



**Citation: Mustapha Abdulhamid v. Registrar, *Motor Vehicle Dealers Act, 2002*,  
2025 ONLAT 16305**

**Licence Appeal Tribunal File Number: 16305/MVDA**

In the matter of an appeal from a Notice of Proposal to Refuse Registration issued by the Registrar of Motor Vehicles pursuant to section 9 of the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sch. B.

Between:

**Mustapha Abdulhamid**

**Appellant**

And

**Registrar, *Motor Vehicle Dealers Act, 2002***

**Respondent**

**DECISION**

**ADJUDICATOR:**

**Rebecca Hines**

**APPEARANCES:**

For the Appellant:

Christopher Hall, Paralegal

For the Respondent:

Dufie Nyamekye, Counsel

**Held by videoconference:**

February 12 to 14, 2025

## OVERVIEW

- [1] This is an appeal from a Notice of Proposal (“NOP”) dated September 17, 2024, issued by the Registrar (the “respondent”) under the *Motor Vehicles Dealers Act, 2002*, S.O. 2002, c. 30, Sch. B (the “Act”), to refuse the registration of Mustapha Abdulhamid (the “appellant”) as a motor vehicle salesperson pursuant to s. 9 of the Act.
- [2] The appellant was first registered as a salesperson in 2006.
- [3] From September 2, 2020 to October 3, 2023, the appellant was employed as a General Sales Manager with 2041924 Ontario Ltd. o/a Jaguar Windsor Land Rover Windsor (“Jaguar Windsor”). He was terminated from this dealership for stealing money from consumers.
- [4] From January 4, 2024 to July 23, 2024, the appellant was employed as a Sales Manager with 1231525 Ontario Limited o/a Wharncliffe Auto Group (“Wharncliffe”). He was also terminated from this dealership for stealing money from consumers.
- [5] On August 7, 2024, the appellant submitted a motor vehicle salesperson change application to the Ontario Motor Vehicle Industry Council (“OMVIC”) seeking to be employed as a General Manager with 1231525 Ontario Ltd, o/a London Airport Kia (“London Airport Kia”). In response, the respondent issued the subject NOP refusing the appellant’s registration.
- [6] The respondent submits that the past conduct of the appellant affords reasonable grounds for belief that he will not carry on business in accordance with the law and with integrity and honesty, and is therefore, disentitled to registration as a motor vehicle salesperson pursuant to s. 6(1)(a)(ii) and (iii) of the Act. The respondent also argues that the appellant made a false statement in an application for registration and is disentitled to registration as a result. The onus is on the respondent to prove that the NOP should be carried out.
- [7] The appellant argues that the allegations outlined in the NOP are false and the OMVIC investigation was flawed.
- [8] The matter proceeded to a three-day videoconference hearing. On behalf of the respondent, I heard the testimony of: Susan Dicks, Manager of Registrations, Ontario Motor Vehicle Industry Council (“OMVIC”) Brendan Fernandes, Resolution Support Coordinator with OMVIC and Todd Pearce, Investigator with OMVIC. I also heard the testimony of three consumer witnesses: Hargune Sihota (“Consumer B”), Kyle Azevdo (“Consumer C”) and Angel Azenon-Gochez (“Consumer D”) and Andrew Johnston, Sales Manager employed with Wharncliffe. Nobody testified on behalf of the appellant.

## ISSUES IN DISPUTE

- [9] I have been asked to decide the following issues:
- i) Does the past conduct of the appellant afford reasonable grounds for belief that he will not carry on business in accordance with the law and with integrity and honesty, thereby disentitling him to registration pursuant to s. 6(1)(a)(ii) of the *Act*?
  - ii) Did the appellant make a false statement on an application for registration, pursuant to s. 6 (1)(a)(iii) of the *Act*?
  - iv) If I find that the appellant is disentitled to registration, then I must determine whether to direct the respondent to carry out its NOP or whether to substitute my opinion for that of the respondent, as by attaching conditions to the registration.

## RESULT

- [10] The respondent has established that the past conduct of the appellant affords reasonable grounds for belief that he will not carry on business in accordance with the law and act with honesty and integrity contrary to s. 6(1)(a)(ii) of the *Act*. Further, I find that the appellant made false statements on his application for registration contrary to s. 6(1)(a)(iii) of the *Act*. I find that terms and conditions are not appropriate to protect the public interest. I therefore direct the respondent to carry out its NOP to refuse the registration of the appellant under the *Act*.

## PROCEDURAL ISSUE

### *Motion for an Adjournment/Stay of the Proceedings*

- [11] The appellant brought a motion seeking an adjournment of the hearing because he has been charged under the *Provincial Offences Act and Criminal Code* which is currently before the courts. He submits that the Licence Appeal Tribunal's (the "Tribunal") proceeding should be stayed until the court renders a decision on the criminal and provincial offence charges. He argues the Tribunal's findings about his conduct in this matter may impact the outcome of the matters before the courts. The appellant relies on the Supreme Court of Canada's decision in *Kienapple v. the Queen*, [1975] 1 SCR 729 ("*Kienapple*"), where the court determined that no one should be punished twice for the same offence.
- [12] The respondent opposed the applicant's adjournment request and argues that he could have brought a motion seeking an adjournment in advance of the hearing but did not. Instead, he waited until the first day of the hearing to make this

request without prior notice to it which is inappropriate. The respondent also asserts the appellant has not provided a compelling reason for making an adjournment request at an event pursuant to Rule 16.2 of the *Licence Appeal Tribunal Rules* (“*Rules*”), when he was aware of the circumstance for requesting an adjournment in advance. In addition, the respondent argues that the issues before this Tribunal involve different legal tests than the matters before the courts, and the outcome of this matter will have no bearing on the issues before the courts. Finally, granting an adjournment would be prejudicial to the respondent because it has prepared its case and has arranged for its witnesses to testify.

[13] I note that Rule 16.2 provides that oral requests for adjournments will only be allowed in compelling circumstances where a party did not and could not have known of the circumstances giving rise to the adjournment request prior to the event. I declined the appellant’s request for a stay of the proceedings or an adjournment because I was not provided with a reasonable explanation for why the request was not made in advance of the hearing when the appellant was aware of the circumstances giving rise to the adjournment request prior to the event. I further note that the parties agreed to the scheduled hearing dates at the case conference and the Tribunal provided the parties with sufficient notice of the hearing date on December 3, 2024. I also find that the appellant has not provided a compelling reason for why the hearing should be adjourned.

[14] I have taken into consideration the factors set forth in Rule 16.3 regarding adjournment requests. I note that the file is 134 days old, and an adjournment would result in a significant delay in a determination being made in this matter. Further, the request is not on consent of the parties. With respect to the appellant’s request that this matter be stayed pending the issues before the court, I find that the matters before the court involve a different legal test and purpose. The Tribunal’s proceedings are undertaken in aid of regulation of those who deal in motor vehicles, not in order to penalize criminal conduct. As well, the burden of proof is different since a finding regarding the appellant’s conduct before the Tribunal does not require a finding beyond a reasonable doubt. I also find the decision in *Kienapple* does not apply to the matter before me because it addressed whether the accused could be punished for the same offence twice in criminal proceedings. As noted above, the proceedings before the criminal courts involve a different legal test and burden of proof than in this regulatory matter before the Tribunal.

#### *Motion for Unredacted Records*

[15] The appellant also brought a motion for the unredacted records in the respondent’s document brief and argues that procedural fairness dictates that he has a right to this information. The respondent redacted the addresses listed in the summons to witnesses, which was not appropriate because it is well-established law that there is no property in a witness. The appellant submits that the respondent failed to provide disclosure in accordance with the principles set

out in *R. v. Stinchcombe*, 1995 CanLII 130 (SCC) ("*Stinchcombe*"). The appellant argues that the redacted records has prejudiced his ability to defend the allegations against him which is another reason the hearing should be adjourned.

- [16] The respondent opposed the appellant's motion for unredacted records and submits that the appellant first received the respondent's disclosure on November 3, 2024, prior to the case conference, and he did not request the unredacted information then. It submits that the appellant recently requested the redacted information on January 20, 2025, and was advised of OMVIC's position. The respondent submits that it redacted sensitive information such as the consumer's contact information, driver's licence numbers and a few digits from the consumer's banking information. The respondent argues that the redacted information is not relevant to the issues in dispute. Further, it maintains that the appellant was aware of the witnesses the respondent was calling and could have sought their contact information in advance but did not. Finally, the respondent submits it was not appropriate for the appellant to make a last-minute request for this information in order to delay the hearing.
- [17] In making a determination, I ordered the respondent to submit its unredacted document brief to me so that I could review the nature of the redactions. I confirmed that the respondent redacted a driver's licence number, a few digits from bank account numbers and the contact information of the consumers. I do not find the appellant is prejudiced due to these redactions because the identity of the consumers was in the records so the appellant would be aware of which consumers had made the allegations in the NOP. In my view, the appellant could have brought a motion seeking the contact information for the consumers in advance of the hearing but did not. Further, he did not provide any explanation for why he waited until the eve of the hearing to request this information. I also find the appellant is not prejudiced by the redactions made by the respondent in its document brief because he had the contact information of Consumers B, C and D which was confirmed by text messages sent between the consumers and the appellant. Further, he would have had access to the bank account information which was redacted because the e-transfers were sent directly to his personal email. Consequently, I find that the appellant was not prejudiced by any of the redactions made by the respondent in its document brief.
- [18] Although I agree that the respondent should not have redacted the contact information for the consumers in the summons to witnesses, I find the appellant was not prejudiced because he was able to cross-examine the witnesses on their evidence and defend the case against him.

## **ANALYSIS**

**I find the past conduct of the appellant affords reasonable grounds for belief that he will not carry on business in accordance with the law and with integrity and honesty.**

- [19] The onus is on the respondent to prove that the past conduct of the appellant affords reasonable grounds for belief that he will not carry on business in accordance with the law and with integrity and honesty. The standard of “reasonable grounds for belief” was set out by the Court of Appeal in *Ontario Alcohol and Gaming Commission of Ontario v. 751809 Ontario Inc. (Famous Flesh Gordon’s)*, 2013 ONCA 157 (CanLII). The respondent does not have to show that the appellant’s past conduct makes it more likely than not that he will not carry on business as required, but only that its belief to that effect is based on more than mere suspicion and on compelling and credible information. Further, the respondent must also show that there is a nexus between the past conduct and the appellant’s ability to conduct business under the *Act*, serving the interests of the public. Further, in the recent decision of *Yarco Developments Inc. v. Home Construction Regulatory Authority* (Registrar), 2024 ONSC 93 (“*Yarco*”), the Divisional Court clarified that the question to be decided by the Tribunal is whether the Registrar’s evidence supports the NOP.
- [20] The respondent argues that it has shown that there are reasonable grounds for belief based on the evidence supporting the allegations outlined in its NOP. The allegations stem from four separate transactions regarding the sale of motor vehicles. The respondent submits that the appellant has displayed a pattern of deceptive business practices and non-compliance with the law. In particular, it maintains that the appellant has misappropriated funds in relation to four consumer transactions by taking cash paid by consumers and not applying it towards the sale or trade of the vehicle. As a result of this conduct, the appellant was terminated from two dealerships.
- [21] The appellant argues that he has been registered as a motor vehicle salesperson since 2006 and has not had any problems until recently. Additionally, the appellant submits the allegations made by the consumers are false and the respondent’s investigation into the various complaints was flawed because the investigator did not interview important witnesses who would have relevant information, nor did it fully investigate what happened to the missing funds. Moreover, the appellant asserts that the respondent failed to hold the dealerships the appellant was employed with responsible for any of the misconduct outlined in the NOP.
- [22] I will now discuss the allegations outlined in the NOP, and my findings.

### **Allegations re: Consumer A**

- [23] The NOP alleges that Consumer A leased a vehicle from Jaguar Windsor for a period of four years and the appellant acted as the salesperson for the transaction. The consumer returned the vehicle prior to the end of the lease period and the appellant advised the consumer that a \$24,450 penalty was charged for the early return of the vehicle and damage caused during the lease. Per the appellant’s instructions, Consumer A issued a cheque to an individual who was not an employee of the dealership. Jaguar Windsor never received the

funds for this vehicle. OMVIC charged the appellant with making false, misleading, or deceptive representations contrary to ss. 14(1) and 17(1) of the *Consumer Protection Act, 2002, S.O. 2002, c. 30, Sched A ("CPA")*.

- [24] Section 17(1) of the *CPA* provides that no person shall engage in an unfair practice. Section 14(1) defines an unfair practice as making a false, misleading, and deceptive representation.
- [25] The respondent submitted evidence such as the lease agreement and copies of cheques issued by the consumer in support of the allegations in the NOP involving Consumer A. Despite being summoned by the respondent, Consumer A did not attend the hearing to testify. No explanation was provided for the consumer's absence. For these reasons, I have given the evidence regarding this allegation little weight because the appellant was unable to cross-examine the consumer on this evidence. In addition, Mr. Pearce acknowledged during cross-examination that there was no evidence that the money the consumer paid for the lease takeover was exaggerated.

**Allegations re: Consumer B**

- [26] The NOP alleges that the appellant misappropriated funds received from the consumer regarding the purchase of a vehicle. Consumer B contacted Jaguar Windsor in November 2023 about purchasing a vehicle and the appellant was the salesperson. Between November 1, 2022, and February 9, 2023, Consumer B paid \$18,300 directly to the appellant by e-transfer as a deposit for the purchase of a vehicle and was advised by the appellant on December 22, 2022, that the vehicle had been ordered. Consumer B later discovered that the vehicle had never been ordered and the dealership had no record of the sale. The NOP alleges that the appellant has been charged by OMVIC with making false, misleading, or deceptive representations, contrary to sections 14 and 17 of the *CPA*.
- [27] Consumer B testified that, in October 2022, he contacted Jaguar Windsor about purchasing a 2023 Range Rover and that the appellant was the salesperson he dealt with. Between November 1, 2022, to February 9, 2023, Consumer B sent e-transfers to the appellant's personal email address in the amount of \$18,300 for a deposit. Copies of the e-transfers from the consumer to the appellant's personal email address confirmed same. The consumer never signed or received a bill of sale. The consumer testified that he had previously dealt with the appellant when he worked for another dealership, and he did not have any issues, thus he had no reason not to trust him. A text message between the consumer and the appellant on December 22, 2022, confirms that the consumer requested a copy of a spec sheet confirming that the vehicle had been ordered but he did not receive confirmation of same.

- [28] In February 2024, the consumer contacted the dealership and was advised that the appellant had been terminated for allegedly exporting vehicles overseas. The dealership refused to address the consumer's complaint because it had no record of the transaction or the consumer's deposits. Consumer B testified that he spoke with the appellant after learning of his termination and the appellant told him not to worry about it and that the dealership had his money. The consumer then filed a complaint with OMVIC and a report with the Windsor Police. To date, Consumer B has never received a refund of his deposit or a vehicle. An Information outlining the appellant's criminal charge, dated April 30, 2024, confirmed that the appellant was charged with fraud over \$5,000 contrary to section 380(1)(a) of the *Criminal Code* arising from this incident. As of the date of the hearing, the outcome or status of these charges are unknown.
- [29] Consumer B was asked during cross-examination about whether the e-transfers sent to the appellant were to pay back a loan owed to the appellant's brother in-law which the consumer denied. The consumer was also asked about a \$4,000 payment made by the appellant to a Honda dealership for the purchase of a Mercedes in March 2023 on the consumer's behalf. I note that the appellant did not tender any evidence to support any theory that the consumer owed him money. Much was made by the appellant about the fact that the e-transfers from the consumer to the appellant came from three different bank accounts (a personal account, a joint account with his mother and Equity Jewels Inc., the consumer's business account). I find this fact irrelevant because the bulk of the e-transfers indicated that they were for a Range Rover.
- [30] As highlighted above, the appellant chose not to testify. As a result, I have no evidence or explanation from him about what happened with this transaction. Nor did the appellant provide any evidence supporting his theory that the e-transfers were sent from Consumer B to repay a loan to his brother-in-law. Consequently, I give the appellant's theory that the e-transfers were sent to the appellant by the consumer as a repayment for a loan owed to his brother-in-law no weight. Further, this theory does not align with common sense because if the consumer owed money to the appellant's brother-in-law he would not have logically sent e-transfers to the appellant for a Range Rover. Moreover, the appellant has been charged with fraud arising from this transaction.
- [31] Although I acknowledge that there was a small discrepancy (a difference of \$1,000) in the deposit amount reported by the consumer to OMVIC and the police, I find Consumer B to be a credible witness and find no reason not to believe his version of events. I find the appellant took money from the consumer and failed to order the vehicle and apply the money towards the purchase on behalf of the consumer. I find that the appellant engaged in an unfair practice by making deceptive representations to the consumer that he had ordered the Range Rover and by accepting money from the consumer to his personal



account that was never put towards this purchase, contrary to ss. 14 and 17 of the *CPA*.

**Allegations re: Consumer C**

- [32] The NOP alleges that Consumer C contacted Jaguar Windsor in May 2023 to purchase a vehicle and the appellant acted as the salesperson. The NOP claims that the consumer paid \$10,000 as a deposit to the appellant towards the purchase of this vehicle. On March 28, 2024, Jaguar Windsor informed Consumer C that it had not received the \$10,000 deposit for this vehicle. OMVIC charged the appellant with making false, misleading, and deceptive representations, contrary to ss. 14(1) and (17)(1) of the *CPA*.
- [33] Consumer C testified that he had previously bought three vehicles from Jaguar Windsor, and the appellant was the salesperson on the previous transactions, so he had come to trust the appellant. The consumer stated that he was interested in purchasing a 2024 Range Rover, so he contacted the appellant to order the vehicle and provided a \$10,000 deposit to the appellant: \$3,885.00 was paid by Visa and the balance was paid by cash. Consumer C testified that he asked the appellant several times for receipts, but the appellant ignored his request. The respondent relied on a text message between the consumer and the appellant on July 31, 2023, where the consumer asked the appellant to email him the lease agreement and a receipt for the deposit, which he had asked for seven times.
- [34] Consumer C testified that he decided that he did not want to proceed with the transaction because his previous Range Rovers had been stolen twice. He contacted the dealership and was notified that the appellant had been fired. The consumer met with the owner of the dealership who gave him a \$10,000 receipt for his deposit, but the dealership did not want to return the deposit because it had not received the money for the transaction. However, the evidence supports that the dealership applied the \$10,000 deposit towards the purchase of another vehicle.
- [35] During cross-examination, Consumer C was asked about an e-transfer in the amount of \$2,500 he sent directly to the appellant. The consumer acknowledged this could have been for repairs to fix his 2023 Range Rover, which had been damaged following a break-in.
- [36] Although I find that this transaction was not handled properly by the appellant because there was no evidence that the vehicle was ordered, I find the payments the consumer made by Visa were paid directly to Jaguar Windsor and not to the appellant. Further, I have insufficient evidence before me to support the consumer's allegation that he paid cash directly to the appellant. I find Consumer C's testimony about when cash was given to the appellant vague and lacking in detail. Further, the consumer acknowledged that it was possible the e-transfer

that was sent to the appellant was to repair his 2023 vehicle. Consequently, I find the respondent has not met its onus in proving this allegation in the NOP.

**Allegations re: Consumer D**

- [37] The NOP alleges that Consumer D attended Wharncliffe to purchase a vehicle and that the appellant acted as the salesperson for this transaction. Between April 25, 2024, and May 2, 2024, Consumer D paid \$10,000 to the appellant as a deposit to be applied towards the purchase of the vehicle. On May 2, 2024, the appellant transferred \$1,000 of the deposit into the dealership's account. The NOP alleges that the appellant subsequently admitted to receiving \$10,000 cash from Consumer D and agreed to reimburse the dealership for the remaining \$9,000, which to date, has never been paid. OMVIC charged the appellant with making false, misleading, and deceptive representations, contrary to ss. 14(1) and (17)(1) of the *CPA*.
- [38] Consumer D testified that he bought a 2013 Mazda from the dealership and the appellant was the salesperson he dealt with. He provided a \$10,000 deposit to the appellant which can be broken down as follows: a \$2,000 e-transfer was sent directly to the appellant's email address on April 25, 2024, and \$8,000 in cash. Receipts provided to the consumer by the appellant confirm that he paid two separate cash installments of \$1,000 and \$3,000 on April 26, 2024, and paid a final cash installment of \$4,000 on May 2, 2024. The consumer testified that the appellant told him that he would get approval faster if he sent the e-transfer directly to him.
- [39] Consumer D testified that after he had taken ownership of the vehicle, he received a call from the appellant who advised him that he was in trouble and needed Consumer D to do a favour for him regarding when he gave the cash deposits to him. The appellant followed up by sending the consumer a text message and email which stated that the consumer paid him \$1,000 cash at the end of April 2024, and the balance of \$9,000 cash was paid by mid-May 2024 on pick-up. I find that the appellant's text and/or email exchange with the consumer does not align with the dates of the receipts given to the consumer for the cash payments made. The consumer testified that the next day someone from the dealership called him and said that there had been some suspicious activity regarding his transaction and asked him to have a meeting with a manager and the appellant. The consumer attended the dealership the next day and met with the manager, but the appellant did not show up.
- [40] Mr. Johnston, a Sales Manager with Wharncliffe testified that the appellant had sold a vehicle and when he reviewed the deal file on July 3, 2024, it was discovered that money was missing because the file did not have any receipts from the transaction. The dealership phoned the appellant and asked him where the money was and he advised that the money had been provided to Alex,

another employee, to put in the safe. He then discovered that there was a \$1,000 cash deposit in the safe with a receipt to the customer for the end of April 2023. Mr. Johnston testified that he called the consumer and asked him to come in for a meeting with him and the appellant. However, the appellant did not attend. The appellant later admitted to Mr. Johnston that he had taken the money and he promised that he would pay it back. Mr. Johnston testified that, to date, the appellant has not repaid this money owed to the dealership. The dealership reported the incident to the police; however, the current status of this investigation is unknown. Mr. Johnston testified that the dealership's policy does not allow salespeople to accept deposits to their personal accounts and that the dealership has an email account for such deposits. He further testified that when a cash deposit is received, a receipt should be given to the consumer and the money should immediately be deposited in the safe.

- [41] During the cross-examination of Mr. Johnston, it was revealed that it was his signature on the bill of sale, the credit agreement, and the warranty program. Mr. Johnston indicated that he helped with this transaction and that it was his signature on the documents, but he was not the salesperson involved in the transaction. Mr. Johnston also confirmed that the dealership has not commenced any legal proceedings against the appellant for the missing money. Mr. Johnston was also asked why the dealership released the vehicle to the consumer when there was \$10,000 owing, and he indicated that it was the appellant who released the vehicle to the consumer.
- [42] I find the e-transfer statement sent by Consumer D directly to the appellant, the receipts given to Consumer D for the cash deposits along with the dates, and the text message and email sent from the appellant to the consumer support the respondent's narrative outlined in the NOP. I find the respondent has established reasonable grounds for belief that the appellant misappropriated the funds paid by Consumer D in this transaction for his own personal gain. I find Consumer D's testimony consistent with the documentary evidence. Although Mr. Johnston's testimony supports that he himself did not comply with the *Act* in that his signature should not have been on the bill of sale, credit agreement or warranty documents if he was not the salesperson, this fact does not make the consumer's testimony and evidence relied upon in support of same unreliable. In addition, I find that I do not require evidence of a policy to accept Mr. Johnston's testimony that salespeople are not allowed to accept deposits into their personal accounts because I find that it would defy logic for this to be an acceptable practice for any business.
- [43] Finally, the applicant did not testify and provide an explanation for what transpired from his perspective. As a result, I do not have any evidence to challenge the respondent's evidence and version of events.
- [44] I find that the appellant engaged in an unfair practice by accepting an e-transfer and cash deposits from the consumer in the amount of \$10,000 and failed to

apply it towards the sale of the vehicle contrary to ss. 14(1) and 17(1) of the *CPA*.

***Summary: The past conduct of the appellant affords reasonable grounds for belief that he will not carry on business in accordance with the law and with integrity and honesty***

- [45] For the above noted reasons, I find the respondent has proven that the appellant's past conduct in relation to the two transactions involving Consumers B and D affords reasonable grounds for belief that he will not carry on business in accordance with the law and with integrity and honesty. I find that the respondent produced compelling and credible evidence that establishes that the appellant took money from two consumers for his own personal gain while acting as a motor vehicle salesperson. I agree with the respondent that the appellant has displayed a pattern of dishonesty and non-compliance with ss. 14(1) and 17(1) of the *CPA*.
- [46] For these reasons, I find that the appellant is disentitled to registration in accordance with s. 6(1)(a)(ii) of the *Act*.

**I find the appellant made a false statement on an application for registration, pursuant to s. 6 (1)(a)(iii) of the *Act*.**

- [47] The NOP alleges that the appellant made a false statement on his application for registration. In particular, the appellant was asked if he had ever been charged with an offence under any law, within or outside Canada, and he answered no. This answer was false because the appellant had pending criminal charges in the Ontario courts for fraud prior to completing the application.
- [48] Section 6(1)(a)(iii) of the *Act* provides that an applicant is entitled to registration or renewal of registration unless the applicant or an employee or agent of the applicant makes a false statement or provides a false statement in an application for registration or for renewal of registration. In the Divisional Court's decision in *Registrar, Motor Vehicle Dealers Act v. Vernon*, 2016 ONSC 304 CanLII, the court confirmed that important to the analysis is whether the applicant knew that the statements made on the application were false.
- [49] Ms. Dicks testified that the appellant submitted a salesperson change application for registration on August 7, 2024, to be employed as a General Sales Manager with London Airport Kia. Under the Eligibility section of the application, the appellant was asked whether he had ever been charged with an offence under any law, within or outside Canada. The form indicated that this question applied to charges still pending or before the court, charges that were stayed, charges that resulted in a finding of guilt, conviction, absolute or conditional discharge, and charges that were withdrawn dismissed or resulted in a finding of not guilty.

The appellant answered “no.” This answer was false because the appellant had been charged under the *Criminal Code* with fraud exceeding \$5000.

- [50] The appellant chose not to testify at the hearing without any explanation. His legal representative argued that the appellant made an honest mistake on the application, and that he allegedly contacted a representative at OMVIC by phone to correct the mistake on the application. However, the OMVIC representative failed to make a record of this conversation.
- [51] I am not persuaded that the appellant made an honest mistake on the application and find that he knew or ought to have known when he answered “no” to the above question that it was false. I find the question was clearly worded and unambiguous. Further, the Information laying criminal charges is dated April 30, 2024, which was approximately three months prior to him submitting the application to the respondent. In my view, he would have been aware that criminal charges had been filed against him when he answered “no” to that question. In addition, the appellant did not testify and did not provide any evidence regarding the date he contacted OMVIC or who he spoke to. Nor did he testify to explain how this was an honest mistake. Finally, I find the appellant’s attempt to shift the blame on the respondent disingenuous.
- [52] For the above-noted reasons, I find that the appellant knowingly made a false statement on his application for registration. Moreover, I find that this false statement, on its own, disentitles him to registration in accordance with s6(1)(a)(iii) of the *Act*.

**I find that terms and conditions are not appropriate in this case.**

- [53] The Tribunal has the statutory discretion under s. 9(5) of the *Act* to consider the appellants’ circumstances and determine whether the public interest requires outright revocation of registration or whether the purpose of the *Act* can be adequately protected through other means, including attaching conditions to its order or to a registration.
- [54] The *Act* has two broad purposes: first, to provide protection to consumers; and second, to promote professionalism amongst dealers and salespeople within the automobile industry.
- [55] The respondent argues that terms and conditions are not appropriate in this case because the appellant stole money from a consumer and from his employer. It submits that the only appropriate remedy is to refuse his registration. The position of a salesperson is one of trust, and the fact that the appellant has stolen money means he has not and will not act with honesty in the future. The respondent relies on the Tribunal’s decision in *Toronto Quality Motors Inc., 2291683 o/a The Auto Dealer and Khaled Mousa-Khaled v. Registrar, Motor Vehicle Dealers Act, 2002*, 2021 CanLII 11891 (ON LAT) where the adjudicator

revoked an appellant's registration, which was upheld by the Divisional Court at 2022 ONSC 645 ("*Toronto Quality Motors*"). The respondent submits that the appellants' conduct in *Toronto Quality Motors* was considered appropriate for revocation, which was deemed to be the appropriate penalty by the court. It submits that the appellant took advantage of unsophisticated consumers through dishonesty and manipulation. In that decision, the Tribunal highlighted that terms and conditions may be appropriate to address sloppy business practices but will not adequately address a failure to deal with consumers with honesty and integrity.

- [56] The appellant argues that refusal of his registration is not the appropriate penalty. He submits that registration should be granted with the condition that he be supervised. Further, he argues that OMVIC did not conduct a proper investigation because Mr. Pearce did not interview Alex, the employee at Wharncliffe who the appellant allegedly gave the money to deposit into the safe on behalf of Consumer D. He submits that the respondent has only proven that e-transfers were sent to him, but it has not proven that he misappropriated these funds. Finally, he also argues that Mr. Pearce failed to look into the past history and conduct of the owners of Jaguar Windsor and Wharncliffe who have been found guilty by OMVIC for past non-compliance with the law. The applicant relies on this Tribunal's decision in *7448/MVDA v. Registrar, Motor Vehicle Dealers Act*, 2002, 2014 CanLII 36455 (ON LAT) ("*7448/MVDA*") where the adjudicator discussed the owner of Wharncliffe's past non-compliance with the *Act*. The appellant argues that the owners of the dealerships should have also been held accountable. He also submits that despite being summoned to testify at the hearing, Cathy Pratt, Financial Director with Jaguar Windsor failed to testify. Further, the respondent did not summons the owner of Wharncliffe to testify.
- [57] I find that the appellant has tried to shift the blame onto the dealerships he was employed with, or onto OMVIC. As highlighted above, the applicant did not file any evidence for the hearing, he did not call any witnesses to support his alternative theories and did not testify on his own behalf. I find the decision of *7448/MVDA* is irrelevant to this case because that decision does not discuss the allegations outlined in this NOP. The appellant also placed blame on OMVIC for not seeking clarification when he provided a false statement on his application for registration. I note that it is not OMVIC's responsibility to ensure that an applicant is being truthful on their application.
- [58] I agree with the respondent that the appellant has demonstrated a pattern of non-compliance with the law and terms and conditions are not appropriate in this case because I find they will not protect the public interest.
- [59] I find that refusal of the appellant's registration is the appropriate penalty because he took money from a consumer and/or the dealership for his own personal gain. Rather than accepting responsibility and expressing remorse, he

has blamed OMVIC and his former employers for his actions. I find that supervision is not appropriate to prevent this type of dishonesty.

[60] For these reasons, I find that the public interest cannot be adequately protected with terms and conditions.

**ORDER**

[61] For the reasons set out above, pursuant to s. 9(5) of the *Act*, I direct the respondent to carry out the NOP to refuse the registration of the appellant.

**Released:** March 31, 2025



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**Rebecca Hines**  
**Adjudicator**