

**Licence  
Appeal  
Tribunal**

**Tribunal  
d'appel en  
matière de permis**



DATE: 2016-11-29  
FILE: 9903/MVDA  
CASE NAME: 9903 v. Registrar, *Motor Vehicle Dealers Act, 2002*

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An Appeal from a Notice of Proposal by the Registrar, *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sch. B – dated November 9, 2015 to Refuse and Revoke Registrations

2067304 Ontario Inc. o/a Mak Auto Sales and Mohamed Kassab

Appellants

-and-

Registrar, *Motor Vehicle Dealers Act, 2002*

Respondent

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### **REASONS FOR DECISION AND ORDER**

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**ADJUDICATOR:** Geneviève Blais, Member

#### **APPEARANCES:**

**For the Appellants:** Mohamed Kassab, on his own behalf and as Agent for 2067304 Ontario Inc. o/a Mak Auto Sales

**For the Respondent:** Sarah Aouchiche, Counsel

Heard in Cornwall: October 17, 18, 19 and 20, 2016

## REASONS FOR DECISION AND ORDER

### BACKGROUND

This is a hearing before the Licence Appeal Tribunal (the "Tribunal") arising out of a Notice of Proposal issued by the Registrar, *Motor Vehicle Dealers Act, 2002* (the "Registrar" and the "Act" respectively). The Notice of Proposal dated November 9, 2015, (the "NOP") proposed to refuse and revoke the registration of the Corporate Appellant 2067304 Ontario Inc. o/a Mak Auto Sales ("Mak Auto Sales") as a dealer and the registration of the Appellant Mohamed Kassab as a salesperson under the Act. Mr. Kassab is the sole officer and director of Mak Auto Sales. A supplementary Notice of Further and Other Particulars dated October 11, 2016 was issued by the Registrar.

Counsel for the Registrar advised that Mak Auto Sales as a motor vehicle dealer and Mohamed Kassab as a salesperson are no longer registered under the Act. Accordingly, the Registrar has amended its proposal to refuse registrations to the Appellants as dealer and salesperson.

At the commencement of proceedings, Counsel for the Registrar confirmed with the Tribunal that on October 14, 2016, a settlement occurred between the Registrar and Wali Shearзад and 2228237 Ontario Inc. o/a ABS Auto Sales ("ABS Auto Sales"), two of the Appellants also named in the NOP dated November 9, 2015 and October 11, 2016. The terms of the settlement were approved by the Tribunal and these Appellants are no longer parties to the hearing. Therefore, the particulars relevant to these proceedings before the Tribunal are Paragraphs 11 to 29 in the NOP dated November 9, 2015 and paragraphs 38, 40, 42, 43 and 45 of the NOP dated October 11, 2016.

Mr. Lorne Honickman, Counsel for ABS Auto Sales and Wali Shearзад, was in attendance at the commencement of the hearing and confirmed that these Appellants had reached a settlement with the Registrar and were no longer parties in the proceedings. However, Mr. Shearзад had agreed to testify for the Registrar. As Mr. Honickman had no further direct involvement in the matter before the Tribunal, he requested to remain in the hearing room as an observer. Mr. Kassab questioned Mr. Honickman's motives and objected to his request. The Tribunal advised the Appellant that in-person hearings are open to the public. Notwithstanding, the Tribunal understood the dynamics in this matter were complex and there appeared to be increased acrimony between the parties. Upon reflection, Mr. Honickman withdrew his request and only returned to the hearing room when Mr. Shearзад gave his testimony.

### FACTS

The Registrar alleges that the Appellants' past conduct is inconsistent with the intention of the Act, and disentitles them to registration. The Registrar alleges that:

- Mr. Kassab knowingly worked as a dealer and salesperson without the benefit of registration and the Registrar has serious concerns about the Appellants' governability.
- Mr. Kassab sold vehicles to vulnerable consumers without providing proper vehicle disclosure.
- Mr. Kassab has been non-compliant with the terms and conditions of registration as a salesperson.

The Registrar states that she has reasonable belief that the Appellants' past conduct indicate that they cannot carry on business in accordance with the law and with integrity and honesty.

The Tribunal notes that the Appellants did not provide disclosure of any material they intended to rely upon as evidence at the hearing and provided no explanation for failing to comply with the disclosure requirements set out in the Tribunal's Rules of Practice. However, during the hearing, Mr. Kassab produced documents he wanted admitted into evidence. Counsel for the Registrar objected to the late disclosure, stating that the disclosure requirements had been fully reviewed during the pre-hearing and Mr. Kassab had ample time to disclose the documents prior to the hearing. The Tribunal took into account the fact that the Appellants were not represented by counsel and applied a liberal interpretation to the Rules for disclosure. Accordingly, to facilitate a fair and effective process, the Tribunal allowed the documents that directly related to the particulars of the NOP to be entered into evidence.

At the hearing, Counsel for the Registrar called 10 witnesses. Mr. Kassab was the sole witness for the Appellants.

## **Registrar's Evidence**

### **Mary Jane South**

Mary Jane South, Registrar at the Ontario Motor Vehicle Industry Council ("OMVIC"), provided evidence with regard to the allegations in the NOP. She is the Registrar and Director of Operations with OMVIC who is responsible for the administration of the *Motor Vehicles Dealers Act* ("MVDA"). She has been with OMVIC since 1997. She oversees the registration and consumer complaint functions by assessing the eligibility of applicants for registration and in determining grounds for the revocation and/or refusal of registration applications. The primary purpose of the Act is the protection of the car buying public.

Ms. South provided the following background information concerning the Appellants. On May 30, 2012, OMVIC received from Mak Auto Sales a renewal application for a dealer registration. The application, with pre-printed data from OMVIC's database, had been sent to Mr. Kassab, as sole director of the Corporation, prior to July 2, 2012 when the dealer registration would lapse. One of the questions on the application form stated:

Our records indicate that the registrant is in default of their obligations under the *Retail Sales Act*. Have you attached a copy of the repayment arrangements with the Ministry of Revenue?

Mr. Kassab answered “no” to the question.

Further, Section D: Financial obligations on the application form stated:

If a question appears in this section requesting repayment arrangements with the Compensation Fund or the Ministry of Revenue, it means either the dealership or an interested person is in default with the Compensation Fund or the Ministry of Revenue. The Registrar **shall not grant renewal** unless the registrant for the interested person has made repayment arrangements in accordance with Section 11 of the regulations under the MVDA 2002. [Emphasis added.]

Ms. South stated that the Ministry of Finance is linked to the OMVIC database and had flagged Mr. Kassab as a registrant with OMVIC who was in default of his obligations under the *Retail Sales Act*. On two occasions, prior to acting on the dealer registration renewal, OMVIC called the Ministry of Finance to confirm whether or not Mr. Kassab was in compliance with the Act. OMVIC was told that no payment arrangements had been made by the registrant. Although Mr. Kassab had filed an objection with the Ministry of Finance, Ms. South stressed that the Registrar had no discretion under the MVDA to renew his registration unless repayment arrangements were in place. Mr. Kassab was encouraged by OMVIC to make the payment arrangements prior to July 2, 2012, when his registration as a motor vehicle dealer would lapse. Mr. Kassab failed to do so.

On August 9, 2013, OMVIC received an application from Mr. Kassab seeking registration as a salesperson with ABS Auto Sales. Mr. Wali Shearзад was the registered dealer. On November 26, 2013, Mr. Kassab consented and signed the terms and conditions attached to his registration of two years as a salesperson with ABS Auto Sales, which included the following condition:

The Registrant agrees not to be a partner, shareholder, officer, director or have direct or indirect control of a dealership

On June 30, 2014, OMVIC received an application from Mr. Kassab for the reinstatement of Mak Auto Sales as a general dealer of used motor vehicles. Attached to this application were signed Minutes of Settlement between Mak Auto Sales and the Minister of Finance which provided a full and final satisfaction of all taxes, penalties and interest related to the Corporation. Attached to the application was a letter from Mr. Kassab in which he accused OMVIC of “unjustifiably and unlawfully” terminating his registration as a motor vehicle dealer in 2012. On July 18, 2014, OMVIC received an application from Mr. Kassab requesting a transfer of his salesperson registration from ABS Auto Sales to Mak Auto Sales.

Ms. South stated that in March 2013, OMVIC had reason to believe that Mr. Kassab was operating as a “curbsider”. The term, used in the motor vehicle industry, describes a person who buys or sells vehicles when not registered as a salesperson under the Act. OMVIC routinely investigates suspected “curbers”, as part of their mandate is to protect the car buying public. A consumer purchasing a vehicle from an unregistered dealer has no recourse to the OMVIC compensation fund in the event they make a claim for an unfit vehicle. As Mr. Kassab was no longer registered either as a dealer or as a salesperson, OMVIC Investigators Patrick Lowell and Robert Lucas investigated the Registrar’s concerns. As the OMVIC investigation was ongoing, the Registrar delayed responding to Mr. Kassab’s application for a reinstatement of his registration as a dealer.

On November 9, 2015, the results of the investigation gave rise to the Registrar’s NOP to refuse and revoke registrations of the Appellants.

### **Julia Larche**

Julia Larche is a senior collector with the Ministry of Finance. She testified that in 2011, the Ministry conducted an audit related to unpaid retail sales tax from January 17, 2008 to June 30, 2010 of Mak Auto Sales. On February 6, 2012, an audit assessment notice was sent to Mr. Kassab and it revealed a large amount of unpaid sales tax. On March 16, 2012, Mr. Kassab called the Ministry of Finance voicing his concerns about the audit findings and stated the Ministry audit was in error. He intended to file a notice of objection. The Ministry advised him that a notice of objection did not stop the collection action of the unpaid tax and the legislation obliged him to make payment arrangements. OMVIC was subsequently notified of the collection action by the Ministry of Finance.

OMVIC records indicate that as of June 14, 2012, contact was made with Mr. Kassab to encourage him to make payments that would allow OMVIC to process the renewal of his registration. A nominal amount as \$100.00 per month was all that was required. Mr. Kassab failed to make payment arrangements until January 2013, when the Ministry sent a final notice. Mr. Kassab agreed to an interim payment arrangement of \$100.00 a month, for the period of March 1 to August 30, 2013, at which time the payment schedule ended and Mr. Kassab failed to enter into another arrangement. His licence as a retail vendor was subsequently revoked. On September 13, 2013, the Ministry of Finance advised OMVIC that a settlement with Mak Auto Sales concerning the audit findings had been reached. Ms. Larche acknowledged that the original deemed amount of tax owing had been substantially reduced. The Ministry of Finance had received additional information from various sources to adjust the audit’s findings.

Ms. Larche stated that the Ministry of Finance carefully monitors remittance of retail sales tax as this is taxpayers’ money held in trust by licenced registrants. In cross examination, she acknowledged that the Ministry will adjust the amount of tax owing when a review deems it necessary; however, regardless of whether an individual is filing an objection, the registrant is obligated under the legislation to make payment arrangements while awaiting the outcome of a review.

## **Patrick Lowell**

Patrick Lowell testified he has been an Investigator with OMVIC for six years and previously he was a police officer with the Ottawa Police Force for 33 years. In March 2013, he began the investigation of Mak Auto Sales and Mr. Kassab as OMVIC suspected Mr. Kassab was operating as a “curbsider”. He was later assisted by another OMVIC Investigator, Robert Lucas.

Mr. Lowell attended two locations that belonged to Mr. Kassab. One location was on the outskirts of the city; the lot contained numerous vehicles and a billboard sign with “AK Auto” and a phone number. It appeared that the “M” for Mak Auto had either been taken off or fell off the signage. He later confirmed the phone number belonged to Mak Auto Sales. The second location, closer to the city centre, had signage for Mak Auto Sales and several vehicles on the property. At the rear of the property was a garage where ABS Auto Sales was located.

In August 2013, Mr. Lowell attended Impact Auto Auction and obtained a list of vehicles purchased by Mr. Kassab from January 2011 to August 2013. The information revealed that between February 4 and March 18, 2013, Mr. Kassab, while not registered as a dealer with Mak Auto Sales, purchased nine (9) vehicles from Impact Auto Auction. All nine vehicles were described as salvage or not branded. He later found, through the Ministry of Transportation database, that the vehicle registration ownerships were never transferred to Mak Auto Sales. The registration transfers occurred several months later and were to ABS Auto Sales.

Mr. Lowell’s investigation further revealed that Mr. Kassab, while not registered as a salesperson with ABS Auto Sales, engaged in selling or leasing the following vehicles:

1. March 21, 2013, a 2004 Dodge Caravan (Exhibit 10, Tab 24)
2. July 13, 2013, a 2007 Dodge Caliber to Consumer B, (Exhibit 10, Tab 25)
3. September 12, 2013, a 2005 Pontiac Montana to Consumer C, (Exhibit 9, Tab 22)
4. October 23, 2013, a 2007 Chevrolet Uplander and on February 4, 2016 a 2008 Mazda to Consumer D, (Exhibit 9, Tab 23), (Exhibit 11, Tab 47, 48)
5. July 6, 2013, a 2002 Honda Civic to Consumer E, (Exhibit 9, Tab 21)
6. October 12, 2013, a 2000 Honda Odyssey to Consumer F, (Exhibit 9, Tab 20)
7. June 20, 2016, a 2006 Honda to Consumer G, (Exhibit 11, Tab 45, 46)
8. June 30, 2016, a 2004 Toyota to Consumer H, (Exhibit 11, Tab 45)

Mr. Lowell interviewed and obtained statements from all consumers who leased and/or purchased the above vehicles. Six consumers were subpoenaed as witnesses for the hearing. While Consumers A, B, C, and D gave evidence at the hearing, Consumers E and F failed to attend. Mr. Lowell provided notes of the interviews with Consumers G and H.

In August 21, 2014, as a result of the investigation findings, Mr. Lowell and Mr. Lucas obtained two search warrants which were executed on Mak Auto Sales and ABS Auto Sales. On June 19, 2015, Mak Auto Sales, ABS Auto Sales, Mr. Kassab and Mr. Shearзад, the respective owners, were charged for various violations under the Act and the *Provincial Offences Act* ("POA"). These charges remain pending before the court.

### **Robert Lucas**

Mr. Lucas has been an Investigator with OMVIC since June 2013. Previously he was a police officer for 30 years with the Napanee Police Department and the Ontario Provincial Police. On July 9, 2013, in assisting Mr. Lowell with the investigation of Mr. Kassab operating as a "curbsider", he acted as a potential consumer and approached Mr. Kassab to purchase a vehicle.

Mr. Lucas attended the vehicle lot located on the outskirts of the city and identified by the billboard sign with "AK Auto". There were at least 28 vehicles on the front and rear of the sales lot. As no one was at the location, he called the phone number on the billboard and left a voicemail message indicating his interest in purchasing a vehicle. The phone call was returned by Mr. Kassab who, upon arriving at the business location, identified himself as "Mohamed", the person whose phone number was on the billboard. Mr. Lucas observed that Mr. Kassab was driving a vehicle with dealer plates. The dealer plates were later identified as belonging to ABS Auto Sales. Mr. Lucas and Mr. Kassab engaged in conversation about a sale price for a 2000 Honda Odyssey van. Mr. Kassab provided two options: (1) \$2500, certified and emission tested, or (2) \$2000 as is. After some discussion about a possible trade-in of another vehicle, Mr. Kassab offered a price for \$2200 and stated he would issue a sales receipt for \$1500.00, so that Mr. Lucas would only pay tax on the lower amount. When Mr. Lucas asked if he could test drive the vehicle, Mr. Kassab stated he did not have dealer plates. When Mr. Lucas pointed out that there were dealer plates on the vehicle he was driving, Mr. Kassab stated he would only allow him a test drive once he made an offer to purchase the vehicle.

Prior to his departure, Mr. Kassab informed Mr. Lucas that if he was interested in making a deal, he was to call him to make arrangements to meet again. Mr. Lucas stated that Mr. Kassab represented himself as a business owner and fully engaged in brokering the sale of a vehicle. As Mr. Kassab was not registered at the time, he was satisfied that he was operating as a "curber".

Mr. Lucas testified that on August 20, 2014, he attended with Mr. Lowell at the premises of ABS Auto Sales and Mak Auto Sales and executed the search warrants on both

businesses. Prior to leaving the premises, Mr. Lucas gave Mr. Shearзад and Mr. Kassab his business card and in return, Mr. Shearзад provided his business card and Mr. Kassab took a card from a desk drawer and gave it to Mr. Lucas. Mr. Lucas produced the original card in evidence. Written on the card were ABS Auto and "Mohamed" as Director. (Exhibit 9. p.198) He stated that in portraying himself in this capacity, Mr. Kassab was in violation of his registration as a salesperson with ABS Auto Sales signed in November 2013.

In cross-examination, Mr. Kassab questioned the validity of the business card, denied giving the card to Mr. Lucas and asserted the card did not belong to him. He further questioned the search warrants and asserted they were not valid as his copy was unsigned. Mr. Lucas confirmed that Mr. Kassab was shown the original warrant which was duly signed by a Justice of the Peace. He reiterated that a signed copy of a search warrant must be shown to the owner; however it is not obligatory that the owner receive a signed copy for his records. In further questions, Mr. Lucas stated that from his conversations with Mr. Kassab, he showed all signs of being the owner of the business engaged in the trade of vehicles.

### **Carrie Allinott**

Carrie Allinott, Branch Manager of Impact Auto Auction testified that the company acts as a salvage coordinator for automobile insurance companies. Vehicles involved in accidents and deemed not repairable are brought to the auction and sold "as is" to motor vehicle dealers or to wrecking yards for parts. The auction does not sell directly to the public. Dealers who wish to purchase from the auction must be pre-approved by the company. This approval consists of proof of registration as a dealer with OMVIC and proof of insurance. Once approved, the dealer has a life-time registration and pays an annual fee. The dealers are expected to advise the auction of any change in their status. Ms. Allinott testified that when dealers purchase vehicles from the auction, either in person or online, they are given full disclosure of the vehicle history, the insurance appraisers' vehicle assessment, known in the industry as "branding" and an estimate of repairs. As OMVIC and other regulations require full disclosure of the vehicle history to consumers, Impact Auto Auction expects dealers will in turn provide this information to the consumer purchasing the vehicle.

Ms. Allinott testified that she has known Mr. Kassab since 2007. Mr. Kassab never advised Impact Auto Auction that his registration as a dealer had lapsed on July 2, 2012. Ms. Allinott confirmed that Mak Auto Sales, through Mr. Kassab, purchased nine vehicles from February to March 2013. In November 2015, as a result of information provided to the company by OMVIC, Impact Auto Auction deactivated Mr. Kassab as a registered dealer. Ms. Allinott acknowledged in cross examination that Mr. Kassab was a good customer and the auction company had no issues with his transactions. He paid his fees and bills on time and picked up vehicles on a timely basis.



## Consumer evidence

The following four consumers gave evidence in person at the hearing.

**Consumer A** testified that she is a mother of six children and is in receipt of a disability pension. On March 21, 2013, she leased a 2004 Dodge Caravan from Mr. Kassab. The total lease cost was \$5000, with payments of \$300 per month. These were cash payments made in person to Mr. Kassab at his business location. As she had poor credit, her uncle agreed to have the bill of sale in his name. She testified that Mr. Shearзад was in the office when she and her uncle went to purchase the vehicle; however, he was not involved in the sale. Mr. Kassab, whom she knew as “Mohamed” was the sole person who showed them the vehicle and handled the paperwork. Consumer A and her uncle signed a “lease/bill of sale” which was written on the ABS Auto Sales letterhead and had “accident + repaired” written in the comment section. She therefore thought the car had been in an accident. She was never told the extent of the vehicle damage and was unaware that the insurance company had declared the vehicle a total loss. She had several problems with the vehicle after the purchase. The power steering and alternator were not working properly. All four tires went flat. Although Mr. Kassab repaired the power steering at no cost, she paid for all other repairs.

During her testimony, Consumer A confirmed she signed an affidavit dated June 20, 2016. (Exhibit 7). She testified that a few months before signing the affidavit, Mr. Kassab approached her in his office when she made her monthly payment. He asked if she would sign a document he required “to go to court”. In June, 2016, Mr. Kassab gave her a typed affidavit and told her to take the document to the courthouse and have it signed. Consumer A agreed, and to her surprise, she was asked to pay a \$35 fee for the document to be signed by a commissioner of oaths. She paid the amount but was not pleased with Mr. Kassab as he had not informed her about the fee and never offered to reimburse her.

Counsel for the Registrar read the content of the affidavit to Consumer A. She candidly stated that she did not agree with the following statements:

Prior to lease the aforementioned vehicle I was informed that the vehicle was involved in an accident and as well as a total loss by the insurance company

I’m very pleased with the aforementioned lease transaction....

Consumer A stated that she is not “good” about reading and writing, and she did not understand the meaning of “total loss” or the meaning of an affidavit. She was never satisfied with the vehicle. From the very beginning, there were problems and given the condition of the tires, the safety of her children could have been affected. She reiterated in cross-examination that she dealt only with Mr. Kassab during the vehicle transactions.

**Consumer B** testified that on July 13, 2013, he signed a lease to own/ bill of sale and lease agreement for a 2007 Dodge Caliber for \$6600 with payments of \$300 per month. These were cash payments made in person to Mr. Kassab at his business location. Although he remembered seeing Mr. Shearзад at the vehicle location, he dealt only with Mr. Kassab. He noticed the vehicle had damage to the front bumper; however, Mr. Kassab did not explain to him the meaning of “accident/repared” written on the bill of sale, nor did he provide any vehicle history.

During his testimony, Consumer B confirmed he signed an affidavit on May 2, 2016. (Exhibit 4) He testified that Mr. Kassab approached him when he visited his office to make the monthly car payment and asked if he would sign a document he required to “go to court”. Mr. Kassab read him the document; however Consumer B did not fully understand what it meant. He candidly stated he has a limited education and is unable to read. He did not know the meaning of an affidavit. He further stated that Mr. Kassab gave him \$50 to attend the courthouse to have the document signed and promised him “something good”. At the courthouse, he was told of the \$35 fee for the document to be signed by a commissioner of oaths. Consumer B stated that he trusted Mr. Kassab and believed he was licensed to sell him a vehicle. He only learned at the hearing that he was no longer registered.

In cross-examination, Consumer B acknowledged that Mr. Kassab was always willing to make repairs on the vehicle at no cost and he is happy with his recent vehicle purchase.

**Consumer C** testified that she is a single mother of two children. On September 13, 2013, she leased a 2005 Pontiac Montana from Mr. Kassab, who she knew as “Mohamed”. The lease/bill of sale described the vehicle as rebuilt –accident repaired. The cost was \$2700 with payments of \$300 per month. She experienced numerous problems with the vehicle and in March 2014, Mr. Kassab agreed to exchange the vehicle for a 2003 Mitsubishi and he reduced the monthly payments to \$200. These were cash payments made in person to Mr. Kassab at his business location. She testified that Mr. Kassab provided no vehicle history on either vehicle. She did not know the meaning of “rebuilt” and never thought of asking for more information. Shortly after leasing the Mitsubishi vehicle, the brakes were not working properly. She took the vehicle to another mechanic who advised her that all four brakes needed replacement. She called Mr. Kassab who dismissed her concerns stating that the vehicle had a safety certificate, a copy which was never provided to her. She ultimately stopped using the vehicle and purchased another vehicle from another dealer. Consumer C testified that she did not know a Mr. Shearзад and only ever dealt with Mr. Kassab during the vehicle transactions.

**Consumer D** testified that he has leased and purchased four vehicles from Mr. Kassab. On October 23, 2013, he leased a 2007 Chevrolet Uplander for \$2400 with payments of \$300 per month. He acknowledged that he saw the vehicle before it was rebuilt. Mr. Kassab undertook to send the vehicle to have the frame x-rayed. Although he was not provided a full vehicle history, he knew it was involved in an accident. He was never informed of the results of the vehicle x-ray.

In August and September 2014, Consumer D purchased a 2000 GMC Sierra and a 2004 BMW. He testified that he was not provided with the vehicle history on either of these vehicles. He stated that he has known Mr. Kassab for four years and trusted him. Although he saw Mr. Shearзад on a few occasions in the office, he only dealt with Mr. Kassab who completed all transactions and signed all the documents for each transaction.

During his testimony, Consumer D confirmed he signed an affidavit dated May 13, 2016. (Exhibit 5) He testified that Mr. Kassab approached him with a typewritten affidavit he needed for a court case. Consumer D acknowledged he fully understood what was meant by an affidavit and agreed to attend the courthouse and have it witnessed by a commissioner of oaths. He conceded that he did not read the document as Mr. Kassab was a friend and someone he trusted. He later realized he should have read the content of the affidavit as he erred in signing a document under oath with the following false statements,

In the aforementioned lease transactions I was served by Wali Shearзад

Prior to leasing the aforementioned vehicles, I was informed that each one of the vehicle was involved in an accident and as well as a total loss by the insurance company.

In cross-examination, Consumer D stated he did not feel cheated in the vehicle transactions by Mr. Kassab.

### **Additional consumers**

Mr. Lowell stated that he interviewed four other consumers as part of his investigation. Although Consumer E and F were subpoenaed to attend the hearing as witnesses for the Registrar, they did not attend. Mr. Lowell entered into evidence "will say" statements and interview notes related to these consumers.

**Consumer E** stated that on July 6, 2013, he leased a 2002 Honda Civic and signed a used vehicle bill of sale issued by ABS Auto Sales. The total lease cost was \$2500, with payments of \$250 per month. Consumer E was sold the vehicle by a person named "Mohamed". He was not provided with any vehicle history. He did not deal with any other person at ABS Auto Sales. Only when he signed the lease agreement and received the ownership of the vehicle did he realize the vehicle was "rebuilt". He was happy to get a vehicle as he had a poor credit rating and Mr. Kassab did not do a credit check. On May 12, 2016, (Exhibit 6), Consumer E signed a sworn affidavit containing the following statements:

In the aforementioned lease transaction, I was served by Wali Shearзад

Prior to leasing the aforementioned vehicle I was informed that the vehicle was involved in an accident, that it was a total loss by the insurance company and that it had a rebuilt title.

The above statements are contrary to the notes taken by Mr. Lowell during the interview with Consumer E.

**Consumer F** stated that on October 9, 2013, she met with Mr. Kassab to purchase a 2000 Honda Odyssey. She put a deposit of \$500 on the vehicle in the name of her mother. She was given a receipt from Mr. Kassab which stated:

Down payment Honda Odyssey 2000, balance \$1500 on delivery + \$600 on 3 checks of \$200

On October 12, 2013, she signed a bill of sale for a selling price of \$1101.00 which stated:

As is final sales, intermittent problems, price discounted

Consumer F produced a third receipt from ABS Auto Sales dated October 31, 2013 for \$1101.75. The receipt read "total price for Honda Odyssey 2000 as per contract". When Consumer F asked Mr. Kassab about the different amounts on the bill of sale, she was told not to worry as this was done by him to save on taxes.

**Consumer G** stated that in mid June 2016, he purchased a 2006 Honda vehicle at Mak Auto Sales and dealt with a man named "Mohamed". He was uncertain as to how much he paid for the vehicle as members of his family helped him buy it. He paid \$200 to fix a little problem and he could not recall whether or not he was provided with the vehicle history.

**Consumer H** stated that sometime at the end of June 2016, she purchased a 2004 Toyota from a person named "Mohamed" at a dealership she identified as Mak Auto Sales. She paid \$2,050 but she could not locate the bill of sale. She acknowledged that she had seen the vehicle damage before the repairs were done and there have been no problems with the vehicle.

### **Wali Shearзад**

Mr. Shearзад, a party to the hearing prior to the settlement of issues between himself and the Registrar, and owner of ABS Auto Sales, was called as a witness for the Registrar. Mr. Kassab requested the exclusion of Mr. Lowell from the hearing room while Mr. Shearзад testified. He alleged that as an OMVIC Investigator, Mr. Lowell's presence was intimidating for the witness and could influence his testimony. Counsel for the Registrar submitted there was no evidence to support this allegation and objected to the Appellant's request. Mr. Shearзад stated he had no concerns with the presence of Mr. Lowell and therefore Mr. Lowell was allowed to remain in the hearing room.

Mr. Shearзад testified that he came to Canada in 2001. He first met Mr. Kassab in 2008 at a local mosque. They talked about the car sales industry. As a new immigrant, Mr. Shearзад found it difficult to obtain employment to support his wife and six children. With the encouragement and support of Mr. Kassab, he established ABS Auto Sales and in 2010, he registered as a dealer with OMVIC. Mr. Kassab leased him space on

his car lot and garage at a reduced cost. Mr. Kassab was a friend who willingly shared his knowledge about the car industry. Although he was grateful for his help, he also felt dependent on him to establish his business.

In June 2012, Mr. Kassab informed Mr. Shearзад that OMVIC had suspended his dealer registration as a result of tax issues with the Ministry of Finance. Mr. Kassab offered Mr. Shearзад his inventory of approximately 70 vehicles. Mr. Shearзад saw this as opportunity to expand his business and bought the vehicles on credit. There was no business agreement signed or any accounting process for the repayment of the vehicles. In July 2012, after Mr. Kassab's registration had lapsed, Mr. Shearзад began to share Mr. Kassab's office as the garage space occupied by ABS Auto Sales was too noisy and dusty due to the ongoing vehicle repairs. The Mak Auto Sales signage was not removed and Mr. Shearзад was reluctant to erect the ABS Auto Sales signage as he felt indebted to Mr. Kassab whom he trusted.

With the new office arrangement, Mr. Shearзад initially felt he was in charge of the dealership. He focused on developing templates for the bills of sale and lease agreements and other paperwork. As Mr. Kassab had years in the business, customers dealt with him on vehicle sales. He assumed Mr. Kassab provided disclosure on the vehicles and the repair estimates. The financial accounting for the sale of vehicles was left to Mr. Kassab, as he sold and leased the vehicles. Vehicle trades occurred regularly; however, little money from sales seemed to flow to ABS Auto Sales. Mr. Shearзад suspected that Mr. Kassab was keeping most of the monthly cash payments he received from customers.

Mr. Shearзад became increasingly uncomfortable with the fact that Mr. Kassab was not registered as a salesperson and therefore in August 2013, ABS Auto Sales offered to act as a dealer in support of Mr. Kassab's application to OMVIC for the reinstatement of his registration as a salesperson. On November 26, 2013, OMVIC approved Mr. Kassab's registration as a salesperson with ABS Auto Sales with the agreed condition that he not be a partner, shareholder, officer, director or have direct or indirect control of a dealership. The registration expired on November 25, 2015.

Mr. Shearзад stated that in August 2014, when OMVIC executed the search warrant for the premises of ABS Auto Sales and Mak Auto Sales, he was shocked, confused and disappointed. In January 2015, he moved ABS Auto Sales to a new location and attempted to sever all ties with Mr. Kassab.

During his testimony, Mr. Shearзад was provided with bills of sale and lease agreements related to Consumers A, B, C, D, E and F who provided evidence and/or statements stating they purchased vehicles from Mr. Kassab. He stated that he first learned of these documents when he was given the disclosure information related to the POA offences laid against him and his dealership in June 2015. The documents, issued under ABS Auto Sales, indicate Mr. Shearзад as the salesperson, with a supporting signature. Mr. Shearзад adamantly stated he was not the salesperson in these transactions and the signature on the documents was not his. On two documents, the

spelling of his name is incorrect. Furthermore, he does not know these consumers. He was adamant that Mr. Kassab was the salesperson on these vehicle transactions. He was shocked to think that someone who he trusted as a friend and industry colleague would resort to such measures to conceal his actions and use his name as the salesperson and forge his signature on documents.

Mr. Shearзад stated that subsequent to the POA charges, Mr. Kassab asked him to prepare affidavits related to three consumers. He stated that Mr. Kassab gave him handwritten statements he wanted included in the affidavits and asked that he produce the affidavit in a document format. Mr. Shearзад acknowledged that he knew some of the statements were false; however, he felt trapped and in a difficult position. He feared that if he did not cooperate, Mr. Kassab would take action to affect his livelihood. In an emotional statement, he stated that he feared possible deportation, as his final status as an immigrant was pending. Such action would impact seriously on his family. Over the past year, Mr. Shearзад has continued to have problems with Mr. Kassab over the return of his dealer plate, the lack of disclosure on a vehicle bought from the auction, registrations of vehicles with the Ministry of Transportation and invoices for parts ordered by Mr. Kassab under ABS Auto Sales.

In cross-examination, Mr. Kassab challenged some of Mr. Shearзад's evidence suggesting he was untruthful. He submitted that Mr. Shearзад benefited from all transactions, knew many of the consumers who testified and was knowledgeable about the business practices and the law. He alleged that Mr. Shearзад made a "deal" with the Registrar in exchange for his testimony. Mr. Shearзад maintained his testimony was truthful.

### **Appellants' evidence**

Mr. Kassab testified on his own behalf and for the Appellant Corporation. He stated that he is 60 years of age and came to Canada approximately 30 years ago. He has a university degree in commerce and worked in the field of accounting for several years.

In June 2005, he opened his business as Mak Auto Sales and was first registered as a motor vehicle dealer and salesperson with OMVIC. His business was doing well until he was audited by the Ministry of Finance. He alleged that there were errors in the Ministry's report and the assessment for unpaid taxes was unjustified. He believed that when he filed an objection with the Ministry, he was not required to make payment arrangements. He expected a quick resolution of the issues. He asserted that OMVIC did not understand the concept of "innocent until proven guilty". They engaged in unfair practices and were irresponsible in suspending his registration based on the Ministry of Finance information. He further stated that OMVIC had no reason to deny his request to reinstate his registration after it lapsed in July 2012. OMVIC left him with no option as he could not sell cars. He had to find a way to deal with his inventory and earn a living. He therefore pursued his business with ABS Auto Sales and found Mr. Shearзад helpful in the circumstances.

Mr. Kassab described the business arrangement between Mr. Shearзад and himself as follows. Mr. Shearзад sold the vehicles, while he was responsible for the technical side and the calculations on the bills of sale. He initially referred to the bill of sale as an “agreement” between him and Mr. Shearзад, an internal document. However, in later testimony, he called the bill of sale a “calculation sheet”. He conceded that he “made a different signature” and did not use his own on this document because he wanted to “keep things separate from Mak Auto”. He acknowledged that he may have dealt with the majority of “stuff” in the dealership; however it was only an “impression” that he was the owner and seller.

The balance of Mr. Kassab’s evidence focused on the wrongdoings of Mr. Shearзад and OMVIC. With great effort, he attempted to make Mr. Shearзад responsible for all the vehicle sales and accused him of lying under oath. With the use of colourful and unprofessional language, he alleged that OMVIC engaged in unjustifiable, secretive, unfair actions and applied a double standard when they brokered a settlement with Mr. Shearзад. He furthered alleged the OMVIC investigators engaged in improper investigations, used invalid search warrants, inflated their disclosure and intimidated the consumers who gave false evidence.

With regard to allegations about his honesty and integrity, Mr. Kassab stated he never intended to mislead anyone, and he has nothing to hide. He repeatedly stated “the allegations are bare allegations and lack both particulars and sworn supporting evidence”. This statement was part of a letter written to OMVIC by a lawyer he retained in February 2015. He asserted that the allegations are based on “feelings” and not facts. He maintained that OMVIC has taken a “hard line” in refusing his applications for registration. Notwithstanding, he would like to settle the matter amicably and he would be willing to comply with an agreement similar to the recent OMVIC settlement with ABS Auto Sales and Mr. Shearзад.

In earlier evidence, Mr. Kassab stated that the business was his livelihood to support his family and eventually have a retirement income. However, in later testimony he stated that although he had not made “millions in selling cars”, he was “very well set and did not need this”. He enjoys working with cars; he cannot sit at home and particularly likes to talk with customers who feel comfortable to drop by the office and chat. He concluded his testimony in stating that should OMVIC insist on refusing the registrations, he intends to pursue the matter further.

In response to questions during cross-examination, Mr. Kassab repeatedly used the statement “the allegations are bare allegations and lack both particulars and sworn supporting evidence.” Although he stated that he understood the Act, he was vague on whether or not he knew what was meant by a full disclosure of a vehicle history. He accepted that a consumer should be able to trust a dealer to provide information on the vehicle history. However, he absolved himself of this responsibility as he maintained that Mr. Shearзад was the salesperson engaged in the transactions and therefore responsible for the vehicle history disclosure.

Mr. Kassab admitted he was not registered as a dealer when he purchased nine vehicles from Impact Auto Auction. However, he claimed he did not intentionally portray himself as a dealer, notwithstanding the fact that he knew fully that only dealers can purchase from the auction. Although he now realizes it was a mistake, he simply wanted to resume his business while waiting for OMVIC to reinstate his registration.

In cross-examination, Mr. Kassab insisted that the bill of sale was only a “calculation sheet”. He admitted to signing bills of sale and lease agreements using Mr. Shearзад’s signature that he “made up”. He maintained that the signature did not matter as it really was not a bill of sale but a file copy. He suggested that the consumers who testified, although naïve and simple, were aware of the condition of the vehicle they purchased. He further accused Mr. Lucas of making untruthful statements in his evidence, when he stated that he was offered a sales receipt for a lower amount to avoid sales tax. With respect to the consumers’ signed affidavits, Counsel for the Registrar alleged that these documents were a deliberate attempt by the Appellant to mislead the Tribunal. Mr. Kassab responded that the consumers who signed the affidavits did so willingly, and with respect to Consumer D, he added, “I did not put a gun to his head”. Mr. Kassab asserted that he read each affidavit to each consumer and he was satisfied that they fully understood what they were being asked to sign. He denied he authored the affidavits and insisted Mr. Shearзад played a significant role in the matter.

## THE LAW

Regarding the right to registration, the Act states:

### Registration

6. (1) An applicant that meets the prescribed requirements is entitled to registration or renewal of registration by the registrar unless,
- (a) the applicant is not a corporation and,
    - (ii) the past conduct of the applicant or of an interested person in respect of the applicant affords reasonable grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty, or
  - (d) the applicant is a corporation and,
    - (iii) the past conduct of its officers or directors or of an interested person in respect of its officers or directors or of an interested person in respect of the corporation affords reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty, or...

Regarding the Registrar’s right to refuse to register an applicant a registration, the *Act* provides that:

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



## **ANALYSIS AND REASONS**

The Registrar put forward a strong case in support of the Notice of Proposal to refuse the registrations. The Appellants did not provide a credible defence. The Tribunal finds Mr. Kassab's evidence and conduct troublesome. The material presented was lengthy and, more seriously, misleading and showed a disregard for the issues contained in the NOP. Mr. Kassab's main defence to the specific allegations brought forward by the Registrar was to accuse OMVIC of engaging in a double standard and to further allege that the consumer witnesses and Mr. Shearзад were intimidated by OMVIC and provided false evidence.

The Tribunal finds that Mr. Kassab is seriously lacking in credibility and where his evidence differs from another witness, the Tribunal prefers the evidence of the other witness. The Tribunal arrives at this conclusion for two reasons: (1) the obvious attempt to mislead the Tribunal in having vulnerable consumers sign and swear affidavits containing false statements, and (2) the clear attempt to avoid responsibility for his actions in declaring Mr. Shearзад as the salesperson and forging his signature on vehicle lease agreements and bills of sale.

The Tribunal has considered the evidence that the Appellant felt unjustly treated by the Ministry of Finance in 2012, when the corporation was assessed for unpaid retail sales tax. By his own admission, he was angry and very frustrated with the procedures and delays to resolve the issue. The evidence indicated that Mr. Kassab was fully informed of the legislative limitations with respect to a renewal of his registration with OMVIC. For whatever reason, he engaged in a stubborn refusal to make payment arrangements and failed to cooperate with the process until it was too late and his registration lapsed. The evidence before the Tribunal suggests that Mr. Kassab had strong personal beliefs in the justice of his cause and took matters in his own hands to pursue his business one way or the other. Notwithstanding his beliefs and the delays with the settlement of his tax issues, these circumstances do not excuse the Appellant's conduct after the registrations lapsed.

The Tribunal heard and accepts the evidence of four consumers that Mr. Kassab acted as the salesperson when they leased or purchased vehicles from March to October 2013, while he was not registered as a salesperson or dealer. Their evidence was clear, forthright and credible. These consumers all testified they were not provided full disclosure of the vehicle history. At no time did the Tribunal hear the Appellant acknowledge he failed to provide the full information related to the vehicle history. The evidence is overwhelming that the Mr. Kassab sold vehicles without full disclosure of material facts known to them at the time of sale. This conduct is a clear violation of the Act.

The Tribunal heard from two experienced investigators who provided detailed documents regarding vehicle transactions involving Mr. Kassab while not registered as a dealer or salesperson. The majority of the vehicle trades occurred in 2013. The Tribunal gave the testimony of the four witnesses involved in those trades more weight

in assessing the Appellant's character than the supporting documents provided from interviews with the purchasers of three vehicles in 2016 who did not testify. Mr. Kassab admitted that he purchased nine vehicles from the auction while not registered as a dealer with OMVIC. The Tribunal does not accept his claim that his actions were inadvertent as he anticipated his registration would soon be reinstated. As Mr. Kassab had been in the motor vehicle industry since 2005, and the auction house was his source of vehicles, the Tribunal can only conclude that he was fully aware of his actions and perhaps hoped they would go unnoticed. He provided no evidence to substantiate that his reinstatement was imminent.

The Tribunal heard and accepts the evidence of Mr. Shearзад who was troubled by the events that lead to the NOP and the hearing before the Tribunal. His evidence was steadfast and detailed. He was clearly distraught by the actions of Mr. Kassab whom he considered a confidant and a friend.

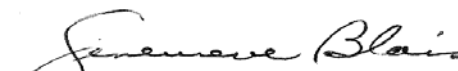
Of particular concern to the Tribunal is the Appellant's admitted action of forging Mr. Shearзад's signature on the lease agreements and bills of sale, which he described as a "made-up signature". He displayed a cavalier attitude when he described the bill of sale as an "internal calculation sheet" and not an official document and that the signature was of no significance. The Appellant did not provide any evidence to confirm that was indeed the way he and Mr. Shearзад had agreed to do business. The Tribunal finds Mr. Kassab's evidence incredulous and can only conclude that his actions were a desperate attempt to avoid detection and to deceive. The Tribunal finds this behavior a serious dereliction of Mr. Kassab's responsibilities under the Act. His conduct relates both to his integrity as a salesperson and as principal of his business and fails the test of honesty, integrity and conduct in accordance with law.

The intention and the objective of the Act are to protect the public interest. It is essential that is applied in a way that does protect consumers. Considering all the evidence, the Tribunal finds that the past conduct of Mr. Kassab provides reasonable grounds for belief that the Appellants will not carry on business in accordance with law or with integrity and honesty.

## **ORDER**

Pursuant to the authority vested in it under the provisions of the Act, the Tribunal directs the Registrar to carry out the Proposal and refuse the Appellants registration as a motor vehicle dealer and as a motor vehicle salesperson.

LICENCE APPEAL TRIBUNAL

  
Geneviève Blais  
Member