



Citation: Voskamp v. Registrar, *Motor Vehicle Dealers Act, 2002*, 2021 ONLAT MVDA 13491

Date: 2021-11-16
File Number: 13491/MVDA

Appeal from a Notice of Proposal to refuse the Registration of the appellant as a motor vehicle salesperson pursuant to the *Motor Vehicle Dealers Act, 2002*

Between:

Richard Voskamp

Appellant

and

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

DECISION AND ORDER

Adjudicator: Colin Osterberg, Member

Appearances:

For the Appellant: Michael Burokas, Counsel

For the Respondent: Jane Samler, Counsel

Heard by Videoconference: **October 14, 2021**

REASONS FOR DECISION AND ORDER

A. OVERVIEW

- [1] Pursuant to a Notice of Proposal dated July 16, 2021, the Registrar proposed to refuse the registration of Richard Voskamp (the “appellant”) as a motor vehicle salesperson under the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 20, Sched. B (the “Act”) and Regulations. Pursuant to a Notice of Further and Other Particulars dated October 8, 2021, the Registrar no longer proposes to refuse the appellant’s registration but instead proposes to apply conditions to the registration of the appellant as a motor vehicle salesperson under the *Act* and Regulations.
- [2] The Registrar seeks to impose conditions on the appellant’s registration on the grounds that:
 - a. the appellant cannot reasonably be expected to be financially responsible in the conduct of business; and
 - b. the past conduct of the appellant affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty.
- [3] The appellant appeals the Registrar’s proposal to apply conditions to his registration to the Tribunal.
- [4] Based on all the evidence, I find that there are reasonable grounds to believe that the appellant will not carry on business in accordance with law and with integrity and honesty. However, I find that in this case it is appropriate to permit registration with conditions, and that the conditions proposed by the Registrar are reasonable in the circumstances. I therefore direct the Registrar to carry out its proposal dated October 8, 2021.

B. ISSUES

- [5] The first issue to be decided is whether, having regard to the applicant’s financial position, the applicant cannot reasonably be expected to be financially responsible in the conduct of business according to s. 6(1)(a)(i) of the *Act*.
- [6] The second issue to be decided is whether the past conduct of the appellant affords reasonable grounds to believe that he will not carry on business as a motor vehicle salesperson in accordance with law and with integrity and honesty according to s. 6(1)(a)(ii) of the *Act*.
- [7] If the answer to either question is in the affirmative, then the third issue to be decided is whether the public interest can be adequately protected through granting registration with conditions.

C. LAW

[8] Under s. 6(1)(a) of the *Act*, an applicant is entitled to be registered as a motor vehicle salesperson unless one of the following criteria is present:

- (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
- (iii) 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.

[9] Under s. 6(2) of the *Act*, a registration is subject to such conditions that are either consented to by the applicant, applied by the Registrar under s. 9 of the *Act*, as ordered by the Tribunal, or as are prescribed. Section 9 of the *Act* provides that the Registrar may apply conditions to a registration and that the Tribunal may direct the Registrar to carry out its proposal or substitute its opinion for that of the Registrar and attach conditions to its order or to a registration.

[10] The Tribunal must therefore determine whether the applicant cannot reasonably be expected to be financially responsible in the conduct of business or that 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, and, if so, whether there are conditions which may be attached to the appellant's licence which will mitigate the risks created by those issues.

[11] The Ontario Court of Appeal has described the applicable standard of proof as follows:

The standard of proof provided by s. 6(2)(d) of the *Act* is that of "reasonable grounds for belief"... As applied to this case, s. 6(2)(d) of the *Act* required the Registrar simply to show that Mr. Barletta's past or present conduct provides *reasonable grounds for belief that he will not carry on business in accordance with law and integrity and honour*. The Registrar does not have to go so far as to show that Mr. Barletta's past or present conduct *make it more likely than not that he will not carry on business as required*.¹

¹ *Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc. (Famous Flesh Gordon's)*, 2013 ONCA 157 at 18-19.

- [12] At the same time, the “reasonable grounds for belief” must be more than “mere suspicion and will be found to exist “where there is an objective basis for the belief which is based on compelling and credible information.”² Further, there must be a nexus between the appellant’s past conduct and his ability to conduct business as a motor vehicle salesperson serving the interests of the public.³
- [13] Even if I find that there are reasonable grounds for belief that the appellant will not carry on business in accordance with law and with integrity and honesty, I must still consider whether refusal of registration is the appropriate remedy or whether the public interest can be adequately protected through granting registration with conditions.⁴

D. EVIDENCE AND ANALYSIS

Financial Responsibility

- [14] The Registrar presented little evidence regarding the appellant’s current financial position and made no submissions about whether he can reasonably be expected to be financially responsible in the conduct of business.
- [15] There was evidence at the hearing which established that the appellant declared personal bankruptcy twice. The first time was in 1996 and the second was in 2007. The Registrar presented no evidence as to the reasons for the bankruptcies and made no submissions as to why the Tribunal should consider those bankruptcies to be indicative that the appellant cannot currently be expected to be financially responsible in the conduct of business.
- [16] The appellant presented evidence that he has been successful working in several jobs since 2007, which have entailed significant financial responsibility without any concerns being expressed by his employers as to his ability to handle those responsibilities. The appellant submitted supportive letters from two of his previous employers as well as the oral evidence at the hearing of Justin Ferron, the owner of a recreational vehicle dealership called Throttle Powersports, which employs the appellant as the General Manager of one of his sales locations.
- [17] I find that the Tribunal was presented with insufficient evidence to conclude that the appellant cannot reasonably be expected to be financially responsible in the conduct of business.

² *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para.114

³ *CS v. Registrar, Real Estate and Business Brokers Act, 2002*, 2019 ONSC 1652 at para. 32

⁴ *Arulappu v. Registrar, Real Estate and Business Brokers Act, 2002*, 2011 ONSC 797 (Div. Ct.)

The Past Conduct of the Appellant

[18] With respect to the allegation that there are reasonable grounds to believe that the appellant will not carry on business in accordance with the law and with integrity and honesty, the Registrar presented evidence of the following conduct:

1. that the appellant was responsible for the day-to-day operations of a dealership which failed to make lien payments with respect to several vehicle trade-ins in breach of its obligations under its contracts with its customers and in breach of the *Act*;
2. that the appellant acted as a motor vehicle salesperson when he was not licenced to do so in breach of the *Act* and in breach of a Consent Order of the Tribunal; and
3. that the appellant acted as a motor vehicle dealer when he was not licenced to do so in breach of the *Act* and in breach of a Consent Order of the Tribunal.

[19] The appellant presented evidence with respect to the circumstances surrounding the conduct cited by the Registrar. He also presented evidence regarding other past conduct that he says demonstrates that he should be trusted to conduct business in accordance with law and with integrity and honesty.

Lien Non-Payments

[20] The evidence presented at the hearing was that 1405093 Ontario Inc. (“Pembroke Suzuki”) was registered as a motor vehicle dealer between June 2000 and June 2008. The appellant was the vice president, director, and the person in charge of the day-to-day operations of Pembroke Suzuki.

[21] On April 7, 2006, the Registrar made a proposal to revoke the registrations of, among others, Pembroke Suzuki and the appellant. The Registrar presented evidence that Pembroke Suzuki was engaged in a practice of non-payment of liens, which caused significant damage to its customers and required significant payments by the Motor Vehicle Dealers Compensation Fund. Specifically, Pembroke Suzuki had taken as trade-ins, several customers’ vehicles which had liens attached to them as security for the repayment of outstanding loans. Most of those customers also required financing to purchase their new vehicles from Pembroke Suzuki. As part of the sales agreement for the new vehicle purchases, Pembroke Suzuki agreed to pay the debts for the vehicles traded in and to discharge the liens attached to them. Pembroke Suzuki failed to do so. The result was that the customers found themselves with outstanding debts on both vehicles, the ones that they purchased from Pembroke Suzuki, and the ones that they had traded in.

- [22] The appellant testified that, when he found out about the outstanding lien non-payments, instead of disclosing the issue to his customers, he attempted to find bank financing to deal with the liens while trying to avoid the issue coming to light by making monthly payments for the loans. When Pembroke Suzuki was unable to obtain additional financing, it declared bankruptcy at the direction of the appellant.
- [23] The appellant alleges that he was not involved directly in the decision not to pay out the liens and that he naively trusted his accounting department. When the issue came to his attention, he (eventually) realized it was not possible to repair the financial situation and he, and Pembroke Suzuki, had to declare bankruptcy. The appellant was not specific as to who in his accounting department was responsible for failing to pay out the liens, or what such a person would have to gain by doing so. He acknowledged that he was responsible for the day-to-day operations of the dealership, including its finances, but alleged that his trust in the wrong people led to the lien non-payments and eventual bankruptcy.
- [24] As noted, the appellant admits that, as the person in charge of the day-to-day operations of Pembroke Suzuki, he was ultimately responsible for the lien non-payments. However, I do not accept his characterization of his involvement as, in effect, the victim of an unnamed accounting person. There was no evidence presented in support of that allegation and I find that the appellant's characterization is evidence that he does not fully accept or understand his obligations of integrity and honesty under the *Act*. While it is encouraging that the appellant at least admits responsibility for the lien non-payments, it is concerning that he continues to cast the blame for the occurrence elsewhere.

Acting as salesperson without licence

- [25] On April 7, 2006, in part because of the lien non-payment issue, the Registrar issued a Notice of Proposal to revoke the licences of Pembroke Suzuki and the appellant. The appellant filed a Notice of Appeal with the Tribunal and that appeal was resolved by way of a written settlement signed by the appellant and the Registrar along with a Consent Order of the Tribunal released November 21, 2006. Pursuant to the Consent Order, the appellant's registration as a motor vehicle salesperson was suspended for a period of 5 years at which time he could apply for registration.
- [26] Despite this, starting in June 2009 the appellant began acting as a motor vehicle salesperson for Jack McGee Chevrolet-Cadillac Limited ("McGee"). Between June 24, 2009 and November 14, 2009, the appellant sold 22 motor vehicles despite being suspended from doing so. On December 4, 2009, the appellant was charged with 22 counts of acting as a salesperson while not registered as a motor vehicle salesperson as required by the *Act*. On February 14, 2013, the appellant was convicted of all 22 counts and fined \$22,000.

- [27] At the hearing, the appellant testified that someone at McGee told him he could apply for a salesperson's licence under the *Act*, and that a temporary licence would be automatically issued while he awaited the Registrar's decision on registration. He applied for the licence and, although he never actually received a temporary licence from the Registrar, he says he assumed he could start selling vehicles immediately. He thought that if the Registrar refused to issue a licence, he could appeal the decision and ultimately shorten the length of his suspension.
- [28] I find the appellant's explanation to lack credibility to the point of absurdity. I do not believe that he was truthful about this evidence at the hearing. The appellant had significant experience selling vehicles and knew that his licence was suspended when he started selling vehicles in 2009. I do not believe that the appellant thought that he could stay the suspension by simply applying for a licence in 2009. That simply makes no sense. The appellant, when questioned about this, ultimately agreed at the hearing that he knew that he did not have a licence when he sold the vehicles in 2009. In effect, the appellant admitted that the evidence that he had given under oath at the hearing was not true.
- [29] I also note that, on May 23, 2013, in sentencing the appellant with respect to the 22 counts under the *Act*, Justice of the Peace S. Lancaster stated that the charges under the *Act* were *mens rea* offences and he found that the appellant knew that he was trading in motor vehicles when he was not permitted to do so by law. The Court considered as aggravating factors that the appellant had knowledge of the consequences of his actions given his dealer and salesperson activities over the years and that "he was well aware that he was trading in motor vehicles while subject to an OMVIC prohibition order."
- [30] I find that the appellant acted as a motor vehicle salesperson in 2009 with the knowledge that he was not licenced to do so, and that he tried to mislead the Tribunal about his reasons for doing so. The appellant's actions in 2009 were in breach of the *Act* and in breach of the Consent Order he had agreed to in 2006 and are significant in the determination as to whether there is reason to believe that the appellant will not carry on business in accordance with the law.
- [31] The fact that the appellant tried to convince the Tribunal that he believed he was acting in accordance with the law when he sold vehicles in 2009, is evidence that he is not prepared to take full responsibility for his illegal actions even long after they were committed and after he has been found to have knowingly committed those illegal acts. The fact that he is prepared to misrepresent important facts under oath speaks to his lack of integrity and honesty.

Acting as dealer without a licence

- [32] On May 26, 2011, the appellant was charged with acting as a motor vehicle dealer and trading in motor vehicles between March 19, 2011 and May 17, 2011, when he was not registered to do so, contrary to s. 4(1)(a) of the *Act*. The appellant admitted in an agreed statement of facts dated June 5, 2014, that on March 19,

2011 he purchased three motor vehicles at an auction while accompanied by another person, Rachael Dumbroskie. The appellant agreed that, within two weeks, those three vehicles were advertised for sale and that the appellant negotiated the sale of one of those vehicles to a Carissa McIntyre. Ms. McIntyre later found out the vehicle needed extensive repairs.

- [33] At the hearing, the appellant's initial testimony was that he purchased the vehicles to give to family members and that he did not intend to sell those vehicles. He explained that he later decided to sell the vehicles because he needed money to pay the lawyers who were defending him with respect to the charges for acting as a salesperson without a licence. He argued that he did not believe he was acting as a dealer without a licence at the time but now he realizes that he should have done things differently.
- [34] I do not accept the appellant's explanation. To suggest that he did not have enough money to pay his lawyers and at the same time purchase three vehicles for family members before realizing almost immediately thereafter that he could not afford to purchase those vehicles, is not credible.
- [35] When it was suggested to the appellant that this explanation was difficult to accept, the appellant changed his story and testified that his girlfriend actually purchased the cars because he did not have any money to purchase them himself. This being the case, the appellant suggested that he did not think he was acting as a dealer in contravention of the *Act* at the time.
- [36] I do not accept this version of events either. Aside from the fact that this story was different than the story he had just presented, it does not make sense that the appellant's girlfriend would purchase vehicles for three of the appellant's family members and then sell them two weeks later to pay the appellant's lawyer bills.
- [37] The appellant ultimately agreed that he intended to sell the vehicles when he or his girlfriend bought them and that this was contrary to the *Act* since he did not have a dealer's licence at the time.
- [38] On June 5, 2014, the appellant pleaded guilty to acting as a motor vehicle dealer when not registered to do so and was fined \$5,000 for that offence.
- [39] I find that the appellant knowingly breached the *Act* and the terms of the Consent Order by acting as a motor vehicle dealer from March 2011 to May 2011. This conduct is significant when deciding whether there is reason to believe that the appellant will not carry on business in accordance with the law.

[40] I also find that the appellant misrepresented the circumstances surrounding this breach at the hearing before the Tribunal. Again, the fact that the appellant initially testified that he believed he was acting in accordance with the law when he purchased and sold motor vehicles in 2011, is evidence that he is not prepared to take responsibility for his illegal actions even long after they were committed and after he previously admitted to have knowingly committed those illegal acts. It is also evidence that he is prepared to misrepresent important facts under oath for his own advantage and that there is reason to believe that he will not act with integrity and honesty in matters connected with his business activities.

Other conduct of the appellant

[41] The appellant is 53 years old and lives in Kingston, Ontario. He has three children, two of whom are financially dependent on him and the other who lives on her own.

[42] From 1987 to 1993, the appellant was a member of the Canadian Armed Forces.

[43] After leaving the military, the appellant returned to Pembroke because he had family obligations there including supporting three young children. He purchased a gas station, a variety store, a sign company, and a tanning salon. The appellant eventually had to declare bankruptcy because the gas company he was affiliated with decided to discontinue its business at his location.

[44] In the mid-1990s, the appellant was hired at Dean Myers Chevrolet Oldsmobile in Toronto and began training to take over as the general manager of that business. He never became general manager there but was their business manager for about three years. As business manager, the appellant had some responsibility for ensuring that employees of the dealership complied with the *Act*.

[45] In 2000, the appellant and a partner, John Ryan, opened Pembroke Suzuki. That dealership sold motor vehicles exclusively for about 5 years and then started dealing in Recreational Vehicles, which are not subject to the *Act*. The appellant testified that financing in the RV business works differently than it does in the motor vehicle business. In the motor vehicle business, loan payments are linked to the sale of the vehicle, which is being financed as inventory. However, in the RV business, banks require payments regardless of whether or not a unit is sold. This can create significant cash-flow issues if sales slow down and the business is caught with too much inventory. The appellant says that this was one of the causes for the bankruptcy of Pembroke Suzuki and himself in 2008.

[46] After his bankruptcy, the appellant held several positions. In approximately 2010, he worked for a Del Mastro's RV dealership as general manager. While there, he was responsible for the day-to-day operations of the business including profit and loss, training the salespersons, and setting budgets.

- [47] The appellant's application for registration indicates that from June 2012 until June 2017, he was the Director of Operations at Kingdom Auto Parts. The appellant testified at the hearing that this job lasted about 3 years and that he was their general manager. He says that he supervised 30 or 40 employees and that the business was involved in importing automobile parts from China and selling those parts to companies in North America. The appellant says that he developed Kingdom into an online auto parts store and that it is still doing very well. The appellant says that he left that business when it went primarily online.
- [48] From July 2017 until November 2017, the appellant worked at a Dilawri Group car dealership as the fixed operations director for 5 of their stores. The appellant presented into evidence a letter from Ian Hunter, the General Manager of one of the stores operated by Dilawri Group. Mr. Hunter writes that he worked with the appellant and is aware of the appellant's prior history, specifically that a dealership the appellant was involved with declared bankruptcy and that he had been convicted of acting as a motor vehicle dealer while not licenced on two occasions. Based on the lack of details contained in the letter it is not clear that Mr. Hunter knows the full extent of the appellant's past conduct and it is unknown whether such knowledge might change his opinion.
- [49] Mr. Hunter writes that, while employed at Dilawri, the appellant "carried on business with honesty, integrity, compliance with the law, and with the utmost professionalism. This experience reinforces(sic) my firm belief that he would continue to do so as a registered salesperson should this Tribunal give him a chance."
- [50] From December 2018 until November 2019, the appellant was the fixed operations manager at Thornhill Hyundai. The appellant presented into evidence a letter from Gregory Carrasco, Vice President, which states that the appellant was tasked with streamlining and overseeing the dealer's parts and service department and was involved in the day-to-day supervision of approximately 25-30 employees and handling customer complaints. The appellant also is said to have assisted the dealership in setting their budgets and developing their financial statements relating to the departments he oversaw. Mr. Carrasco writes that he was aware of the appellant's past history, namely that a dealership he was involved in declared bankruptcy and that he had been convicted of acting as a motor vehicle dealer while not licenced on two occasions. Based on the lack of details contained in the letter, it is unclear whether Mr. Carrasco knows the full extent of the appellant's past conduct and it is unknown whether such knowledge might change his opinion.
- [51] Mr. Carrasco writes that, during his employment at Thornhill Hyundai, the appellant "carried on business with honesty, integrity, compliance with the law, and with the utmost professionalism. This experience reinforces(sic) my firm belief that he would continue to do so as a registered salesperson should this Tribunal give him a chance."

- [52] From August 2020 until December 2020, the appellant worked at Agincourt Nissan as their fixed operations manager.
- [53] From January 2021 until March 2021, the appellant was the service manager at Car On Auto in Ottawa.
- [54] The appellant was then recruited to work at Throttle Powersports (“Throttle”) where he is currently employed. Throttle is in the business of selling powersport and leisure vehicles including RVs, ATVs, trailers and marine vehicles. Throttle has two locations, one in Almonte, Ontario and a newer location in Kingston.
- [55] Justin Ferron is the sole owner and director at Throttle. He hired the appellant to act as the general manager at the Kingston location, which was about to be opened. The plan was to train the appellant at the Almonte location and then have him running the Kingston location on his own.
- [56] However, Throttle was starting to get into the business of selling motorcycles along with its other offerings, and motorcycles are governed by the *Act*. Given that the appellant is not licenced under the *Act*, Mr. Ferron determined that he should start immediately at the Kingston location and that motorcycles would not be sold out of that location until the appellant’s application for registration is determined. The appellant has been the general manager at the Kingston location since March 2021.
- [57] As general manager, the appellant is responsible for the day-to-day operations of the business including driving sales, managing the service department, ensuring accuracy in financial reporting, ensuring that the parts inventory is maintained accurately, hiring and training staff and managing the store’s profit and loss performance.
- [58] Mr. Ferron says that the appellant has been an excellent general manager. The business has been profitable, and complaints are handled effectively by the appellant.
- [59] Mr. Ferron says that he is aware of the appellant’s past conduct and believes that the appellant is entitled to another chance despite his past mistakes. He believes that the appellant has learned from his mistakes and notes that it is he who is placing his own financial well-being at risk, and that he trusts the appellant to live up to the responsibility that he will be given.
- [60] The appellant argues that, although he made some serious mistakes in the past, he has learned from those mistakes and his experience has made him more able to understand the requirements of the *Act* and the consequences for failing to abide by the *Act*. He says that he has paid a high price for his mistakes and that he deserves a licence and a chance to prove himself.

[61] The appellant says that he can be trusted. He says that he has been placed in many positions of trust, has been trusted, and has proven himself worthy of the trust that has been placed in him. He says that he would never again knowingly breach the provisions of the *Act*.

E. ANALYSIS

[62] I find that the Registrar has proven 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.

[63] While the appellant was in charge of the day-to-day operations of Pembroke Suzuki, that business was responsible for the non-payment of liens for its own financial gain and the financial loss of its customers. The appellant denies that he knew that this was occurring but admits that his was the ultimate responsibility. While it is not entirely clear that the appellant directed the non-payment of liens, that conduct occurred while the appellant was responsible for the business' day-to-day operations. Moreover, I find on a balance of probabilities, that the appellant participated in the attempted cover-up of the non-payments. The appellant admits that, when he became aware of the lien non-payments, he did not advise the affected customers, but instead tried to secure financing to cover the debts owing. In the meantime, the customers' monthly loan payments were being paid so that they would not become aware of the lien non-payments.

[64] The appellant's actions at Pembroke Suzuki are sufficient to constitute reason for belief that he will not carry on business in accordance with law and with integrity and honesty. I am also concerned that at the hearing, the appellant tended to minimize his participation and culpability in the actions of Pembroke Suzuki. The appellant's failure to take adequate responsibility in the circumstances reflects negatively on his integrity and honesty.

[65] I have found that in 2009 and 2011 respectively, the appellant knowingly acted as a motor vehicle salesperson and motor vehicle dealer, while unregistered, was charged with offences under the *Act*, and was convicted of those offences. I find that these actions provide reason for the belief that the appellant will not carry on business in accordance with law and with integrity and honesty. These actions were taken in direct defiance of the law and in contravention of his agreement to refrain from so acting as part of the Consent Order issued by the Tribunal in 2006. I am concerned that the appellant tried to mislead the Tribunal and to minimize his actions, or deny his behaviour, even with respect to offences he admitted at the time to have committed.

[66] Although the appellant has held several positions since 2010 in which he has been given responsibilities requiring trust, the seriousness of his previous conduct, and his reluctance to take full responsibility for that conduct, afford reasonable grounds for the belief that the appellant will not carry on business as a motor vehicle salesperson in accordance with law and with integrity and honesty.

Remedy

- [67] Having found that there are reasonable grounds to believe that the appellant will not carry on business in accordance with law and with integrity and honesty, I must now consider the appropriate remedy. The Registrar and the Tribunal have the statutory discretion to consider the appellant's circumstances and determine whether the public interest requires outright refusal of registration or whether the public interest can be adequately protected through granting registration with conditions.
- [68] The Registrar argues that the appellant's past conduct was serious and would, in some cases, be sufficient to require the Registrar to refuse to register the appellant. However, the Registrar accepts that the passage of time, and the appellant's intervening conduct, are sufficient to justify registration of the appellant as a salesperson with conditions. The appellant does not seriously dispute the need for conditions but takes issue with the length of time the conditions proposed by the Registrar should be in place.
- [69] I accept that, since the conduct complained of by the Registrar, the appellant has held a number of positions of responsibility and has the support of his former employers. His current employer is supportive of the appellant's registration. I note that the appellant has been employed in the motor vehicle sales industry, albeit in positions which do not require licencing under the *Act*, for the past 10 years without incident and accept that this is evidence that the appellant has learned lessons from the events of the past and that it is reasonable to consider licencing at this time with conditions.
- [70] The conditions proposed by the Registrar are primarily focussed on ensuring that the appellant's activities as a salesperson are supervised and that he is not acting as a person with the primary responsibility for the day-to-day activities of a dealership or with primary responsibility for ensuring compliance with the *Act* on behalf of a dealer. I find that these are reasonable considerations given the appellant's past conduct and are directed at ensuring adequate protection of the public. The Registrar proposes that the conditions remain in place for a period four years to ensure that the appellant is able to demonstrate that he can carry on business in accordance with the law and with integrity and honesty.
- [71] The appellant argues that the conditions should only be in place for one year in the circumstances and that he should currently be allowed to act as a person with primary responsibility for the day-to-day activities of a dealership and be entitled to apply for registration as a motor vehicle dealer after the one year period.

[72] I find that the conditions proposed by the Registrar, are reasonable in the circumstances and that they should remain in place for four years as proposed. The seriousness of the appellant's past conduct and the concerns I have with respect to the appellant's acceptance of responsibility for that past conduct require a significant period of supervision to adequately ensure that the public interest is protected.

F. CONCLUSION

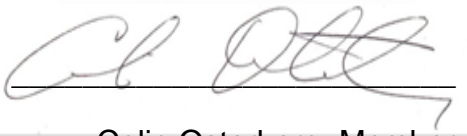
[73] I find that the Registrar has proven that there are reasonable grounds to believe that the appellant will not carry on business in accordance with law and with integrity and honesty.

[74] I find that terms and conditions can be imposed in order to ensure that the Act's public interest objectives are satisfied and that the conditions proposed by the Registrar are reasonable for that purpose.

G. ORDER

[75] The Tribunal directs the Registrar to carry out its proposal to apply conditions as set out in the Notice of Further and Other Particulars dated October 8, 2021, which is attached to this Order as Schedule "A".

LICENCE APPEAL TRIBUNAL



Colin Osterberg, Member

Released: November 16, 2021

Schedule "A"

Proposed Conditions of Registration: Richard Voskamp

1. These conditions shall remain **effective for a period of four (4) years** from the date of this Order as issued by the Licence Appeal Tribunal. At which time, Richard Voskamp (the "Applicant") may make a written request to the Registrar for the removal or amendment of said conditions, which will not be unreasonably withheld.
2. The Applicant shall ensure that any sponsoring dealer and individuals are informed of the conditions contained in this document to the extent necessary to ensure compliance with these conditions.
3. The Applicant shall comply with all requirements of the *Motor Vehicle Dealers Act 2002* (the "MVDA") and Ontario Regulation 333/08, the *Code of Ethics* in Ontario Regulation 332/08, the Ontario Motor Vehicle Industry Council ("OMVIC") Standards of Business Practice, 2010 and OMVIC Guidelines, as may be amended from time to time. The Applicant further agrees to read all correspondence and bulletins from OMVIC as released.
4. The Applicant acknowledges that "trade" refers to buying, selling, leasing, advertising or exchanging an interest in a motor vehicle or negotiating or inducing or attempting to induce the buying, selling, leasing or exchanging of an interest in a motor vehicle as defined in the MVDA and pursuant to section 36 through to and including section 51 of Ontario Regulation 333/08; and is not limited to the signing of contracts. The Applicant further acknowledges that this includes attendance at auction on behalf of the Applicant and positions commonly referred to as Sales Manager, Finance and Insurance Manager, Branch Manager, Business Manager, General Manager or any individual who has supervisory authority over salespersons.
5. The Applicant shall not act as a salesperson on behalf of any dealer other than the Applicant's sponsoring dealer.
6. The Applicant shall not transfer his registration as a salesperson to another dealer without having first obtained prior written consent of the Registrar, which will not be unreasonably withheld.
7. The Applicant shall not conduct business with any person acting as a motor vehicle dealer and trading in motor vehicles without first confirming that the person is registered as a motor vehicle dealer.
8. The Applicant shall provide the Registrar with notice in writing, within five days, of any substantive changes to his role with his sponsoring dealer or information provided in obtaining his registration, pursuant to section 31 of Ontario Regulation 333/08.
9. For a period of **four (4) years** from the date of this Order, the Applicant shall not be a partner, shareholder, officer, director, owner, bank signing authority, or controlling mind of

any dealer; nor shall the Applicant provide funds or act as an investor in relation to any dealer.

10. For a period of **two (2) years** from the date of this Order, the Applicant shall not act as a *person-in-charge*, which includes primary responsibility for the day-to-day activities and primary responsibility for ensuring compliance with the MVDA and its Regulations, on behalf of any dealer.
11. The Applicant agrees to be registered as a salesperson, and shall not apply to be a dealer for a period of at least four (4) years.
12. The Applicant shall not be involved in the creation of books and records, which are false or misleading as to the true nature of a transaction involving the trade of a motor vehicle.
13. The Applicant shall ensure that his registration will not be used to trade in motor vehicles where the Applicant knows, or ought to know, that it could facilitate an illegal or unethical practice.
14. The Applicant shall forthwith comply with any reasonable requests for information, made on behalf of the Registrar.

BANKRUPTCY

15. The Applicant shall forthwith notify the Registrar, in writing, of any pending or future bankruptcy, consumer proposal or similar financial event. This includes providing the Registrar with full and complete disclosure of all the circumstances.
16. The Applicant confirms that the particulars and circumstances of his previous two bankruptcies have been accurately disclosed to the Registrar.

CHARGES

17. The Applicant shall forthwith provide any sponsoring dealer with notice, in writing, of any charges, offences, findings of guilt, convictions or pending charges. The Applicant shall forthwith provide the Registrar with a copy of the notification acknowledged by the signature of the sponsoring dealer.
18. The Applicant shall advise the Registrar of any disposition of any future charge, *under any law*, within five (5) days of same and the Applicant shall comply with any and all recognizances, penalties, dispositions and/or probation orders.
19. The Applicant shall lawfully exercise best efforts to pay any outstanding fines, in particular, the fine of **\$22,000** for acting as a motor vehicle salesperson while not registered to do so (2013) and the fine of **\$5,000** for acting as a motor vehicle dealer while not registered to do so (2014).
20. The Applicant confirms that the particulars and circumstances of his previous findings of guilt, convictions and pending charges are substantially as disclosed to the Registrar.

21. The Applicant shall provide a "Police Information Check" or a report from Backcheck.com upon renewal. The Police Information Check results must include any available outstanding entries (pending charges) as well as any absolute/conditional discharges, judicial orders or stayed charges.

OTHER

22. The Applicant shall provide the Registrar with full and complete disclosure in all future correspondence and on all future applications, regardless of whether or not disclosure has been made previously to the Registrar.
23. The documents, information or statements provided to the Registrar are true to the best of the Applicant's knowledge, and belief; and that full answer to all questions, inquiries and requests made by the Registrar in connection with the Applicant's application have been given.
24. The Registrar may take further administrative action, including a proposal to suspend or revoke registration, arising from any matters that have occurred or may occur related to honesty and integrity, financial responsibility or compliance with these conditions.