

Licence  
Appeal  
Tribunal

Tribunal  
d'appel en  
matière de permis



DATE: 2017-06-08  
FILE: 10602/MVDA  
CASE NAME: 10602 v. Registrar, *Motor Vehicle Dealers Act 2002*

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An Appeal from a Notice of Proposal by the Registrar, *Motor Vehicle Dealers Act, 2002*,  
S.O. 2002, c. 30, Sch. B - to Refuse Registration

Gordon Mander

Appellant

-and-

Registrar, *Motor Vehicle Dealers Act 2002*

Respondent

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**REASONS FOR DECISION AND ORDER**

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**ADJUDICATOR:** Patricia McQuaid, Vice-Chair

**APPEARANCES:**

**For the Appellant:** Self-represented

**For the Respondent:** Michael Rusek, Counsel  
Diana Mojica, Student-at-law

Heard in Toronto: May 16, 2017

## REASONS FOR DECISION AND ORDER

### BACKGROUND

[1] This is a hearing before the Licence Appeal Tribunal (the “Tribunal”) arising out of a Notice of Proposal issued by the Registrar, *Motor Vehicle Dealers Act 2002* (the “Registrar” and the “Act” respectively). The Notice of Proposal dated December 1, 2016 proposes to refuse to grant the registration of Gordon Mander (the “Appellant”) as a salesperson under the Act.

[2] The Registrar is proposing to refuse the Appellant’s registration on the basis that the Appellant’s past conduct and, in particular, his failure to attend court in Calgary, Alberta in connection with an assault charge, affords reasonable grounds for belief that he will not carry on business in accordance with the law and with integrity and honesty. His failure to attend Court resulted in the issuance of a warrant for his arrest.

[3] After carefully considering the evidence and submissions, the Tribunal directs the Registrar not to carry out the Notice of Proposal. Reasons are as follows.

### FACTS AND EVIDENCE

[4] There is no dispute on the key facts in this appeal. Mr. Mander submitted his application for registration to the regulator, the Ontario Motor Vehicle Industry Council (“OMVIC”), on August 16, 2016. The Registrar does not allege that Mr. Mander failed to disclose relevant information in response to the questions on the application form. In response to Question 8 which asks: “Has the applicant **ever** been found guilty or convicted of an offence **under any law**, or are there any charges pending...”, Mr. Mander answered ““Yes”. He attached the Police Information Check which he obtained from the Peel Regional Police on August 6, 2016. This record disclosed several convictions in 1985 and 1987 and a more recent charge, in July 2015 for assault and ‘fail to attend court’, for which the disposition was noted as “wanted”.

[5] Tom Girling, Director of Investigations at OMVIC, testified that, but for the outstanding warrant, OMVIC would not have issued the Notice of Proposal. He stated that a criminal conviction, especially if it is dated or a “minor offence” in some regard, is not an automatic bar to registration. All of an applicant’s circumstances are considered when the regulator reviews the application. In this instance, the Registrar’s position is that an “active” warrant for Mr. Mander’s arrest is an absolute bar to registration.

[6] Mr. Mander provided, both with his application and in testimony at the hearing, an explanation for the assault charge and the circumstances which lead to him leaving Alberta before the charge was dealt with, and the reasons why he has not yet returned to Calgary to deal with the outstanding warrant and charge. He stated that in July 2015, he and his spouse were shopping at a store in Calgary when they were approached by a male acquaintance of his spouse. She felt threatened by the male and Mr. Mander intervened by putting his hand on the male’s arm. Words were exchanged. They left the

store in a cab. The male recorded the cab's licence plate number and called the police. Mr. Mander was detained and charged with common assault.

[7] At about this time in the summer of 2015, Mr. Mander's spouse was contacted by her son who lives in Ontario and with whom she had had little contact in the preceding years. The son told her that he and his fiancé were expecting a baby. As a result, Mr. Mander and his spouse decided to move to Ontario to help out. They have been assisting the son's young family, using up much of their savings in the process. Since moving to Ontario, Mr. Mander has not been successful in securing a job so he decided in August 2016 to submit an application to OMVIC. He never anticipated, given his past work history, that he would be denied registration.

[8] That past work history is a career in motor vehicle sales in Alberta, beginning in 1987. He has been licensed by the Alberta regulator from 2001 to 2014 (licensing of the industry in Alberta began in 2001). Mr. Mander provided a document from the Alberta Motor Vehicle Industry Council ("AMVIC") confirming this fact. AMVIC also confirmed that there were no complaints in their records concerning Mr. Mander. The Registrar made no independent inquiries and did not challenge this evidence.

[9] Mr. Mander testified that when he went to the Peel Regional Police station on August 5, 2016 to obtain the Police Information Check he told the officer at the desk that there was an outstanding warrant for his arrest issued in Alberta (It was not a Canada wide warrant), and that he was prepared to turn himself in to the Peel police. The officer asked him to remain at the station while they made inquiries. The officer subsequently told him that the Calgary police had advised that the charge was not serious enough for them to pursue his arrest in Ontario.

[10] Prior to commencing his employment with OMVIC in February 2016, Mr. Girling was an OPP officer for 37 years in the position of superintendent. He testified that, in his opinion, the Calgary police may have chosen not to have the warrant executed by Peel for two reasons. First, the distance and expense involved may have been a factor. Second, the offence in question was a "common" offence, and weighing public safety concerns, the Peel Regional Police likely determined that it was not necessary to proceed on the warrant.

[11] As required by an applicant for registration, Mr. Mander does have an offer of employment, from Peter's Auto Sales. The principal of that company signed Mr. Mander's application and certified that he was aware of the information given by Mr. Mander in response to each of the questions.

## **ANALYSIS**

[12] Mr. Mander gave his evidence in a credible and straightforward manner. He described his failure to attend Court for the charge as a lapse in judgment. Counsel for the Registrar described the failure as a "dangerous indication that he is willing to put personal priorities ahead of his legal obligations" should he be registered and that, if

faced with personal financial concerns, he might fail to disclose adverse information to a customer. The Registrar does not, however, dispute Mr. Mander's history of good behaviour in the regulated auto sales industry in Alberta.

[13] What is of apparent grave concern to the Registrar, as articulated by counsel, is that Mr. Mander has shown an unwillingness to be bound by the law - as evidenced by his failure to return to Alberta to face the charges – and that he is actively avoiding his day in court because he does not want to “face the music”.

[14] There may be some basis for the Registrar's concern about the fact that this outstanding issue has not been dealt with in that Mr. Mander did state on his application form in August 2016 that he intended to return to Alberta in “the very near future to deal with this minor charge” and yet, as of May 2017, he had not done so. At the hearing, he testified that financial constraints and the time commitment required to return have hampered his ability to return. It is true that there is a cost to returning to Alberta, but there has also been a cost of not returning: his application was made almost two years ago and was not approved by the Registrar primarily because of this issue.

[15] With respect to entitlement to registration, the relevant section of the Act states in part as follows:

**Registration**

6. (1) An applicant that meets the prescribed requirements is entitled to registration or renewal of registration by the registrar unless,

(a) the applicant is not a corporation and,

...

(ii) the past conduct of the applicant or of an interested person in respect 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..

...

**Refusal to register, etc.**

8. (1) Subject to section 9, the registrar may refuse to register an applicant or may suspend or revoke a registration or refuse to renew a registration if, in his or her opinion, the applicant or registrant is not entitled to registration under section 6.

...

[16] The powers of the Tribunal are set out as follows in the Act:

9. (5) If a hearing is requested, the Tribunal shall hold the hearing and may by order direct the registrar to carry out the registrar's proposal or substitute its opinion for that of the registrar and the Tribunal may attach conditions to its order or to a registration.

[17] As counsel stated in submissions, section 6(1)(a)(ii) does allow for some speculation; however, speculation grounding the decision to refuse registration must take place in the context of a determination that the conduct affords **reasonable** grounds for belief that the applicant will not carry on business in accordance with the law and with integrity and honesty. In its assessment of the evidence before it, the Tribunal must consider the whole of the past conduct. Does the evidence of past conduct that is before the Tribunal indicate a high degree of trustworthiness – the elements of honesty and integrity – so that it is reasonable and appropriate to place public trust in this Appellant with the granting of a registration to sell motor vehicles?

[18] Mr. Mander has an unblemished record in the auto sales industry as evidenced by the information from AMVIC. He has also provided a letter of reference from a prior employer. The outstanding charge is not, even on the Registrar's evidence, a serious one, though the fact of the charge itself is by no means minimized by the Registrar or by this Tribunal. The fact of the outstanding warrant can at best be characterized as a very serious lapse of judgment, but it is not an issue which raises concerns about Mr. Mander's integrity and honesty when dealing with consumers nor should it undermine public confidence in the industry as a whole or, as counsel submitted, offend the public's sensibilities. There is no evidence of any industry related conduct which casts doubt on the Appellant's trustworthiness and while an assessment of past conduct is not confined to business matters, there is simply no evidence that the Appellant is a risk to put personal interests ahead of his financial obligations to consumers. His prospective employer has been apprised of his past actions and is supportive. Indeed the decision Mr. Mander made to leave Alberta when he did, for very personal reasons, has cost him, and only him, financially as he seeks to embark on a career in Ontario.

[19] Based on the above evidence, the Tribunal finds that there are not reasonable grounds for belief that Mr. Mander will not carry on business in accordance with the law and with honesty and integrity. However, the Tribunal acknowledges the Registrar's concern that the Appellant has not taken it upon himself to respond to the warrant and charge in almost two years despite his stated intention to do so on his application for registration. Therefore, pursuant to s. 9 of the Act, the Tribunal has concluded that the Appellant's registration should be subject to a condition responsive to these particular circumstances to ensure that he complies with his obligations in respect to the outstanding warrant and charge, in accordance with the law.

**ORDER**

[20] Pursuant to the authority vested in it under the provisions of the Act, the Tribunal directs the Registrar not to carry out the Proposal to refuse the application for registration as a salesperson. It orders the Registrar to register the Appellant subject to the following conditions:

1. Mr. Mander shall respond to and deal with the outstanding matters against him in Alberta related to the charge of assault laid in July 2015 within 12 months of this Order. Should the Appellant fail to do this, the Registrar may take further administrative action, including a proposal to suspend or revoke registration as a result of a failure to comply with this term and condition.

LICENCE APPEAL TRIBUNAL



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Patricia McQuaid, Vice-Chair

*Released: June 8, 2017*