

Licence  
Appeal  
Tribunal

Tribunal  
d'appel en  
matière de permis



DATE: 2013-04-17  
FILE: 7810/MVDA  
CASE NAME: 7810 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 - to Refuse Registration

Tam Thanh Le

Applicant

-and-

Registrar, *Motor Vehicle Dealers Act 2002*

Respondent

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**REASONS FOR DECISION AND ORDER**

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**ADJUDICATOR:** Kenneth W. Koprowski, Vice-Chair

**APPEARANCES:**

**For the Applicant:** Self-represented

**For the Respondent:** Michelle Samaroo, Counsel

Heard in Toronto April 4, 2013

## 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 December 3, 2012, proposed to refuse to grant the registration of Tam Thanh Le (the “Applicant”), as a salesperson under the Act.

The Applicant applied to the Ontario Motor Vehicle Industry Council (“OMVIC”) to be registered under the Act as a motor vehicle salesperson. The Applicant signed the application form on July 13, 2012 and OMVIC received it on August 3, 2012.

The Registrar refused to grant the application because, on June 5, 2012, the Applicant had been convicted under section 7(1) of the *Controlled Drugs and Substances Act S.C. 1996, c. 19*, on a charge of producing a controlled substance, *Cannabis (marihuana)*. The Applicant was sentenced to a period of incarceration of 18 months, to be served conditionally, under supervision, in the community, on strict terms. At the time the Applicant applied to be registered, his sentence had not yet expired. The Registrar took the position that the application was premature in that the past conduct of the Applicant afforded reasonable grounds for belief that the Applicant will not carry on business in accordance with law and with integrity and honesty because there was not enough time from the imposition of his sentence for the Applicant to show positive conduct without the need for supervision.

The Applicant appealed to the Tribunal.

### FACTS

The facts are not in dispute.

Detective Constable Darryl Dam was the officer who arrested the Applicant. At the time of this hearing, he had served on the Vice and Drug Unit of the Hamilton Police Service for five years. He confirmed that, on August 4, 2010, pursuant to a search warrant, he searched the house owned by the Applicant. He found 434 marijuana plants in the house and 258.8 grams of processed marijuana. He charged the Applicant with producing a controlled substance pursuant to section 7(1) of the *Controlled Drugs and Substances Act*. He also charged the Applicant with possession of marijuana for the purpose of trafficking, contrary to section 5(2) of that Act.

On June 5, 2012, the Applicant was convicted under section 7(1), but the charge under section 5(2) was withdrawn at the request of the Crown Attorney, as noted on the Indictment found at page 51 of Exhibit #3.

Detective Dam further confirmed that the sentence imposed on the conviction under section 7(1) was a conditional sentence of 18 months on strict terms that were summarized on pages 55 to 63 of Exhibit #3.

Detective Dam stated that the Applicant's growing operation in his house was of "medium sophistication," to use his terminology. He also acknowledged that the Applicant was truthful in the statements that he gave to the police and that he was remorseful.

In the Applicant's Notice of Appeal, he stated that he was still registered with the Investment and Industry Regulatory Organization of Canada ("IIROC"). In stating this, the Applicant was trying to make the point that, if his conduct had anything to do with public misgivings, he would have been stripped of his securities licence. Since he was not, then the Registrar should allow him to be registered under the Act in his current application for registration as a motor vehicle salesperson.

IIROC's responsibilities include having to oversee its rules concerning the business and financial conduct of firms registered with it and of their registered employees.

However, the evidence of Christopher Bhalla confirmed that the Applicant was not still registered with IIROC, contrary to the Applicant's assertion in the Notice of Appeal.

Mr. Bhalla is the manager of registration with IIROC. His duties are to oversee the staff who review applications for approval with IIROC. He stated that, although the Applicant had at one time been registered with IIROC, that registration ended on December 15, 2010. It was on that date that IIROC received a Notice of Termination from the Applicant's sponsoring securities firm. Once the Applicant's sponsoring firm terminated the Applicant's employment, the Applicant's registration with IIROC was also automatically terminated.

The only evidence of the reason that the Applicant's firm terminated his employment is found in an e-mail dated May 30, 2012, from the Applicant to the IIROC website (Exhibit #5) where the Applicant states: "...I was let go of (*sic*) [name of securities firm] in November 2010 and do (*sic*) to a criminal matter." The Applicant informed the Tribunal that he had voluntarily disclosed the two drug charges to his employer.

If the Applicant were to apply for registration with IIROC, he would be subject to what Mr. Bhalla called the "fit and proper" review. Such a review, quoting from page 1 of Exhibit #6, provides "...that an application for individual approval be approved unless the applicant is not qualified by reason of integrity, solvency, training or experience or the approval is not in the public interest." The Tribunal notes that the criteria for approval by IIROC are similar in nature to the criteria for registration under the Act. Mr. Bhalla confirmed that, since December 15, 2010, the Applicant has not applied for registration nor is he currently employed by a sponsoring firm.

Furthermore, Mr. Bhalla referred to an e-mail dated June 6, 2012, filed as Exhibit #5, which sets out the significance of a conviction on a person's registration with IIROC. The e-mail was sent to the Applicant from "Registration Inquiries" at IIROC. Among other things, the e-mail states:

Criminal proceedings are examined as part of our suitability reviews for individuals seeking registration with us. Each situation is looked at case-by-case and many factors come into play when reviewing an application for registration. As each situation is examined on a case-by-case basis, it is impossible for us to advise on whether or not you would be granted registration or on the terms and conditions that could be imposed on your registration....

Finally, Mr. Bhalla confirmed that he has not seen any evidence of the Applicant's conviction because, once the Applicant's registration with IIROC was terminated, he was no longer obliged to disclose that information.

Relying on the foregoing evidence, the Registrar, therefore, considered that the Applicant's assertion in the Notice of Appeal that he was still registered with IIROC was not truthful and did not support his argument that he should be registered as a salesperson under the Act.

Laura Halbert also testified on behalf of the Registrar. Ms. Halbert has been, as at the date of this hearing, the Director of Compliance at OMVIC for 15 years.

She confirmed that the role of OMVIC was to oversee the Act, which she described as a public protection statute, and to oversee the salespersons and dealers registered under the Act. She also emphasized that any salesperson registered under the Act "...had front-line interactions with consumers..." and that the position of a salesperson "...involves a lot of trust," to quote her testimony.

She confirmed that the Notice of Proposal (Tab 1, Exhibit #3) to refuse the Applicant's application for registration under the Act was based on the fact that the Applicant had been recently convicted of a serious offence and on the fact that he was still under a supervised period of probation. The Applicant's financial situation, as set out in his application for registration, was also a factor, but was not as significant as his conviction and on-going probation.

Ms. Halbert also pointed out to the Tribunal that the Applicant's response in the application that he was a first-time applicant was incorrect. The Applicant had been granted, in the year 2000, a provisional licence in response to his earlier application dated May 9, 2000 (Tab 7, Exhibit #3). The provisional licence was in force for only 60 days and had expired in 2000. A provisional licence is no longer available under the Act.

The Applicant informed the Tribunal that he had forgotten about the provisional licence, since he never tried to sell any vehicles under the authority of that certificate. He allowed the provisional licence to expire. The Tribunal has no reason to doubt the Applicant's testimony on that point.

Ms. Halbert also confirmed with the Tribunal that, other than the matter relating to the provisional certificate granted in 2000, there was no question of the Applicant having provided false or misleading disclosure on his application form. The main reasons for refusing registration were the Applicant's recent conviction, the fact that his period of supervised probation was still running and the fact that there has been no period of time during which the Applicant could demonstrate positive conduct without supervision on the completion of his sentence. Ms. Halbert considered that the public protection mandate of the Act was not met by registering someone with a criminal record and who was still serving the sentence imposed on him. As she stated, the Applicant's application is premature.

In response to questioning from the Tribunal, Ms. Halbert did confirm, however, that the Applicant filled out his application form correctly and without any significant misleading information. Although his conviction did not involve fraud against the public, the Applicant's conviction was still significant. The conviction was not industry related and did not arise from dealing with the public, although she believed his conviction had public applications.

Ms. Halbert also did not consider that the Applicant's application for registration should be granted with conditions. The reason was that the Applicant was still under supervised probation and should not be granted access any to the public, even with conditions. The Registrar required a period of conduct without supervision to allow the Registrar to determine how the Applicant conducted himself after he completed his probation period. As at the time of this hearing, the Registrar had no evidence of the Applicant's conduct without supervision.

The Applicant had a friend, D.K., testify as a character witness on his behalf. However, D.K. knew the Applicant for only six months beginning in about June or July, 2012, when they worked at the same furniture store. Although D.K. stated that he never observed the Applicant do anything improper with any customer of the business, he acknowledged that he was not present at all times that the Applicant was talking to customers. He also was not aware, in June or July, 2012, that the Applicant had a conviction or that he had been growing marijuana in his house. He also did not know that the Applicant was on probation until the Applicant told him sometime later in their relationship.

The Applicant also filed three letters of reference, filed as Exhibit numbers 7, 8 and 9. The writers of those letters of reference were not present at this hearing. One was still in Cairo, Egypt. One was still in Australia and the other was in another part of the Province of Ontario. However, the Applicant admitted that he did not know whether the three persons who wrote the letters knew of his drug record or of the risk to the public in the motor vehicle business. As a result, the Tribunal places little weight on those letters of reference.

The Tribunal also considers, as significant, the fact that the Applicant filed neither a letter of reference from the motor vehicle dealership where he intended to work as a salesperson nor did he have anyone from that dealership attend the hearing to testify on his behalf. The Applicant's reason was that his employer was busy and he did not want to interfere with their work.

For his part, the Applicant, who said that he was 37 years old, admitted that his conviction was a serious matter. He did not significantly contest the evidence of the Registrar's witnesses. He stated that he was merely curious when he started to grow the marijuana. He felt something was lacking in his life and wanted to take a risk. He admitted that he exercised poor judgment. He volunteered the information about his conviction to his employer and to IIROC. He did not try to hide that information. However, the Tribunal notes that it was the Applicant's employer, not the Applicant, who informed IIROC that the Applicant's employment was terminated.

He asserted that his conditional sentence was a lenient one because he had a high chance for rehabilitation. He considered that the Judge who imposed the sentence was giving him a break. He intended to stay away from that kind of conduct. He felt he had a right to make a living selling vehicles and believed his application should be granted.

## **THE LAW**

The Act states in part as follows:

### **Prohibition**

4.(1) No person shall,

...

(b) act as a salesperson unless he or she is registered as a salesperson.

...

### **Unregistered salesperson**

(3) A motor vehicle dealer shall not retain the services of a salesperson unless the salesperson is registered in that capacity.

...

### **Salespersons**

(5) A salesperson shall not trade a motor vehicle on behalf of a motor vehicle dealer unless the salesperson is registered to that dealer.

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,

(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;

(b) suspend or revoke a registration; or

(c) apply conditions to a registration or renewal to which the applicant or registrant has not consented.

### **Content of notice**

(2) The notice of proposal shall set out the reasons for the proposed action and shall state that the applicant or registrant is entitled to a hearing by the Tribunal if the applicant or registrant mails or delivers, within 15 days after service of the notice, a written request for a hearing to the registrar and to the Tribunal.

...

### **Hearing**

(5) If a hearing is requested, the Tribunal shall hold the 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.

## **ISSUE**

The Tribunal was called upon to decide whether, in the circumstances of this case, 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.

## APPLICATION OF LAW TO FACTS

Counsel for the Registrar submitted that, to be registered under the Act, an applicant must meet the “past conduct” test in section 6(1) (a) (ii) of the Act to ensure the public protection of consumers. She concluded that the Applicant’s recent conviction and current period of supervised probation illustrated that the Applicant’s past conduct afforded reasonable grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty. The application in this case is premature because the penalty imposed on the Applicant has not yet been completed. There has not been a sufficient time without supervision to establish proper conduct on the part of the Applicant. His application was filed with OMVIC only two months after his conviction. As at the time of this hearing, the Applicant still had eight months of his sentence remaining.

In support of her position, Counsel for the Registrar referred the Tribunal to three previous decisions of this Tribunal. The Tribunal notes that previous decisions of this Tribunal are not binding on the Tribunal but their reasoning can be persuasive.

The first decision was *Re: Koo* [2012] O.L.A.T.D. No. 235, dated September 13, 2012. In that case, the Registrar issued a Notice of Proposal dated March 8, 2012, under the Act, to refuse the applicant’s application for registration as a salesperson under the Act. The applicant had been arrested in June, 2009 on a charge of break and enter and theft over \$5,000.00, contrary to the *Criminal Code* of Canada and was convicted of those offences. The sentence imposed was a conditional sentence of two years less a day, to be completed in June, 2012. In November, 2011, before the sentence was completed, the applicant applied for registration as a salesperson under the Act. One of the reasons for the Registrar’s refusal was that not enough time had passed since his sentence was completed to establish a record of unsupervised positive conduct. The hearing was held on September 5, 2012, approximately three months after his sentence was completed.

In the absence of evidence that the applicant in that case had taken material and concrete steps to reform and that he had achieved success in sustaining a life of honesty and integrity, the Tribunal stated, at paragraph 18 of the decision:

**18** ... Mr. Koo did not testify nor were any character witnesses called on his behalf. It is not possible for the Tribunal to determine whether Mr. Koo has taken any actions to understand what caused him to commit the crime or to learn any lessons from it. Apart from evidence of a longer term relationship and the birth of his son, the Tribunal has scant evidence that Mr. Koo has taken any steps to turn his life around. **While he has completed his conditional sentence, there has not been a sustained period of unsupervised positive conduct.** The Tribunal has no option but to conclude that Mr. Koo's past conduct does give rise to reasonable grounds to believe that he will not conduct his business in accordance with the law and with integrity and honesty as required under the Act.

(Emphasis is added)



In *Re: Koo*, the applicant had completed his conditional sentence as at the time of the Tribunal hearing on September 5, 2012, but the Tribunal held that, despite that, there was not a sustained period of unsupervised positive conduct. This is to be contrasted with the case now before this Tribunal where the Applicant has not even completed his period of probation.

Therefore, in *Re: Koo*, the Tribunal directed the Registrar to carry out its Proposal to refuse to register the applicant as a salesperson under the Act.

The second decision referred to by Counsel for the Registrar was *Grace Auto Sale Ltd.* [2006] O.L.A.T.D. No. 181, a decision of this Tribunal dated May 4, 2006, under the *Motor Vehicle Dealers Act*, the predecessor to the current Act. Although there had been an application for registration as a motor vehicle dealer and for registration of an individual as a salesperson under that Act, the appeal to the Tribunal was pursued by only the individual applicant in that case.

The applications were dated May 31, 2005. The individual applicant had a charge of criminal harassment against him as of June 23, 2005. On August 4, 2005, he was convicted and a sentence of probation for two years was imposed. On October 19, 2005, the Registrar issued a Notice of Proposal to refuse the individual's application to be registered as a salesperson and the corporation's application to be registered as a dealer.

At the time of the hearing before the Tribunal on March 15, 2006, the individual applicant had not completed his probation period, a situation similar to the case now before the Tribunal. At paragraph 57 of the Decision, the Tribunal member stated:

**57** However, the Tribunal fully agrees with the reference to Levesque and "... that some time must pass between the expiry of sentence and the expiry of parole or probation for the Applicant to show rehabilitation ..." In the Applicant's case, the probation period will not expire until February 2007...

Consequently, the Tribunal directed the Registrar to carry out his Proposal to refuse registration of the individual applicant as a salesperson under the *Motor Vehicle Dealers Act*.

The third decision referred to the Tribunal was *Re: Martin* [2012] O.L.A.T.D. No. 102, dated March 7, 2012. In that case, the applicant had been convicted on November 26, 2009, of conspiracy to traffic in cocaine. The applicant pleaded guilty. A sentence of six years less credit for time served was imposed. The applicant was released on parole in May, 2010. The parole period would continue until November 26, 2012. On August 30, 2011, the Registrar issued a Notice of Proposal to refuse the registration of the applicant as a salesperson under the Act. One of the reasons for the refusal was that insufficient time had passed since the applicant's conviction to demonstrate that there had been a change in the applicant's moral outlook. At the time of the hearing on January 24, 2012, the applicant's period of parole had not yet expired.

At paragraph 27 of the decision we read:

27 ...the Tribunal is not satisfied that this is a case where the normal practice of not allowing registration until sufficient time has elapsed for an applicant to prove himself to be of good character should be abandoned....

As a result, the Tribunal in the *Martin* decision directed the Registrar to carry out the Proposal to refuse registration of the applicant as a salesperson under the Act.

Counsel for the Registrar, therefore, submitted that, as in the *Martin* and *Grace Auto* decisions, the Applicant in the matter now before this Tribunal has not yet completed his period of probation, so that the Registrar was justified in refusing to grant the application. In the *Koo* decision, even though the period of probation had expired, there was not a sustained period of unsupervised positive conduct. That reasoning, according to Counsel's argument, was all the more justification for refusing the Applicant's application in this matter, for he has not even completed his period of probation.

For his part, the Applicant argued that OMVIC has two classes of parties that it deals with; that is, those persons who are already registered under the Act and those who apply to be registered. He accused OMVIC of taking the smallest concerns and blowing them out of proportion.

He further accused OMVIC of not enforcing its values against those registrants who are guilty of gross misconduct and who are already in the motor vehicle business, whereas OMVIC takes a harder stand against those who wish to be registered under the Act. To support this argument, he referred the Tribunal to two cases that came before OMVIC's Discipline Committee. He referred to a decision dated January 16, 2012, involving C.W. He also referred to a decision of the Discipline Committee dated January 3, 2012, involving W.M.

However, the Tribunal notes that these cases were disciplinary in nature. They did not come within the purview of section 6(1) (a) (ii) of the Act, which is the section that the Tribunal must consider in this matter. The Applicant's case is a matter of the Registrar's refusal to grant his application for registration. It does not involve the discipline of a party who is already registered and who has violated OMVIC's Code of Ethics. The two types of proceedings involve totally different considerations. The Tribunal does not consider such disciplinary cases to be persuasive in reaching its decision in the instant case.

The Applicant also referred the Tribunal to two decisions of this Tribunal that he argued were supportive of his position that his application for registration should be granted.

The first case was the decision in *7033/MVDA* [2012] O.L.A.T.D No. 174, released May 30, 2012.

In that case, the Registrar issued a Notice of Proposal dated October 18, 2011, to refuse to grant the registration of the applicant in that case as a salesperson under the

Act. The Tribunal directed the Registrar not to carry out the Proposal and ordered the Registrar to approve the applicant's registration, but subject to four conditions.

However, that case involved a consideration of whether there was a change in circumstances on the part of the applicant. In that case, there was a period of 11 years since his conviction in 2002 for several offences. Those offences included fraud, trafficking in credit cards, possession of credit card data for the purposes of committing an indictable offence, possession of stolen and/or falsified credit cards, and possession of stolen identification and of counterfeit currency.

Also, in 2008, the applicant in that case received a pardon with respect to those offences.

The case also involved the applicant's third application for registration. In each application, the application was supported by the same dealer for whom the applicant intended to work. The sequence of events took the following course, as outlined in that decision, beginning at paragraph 2:

**2** This is not the first such application by Mr. Malik. He was first registered as a motor vehicle salesperson from February 4, 1997 to February 4, 1999. He subsequently submitted an application for registration as a salesperson in January 2006, with his proposed employer being [name of dealer deleted]. The 2006 application was refused and Mr. Malik appealed to this Tribunal. In the LAT decision dated April 3, 2007, the presiding member found that the 'past conduct of the applicant affords reasonable grounds for belief that he will not carry on business in accordance with the law and with integrity and honesty since he has only been back in the workforce for one year since his release from probation in February 2003.' She directed the Registrar to carry out his proposal to refuse registration. Mr. Malik appeared before the Tribunal on that occasion without legal representation.

**3** Mr. Malik re-applied for registration in April 2009. Again, a Notice of Proposal to refuse registration was issued. Mr. Malik did not appeal that proposal therefore, pursuant to the Act, the Registrar carried out the proposal to refuse registration on August 26, 2009. In that instance, the sponsoring dealership was again [name of dealer deleted].

**4** This leads then to the current matter - the application dated March 3, 2011 with, once more [name of dealer deleted] as the sponsoring dealership. The fact that Mr. Malik plead guilty and was convicted in February 2002, of numerous offences is not in dispute. ...It is also not in dispute that Mr. Malik received a pardon in November 2008 with respect to these offences (Exhibit 1, Tab 8). What impact this pardon should have is, however, one of the matters in issue.

The Vice Chair also made the following findings, at paragraphs 38 and 39:

**38** However, the indisputable fact is that eleven years have transpired since the incidents giving rise to the criminal conduct. Mr. Malik has had no brushes with the law since then. In *Popal (Re) [2009] OLATD* the Tribunal stated:

The fact that there have been no new convictions does not qualify, as it would be tantamount to saying that it is new evidence or a material change to have not engaged in criminal behavior.

**39** In *Popal* the passage of time being considered was one year and eight months, not 11 years. On these facts, the Tribunal does give weight to what can only be considered as a very considerable passage of time. When considered together with the 41/2 years employment outlined above, the Tribunal is satisfied that there has been a change of circumstances since both the 2007 decision and the 2009 refusal to register sufficient to meet the test in the Act.

The Tribunal considers that the above facts and findings distinguish the above case from the matter now before the Tribunal. Here, there has been no lengthy passage of time after the Applicant's conviction. He has not completed his sentence, as the applicant in the above case had done. He has not shown the support of the dealership that he has named in his application. Nor is the Applicant anywhere close to being able to obtain a pardon.

The Applicant also referred the Tribunal to the decision in *7043/MVDA* [2012] O.L.A.T.D. No. 301, released December 6, 2012.

That case involved the Registrar's Notice of Proposal to revoke a registrant's registration as a salesperson under the Act. It did not involve a proposal to refuse an applicant's application for registration, as in the case now before the Tribunal.

The applicant in that case, as with the Applicant in the current case, had been convicted of producing a controlled substance in violation of the *Controlled Drugs and Substances Act*. The Registrar submitted, therefore, that the applicant's conduct in that case afforded reasonable grounds for the belief that the applicant will not carry on business in accordance with the law and with honesty and integrity, thereby invoking the disqualification from registration pursuant to section 6(1)(a)(ii) of the Act.

The Tribunal Vice Chair in that case directed the Registrar not to carry out the Proposal, but ordered that the registration be granted subject to certain conditions outlined in the Order. The factors that led to that decision were more favourable to the applicant in that case than are the factors in the case now before the Tribunal. Some of those factors are set out in paragraph 17:

**17** The fact is that Mr. Allen has been registered as a salesperson under the Act for 16 years. Until 2010, there was no blemish on his record. The conviction is undeniably serious. From the evidence, it is clear that the conduct that led to the conviction was very much out of character. No one saw it coming. Is there a basis then on which the Registrar can reasonably conclude that, going forward, Mr. Allen will not carry on business in accordance with the law and with honesty and integrity? Certainly his employers do not think so. They continue to entrust their businesses to him on a daily basis. While it may be argued that it is in their interest to have Mr. Allen there minding the shop while they are on the road, it would not be in their interest, financial or otherwise, if his presence was detrimental to their customers' confidence in their dealerships. In some of the cases cited to the Tribunal, for example, in *Koo v. Registrar, Motor Vehicle Dealers Act 2002*, 2012 CanLII 52462, there are no character witnesses called on behalf of an Applicant so that the Tribunal, left with no direct evidence, is asked to infer that the Applicant has reformed and can carry on business with integrity and honesty. That is not the situation here.

Those facts stand in stark contrast to those in the present case. Here, the Applicant has never been registered. There is no visible support for him from his intended employer as there was for the applicant in the above case. The applicant in the above case already demonstrated his trustworthiness at the dealership. Finally, for the reasons given earlier, the Tribunal places little weight on the character references put forward by the Applicant.

Considering the above factors, the Tribunal does not consider that the above case is persuasive to permit the Tribunal to conclude that the Registrar should allow the Applicant to be registered under the Act as a salesperson.

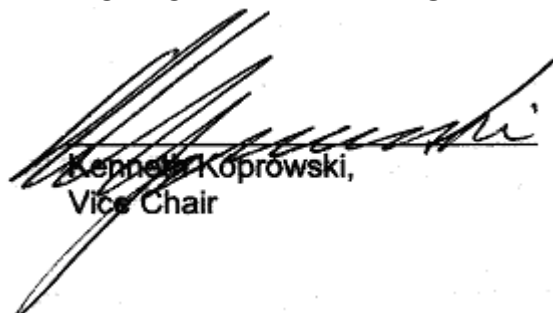
## **CONCLUSION**

Considering the above facts and the authorities that the parties referred to this Tribunal, the Tribunal finds that the evidence and the weight of the authorities favours the position that the Registrar takes in this matter to refuse to grant the Applicant's application. The Tribunal agrees, for all the foregoing reasons, 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; there was not enough time from the imposition of his sentence for the Applicant to show positive conduct without the need for supervision.

## **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 to refuse to grant the registration of Tam Thanh Le as a salesperson under the Act.

LICENCE APPEAL TRIBUNAL



Kenneth Koprowski,  
Vice Chair

