

**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



January 16, 2007

**MEMORANDUM**

**Re: Vinh Khai Ngo 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:**

Symon Zucker, Counsel for the Applicant  
Michael Rothe, Counsel for the Respondent

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VINH KHAI NGO

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

TO REFUSE REGISTRATION

TRIBUNAL: ELIZABETH L. SPROULE, Vice-chair

APPEARANCES: SYMON ZUCKER, Counsel, representing the Applicant  
A. MICHAEL ROTHE, Counsel, representing the Registrar,  
*Motor Vehicle Dealers Act*

DATE OF HEARING: December 15, 2006 Toronto

REASONS FOR DECISION AND ORDER

BACKGROUND:

This is an appeal to the Licence Appeal Tribunal (the "Tribunal") from a Notice of Proposal (the "Proposal") pursuant to section 7 of the *Motor Vehicle Dealers Act* (the "Act"). The proposal dated August 2, 2006, (Exhibit 1), sets out the Registrar's reasons for refusing to register Vinh Khai Ngo 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 and financial position are inconsistent with the intention and objective of the Act, and therefore warrants disentitlement to registration under the Act. Therefore, the Registrar is unwilling to register Vinh Khai Ngo under the *Motor Vehicle Dealers Act*.

The particulars upon which the Registrar relies are stated in the proposal, as follows:

- 1) Vinh Khai Ngo (hereinafter referred to as the "Applicant") applied for registration as a motor vehicle salesperson on or about May 31, 2006. He proposes to work for The Collection of Fine Cars Inc.

2) On the application to become a registered salesperson 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, "Yes", indicating:

**"TRAFFICKING &  
POSSESSION FOR PURPOSE OF TRAFFICKING"**

3) A criminal record search found that the Applicant engaged in past conduct resulting in the following findings of guilt:

October 23, 2003	Obstruct Peace Officer
May 31, 2005	Possession of a Scheduled Substance for the Purpose of Trafficking
	Traffic in Scheduled Substance

4) The Applicant is currently on parole until March 30, 2009.

The evidence presented to the Tribunal by the Registrar consisted of documentary evidence as well as the oral testimony of Police Constable Bob Hackenbrook and Laura Halbert.

The evidence presented by the Applicant consisted of documentary evidence as well as the oral testimony of three witnesses and the Applicant.

#### **EXHIBITS:**

Exhibit 1 – Notice of Proposal to Refuse the Registration, dated August 2, 2006.

Exhibit 2 – Notice of Appeal received by the Tribunal on August 18, 2006.

Exhibit 3 – Respondent's Book of Documents.

Exhibit 4 – Information of Peel Regional Police.

Exhibit 5 – List of example terms and conditions.

Exhibit 6 - Letter from St. Leonard's House dated December 11, 2006.

Exhibit 7 – Letter from Correctional Service Canada, dated December 13, 2006.

## EVIDENCE

The following is a summary of the oral testimony.

### Police Constable Bob Hackenbrook

PC Hackenbrook is currently with the Peel Regional Police and has over 10 years experience. He testified that he was familiar with the Applicant through investigations of the Peel Regional Police, which began in June of 2003, into the growing and transporting of Marijuana. The investigations led to the arrest of 15 individuals, a number of whom were related to the Applicant including his uncle, aunt and parents. The latter were arrested and charged with conspiracy to traffic. PC Hackenbrook testified that the drug operation involved large quantities of marijuana at significant value which were being smuggled over the boarder in cars with secret compartments. It was his evidence that Mr. Ngo played a significant role in this operation. The Applicant was not charged and arrested at the same time as his co-accused as he left the jurisdiction for Calgary the day of the raid. He later returned and turned himself in and was denied bail.

In cross-examination, PC Hackenbrook was asked to read from the statement of facts relating to the bail hearing wherein it was stated that according to the Applicant, he (the Applicant), did not find out until five or six months later, through the Internet, that his family was arrested. The witness was also asked if he had any evidence that the Applicant was engaged in criminal activity while living in Calgary or since the Applicant's release. His reply was that he had not seen the Applicant since his bail hearing and had no other knowledge of him.

In re-direct, the witness was asked to finish reading the statement of facts referred to above which indicated that the Applicant did not return until February 28, 2005, several months after learning of the charges.

### Laura Halbert

Ms. Halbert testified that she currently holds the position of Director of Compliance with OMVIC and has been in the position since 1997. Ms. Halbert reviewed the application of the Applicant and the results of the criminal history search, which are also set out in the Proposal to Refuse. The May 2005 charges resulted in a sentence of 46 months. The witness indicated that the Registrar looks to the past conduct of an applicant as a guide as to whether he/she will carry on business in accordance with the law and with honesty and integrity. In this case, the charges, being both recent and serious, were of concern to the Registrar.

In cross-examination, Ms. Halbert agreed that the charges of the Applicant were not fraud charges and that criminal conviction were not, in themselves, prohibitive. She also confirmed that there was no issue of non-disclosure. Ms. Halbert indicated that there had not been enough time passed to demonstrate good conduct on behalf of the

Applicant. When asked what is the appropriate amount of time, she indicated that it should be at a minimum after parole expires plus a period of time with good conduct.

#### Witness #1

This witness testified that she is employed by a car dealership where, among other things, she oversees the financial aspects of car deals. She has been working at this particular dealership for one year, but has been in the employ of the owner for 15 years. She is currently licensed by OMVIC. She testified that she has been acquainted with Mr. Ngo for eight years, having met him through his ex-wife. It was her evidence that she is familiar with the Applicant's criminal conviction and sentence. It was her opinion that the Applicant has made a change in his life, he has "smartened up". She confirmed that she would be prepared to supervise him at the dealership where she works, and that there is a job there for the Applicant if he is licensed.

In cross-examination, the witness indicated that she is aware of the May 2005 convictions, but did not know the amounts of drugs involved. She indicated that the charges were over a year ago, that the Applicant has paid for his crime and that he has realized that he does not want to be in that business – "he has grown up a lot". The witness confirmed that the dealership where she is employed is not the dealership on the application, that the dealer has not been provided with a copy of the application and that the Applicant has not formerly applied for a job there. She testified that she has the authority to hire the Applicant.

#### Witness #2

This witness testified that he is the General Manager for The Collection of Fine Cars Inc., and has been employed at that dealership for approximately 13 years. He oversees the daily activities of the employees and they are accountable to him. It was his evidence that he has known the Applicant for one year and that he is familiar with his charges as is the owner of the dealership. He confirmed he had reviewed the conditions set out in Exhibit 5, and when asked if he would undertake to personally supervise the Applicant, he responded "yes, he would be accountable to me". This witness testified that the Applicant seemed to be a man of integrity and honesty, ambitious and multilingual, which would be a valuable asset.

In cross-examination, the witness confirmed that he understood section 5 of the Act and agreed that dealing with narcotics was not carrying on with honesty and integrity.

#### Witness #3

This witness testified that she is 22 years old and currently employed full time, but plans to go to College in the new year. She has known the Applicant for nine months. She confirmed that the Applicant advised her of his convictions and his parole. It was not too long after meeting him that he disclosed these things, which in her opinion make him honest. She indicated that the Applicant is very motivated to turn his life around.

In cross-examination, the witness was questioned as to what was her understanding as to the extent of the drug trafficking to which she indicated she remembered it was in the "thousands of pounds". When asked as to the role of the Applicant, she stated "it wasn't major because he was not the main one".

### The Applicant

The Applicant testified that he is 31 years old and that he is currently divorced with no children. He is presently involved with Witness #3, and sees it as a relationship with future potential. He confirmed the accuracy of PC Hackenbrook's evidence. He testified that he was not aware of the warrants out for his arrest when he left for Calgary, rather he left as he was tired of doing what he was doing, and was in a conflict with his uncle. He went to Calgary for a new start. It was his evidence that he found out about his family through a friend who directed him to the Internet – he had not made phone calls home after he had left. He did not come back initially as he was afraid. However, after some time, he gave thought to the consequences, and wanted to turn his life around. He then turned himself into police in Toronto. He subsequently pled guilty to the charges.

It was the Applicant's evidence that he is currently living with his parents in Mississauga, and that he is on full parole, which expires in March of 2009. He confirmed that he has advised his parole officer of his plans and requested a letter (Exhibit 7). He testified that he applied to The Collection of Fine Cars Inc. as he had met Witness #2 through a mutual friend and really liked him.

In cross-examination, the Applicant confirmed that his conflict with his uncle was over the fact that he, the Applicant, had started a side business in trafficking, in competition with his uncle. He testified that he did not call his parents until he had been gone two-three months, and that there was a period where he did not have contact. He did not find out about the Canada wide warrant until approximately five-six months after he had left. He explained that he waited another six or seven months before returning, as he was afraid to turn himself in.

## **THE LAW**

The Motor Vehicle Dealer Act states as follows:

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

6. (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.

## **APPLICATION OF THE LAW TO THE FACTS**

If relying on the reasons set out in section 5(1) (b) of the Act, the onus of proof rests upon the Registrar to prove that 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.

It is clear from the statements of the Applicant that it is his intention to change his life and avoid ever going to prison again. He is to be commended for this. The facts before this Tribunal are not disputed. The Applicant engaged in drug trafficking, in co-operation with his uncle and on his own. It was not clear from the evidence exactly how long he did this, but it was clear that there were significant amounts of illegal drugs and large sums of money involved which lead to serious charges, time in prison and a lengthy parole period. This was not a minor incident and the Applicant was not a young man at the time – he was in fact 30 years of age when arrested and charged. According to the documentation provided, he was released to a federal correctional residential facility on day parole from January 19 to September 9, 2006, after which he moved back home with his parents where he currently resides.

The Applicant provided three witnesses who testified that they believed that the Applicant has changed his life and in their opinion he should be registered. Witness #3 is the Applicant's girlfriend of nine months. She believes in the Applicant's honesty as he disclosed the details of his criminal charges and parole to her. It was not clear to the Tribunal how informed this young lady actually was as she was under the impression that the Applicant had not played a major role in the trafficking business which the charges and other evidence suggest was the case. Witness #2 has known the Applicant for one year as a friend. Witness # 3 has known the Applicant eight years, on a social basis, and testified that he has "smartened up" and has "grown up a lot" as a result of his experience. It was clear that these three friends believe that the Applicant is motivated and capable of acting within the law. In addition to the testimony of these individuals, the Applicant provided a letter from the facility he was initially released to and one from his parole officer. Both letters state that the Applicant has abided by the terms of his parole.

The only issue before the Tribunal is whether the Registrar's decision was reasonable given the facts above.

Counsel for the Applicant argued that the Act does not set out a minimum period of positive conduct needed for registration and that Applicant ought to be given the opportunity to be employed as a car salesperson as he has demonstrated good character in that: i) he turned himself in, ii) he was honest about his criminal record on

his application for registration, and iii) there is no evidence that he has engaged in further criminal activity. It was further argued that this is a situation where any concerns could be addressed through conditions and that both dealerships willing to employ the Applicant were willing to sign "personal undertakings" regarding any conditions imposed by the Registrar, and therefore ensuring the Applicant's compliance.

Firstly, it is not clear to the Tribunal from the evidence of the witnesses that they in fact had a personal undertaking in mind when they confirmed they would be supervising the Applicant, nor what such an undertaking would achieve. Secondly, the Applicant's turning himself in, eventually, and making full disclosure on his application were the right things to do, but do not counter in any significant way his past, serious, criminal conduct.

In the January 1989 CRAT decision of *Kennedy v. Registrar of Real Estate and Business Brokers*, referred to by Counsel for the Registrar in closing arguments, the Tribunal in that proceeding held that the Applicant was properly refused registration on the basis that the Applicant, who was still on parole for drug charges, had not demonstrated, over a reasonable period of time, that he was rehabilitated given the seriousness of his crimes and his failure to disclose his past convictions to the Registrar. Counsel for the Applicant argued that the *Kennedy* case can be distinguished on the fact that that Applicant had a lengthy criminal record and had failed to disclose it. Notwithstanding that non-disclosure is not an issue here, this Tribunal agrees with the findings of the Tribunal in the *Kennedy* case that it is reasonable that an Applicant be required to demonstrate that he has been rehabilitated over a reasonable period of time.

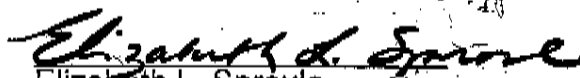
Although there is no minimum period of positive conduct set out in the Act, there has in this instance been very little or no time that one can point to and say that the Applicant has been living an independent crime free life. The Applicant has been residing in some form of federal correctional facility from the time of his arrest until September 9, 2006. Presumably, he has been highly supervised throughout this period therefore it is not very useful in assessing whether the Applicant has reformed and will be law abiding. At the time of this proceeding, the Applicant had been residing with his parents, a little over three months, and was still being monitored, albeit to a lesser degree. It is clear that the Applicant's stated intention is that he will no longer pursue a life of crime, but it is the expectation of the public that only honest and law abiding individuals will be registered, and it is the Registrar's responsibility to ensure this. Given the seriousness of the crime committed by the Applicant, it is not unreasonable for the Registrar to require a period of positive conduct sufficient to determine whether the Applicant is in fact trustworthy, and three months on parole is not, in the Tribunal's opinion, sufficient.

Having reviewed all the facts, the Tribunal finds that the Registrar's belief that the Applicant will not carry on business in accordance with the law and with honesty and integrity, based on the past conduct of the Applicant, is not unreasonable at this time.

**DECISION:**

Accordingly, pursuant to the authority vested in it by Section 7. (4) of the *Motor Vehicle Dealers Act*, the Tribunal directs and orders, the Registrar to carry out his Proposal of August 2, 2006, to refuse the registration of Vinh Khai Ngo under the Act.

## LICENCE APPEAL TRIBUNAL

  
Elizabeth L. Sproule  
Vice-chair

*RELEASED: January 16, 2007.*

FILE NAME: 3744.mvda.ngo.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 [www.lat.gov.on.ca](http://www.lat.gov.on.ca) in two weeks time. The decision will also be available on Quicklaw at a later date.