controls or implement even minimal supervision to ensure the Dealer and its salespeople conducted business with honesty, integrity and the law.

11. As a consequence, numerous motor vehicles were sold to the public without ensuring that proper and complete disclosure was made to the purchaser.

12. Given the Applicant's past conduct. I verily believe that the Applicant will not comply with any terms and conditions imposed by the Tribunal if the stay motion is granted.

13. When the public interest is balanced against the private interests of the Applicant, those of the public are paramount.

Applicant Bruce Anderson, subsequent to filing the above affidavit, filed a Supplementary Affidavit. This Supplementary Affidavit stated as follows:

1. I make this Supplementary Affidavit in response to the Affidavit of Mary Jane South of the Ontario Motor Vehicle Industry Council ("OMVIC") as sworn May 10, 2006.

2. Paragraphs 4 and 5 of her Affidavit are misguided.; The separate motor vehicle repair business that I operate on the same site, obtains a significant amount of its customers from the motor vehicle dealership. Most of the purchasers of the vehicles that we have sold, have become long-term and faithful customers of the repair shop; and the repair shop handles most of the warranty work required by the purchasers of the vehicles as well.

3. Paragraph 6 of her Affidavit is inaccurate as well, as there were three (3) other registered motor vehicle sales persons in addition to myself, prior to revocation. I currently have nine (9) employees and/or summer students at my repair shop, and some of those employees will have to be laid off within the next month if I am not able to generate business for the repair shop by having the sales office re-open pending the hearing of this Appeal on its merits.

4. Paragraph 7 of her Affidavit is also puzzling. My car dealership will be unable to sell any motor vehicles to the public for at least a month (from the release of the Decision on April 27, 2006 to the date of the Motion). If my dealership is subsequently unable to sell any motor vehicles to the public for another nine (9) months approximately, pending the hearing of this Appeal, then the car dealership will not be able to remain solvent because of the ongoing debt that would accrue unchecked on the dealership. If there is no income to be earned within the next nine (9) months, then no further financial details are even relevant. If the stay Motion is refused, but the Appeal is subsequently granted, then it would be very difficult to start selling cars after having been closed down without stock or salespersons for at least nine (9) months, and the damage to my business reputation would be considerable. Surely, that in itself is irreparable harm.

5. a) Paragraph 9 of her Affidavit deposes that I ignored written warnings regarding alleged previous criminal fraud activities of my unregistered sales person. However, the evidence given at the Hearing by Louis Tomlinson (OMVIC's witness) was quite different than what was written by the Vice-Chair Daniel Laurin and as set out at Mary Jane South's Affidavit. The transcripts of the Hearing will show the exact wording of Louis Tomlinson's answers, but my lawyer's note-taking and my personal recollection is as follows:

- *That Bruce Anderson's reputation is excellent.*
- *That Peter Rockwell was the best con-artist / ever saw in my life, he was good, one of the best.*
- *That Peter was a great guy and I trusted him implicitly.*
- *That I had some disputes with Peter but he stayed for two and a half years.*
- *That I gave Bruce Anderson more details in February, 2005 about Peter than in 2003.*

b) It is very important to note that the audit by Tina Cabot which uncovered the problem occurred in November, 2004, being several months before the letter was written to me by Tomlinson. Note further that evidence was presented to the Tribunal from both Laurie Hosie (identified by the Tribunal only as "witness #2 for the applicant") and by myself to demonstrate that the relationship between Mr. Rockwell and Mr. Tomlinson was rocky as they were arguing all the time over everything and nothing.

c) The sentence at page 10 of the Reasons for Decision: "Each time, he warned the Applicant of the serious problems encountered with Peter Rockwell when he acted as a sales person for him. He told him repeatedly that Rockwell was a con-artist." is respectfully submitted to have been misconstrued by the Vice-Chair in view of the above note-taking. The frequency of the warnings has also been misconstrued, and no weight was given to the possible ulterior motive of Tomlinson.

- d) Another example of a misconstrual by the Vice-Chair is set out at page 13 of the Reasons for Decision wherein Mary Jane South's testimony was recorded as "She said that there was a substantial markup 3. to 4 times the normal average price, on the vehicles involved in the inspection". However, in my subsequent testimony, I deposed that the mark-up was inaccurate, partly because of the significant repair work that was being effected by my repair shop to the motor vehicles prior to their sale. This error was submitted by my lawyer to be significant, as Mary Jane South was basing her opinion on an incorrect assumption. Surprisingly, no mention of her error was noted in the Reasons for Decision of the Tribunal (at page 19, bullet 7, of the Decision).
- e) Tina Cabot's audit was a random matter and was not generated by any customer complaints, and in fact no customers ever testified against my conduct. (Note that in my testimony in chief, I thanked Tina Cabot for uncovering the problems that she discovered. Had it not been for her, then Peter Rockwell would have likely continued to be in my employ for a longer period of time, which likely would have caused me more problems and a greater loss of money. My "thank you" was sincere and complementary. However, I was immediately sanctioned by the Vice-Chair, who incorrectly perceived that I was being sarcastic with my comments).
- f) My evidence in chief was that Tina Cabot attended a week late for her inspection. I had booked less repair work the previous week so that I would have more time to attend with her, but she did not attend. The following week I was obliged to make up the deferred repair work from the week before, such that I was busier than normal on the first day that she subsequently attended. The Vice-Chair misconstrued this comment by holding at page 23, bullet 5 that "during the period when the events took place, he was overwhelmed with work at his business "

6. The Vice-Chair, with the benefit of hindsight, was very critical of my supervision practices. However, he gave me no credit for the fact that, over the last 27 years I had supervised all my other employees, in my own personal management style, without having similar problems.

7. Page 27 of the Vice-Chair's Decision is very revealing whereby he believed that I should have put in place MINIMAL controls, supervision and monitoring processes, once Peter Rockwell was arrested for domestic assault. Firstly, the Charter of Rights provides that everyone charged with a criminal offence is presumed innocent until proven guilty. Secondly, the Vice-Chair seems to imply that had our losses been limited to one or two vehicles only, then that issue of my improper supervision would have been less damaging.

8. Paragraph 12 of Mary-Jane South's Affidavit is equally puzzling wherein she deposes that given my past conduct, she does not believe that I will comply with any terms and conditions imposed by the Tribunal if the stay Motion is granted. In 27 years of business I have hired one bad employee and I am endeavouring to never repeat this mistake. My past conduct in resolving all of the customers' issues arising from the rogue employee, should reflect very favourably on my projected conduct. The 3 complaints received in this matter all were made after the OMVIC audit (when OMVIC began to communicate directly with the customers) and neither my dealership nor myself have had any prior or subsequent discipline matters in the Registrar's Office.

b) The following chronology indicates the speed with which I responded to and resolved each of the 3 complaints involving Maureen Hall, Christina Allsop, and Mr. & Mrs. Louisseize respectively:

Maureen Hall

July 14, 2004	Vehicle sold
November 24, 2004	Letter from Henleighs Auto Sale regarding odometer and OMVIC investigation
November 24, 2004	Letter to Maureen Hall regarding odometer
February 5, 2005	Maureen Hall accepts offer to extend 2 year warranty at no charge (not refunded by Henleighs)
November 25, 2005	Letter from Maureen Hall, attesting to fair treatment.

Christine Allsop

July 15, 2004	Vehicle sold
January 21, 2005	Letter from Christina Allsop
January 25, 2005	Replied to Christina Allsop
February, 2005	Telephone call regarding structural safety
February, 2005	Returned vehicle to Henleighs and loaned customer a vehicle
March 10, 2005	Release of Claims, Allright paid out loan not reimbursed by Henleighs
April 26, 2005	OMVIC investigated complaint - satisfied already

Mr. & Mrs. Louisseize

October 8, 2004	Vehicle sold
November 24, 2004	OMVIC investigation
February 2, 2005	Letter from Mr. & Mrs. Louisseize stating the OMVIC had contacted them and their concerns
February 22, 2005	Purchased new vehicle for Mr. & Mrs. Louisseize
February 25, 2005	Release of claims - satisfied

I made these 3 customer issues a priority and made sure that all 3 customers were compensated fairly and expediently. I took responsibility morally and financially for the actions of my rogue employee, and the customers ultimately remained satisfied with my efforts.

9. a) Because I was selling cars before OMVIC came into existence, I was "grandfathered" into the OMVIC program without having any formal training with the OMVIC regulations or bureaucracy. As an example, I was not aware that the registration of a salesperson had to be transferred within sixty (60) days only, when a salesperson was changing employers. As a further example, I erroneously believed that proof of OMVIC registration was required in order to attend at the Ministry of Transportation to change vehicle ownerships and/or to attend at the wholesale car auctions. As a result of my experience with this rogue employee, I am now very much aware of the OMVIC regulations covering these areas.
- b) My dealership has not bought or sold any further accident repaired vehicles since my experience with the rogue employee and I have no intention of ever doing so again.
- c) I had further put various controls in place (such as consecutively numbered Bills of Sale), and I consider Mary Jane South's allegations to be unfounded, unsubstantiated, and vexatious.

10. I therefore verily believe that there is no risk that any future customers of our dealership will be at any risk if my licence is reinstated pending an Appeal. If my licence is reinstated, I will agree to comply with the terms of the Act, the regulations, and with the Standards of Business Practice.

B. Decision of the Tribunal Which is Appealed

The Tribunal found in its decision of April 27, 2006 that the following facts had been proved.

1. That Bruce Anderson knew that the dealer retained and employed one Rockwell as a salesperson well knowing that Rockwell was not registered as a salesperson under the Act and thereby contravened the Act.
2. That Bruce Anderson as sole officer and controlling mind failed to establish that there was salesperson monitoring, inspections and/or controls in place at the dealership and failed to supervise, monitor and control Rockwell.
3. That the dealer sold some eight motor vehicles to various members of the public without disclosing that such vehicles had been previously branded as salvage or rebuilt.

4. That Rockwell on behalf of the dealer, and there and then representing the dealer, conducted the eight transactions of sale to the various purchasers.

Based on the above proven facts the Tribunal found in its decision that there were sufficient grounds for the Registrar's decision to revoke the Applicants' registrations.

C. Grounds of Appeal

The Applicants' Notice of Appeal lists the following grounds upon which the Applicants base their appeal:

(a) That the Vice-Chair erred in law and in fact in directing the Registrar to carry out his proposal to revoke the registrations of Allright Automotive Repair Inc. and Bruce Anderson as motor dealer and sale person respectively, by improperly determining that the past conduct of the Appellants afforded reasonable grounds for belief that they would not carry on future business in accordance with the law, and with integrity and honesty; when in actual fact there was no evidence presented by the Registrar impugning the integrity or honesty of Bruce Anderson [the personal Appellant and the controlling mind of the corporate Appellant] and further, when the evidence clearly established that the Appellants would strictly carry on their future business in accordance with the law.

(b) That the Vice-Chair erred by not finding that the supervision error made by Bruce Anderson [after having been involved in the automotive industry for more than thirty-five (35) years] by failing to properly supervise, monitor and control an employee whom he implicitly trusted but whom was later determined to be a rogue employee, was a one-time mistake from which he has well learnt his lesson.

(c) That the Vice-Chair erred by not properly applying the evidence presented by the Appellants (most of which was not challenged by the Registrar) against the seven (7) grounds that formed the Registrar's position to revoke registration.

(d) That the Vice-Chair erred by failing to consider any other remedy apart from revocation, given the longevity of Bruce Anderson's experience in the automotive industry without prior sanctions, the uncontested fact that all problems were initially caused by the rogue employee, the vicarious liability caused to the Appellants arising from the rogue employee's actions and misconduct, and the significant efforts made by the Appellants to mitigate the losses sustained by their customers and to appease those customers. Terms and conditions to avoid any future misconduct by any other rogue employee, should have been a sufficient penalty.

(e) That the Vice-Chair erred by not addressing or noting in his decision the significant concessions made by the Registrar's witnesses Lewis Tomlinson and Mary Jane South, on cross-examination by counsel for the Appellants; and that the Vice-Chair further misapprehended part of the evidence in chief of Bruce Anderson.

(f) That the Vice-Chair incorrectly sanctioned Bruce Anderson at an early stage of his evidence because of the Vice-Chair's mis-comprehension of a comment,

which sanction predetermined the Vice-Chair's subsequent finding that Bruce Anderson was evasive, and not credible.

(g) That the Vice-Chair erred in finding Bruce Anderson to be evasive and not credible when Bruce Anderson admitted (on the commencement of the third day of the hearing) part-way through his evidence in chief, and prior to his cross-examination to being both nervous and quite physically exhausted.

(h) That the Vice-Chair erred by interfering with and halting part of the cross-examination of the Deputy Registrar of the Ontario Motor Vehicle Industry Council, by counsel for the Appellants.

(i) That the Vice-Chair erred by not ruling on whether the Registrar had properly complied with the disclosure requirements set out in the pre-hearing Interim Order of December 30, 2005.

(j) That the Vice-Chair failed as a whole to consider relevant facts and correct legal principles in arriving at his decision, and completely misapprehended parts of the evidence.

(k) That the Vice-Chair erred by failing to follow a previous decision of the Licence Appeal Tribunal released April 26, 2005 in Target Autozone and Richard Crooke, which decision had allowed the controlling mind of a corporate applicant to still retain his personal registration as a motor vehicle sales person because there would be no management or control obligations imposed upon him as a sales person (contrasted to his obligations as a dealer).

(l) That the Vice-Chair erred by imposing hindsight on Bruce Anderson's management of the rogue employee, rather than attempting to understand Anderson's unsuspecting state of mind in the context of dealing with a trusted employee.

(m) That the decision of the Vice-Chair is unfair and inappropriate under all of the circumstances and that his line of reasoning was improperly applied against the issues to be determined.

D. Grounds for Stay of Proceedings

The Applicants rely upon the grounds for a stay of the Tribunal's decision based upon the affidavit evidence more fully referred to in "A" of this Ruling.

LAW:

Section 25(1) of the *Statutory Powers and Procedures Act* reads as follows:

25(1) Unless it is expressly provided to the contrary in the Act under which the proceeding arises, an appeal from a decision of a tribunal to a court or other appellate tribunal operates as a stay in the matter except where the tribunal or the court or other body to which the appeal is taken otherwise orders.

The above quoted section results in an appeal from a Tribunal operating as a stay unless it is expressly provided to the contrary in the *Motor Vehicle Dealers Act*.

Section 7(9) of the *Motor Vehicle Dealers Act* reads as follows:

"Although a registrant appeals from an order of the Tribunal under section 11 of the *Ministry of Consumer and Commercial Relations Act*, the order takes effect immediately, but the Tribunal may grant a stay until disposition of the appeal."

In the matter of *Metropolitan Stores (MTS) Ltd. v. Manitoba Food & Commercial Workers, Local 832* (1987) 38 D.L.R. (4th) 321, the court adopted a 3-stage test for courts to apply when considering an application for a stay. This decision was followed in *RJR-Macdonald Inc. v. Canada (A-G)* (1991) 82 D.L.R. (4th) 385 at 405.

FIRST TEST

A preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried.

SECOND TEST

It must be determined whether the Applicant would suffer irreparable harm if the application were refused.

THIRD TEST

An assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision.

ANALYSIS:

In terms of Section 7(9) of the *Motor Vehicle Dealers Act*, the decision of the Tribunal dated April 27, 2006, takes immediate effect and an appeal from that decision does not operate as a stay of such decision. However, the Tribunal may grant a stay of the decision until the disposition of the appeal.

The motion now before this Tribunal is for an order staying its decision of April 27, 2006, pending disposition of the Applicants' appeal.

The Tribunal will now consider each of the tests referred to above and in so doing will apply those tests to the facts presented in this matter.

The Applicants' motion to stay may only be granted if all three tests set forth in the *RJR-Macdonald Inc. (op. cit.)* are met.

The First Test

Whether or not this test has been satisfied should be based on common sense and an extremely limited review of the merits of the case.

The evidence adduced in this matter is that the Applicants have been registered since 1998 and that during the period 1998 until the date of the hearing now under appeal there have been no complaints registered with OMVIC regarding the Applicants. However, Bruce Anderson during the currency of Rockwell's employment as a salesperson took no steps to satisfy the requirements of the Act so as to ensure that Rockwell was in fact registered with OMVIC. He permitted Rockwell to act as a salesperson for many months and when OMVIC's investigator Cabot upon inspecting the dealer's premises ascertained that Rockwell was not registered as a salesperson under the Act and this fact clearly became known to Anderson, he continued to employ Rockwell. This fact is a clear violation by Anderson of section 4 of the Act (retaining the services of a salesperson who is not registered) which in and of itself indicates grounds sufficient to support the Tribunal's decision to revoke the Applicants' registration in terms of section 5.(1)(b) of the Act. Mary Jane South of OMVIC in her affidavit (Exhibit 4 of the motion at paragraph 9) states:

Anderson while the operating mind of the Dealer knowingly allowed an unregistered salesperson, Peter Rockwell, (the "unregistered salesperson") to by and sell motor vehicles on behalf of the Dealer.

Neither in Anderson's affidavit in support of his motion (Exhibit 3 on motion), nor in his supplementary affidavit (Exhibit 4 of motion) does he deal with this serious and pertinent allegation.

This allegation, left undisturbed by the Applicants, results in the even low threshold not having been met and on this ground alone the Applicants' motion must fail.

The Second Test

This test consists of deciding whether the Applicants who seek the stay would, unless the stay is granted, suffer irreparable harm.

It was held in *RJR-MacDonald Inc. vs. Canada (A-G)* 111 D.L.R. (4th) at p. 405:

At this stage, the only issue to be decided is whether a refusal to grant relief could so adversely affect the applicant's own interests that the harm could not be remedied if the eventual decision on the merits does not accord with the result of the interlocutory application.

Irreparable harm, according to the *RJR-MacDonald* decision is

where one party will suffer permanent market loss or irrevocable damage to its business reputation

Nowhere in his affidavits in support of his motion does Anderson depose to what actual harm he would suffer if the stay motion were not granted. In fact, he states as follows in paragraph 4 of his supplementary affidavit (Exhibit 4 on motion).

... My car dealership will be unable to sell any motor vehicles to the public for at least a month (from the release of the Decision on April 27, 2006 to the date of the Motion). If my dealership is subsequently unable to sell any motor vehicles to the public for another nine (9) months approximately, pending the hearing of this Appeal, then the car dealership will not be able to remain solvent because of the ongoing debt that would accrue unchecked on the dealership. If there is no income to be earned within the next nine (9) months, then no further financial details are even relevant. If the stay Motion is refused, but the Appeal is subsequently granted, then it would be very difficult to start selling cars after having been closed down without stock or salespersons for at least nine (9) months, and the damage to my business reputation would be considerable. Surely, that in itself is irreparable harm.

No relevant financial details are set forth in either affidavit deposed to by Anderson. While it is possible that employees of the dealership may have to be laid off pending the appeal, that cannot be considered as irreparable harm to the dealership or Anderson. The evidence indicates that Anderson has for the past 27 years been in the business of carrying on repairs to motor vehicles and that presently he has in operation this repair business in or about the same premises as those used and occupied by the dealership. In paragraph 3 of the Supplementary Affidavit of Anderson (Exhibit 5 on motion) he states "I currently have nine (9) employees and/or summer students at my repair shop." This business of Anderson's repair shop has, on his own evidence, been in existence for 27 years and presently remains in business. It was in existence well prior to the motor vehicle dealership being in operation and there is every indication that it is a viable, ongoing concern. There is nothing to indicate that the business, owned and operated by Anderson, will "suffer irreparable harm." Not only is it not relevant or apparent, but unproven, that the repair shop will suffer irreparable harm it has also not been shown that Anderson's income from the repair shop will be irreparably harmed if the dealership were to have its registration revoked.

Accordingly, the Applicants are found not to have met this test.

The Third Test

The third test to be applied was described by Beetz J. in *Metropolitan Stores (MTS) Ltd. vs Manitoba Food & Commercial Workers, Local 832* (1987), 38 D.L.R. (4th) 321 at page 334 as:

A determination of which of the two parties will suffer the greater harm from the granting or refusal of an interlocutory injunction, pending a decision on the merits.

The balance of inconvenience and public interest considerations must be considered. It was held in *Ainsley Financial Corp v. Ontario Securities Commission* (1993) 106 D.L.R. (4th), 507 at page 530 that:

Interlocutory injunctions involving a challenge to the constitutional validity of legislation or to the authority of a law enforcement agency stand on a different footing than ordinary cases involving claims for such relief as between private litigants. The interests of the public which the agency is created to protect, must be taken into account and weighed in the balance, along with the interests of the private litigants.

The *Act* that regulates the motor vehicle industry is a consumer protection statute and considerations of public interest are of the utmost importance and were no doubt behind the rationale for legislating that *Act* into existence.

The Tribunal, appointed as such in terms of the *Act*, is empowered to ensure that the public interest is safeguarded. The Registrar has a duty to deal with motor vehicle dealers and salespersons whom he reasonably perceives to be acting contrary to the public interest and who may cause harm to the consumer. Considerations of public interest are without doubt of great importance having regard to the tenor of the *Act*, as well as its Regulations.

As was stated in *RJR MacDonald* case at p. 409

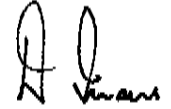
...In the case of a public authority, the onus of demonstrating irreparable harm to the public interest is less than that of a private applicant. This is partly a function of the nature of the public authority and partly a function of the action sought to be enjoined. The test will nearly always be satisfied simply upon proof that the authority is charged with the duty of promoting or protecting the public interest and upon some indication that the impugned legislation, regulation, or activity was undertaken pursuant to that responsibility. Once these minimal requirements have been met, the court should in most cases assume that irreparable harm to the public interest would result from the restraint of that action.

The decision of the Tribunal that the Applicants' appeal includes findings of the Applicants repeatedly selling vehicles to the public that were branded without disclosing this to the purchasers. This was done in seven transactions and Anderson's contention was that he did not know of these transactions which were handled by a rogue salesperson. He also conceded he failed to adequately supervise the dealership and its employees. All this did not occur on a single or isolated occasion but occurred on an ongoing basis in the very recent past. There is nothing to show that this situation will not reoccur in which event the public would be at risk. Having regard to the nature and extent of the recent and repeated conduct of Anderson, the fact that Anderson is still able to carry on his repair shop business, as well as the purpose of the *Act* as a consumer protection statute, the Tribunal is of the opinion that the public interest outweighs Anderson's private interest and that the balance of convenience does not weigh in favour of granting a stay.

ORDER:

For the reasons above stated, pursuant to the authority vested in it by section 7.(9) of the Act, the Tribunal directs that the Applicants' motion for a stay of the Tribunal's decision of April 27, 2006, until the disposition of the Applicants' appeal to the Divisional Court be and is hereby refused.

LICENCE APPEAL TRIBUNAL



Derek Israel, Vice-Chair

Released: June 1, 2006

File: 3186.mvda.allright.motion.stay.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.

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.