

Licence  
Appeal  
Tribunal

Tribunal  
d'appel en  
matière de permis



EDWARD EDMONDS

APPEAL FROM A NOTICE OF PROPOSAL OF THE REGISTRAR  
UNDER THE *MOTOR VEHICLE DEALERS ACT, 2002*, S.O. 2002,  
c. 30, Sch. B

TO REFUSE REGISTRATION

TRIBUNAL: RICHARD MACKLIN, Vice-Chair

APPEARANCES: EDWARD EDMONDS, the Applicant, unrepresented

POEME C.H. MANIGAT, Counsel, representing the Registrar,  
*Motor Vehicle Dealers Act, 2002*

DATE OF HEARING: February 7, 2011 Toronto

## 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 August 25, 2010, proposed to refuse to grant the registration of Edward Edmonds (the "Applicant"), as a salesperson under the Act.

### FACTS

The Applicant was arrested on December 16, 2008, and charged with four counts under the *Criminal Code* of Canada, R.S.C. 1985, c. C-46.<sup>1</sup> Of the four counts, one has subsequently been withdrawn. The remaining charges are set for trial in October of 2011. The Applicant also owes roughly \$10,000.00 in family support arrears.

<sup>1</sup> Two counts of living off the avails of prostitution and counts of controlling a prostitute and running a common bawdy house.

In the face of these difficulties, the Applicant has successfully obtained a realtor's licence, passed the necessary course to become a car salesperson and located an automobile dealer, 970910 Ontario Inc. o/a Prestige Motors, which is prepared to hire him as a salesman.

The Registrar has refused to register the Applicant as a salesperson under the Act for reasons which, at the conclusion of this hearing, boiled down to the following:

- i) The Applicant's disclosure of his criminal circumstances was less than perfect and in particular, despite the Registrar's attempts, there is still no confirmation in the Registrar's file that the proposed employer is fully aware of the criminal charges the Applicant is facing. Hence, it is argued, there are reasonable grounds to believe that the Applicant will not conduct himself in the position of salesperson, in accordance with the law and with honesty and integrity;
- ii) Similarly, the conduct underlying the charges is such that there are reasonable grounds to believe that the Applicant will not conduct himself in the position of salesperson, in accordance with the law and with honesty and integrity; and
- iii) The Applicant's failure to abide by a court order and pay family support arrears of \$10,000.00 means that the Applicant cannot reasonably be expected to be financially responsible in the conduct of business.

## THE LAW

The pertinent provisions of the Act are:

### 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,
    - (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;

**Refusal to register, etc.**

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.

**Conditions**

- (2) Subject to section 9, the registrar may,
- (a) approve the registration or renewal of a registration on such conditions as he or she considers appropriate; and
  - (b) at any time apply to a registration such conditions as he or she considers appropriate.

**Notice re: refusal, suspension, etc.**

9. (1) The registrar shall notify an applicant or registrant in writing if he or she proposes to,
- (a) refuse under subsection 8 (1) to grant or renew a registration; ...

**Hearing**

- (5) If a hearing is requested, the Tribunal shall hold a hearing and may by order direct the registrar to carry out the registrar's proposal or substitute its opinion for that of the registrar and the Tribunal may attach conditions to its order or to a registration.

**ANALYSIS**

Stripped of the criminal allegations that are yet to be proven in a court, the concerns that relate to the Applicant are better served by attaching conditions to his registration as opposed to a blanket refusal to register him. At present, there are allegations related to non-industry specific charges that will be tried in October 2011. The Registrar should be notified of the progress of those criminal charges, and any others that emerge in the near future. However, the Applicant is a 55-year-old man with no criminal record. No direct evidence of any crimes committed by the Applicant was called at this hearing.

In his application for a salesperson licence, amongst other things, the Applicant attached an accurate Criminal Background Check, prepared by the York Regional Police Service. That document disclosed to the Registrar the full extent of the charges the Applicant was facing. Thus, there can be no concern regarding the Applicant's disclosure of his criminal charges to the Registrar. There is, however, some concern regarding the full extent of the proposed employer's knowledge of the Applicant's outstanding charges. That concern can be ameliorated by attaching a condition to the registration, to which the Applicant at this hearing consented, that the full list of charges be signed off on by the proposed employer.

Finally, there are *bona fide* concerns regarding the Applicant's financial predicament. It is of note, however, that this is not a case where the Applicant has done nothing to improve his financial position. He has obtained a realtor's licence and taken every step he could to obtain a car salesman's licence. Presumably, these are steps which will lead to the extinguishing of the \$10,000.00 family support obligations sooner than would occur if the Applicant settled for lower paying employment. Thus, this is not a case like 1302406 (*c.o.b. Colson Motor Cars*) (*Re*) [2002] O.L.A.T.D. No. 268, where the dealership was sued by a group of consumers, in respect of car sales, and was ordered by judgment to pay \$40,000.00 in damages. The dealer in *Colson* then took no steps to satisfy the judgment.

Thus, in conclusion, the Tribunal finds an absence of reasonable grounds upon which the Registrar could believe that the Applicant will not carry on business in accordance with law and with integrity and honesty. However, on the Applicant's consent, the Tribunal will order conditions in respect of clearing up any ambiguity regarding what the Applicant's proposed employer knows about his charges and ensuring that the Registrar be promptly apprised of the disposition of those charges and any others that may emerge.

The Tribunal does, however, find that having regard to the financial position of the Applicant, he cannot reasonably be expected to be financially responsible in the conduct of business. That is not to impute ill-motive on the Applicant. Simply put, his financial position (caused by family support arrears and recent and prolonged stints on social assistance during the last two years) is such that he is not in a position to manage his day-to-day affairs the way he could if he had been gainfully employed during these last two years. Again, these shortcomings can be addressed through a condition that, for a period of time, the Applicant not hold any managerial position with his employer. The Registrar, as an alternative submission to the submission that the appeal be dismissed, sought a long-term prohibition on the Applicant handling money or being in a position to obtain credit information. There is no evidence of any financial impropriety in the Applicant's past or any evidence of misuse of personal information. Thus, the Tribunal has rejected these proposed long-term prohibitions as they appear unfounded and may considerably hinder the Applicant's ability to make sales. A brief period where the Applicant is out of management, on the other hand, means that material transactions at the dealership will be the responsibility of someone else, thus allowing for enhanced accountability in the event of a problem.

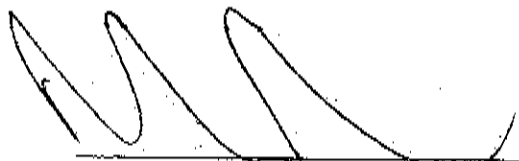
The Tribunal wishes to add that all of the above is without prejudice to the Registrar seeking to issue a proposal in the event that the Applicant is convicted of the offences with which he is charged.

**ORDER**

Pursuant to the authority vested in it under the provisions of the Act, the Tribunal directs that the Registrar not carry out the Notice of Proposal and further orders that the Registrar approve the registration of the Applicant as a salesperson, subject to the following conditions:

1. That the dealer with whom the Applicant is registered be provided with an up-to-date copy of a Criminal Background Check Results ("C.B.C.R.") in respect of the Applicant and forward a copy of that C.B.C.R. to the Registrar. The forwarded C.B.C.R. copy is to evidence, on its face, that the dealer is aware of all outstanding charges that the Applicant is facing;
2. That the Applicant advise the Registrar of the disposition by the trial court of the charges he is currently facing, within five business days of that disposition;
3. That the Applicant advise the Registrar in writing, within five business days, of any other charges that he is facing under any federal legislation or provincial legislation where the charge would fall under Part III of the *Provincial Offences Act*, R.S.O. 1990, c. P.33;
4. That the Applicant advise the Registrar in writing if he is charged, subsequent to the release of these reasons, with any charge of the nature described in paragraph 3 above. Such advice shall disclose the full extent of those charges and be delivered to the Registrar within five business days of the date of charge; and
5. That, for a period of one year from the date of the release of these Reasons, the Applicant is not to be employed with managerial roles or responsibilities with his registered dealer.

LICENCE APPEAL TRIBUNAL



Richard Macklin, Vice-Chair

RELEASED: February 18, 2011

The hearing was recorded. Transcripts can be made available at your expense. The period to appeal a decision to the Ontario Superior Court of Justice or Divisional Court (<http://www.ontariocourts.on.ca/>) is 30 calendar days from the date of release of the decision. Please arrange to pick up your Exhibits within 30 days after that period has passed. The Tribunal requires seven days notice prior to releasing Exhibits.

This decision, which is being released to the parties in this proceeding, may also be posted on the Licence Appeal Tribunal's website <http://www.lat.gov.on.ca/> within three weeks time. The decision may also be available on Quicklaw at a later date.