

Licence Tribunal  
Appeal Tribunal  
Tribunal d'appel en  
matière de permis



DATE: 2012-12-18  
FILE: 7036/MVDA  
CASE NAME: 7036 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 Revoke Registration

David Jervis o/a Dave's Car and Truck Sales and Scott Jervis

Applicants

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

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**REASONS FOR DECISION AND ORDER**

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**ADJUDICATOR:** Terrance Sweeney, Vice-Chair

**APPEARANCES:**

**For the Applicants:** Anik Morrow, Counsel

**For the Respondent:** Angela La Viola, Counsel

Heard in Toronto: November 27 and 28, 2012

## REASONS FOR DECISION AND ORDER

### BACKGROUND

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 October 20, 2011, proposed to revoke the registration of the Applicants David Jervis o/a Dave's Car and Truck Sales and Scott Jervis (the "Applicants"), as a motor vehicle dealer and salesperson, respectively, under the Act.

The Proposal sets out the reasons of the Registrar for revoking the registration of the Applicants as follows:

The intention and objective of the Act is to protect the public interest. In doing so, the Act prohibits the making of false statements in an application for registration or renewal and requires that Applicants be financially responsible in the conduct of business and that they carry on business in accordance with the law and with integrity and honesty. The past conduct of DAVID JERVIS o/a DAVE'S CAR AND TRUCK SALES and SCOTT JERVIS is inconsistent with the intention and objective of the Act, and therefore warrants disentanglement to registration under the Act.

The particulars upon which the Registrar relies are set out in the Proposal as follows:

#### *Registration History*

1. David Jervis o/a Dave's Car and Truck Sales ("Dave's Car Sales") operates as a sole proprietorship and was first registered as a dealership under the Act on or about May 2, 1986.
2. Scott Jervis was first registered as a salesperson under the Act on or about December 13, 1999. Scott Jervis is employed by Dave's Car Sales and is the son of David Jervis.

#### *Possession of Stolen Vehicles*

3. On or about June 1, 1999, the Registrar issued a proposal to revoke the registration of Dave's Car Sales. The proposal was substantially based on the fact that David Jervis had 17 convictions for possession of stolen property relating to possession of stolen motor vehicles. By a decision of the Commercial Registration Appeal Tribunal dated December 15, 1999, the Registrar was directed not to carry out the proposal. The Registrar repeats and relies on the Tribunal's findings of fact.
4. From on or about November 9, 2006 to on or about December 20, 2007, David Jervis engaged in conduct which resulted in criminal charges involving 7 counts of failing to notify the Registrar of Imported Vehicles of the salvage status of imported vehicles, contrary to the *Highway Traffic Act*.

5. From on or about August 29, 2006 to or on about May 20, 2009, David Jervis engaged in conduct which resulted in his being charged with 23 counts of possession of property obtained by crime over \$5000, 5 counts of possession of property obtained by crime under \$5000, and 12 counts of Fraud over \$5000.
6. On or about October 4, 2010, David Jervis entered pleas of guilty to 10 counts of possession of property obtained by crime and 7 counts under the *Highway Traffic Act*. David Jervis was convicted and fined; and probation was ordered for a period of 2 years. As a result of David Jervis pleading guilty, Scott Jervis was not charged for his involvement in the offences.

At the opening of the hearing, the Registrar withdrew his allegations against Scott Jervis.

David Jervis ("Mr. Jervis"), through his counsel, conceded his criminal record and his convictions under the *Highway Traffic Act*.

Counsel for the Registrar filed a book of documents<sup>1</sup> and opted not to call any further evidence.

The Applicant, Mr. Jervis, testified and called two other witnesses.

## THE EVIDENCE FOR THE APPLICANT

**David Jervis** is 59 years old and is married with three children. He has had a Motor Vehicle Dealers licence since 1994. He operates from a five-acre site near Seaforth, Ontario. His son Scott and his daughter Angie are fully employed in the business. His daughter Becky works part-time there. He has two other employees: a body man and a licensed mechanic. He is in the business of rebuilding cars and has about a million auto parts on his premises.

He was present when the police arrived on May 20 and 21, 2009. They went through his inventory and left with parts and cars. He was formally charged in Goderich in October 2009.

On October 4, 2010 he pled guilty to nine counts of possession of stolen property under \$5000 and one count of possession of stolen property over \$5000. He also pled guilty to seven charges under the *Provincial Offences Act* for failure to inform the Registrar of Imported Vehicles of the salvage status of imported vehicles, contrary to the Act. He was fined \$16,500.00 and sentenced to two years probation.

He testified that he completed his probation without incident. He has also improved his business practices by having his son Scott acquire parts over the internet rather than on

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<sup>1</sup> Exhibit 3

native reserves and "swap meets". He is restricting his activities to the site, breaking down cars and tidying up the inventory. He said that he would abide by any terms and conditions which the Tribunal imposed on him. He wants to keep his licence as he loves working. He said that he got a pardon for the 1995 convictions.

**KA** is a licensed dealer who knows Mr. Jervis well. He operates in the same geographical area as Mr. Jervis and is engaged in the same business. He deals with Mr. Jervis and has never had any problem with him. He and his wife drive cars purchased from Mr. Jervis.

He said that Mr. Jervis has a very good reputation. He would be prepared to act as a co-signer or overseer of Mr. Jervis' business if the Tribunal were to impose such terms on Mr. Jervis' licence.

**Scott Jervis** is 37 years old and is married with three children. He has had his salesperson licence since 2000. He is employed full-time at Dave's Car Sales. After his father's convictions in 2010, they changed their business practices so that he now does the ordering of parts on line from General Motors and licensed dealers. Business has been good and he expects that, in time, the business will be turned over to him by his father.

He is concerned that if his father loses his licence he and his sisters and the two other employees would be out of work. He would have to transfer to another licensed dealer. He would be able to work with KA if he were to be part of any terms imposed on his father.

## THE LAW

The applicable provisions of the Act regarding registration read, in part, as follows:

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,

(i) having regard to the applicant's financial position or the financial position of an interested person in respect of the applicant, the applicant cannot reasonably be expected to be financially responsible in the conduct of business,

(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

...

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.

(2) Subject to section 9, the registrar may,

(a) approve the registration or renewal of a registration on such conditions as he or she considers appropriate; and

(b) at any time apply to a registration such conditions as he or she considers appropriate.

The onus lies on the Registrar to prove his case on a balance of probabilities.

## THE ISSUE

Does the past conduct of Mr. Jervis afford reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty?

## APPLICATION OF THE LAW TO THE FACTS

The Tribunal invited argument from counsel as to how it must deal with the pardon obtained by Mr. Jervis in 2007 in respect of the 1995 convictions.

In *Re Steinberg*<sup>2</sup> at para. 30, Vice Chair Dryden of the predecessor tribunal to LAT said:

... it is open to the Tribunal, if it considers this the proper course to follow, to disregard the pardoned offences but, on the other hand, the pardon does not preclude reliance by the Registrar upon the convictions if this appears to be the proper course to follow. In the circumstances of this case, the Tribunal finds that the Registrar is still entitled to look at the convictions as past conduct on the part of the Applicant which he should take into consideration, but he must temper his view of the same by the fact that the National Parole Board has seen fit to issue the Pardon.

On appeal to the Divisional Court,<sup>3</sup> it upheld the decision of the Tribunal and said:

The Tribunal was entitled to look at the underlying facts related to the prior convictions and pardon thereof. The *Criminal Records Act* does not detract from the provincial right under section 11 of the *Gaming Control Act* to require an investigation into the past conduct of the applicant.

The Tribunal took time to consider its duty in this regard. After the recess, the Tribunal ruled that it had the discretion to consider the 1995 convictions but would give them little weight. They are 17 years old and the Tribunal in 1999 saw fit to deny the Registrar's proposal to revoke Mr. Jervis' licence, albeit there were other factors in play.

## THE 2010 CRIMINAL CONVICTIONS

The Courts have established principles which this Tribunal must follow in dealing with criminal convictions.

<sup>2</sup> [1994] O.C.R.A.T.D. No. 134

<sup>3</sup> Ontario Divisional Court File #706/94, May 23, 1995

1. Criminal convictions should be accepted on their face.<sup>4</sup>
2. This Tribunal is entitled to examine the circumstances giving rise to the criminal charges for the purpose of mitigation, but it is not entitled to do so for the purpose of re-litigation.<sup>5</sup>
3. Criminal convictions are highly relevant in determining whether one is more likely than not to conduct his business in accordance with law and with honesty and integrity.<sup>6</sup>
4. If the convictions are industry specific in that they arose from one's work, they should be accorded significant weight in the Tribunal's deliberations.

## DECISION

The Tribunal has carefully considered the evidence, the relevant case law and the submissions of counsel.

The Act is consumer protection legislation and should be interpreted liberally to attain its object of protecting the public from dishonest dealers.

The Tribunal accepts the testimony of Mr. Jervis and Scott Jervis that they have improved their business practices. This, of course, can only go to mitigation. Similarly, the Tribunal notes counsel's argument that the convictions only concerned 10 out of a million auto parts. The fact remains, however, that Mr. Jervis is guilty of serious industry-related offences and the Registrar was right to have been concerned.

A motor vehicle dealer's licence is a privilege and not a right. Mr. Jervis forfeited that privilege when he engaged in criminal activity. His licence will be revoked. To do otherwise would send entirely the wrong message to the industry and the public.

Counsel for the Applicant submitted to the Tribunal various proposed terms and conditions for continuation of Mr. Jervis' motor vehicle dealers licence. The Tribunal considered the proposed terms and conditions. The Tribunal rejects them as being wholly inappropriate in the circumstances of this case.

The Tribunal recognizes that this is a family business in a rural area where jobs may be difficult to find. The Tribunal has no desire to heap more punishment on Mr. Jervis' family beyond what they have already endured.

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<sup>4</sup> *Registrar, Motor Vehicles Act v. Jacobs*, 69 O.R. (3d) 462, para. 34

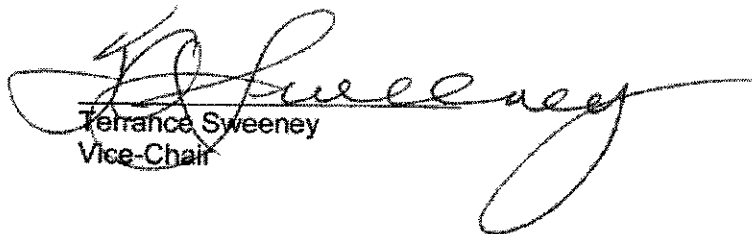
<sup>5</sup> *Ibid*, para. 46

<sup>6</sup> *Omoregie (c.o.b. Filazo International Auto Sales) v. Ontario (Motor Vehicle Dealers Act, Registrar)*. [2011] O.J. No. 1378, para. 11

**ORDER**

The Tribunal orders the Registrar to proceed with his proposal to revoke Mr. Jervis' motor vehicle dealer's licence, but this Order will be stayed until Monday, January 28, 2013 to allow Scott Jervis time to apply for his dealer's licence.

LICENCE APPEAL TRIBUNAL



Terrance Sweeney  
Vice-Chair

*Released: December 18, 2012*