

DISCIPLINE TRIBUNAL
OF THE ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL

PANEL:	Mr. Robert MacKay, Chair	Public Member
	Mr. Joe Malfara	Registrant
	Mr. Chris Pinelli	Registrant

DISCIPLINE DECISION

IN THE MATTER OF A DISCIPLINE HEARING HELD PURSUANT TO THE MOTOR
VEHICLE DEALERS ACT 2002, S.O. 2002, C.30, Sch. B

B E T W E E N :

Appearances¹:

**ONTARIO MOTOR VEHICLE
INDUSTRY COUNCIL**

Ms. Dufie Nyamekye
for OMVIC

- and -

Kingscross Motor Sports Inc.

Mr. Jonathan Gross
for Mr. Tso

and

Mr. Clayton Tso

Date of Hearing: May 30, 2025

¹ Also present at the hearing were independent legal counsel Mr. Edward Marrocco, and Hearing Administrator Mr. David Dailly, who recorded the hearing.

Findings:

The Dealer has breached the following sections of the Code of Ethics:

Professionalism

s. 9(1) In carrying on business, a registrant shall not engage in any act or omission that, having regard to all of the circumstances, would reasonably be regarded as unprofessional of a registrant.

The Dealer and Mr. Tso have violated the following section of the Code of Ethics:

Professionalism

s. 9(3) A registrant shall use the registrant's best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in a motor vehicle.

Mr. Tso has violated the following section of the Code of Ethics:

Accountability

s. 6(2) A registered salesperson shall not do or omit to do anything that causes the registered motor vehicle dealer who employs or retains the salesperson to contravene this Regulation or any applicable law with respect to trading in motor vehicles.

DECISION AND REASONS

Introduction

1. This was a hearing before a panel of the Discipline Tribunal (the "Panel") of the Ontario Motor Vehicle Industry Council ("OMVIC") pursuant to section 17 of the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Schedule B ("MVDA"). OMVIC has a mandate to maintain a fair and informed marketplace by protecting the rights of consumers, enhancing industry professionalism, and ensuring fair, honest, and open competition for registered motor vehicle dealers.
2. The hearing was convened May 30, 2025 (the "Hearing"). The Hearing was held virtually using video conferencing with the consent of the parties.

The Allegations

3. The allegations against Kingscross Hyundai, and Mr. Clayton Tso were set out in a Notice of Referral to the Discipline Tribunal (the "NORD"), dated July 4, 2024. The Notice of Referral was entered as Exhibit 1 at the Hearing. The Notice of Referral is attached to these reasons as Appendix "A".
4. At the outset of the Hearing, counsel for OMVIC, Ms. Dufie Nyamekye, confirmed that discussions with the responding party had resulted in an agreement which they intended to present.

Plea of the Registrants

5. Mr. Jonathan Gross was in attendance as counsel for Kingscross Hyundai (the "Dealer"), and Mr. Tso (the "Registrant), or collectively (the "Registrants") Mr. Tso was not present at the hearing. The Panel confirmed on the record that Mr. Tso was aware the Hearing was happening, chose not to attend, and that Mr. Gross had sufficient instruction to proceed. The Registrants were admitting the allegations contained in the NORD through admissions contained in the Agreed Statement of Facts. Counsel for the parties had an opportunity to review the admission being made in the Agreed Statement of Facts. At the conclusion of that process, the Panel was satisfied that the admissions of the Dealer were voluntary, informed, and unequivocal.

Agreed Statement of Facts

6. The Agreed Statement of Facts² which had been signed by the Dealer on September 19, 2024, and counsel for OMVIC on September 20, 2024, was entered as Exhibit 2 at the Hearing (the "ASF"). The ASF is attached to these reasons as Appendix "B".

² Prior to the beginning of the Hearing, the exhibits were delivered to the Panel members electronically in the interests of hearing economy and on consent of the parties.

7. Ms. Nyamekye, on behalf of OMVIC, took the Panel through the ASF and then Mr. Gross was given an opportunity to speak to the ASF, he agreed with the submissions of Ms. Nyamekye and the contents of the ASF. The Panel then sought and received advice from its Independent Legal Counsel, Mr. Marrocco, before rising to deliberate on the merits portion of the Hearing.

Decision of the Panel

8. Upon reconvening, the Panel stated it was accepting the ASF and was satisfied that the evidence and admissions contained in the ASF were sufficient to make findings of breaches against the Registrants as alleged in the NORD. The Panel made findings against the Registrants accordingly. In reaching its decision the Panel relied exclusively on the evidence contained in the ASF.

9. The Panel made the following findings:

The Dealer has breached the following sections of the Code of Ethics:

Professionalism

s. 9(1) In carrying on business, a registrant shall not engage in any act or omission that, having regard to all of the circumstances, would reasonably be regarded as unprofessional of a registrant.

The Dealer and Mr. Tso have violated the following section of the Code of Ethics:

Professionalism

s. 9(3) A registrant shall use the registrant's best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in a motor vehicle.

Mr. Tso has violated the following section of the Code of Ethics:

Accountability

s. 6(2) A registered salesperson shall not do or omit to do anything that causes the registered motor vehicle dealer who employs or retains the salesperson to contravene this Regulation or any applicable law with respect to trading in motor vehicles.

Penalty

10. The Panel was presented with a Joint Submission on Penalty (the "JSP") which was signed by the Registrants September 19, 2024, and counsel for OMVIC September 20, 2024. The JSP was entered as Exhibit 3. The terms of the JSP are that:

- I. Kingscross Motor Sports Inc. o/a Kingscross Hyundai (the "Dealer") shall pay a fine in the amount of **\$1,500** no later than ninety (90) calendar days from the date of the Discipline Tribunal's Order.
- II. Clayton Tso ("Tso") shall successfully complete the MVDA Key Elements Course no later than ninety (90) calendar days from the date of the Discipline Tribunal's Order.
- III. The Dealer shall **offer** to all current and future salespersons, employed by the Dealer, to **fund** their completion of the Automotive Certification Course, no later than ninety (90) calendar days from the date of the Discipline Tribunal's Order.
- IV. The Dealer and Tso shall comply with the *Motor Vehicle Dealers Act, 2002*, O. Reg. 333/08, O. Reg. 332/08 and its Code of Ethics, and the Standards of Business Practice.

11. Ms. Nyamekye, on behalf of OMVIC, stated that the proposed penalty was appropriate in all the circumstances, presenting similar decisions where the Code of Ethics was not adhered to. Among other things, counsel noted that the Dealer had one prior discipline tribunal order for non-compliance which maybe considered an aggravating factor, however that breach occurred a decade ago. The submission of Ms. Nyamekye was that the proposed penalty will serve as a specific deterrent to the Respondents, and general deterrent to the profession. Specifically, the fine sends the message that when an unfulfilled contract is not addressed in a timely way – there will be consequences under the Code of

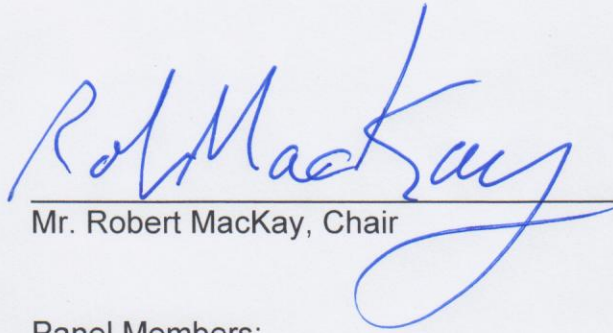
Ethics. The requirement to complete the MVDA Key Elements Course serves as an opportunity for rehabilitation of the conduct of the Registrants.

12. Mr. Gross, on behalf of the Registrants, agreed with the submissions of Ms. Nyamekye and supported the order being sought in the JSP.

Penalty Decision and Reasons

13. The Panel was satisfied that the parties had come to an appropriate resolution which contemplated the relevant objectives on penalty including public protection, remediation/rehabilitation and specific deterrence for the Registrants, and general deterrence to others in the profession. The Panel noted that the Dealer saved all the parties the delay and expense that would have otherwise been incurred in deciding the allegations at a contested hearing.
14. The Panel therefore made the following orders, consistent with the JSP, before the conclusion of the hearing:
- I. Kingscross Motor Sports Inc. o/a Kingscross Hyundai shall pay a fine in the amount of **\$1,500** no later than ninety (90) calendar days from the date of this Order.
 - II. Mr. Clayton Tso shall successfully complete the MVDA Key Elements Course no later than ninety (90) calendar days from the date of this Order.
 - III. The Dealer shall offer to all current and future salespersons, employed by the Dealer, to fund their completion of the Automotive Certification Course, no later than ninety (90) calendar days from the date of this Order.
 - IV. The Dealer and Tso shall comply with the Motor Vehicle Dealers Act, 2002, O. Reg. 333/08, O. Reg. 332/08 and its Code of Ethics, and the Standards of Business Practice.

15. I, Robert MacKay, sign this decision and reasons for the decision as Chair of this discipline Panel and on behalf of the members of the discipline Panel as listed below.



Mr. Robert MacKay, Chair

Date: June 3, 2025

Panel Members:

Mr. Robert MacKay
Mr. Joe Malfara
Mr. Chris Pinelli

Appendix "A"

NOTICE OF REFERRAL TO DISCIPLINE TRIBUNAL

Take notice that pursuant to section 14(4) 4 of the *Motor Vehicle Dealers Act, 2002*, (the "Act"), the Registrar has referred the complaint(s) against Kingscross Motor Sports Inc. o/a Kingscross Hyundai and Clayton Tso to the Discipline Tribunal for alleged violations under the Code of Ethics, as set out in Ontario Regulation 332/08.

REASONS

Section 17 of the Act establishes a Discipline Tribunal and empowers the Discipline Tribunal to hear and determine issues concerning alleged breaches of the Code of Ethics. The Code of Ethics applies to all Registrants registered under the Act. Any Registrants that disregard or violate the Code of Ethics are subject to having their conduct reviewed by the Discipline Tribunal. The Code of Ethics requires that all Registrants conduct business with Integrity, Accountability, Compliance, Respect and Professionalism as well as ensuring that requirements are met when it comes to Disclosure and Marketing and the Disclosure of Information in Sale and Lease Contracts.

PARTICULARS

The reasons for this notice are:

Background:

1. Kingscross Motor Sports Inc. o/a Kingscross Hyundai (the "Dealer") was first registered as a motor vehicle dealer in and around May 1992.
2. Clayton Tso ("Tso") was first registered as a salesperson in and around September 2015. At all material times, Tso has been a Director and Person in Charge of the day-to-day activities of the Dealer.

Dealer's Non-Compliance:

3. On or before January 15, 2022, Consumer B visited the Dealer's premises to purchase a 2022 Hyundai Ioniq 5. Consumer B was advised that the vehicle was unavailable and required a preorder.
4. Consumer B offered to trade in his 2014 Hyundai Elantra GT GLS towards the purchase of a 2022 Hyundai Ioniq 5. The Dealer assessed the vehicle and offered a trade-in value of \$10,000 for the 2014 Hyundai Elantra GT GLS if it was handed over to the Dealer within 2 weeks. Consumer B consented to this, and the vehicle was subsequently handed over to the Dealer.
5. On or about January 15, 2022, Dealer and Consumer B entered into an agreement for the preorder of the 2022 Hyundai Ioniq 5, with Consumer B making a deposit of \$1,000. The agreement confirmed the trade-in value of the vehicle as \$10,000.
6. On or about April 13, 2022, the Dealer sold Consumer B's 2014 Hyundai Elantra GT GLS for \$14,604.45.

7. At the start of 2024, the Dealer informed Consumer B that the pre-ordered vehicle would not be available for delivery. As a result, the consumer demanded a refund of the deposit in addition to the trade-in value of \$10,000.
8. The Dealer refunded the deposit but failed to reimburse the complete trade-in amount. Instead, the Dealer only reimbursed Consumer B for \$7,760.50, attributing the difference to the repairs done to Consumer B's vehicle.
9. The Dealer failed to fulfill its obligations in the contract, and thereby it violated sections 9(1) and 9(3) of the Code of Ethics.

Tso's Non-Compliance:

10. Tso failed to ensure that the Dealer conducted its business in compliance with the Act, its regulations, and the Code of Ethics and thus personally contravened sections 6(2) and 9(3) of the Code of Ethics.

The Registrant(s) may provide a written response to the particulars set out above to OMVIC within 15 days of service of this Notice to: legal_dept@omvic.on.ca.

If the Discipline Tribunal makes a determination that a registrant has failed to comply with the Code of Ethics, it may order one or more of the following:

- A fine up to \$25,000 per party;
- Require the registrant to take further educational courses;
- If the registrant is a motor vehicle dealer, require the dealer to arrange and fund educational courses for salespersons employed by the dealer;
- Award costs.

This Notice of Referral to Discipline ("NORD") and decisions of the Discipline Tribunal may be published. Hearings before the Discipline Tribunal may be recorded and are open to the public.

APPLICATION OF THE STATUTORY POWERS PROCEDURE ACT

The *Statutory Powers Procedure Act*, R.S.O. 1990 c.s.22, applies to the hearing to be held by this Discipline Tribunal. A party to a proceeding may be represented by counsel or an agent.

The good character, propriety of conduct or competence of the Registrant(s) shall be an issue in any hearing before the Discipline Tribunal and reasonable information of allegations with respect thereto has been furnished.

The Rules of Practice of the Discipline Tribunal will apply and are available on OMVIC's website. A Notice of Hearing and disclosure will be provided in accordance with the Rules of Practice of the Discipline Tribunal.

Take note that as per the Rules of Practice, failure to attend a hearing before the Discipline Tribunal may result in a decision being determined *ex parte* (in your absence).

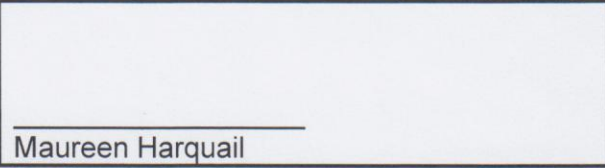
APPLICATION OF THE RULES OF PRACTICE OF THE DISCIPLINE TRIBUNAL

This is to serve notice that OMVIC may make application for its costs, pursuant to Rule 13 of the Rules of Practice.

FURTHER PARTICULARS/SUPPLEMENTAL NOTICE

The Registrar may provide further and other particulars in respect of any other matters herein or in respect to any other matter including further particulars of violations of the Code of Ethics.

DATED at Toronto, this 4th day of July, 2024.



Maureen Harquail

Registrar, *Motor Vehicle Dealers Act, 2002*

Appendix "B"

AGREED STATEMENT OF FACTS

Kingscross Motor Sports Inc. o/a Kingscross Hyundai (the "Dealer") has breached the following:

Sections 9(1) and 9(3) of the Code of Ethics, O. Reg. 332/08

Clayton Tso has breached the following:

Sections 6(2) and 9(3) of the Code of Ethics, O. Reg. 332/08

Background:

1. Kingscross Motor Sports Inc. o/a Kingscross Hyundai (the "Dealer") was first registered as a motor vehicle dealer in and around May 1992.
2. Clayton Tso ("Tso") was first registered as a salesperson in and around September 2015. At all material times, Tso has been a Director and Person in Charge of the day-to-day activities of the Dealer.

Dealer's Non-Compliance:

3. On or before January 15, 2022, the consumer visited the Dealer's premises to purchase a 2022 Hyundai Ioniq 5. The consumer was advised that the vehicle was unavailable and required a preorder.
4. The consumer offered to trade in his 2014 Hyundai Elantra GT GLS towards the purchase of a 2022 Hyundai Ioniq 5. The Dealer assessed the vehicle and offered a trade-in value of \$10,000 for the 2014 Hyundai Elantra GT GLS if it was handed over to the Dealer within 2 weeks. The consumer consented to this, and the vehicle was subsequently handed over to the Dealer.
5. On or about January 15, 2022, Dealer and the consumer entered into an agreement for the preorder of the 2022 Hyundai Ioniq 5, with the consumer making a deposit of \$1,000. The agreement confirmed the trade-in value of the vehicle as \$10,000.
6. On or about April 13, 2022, the Dealer sold the consumer's 2014 Hyundai Elantra GT GLS for \$14,604.45.
7. At the start of 2024, the Dealer informed the consumer that the pre-ordered vehicle would not be available for delivery. As a result, the consumer demanded a refund of the deposit in addition to the trade-in value of \$10,000.
8. The Dealer refunded the deposit but failed to reimburse the complete trade-in amount. Instead, the Dealer only reimbursed the consumer for \$7,760.50, attributing the difference to the repairs done to the consumer's vehicle.

9. The Dealer failed to fulfill its obligations in the contract, and thereby it violated sections 9(1) and 9(3) of the Code of Ethics.
10. On or about February 21, 2024, the consumer filed a complaint with the Registrar.
11. In or around September 2024, the Dealer paid to the consumer the sum of \$2,239.50, therefore reimbursing the consumer for the full \$10,000 deposit.

Tso's Non-Compliance:

12. Tso failed to ensure that the Dealer conducted its business in compliance with the Act, its regulations, and the Code of Ethics and thus personally contravened sections 6(2) and 9(3) of the Code of Ethics.

DISPOSITIONS

13. As particularized above, the Dealer has violated the following section of the Code of Ethics:

Professionalism

s. 9(1) In carrying on business, a registrant shall not engage in any act or omission that, having regard to all of the circumstances, would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming of a registrant..

14. As particularized above, the Dealer and Tso have violated the following section of the Code of Ethics:

Professionalism

s. 9(3) A registrant shall use the registrant's best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in a motor vehicle.

15. As particularized above, Tso has violated the following section of the Code of Ethics:

Accountability

s. 6(2) A registered salesperson shall not do or omit to do anything that causes the registered motor vehicle dealer who employs or retains the salesperson to contravene this Regulation or any applicable law with respect to trading in motor vehicles.

By signature below, I acknowledge, understand and agree to the facts and dispositions outlined herein, and that I acknowledge and understand my right to obtain independent legal advice in this matter.

DATED AT _____ THIS _____ DAY OF _____, 2024

Print Name: I have the authority to bind the Dealer

Signature: I have the authority to bind the Dealer

By signature below, I acknowledge, understand and agree to the facts and dispositions outlined herein, and that I acknowledge and understand my right to obtain independent legal advice in this matter.

DATED AT _____ THIS _____ DAY OF _____, 2024

Signature of Clayton Tso

By signature below OMVIC acknowledges, understands and agrees with the facts and dispositions outlined herein.

DATED AT _____ THIS _____ DAY OF _____, 2024

Akosua Dufie Nyamekye
Legal Counsel
Ontario Motor Vehicle Industry Council