

Licence  
Appeal  
Tribunal

Tribunal  
d'appel en  
matière de permis



WARREN IFILL and TOTAL AUTO SALES INC.

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

TRIBUNAL: KENNETH W. KOPROWSKI, Vice-Chair

APPEARANCES: WARREN IFILL, the Applicant, self represented, and agent  
for TOTAL AUTO SALES INC.

ANGELA LA VIOLA, Counsel, representing the Registrar,  
*Motor Vehicle Dealers Act, 2002*

DATES OF  
HEARING:

July 11, 12, 13;  
September 6, 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 (the "Proposal") issued by the Registrar, *Motor Vehicle Dealers Act, 2002* (the "Registrar" and the "Act" respectively). The Proposal dated November 19, 2010, proposed to refuse to grant the registration of Warren Ifill (the "Applicant") as a salesperson and Total Auto Sales Inc. ("Total Auto Sales") as a motor vehicle Dealer under the Act. They are jointly referred to in this Decision as "the Applicants."

### FACTS

The reasons that the Registrar issued the Proposal, and the Particulars thereof, are stated in the Proposal itself, filed as Exhibit #1.

In effect, the Registrar alleged that the past conduct of the Applicant, as a salesperson and as an officer of Total Auto Sales, afforded reasonable grounds for belief that the Applicants would not carry on business in accordance with the law and with integrity and honesty and in a financially responsible manner. The Proposal states:

### **NOTICE OF PROPOSAL TO REFUSE REGISTRATION**

Take notice that pursuant to Section 9 of the *Motor Vehicle Dealers Act, 2002 c. 30*, Schedule B (the "Act") and the Regulations thereunder, the Registrar is proposing to REFUSE the registrations of TOTAL AUTO SALES and WARREN IFILL as a motor vehicle Dealer and Salesperson respectively, under the Act.

### **REASONS**

The intention and objective of the Act is to protect the public interest. In doing so, the Act requires that Registrants be financially responsible in the conduct of business and that they carry on business in accordance with the law and with integrity and honesty. All Dealers are required to comply with the Code of Ethics. The past conduct of TOTAL AUTO SALES and WARREN IFILL is inconsistent with the intention and objective of the Act, and therefore warrants disentitlement to registration under the Act.

The particulars on which the Registrar relied are as follows:

### **PARTICULARS**

#### BACKGROUND

1. Total Auto Sales Inc. ("the Dealer"), was first registered as a motor vehicle dealer under the Act since on or about June 24, 1999.
2. Warren Ifill ("Ifill") was first registered as a motor vehicle salesperson under the Act since on or about June 24, 1999. At all material times Ifill was sole Director of the Dealer.

#### CONSUMER COMPLAINT

3. On or about January 15, 2009, an OMVIC Complaint Handler received a phone call from a private investigator with [an insurance company] regarding a [motor vehicle]. The Registrar's office was advised that the vehicle had been branded "irreparable" as a result of flood damage in the United States. It was subsequently sold to Consumer "A" with a faulty Structural Certificate. Upon further inquiries, it was revealed that Consumer "A" provided [the insurance company] a Bill of Sale from the Dealer which was signed by Ifill.

#### OMVIC INSPECTION

4. On or about February 17, 2010, an OMVIC Inspector attended at the Dealer's premises for a routine inspection. The Inspector met with Ifill and discussed issues of non-compliance with proper disclosure, consignment agreements and the proper handling of deposits of trust monies as set out in the Act.

5. As a result of the inspection, it was revealed that on or about January 13, 2010, the Dealer had entered into an agreement with a customer for the sale of [vehicle number 1] in the amount of \$46,177.50. The Dealer advised that the customer asked for a Bill of Sale for the purposes of obtaining financing. The Dealer also advised that the customer was searching for [a second vehicle] and the Dealer did not have the particular vehicle available. The customer returned with a cheque in the amount of \$46,177.50, however she then indicated that she wanted to buy [vehicle number 1] instead of [the second vehicle]. The Dealer produced a second Bill of Sale for [vehicle number 1] dated February 1, 2010, in the amount of \$29,041.00. The Dealer proceeded to deposit the certified cheque and refunded the customer \$17,136.50 in cash. The Dealer was advised by the banking institution that the cheque had been obtained by fraudulent means.
6. Upon further inquiry, it was revealed that an occurrence report had been filed by Ifill with Peel Regional Police on or about March 9, 2010, regarding the above transaction. Ifill filed a complaint with respect to the apparent fraud by the customer as outlined above. The police report indicates that the Consumer/Suspect could not be located. Ifill filed the complaint at the direction of the banking institution. The police report disclosed concerns that the police had with respect to Ifill's involvement in the fraud. The police report outlined that Ifill failed to obtain the Customer's driver's licence and that he had participated in the initial fraudulent Bill of Sale in order to facilitate the bank draft by the Consumer/Suspect.
7. On or about April 15, 2010, Peel Regional Police contacted Ifill and advised that the fraud was being reported by the banking institution and that the matter was being reported to Toronto police as well. Ifill advised that he no longer wished to continue with the complaint.

#### MINISTRY OF REVENUE – BREACH OF TERMS AND CONDITIONS

8. On or about April 14, 2010, OMVIC received a Business Short Form Application for renewal of registration submitted by Ifill on behalf of the Dealer. The Dealer was subject to Ministry of Revenue (the "Ministry") imposed Terms and Conditions with respect to the failure to meet the requirements of the *Retail Sales Act* (sic) and thereby default payments totalling \$44,066.03.
9. On or about May 17, 2010, an OMVIC representative notified Ifill that the Dealer had not met the pre-conditions to registration as set out in the Act as being in default of the above repayment arrangements with the Ministry.
10. Ifill entered into repayment arrangements with the Ministry on behalf of the Dealer on April 30, 2009.
11. On or about July 9, 2010, OMVIC received a further copy of Ministry Terms and Conditions dated July 7, 2010 as agreed by Ifill on behalf of the Dealer.
12. The Dealer has failed to comply with the requirements of the *Retail Sales Tax Act*, as to the filing (sic) of returns, remitting of tax due and paying of

assessments when due, thereby failing to comply with the pre-conditions as set out under the Act and Regulations thereunder.

### CRIMINAL CHARGES

13. On or about January 16, 2007, the Commercial Auto Crime Bureau ("CACB") commenced an investigation into the purchasing of wrecked motor vehicles from various salvage auctions in the United States and importing same into Canada. The principle (sic) dealer was identified as "Total Auto Sales", owned and operated by "Warren Ifill" located at 2410 Semenyk Court, Unit #9, Mississauga, ON. The CACB investigators alleged that the title of the imported vehicles was changed from "salvage" to "none" for purposes of re-sale in Ontario with an apparent "clean" title thereby constituting fraudulent "title-washing" of the vehicles. Ifill was suspected by CACB to have participated in the fraud.
14. It was further revealed that on or about August 16, 2007, police observed a vehicle being operated in the City of Brampton. The particular vehicle had been previously registered as "junk" in the United States. The vehicle was stopped and examined by members of the Commercial Auto Crime Bureau. It was determined that that the vehicle was a stolen vehicle that had its Vehicle Identification Number ("VIN") altered.
15. As a result of police detention and seizure, the operator of the motor vehicle contacted someone to make alternate transportation arrangements and was met by Ifill.
16. As a result of examination by police of the vehicle driven by Ifill, it was revealed that the VIN on that particular vehicle had also been altered.
17. Ifill was placed under arrest and charged with Fraud Over \$5000 contrary to section 380(1) of the *Criminal Code of Canada*. The charges were brought before the Ontario Court of Justice, however as a result of police delay in providing disclosure to Ifill, the charges were ultimately withdrawn.
18. It was further revealed that the CACB had researched the history of over 300 vehicles involving Ifill on behalf of the Dealer.
19. As a result of further investigation by OMVIC, it was revealed that Ifill on behalf of the Dealer was involved in numerous fraudulent transactions involving "title-washing" of salvage-branded vehicles being imported from the United States into Canada.
20. The Registrar relies on the provisions as set out in section 6 of the Act. The past conduct of Ifill on behalf of the Dealer affords reasonable grounds for belief that he will not carry on business in a financially responsible manner, in accordance with the law and with integrity and honesty.
21. The Dealer and Ifill have failed to comply with the Act, in particular, section 6.

## **Evidence on behalf of the Registrar**

### Evidence of Louise Cohen

Ms. Cohen is an investigator for the Ontario Motor Vehicle Industry Council (OMVIC). OMVIC is responsible for administering the Act. She ensures compliance with provisions of the Act, trains new inspectors, and trained dealers on the new provisions in the Act that came into force on January 1, 2010.

She performed inspections at dealerships, either with or without making a prior appointment. During these inspections, she would review all books and records of the dealership, the history of, and all corresponding documents relating to all motor vehicle sales or consignment transactions, including the bills of sale. She would also review all bank statements relating to those transactions, to ensure that deposits were made to the appropriate trust accounts.

Ms. Cohen performed an inspection at the premises of Total Auto Sales. Although there were few transactions recorded under its Registration Identification Number ("RIN"), she believed that the premises were larger than the volume of transactions required.

She prepared an inspection report dated February 17, 2010, found at Tab 6 of Exhibit #3-1.

Ms. Cohen noted that the Applicants were not in compliance with the requirement to have a trust account. If a dealer receives a deposit of more than \$10,000.00 or receives vehicles on consignment, as the Applicants did, the dealer must have a trust account. The Applicant had none.

Ms. Cohen also noted several vehicle transaction irregularities.

### Irregularities regarding Vehicle #1

Ms. Cohen examined the Garage Register ("GR") of Total Auto Sales and saw that a vehicle, referred to in this decision as Vehicle #1, was being exported to Nigeria. Under the Act, it is an offence if a dealer deals with an exporter who is not registered under the Act. In response, the Applicant stated that Vehicle #1 was sold for personal use by the father of a friend who owned the vehicle, so that the Applicant believed that the Act did not apply. The Applicant offered to supply to Ms. Cohen the bill of lading to prove that the vehicle had actually left the country, but he never produced that document.

### Irregularities regarding Vehicle #2

Ms. Cohen found two different Bills of Sale dated on two different dates for the same vehicle, described in this Decision as Vehicle #2. Each Bill of Sale recorded a different sale price and a different odometer reading for the vehicle.

The first Bill of Sale is dated January 13, 2010 and is found at page 119 of Exhibit #3-1. The sale price is shown to be \$46,177.50. The odometer reading is shown to be 5299 kilometres. The purchaser is shown to be one R.D. There was no safety Standards Certificate issued. Ms. Cohen testified that the Applicant told her that R.D. was really looking to buy another vehicle, but the Applicant made out the Bill of Sale for Vehicle #2 for the sole purpose of allowing R.D. to obtain financing. Ms. Cohen testified that preparing a Bill of Sale for financing purposes is out of the ordinary unless the vehicle described in it is the one actually being sold.

When R.D. obtained financing at a bank, she returned to Total Auto Sales, according to the Applicant, with a bank draft for \$46,177.50, but decided to buy Vehicle #2, after all, and not the other Vehicle. The Applicant then prepared a second Bill of Sale for Vehicle #2, but for a different price, although the Vehicle Identification Number ("VIN") was the same. The second Bill of Sale is found at page 118 of Exhibit #3-1. The price on the second Bill of Sale is shown as \$29,041.00. The odometer reading is shown as 65,948 kilometres (and not 5299 kilometres). The Applicant stated that he received the bank cheque for \$46,177.50 from the customer, and refunded her the difference in cash between that amount and the second sale price of \$29,041.00. Such a refund is also out of the ordinary, according to Ms. Cohen.

In addition to the foregoing irregularities, Ms. Cohen discovered that the vehicle described in the two Bills of Sale was not at any time registered to either Total Auto Sales or to the purported customer, R.D. The Vehicle Record found at page 122 of Exhibit #3-1 confirms this.

Also, the cheque that the Applicant said that he received from the customer and the refund that he said he gave to the customer did not appear in the bank records of Total Auto Sales.

The bank subsequently reported that the cheque had been obtained by fraudulent means.

### Irregularities regarding Vehicle #3

Ms. Cohen stated that the Applicant informed her that Total Auto Sales received this vehicle, referred to as Vehicle #3 in this Decision, on consignment from one C.P. in about December, 2008. C.P. was a former salesperson for the Applicant. Even though the vehicle was not yet sold, the Applicant paid C.P. the sum of \$30,000.00 in cash, but the Applicant did not complete a bill of sale, nor does the payment appear in the dealership's bank records.

On April 4, 2009, the Applicant prepared a Bill of Sale (page 65 Exhibit #3-1) for this vehicle to one M.Y.R., who he said was the sister of the owner, C.P. The

sale price is shown as \$52,670.00, and the odometer reading is shown to be 9,057 kilometres. The purported purchaser, M.Y.R., is shown to have paid \$14,000.00 as a deposit. She is shown to pay the balance in monthly payments of \$939.28.

Also unusual was that the Ontario Vehicle Record, found at page 79 of Exhibit #3-1, shows that the vehicle came from California, yet the Carfax ownership history report, found at page 66 of Exhibit #3-1, does not show that the vehicle was ever registered in California. A CarProof vehicle history report, found at page 86 of Exhibit #3-1, confirmed that there were no registration records found for this vehicle in California.

The monthly payments of \$939.28 were not recorded in the dealership's bank accounts, but the Applicant told Ms. Cohen that he gave receipts for each monthly payment.

The CarProof vehicle history report also records, on page 90 of Exhibit #3-1, that Total Auto Sales held a lien on the vehicle. The lien was in the amount of \$55,000.00.

The Ontario Vehicle Record (page 80, Exhibit #3-1) shows that the vehicle was subsequently stolen on October 13, 2009. As a lienholder, the Applicant would have been a joint payee with M.Y.R. of the insurance proceeds payable on the loss.

Ms. Cohen expressed many concerns about this entire transaction, as follows. The Applicant paid \$30,000.00 in cash to C.P. while the vehicle was still on consignment. There was no Bill of Sale to C.P. and the vehicle was then purportedly sold to the sister of C.P. for the much higher price of \$52,670.00. The Applicant was shown as a lienholder for the amount of \$55,000.00. Monthly payments for the balance owing were not shown in the Applicant's bank records, and finally, the vehicle was shown in the Ontario Vehicle Record to have been registered in California, but the records from neither Carfax nor CarProof confirmed such a registration in that State.

#### Irregularities regarding Vehicle #4

Total Auto Sales obtained this vehicle in May, 2008 from an auto collision company as a salvage vehicle for the price of \$16,666.66 plus GST. It was sold "as is." The invoice from the salvage company is found at page 105 of Exhibit #3-1.

The Applicant should have been able to show Ms. Cohen the repair invoices related to this vehicle, but he did not have them, explaining that he sent them to the Ontario Ministry of Transportation ("MTO"). However, Ms. Cohen stated that the MTO would have received such invoices from the company that actually did the repairs, and not from Total Auto Sales. The Applicant should have kept

copies of the repair documents. The Applicant could not remember the name of the body shop that did the repairs, but said that it was out of business.

The CarProof Vehicle History report revealed that damage to this vehicle was estimated in the amount of \$21,114.00 as a result of an accident on February 20, 2008 (see page 111 of Exhibit #3-1). Therefore, when the invoice from the collision company showed the price of the vehicle to be \$16,666.66, Ms. Cohen became suspicious.

The Applicant then sold the vehicle on February 28, 2009, to a consumer, D.J.S., for the price of \$19,000.00 as a rebuilt vehicle, as shown on the Bill of Sale found at page 104 of Exhibit #3-1, but the Applicant could not tell Ms. Cohen where the repairs were made nor could he provide any documentation to verify that the repairs were, in fact, made. The CarProof Vehicle History Report showed that the sum of \$33,800.00 was the actual damage amount, but this amount was determined only after the original estimate of \$21,114.00 was made. To Ms. Cohen, it made no sense for the Applicant to buy a vehicle with damage to it estimated at \$21,114.00 for a purchase price of \$16,666.66, and then turn around and sell it for only \$19,000.00 if repairs had to be done in the amount of at least \$21,114.00.

Ms. Cohen also stated that the auto body repair shop from which the Applicant said that he purchased the vehicle was not registered under the Act, so that the Applicant should not have been dealing with it.

The Ontario Vehicle Record, on page 114 of Exhibit #3-1, also revealed another impropriety. Although Total Auto Sales purportedly purchased this vehicle from an auto body shop, the auto body shop does not appear as a registered owner of the vehicle.

At the conclusion of her inspection, Ms. Cohen recorded several of her findings in her report, many of which related to the deficiencies already referred to in the above summary of her testimony.

One additional item on which she admonished the Applicant and which is relevant to this appeal, related to payments of Provincial Sales Tax. The Applicant was in arrears at the time of the inspection in the amount of \$44,742.56, as noted on page 56 of the inspection report in Exhibit #3-1. Ms. Cohen informed the Applicant that he must pay his arrears or make satisfactory arrangements for payment as a pre-condition for registration. Registration could be refused if this pre-condition was not met.

There were also irregularities regarding disclosure issues on the sale of vehicles, outlined in the inspection report. The Applicant did disclose that a vehicle had been in an accident and subsequently repaired, but he could not say who did the repairs. He sold another vehicle without disclosing accident repairs. Although he



told Ms. Cohen that he had sold that vehicle to his mother, Ms. Cohen informed him that the disclosure requirements still applied.

He also did not disclose that a vehicle that he sold had previously been used as a daily rental vehicle.

The Applicant also accepted vehicles on consignment without entering into a written consignment agreement and without having the required trust account. Subsequent evidence revealed that OMVIC had advised the Applicant by letter dated May 17, 2010, of the requirement to have a trust account if a dealer receives vehicles on consignment. The letter is found at Tab 9B of Exhibit #3-1.

After her inspection, Ms. Cohen referred this matter to her manager because of the numerous deficiencies and suspicions relating to the above transactions.

On cross-examination, the Applicant suggested that on the date of Ms. Cohen's inspection on February 17, 2010, there were no transactions at Total Auto Sales between January 1, 2010, and the date of the inspection. Ms. Cohen reminded the Applicant that the Bills of Sale involving the purported sale of Vehicle #2 to R.D. were dated in January and February, 2010.

Ms. Cohen also stated, concerning Vehicle #2, that, although the Applicant had told her that he had prepared the January Bill of Sale just so that the customer could obtain financing, banks would only finance a particular value for a specific vehicle. It is not normal for a dealer to change the vehicle that is ultimately purchased without the bank approving the change.

On the requirement for a trust account, the Applicant suggested that other dealers did not know about the requirement to have one in place. Ms. Cohen stated that all dealers should have known because she held seminars on that topic for one and a half years before the new requirement became law. Also, OMVIC and the Used Car Dealers Association ("UCDA") sent out many bulletins, e-mails, faxes, newsletters and video clips on the OMVIC website.

Concerning Vehicle #3, the Applicant suggested that, in the absence of a Bill of Sale to show that he paid \$30,000.00 to C.P. for the vehicle on consignment, the Used Vehicle Information Package ("UVIP") found on page 10 of Exhibit #5 was sufficient to evidence the transaction because it was a private transaction between him and C.P. However, the documentation from the MTO clearly belies the private transaction character of the exchange. On page 78 of Exhibit #3-1, the Vehicle Record clearly shows that C.P. first transferred the vehicle to Total Auto Sales, and then Total Auto Sales transferred it back to C.P. who then transferred it back to Total Auto Sales. It was then transferred to M.Y.R. The registration trail demonstrates that the exchange was not a private transaction between the Applicant and C.P., but a formal business transaction between C.P. and Total Auto Sales.

### Evidence of Jeffrey Davis

Mr. Davis gave testimony related to the criminal charges that had been laid against the Applicant but which had subsequently been withdrawn. He also testified about the improper transfer of damaged vehicles to consumers in Ontario.

Mr. Davis is a former Commercial Auto Crime Bureau police officer with the Peel Regional Police Services. He is now self-employed, examining motor vehicles for insurance companies and auction houses.

He had previously investigated Total Auto Sales and the Applicant. His investigation report is found at Tab 12 of Exhibit #3-1.

The Commercial Auto Crime Bureau embarked upon an investigation into the purchase of wrecked motor vehicles from various salvage auctions in the United States of America and their importation into Canada. The vehicles were purchased in the name of Total Auto Sales. The investigation revealed that many vehicles that were damaged beyond repair were brought into Canada, sent to various auto body shops and then sold to consumers using counterfeit documents to register them in Ontario.

The Applicant was charged with fraud over \$5,000 contrary to the *Criminal Code* of Canada. At the same time, the Applicant was charged with possession of break-in instruments, also contrary to the *Criminal Code*. These charges arose when the police stopped a vehicle and found that its VIN had been altered and the vehicle had been stolen. The police seized the vehicle. The driver of the vehicle called for the Applicant to pick her up. When the Applicant arrived at the scene of the seizure, the police discovered that the Applicant's vehicle was also stolen and also had its VIN altered.

It was while the Applicant's vehicle was being searched that the alleged break-in tools were found. At page 18 of exhibit #3-1 is a photograph of the alleged break-in tools.

The vehicles were returned to their insurance companies.

It would have taken Mr. Davis six months to a year to accumulate all the documents for 342 damaged vehicles that he was investigating and that had been imported into Canada. The investigation brief that he would have prepared for the Crown Attorney would have been very complex. In the end, the Crown Attorney withdrew the charges before Mr. Davis could assemble all the documents.

Mr. Davis stated that his concern was that many vehicles that had been branded "irreparable" in the United States became registered to members of the general

public in Ontario. He candidly acknowledged that he could not say that the Applicant was responsible for all 342 vehicles, but believed that the Applicant was responsible for the majority of the vehicles. There was no record that those vehicles had been registered to Total Auto Sales before being transferred to their eventual owners.

If a vehicle were branded "irreparable" in the United States, it should not be sold under any other brand in Ontario. If a vehicle were branded "salvage," it must first be repaired, and then inspected and then branded as "rebuilt" before being sold to a consumer.

On cross-examination, Mr. Davis stated that he did not know how many of the vehicles that he was investigating were branded "irreparable." On one occasion, he followed a truck carrying five vehicles on it. One vehicle was left at the premises of Total Auto Sales and four went to a body shop, but the Applicant would not tell him where the four vehicles were being delivered. The Applicant suggested that the account that Total Auto Sales had with the auction dealers in the United States was being used by others and not by the Applicant. Mr. Davis did not know whether that was the case because the sales were all made in the United States and he did not know how the vehicles were paid for.

#### Evidence of Marilyn Blazeovich

Ms. Blazeovich gave testimony related to the arrears owing by Total Auto Sales under the *Retail Sales Tax Act* of Ontario. As at the time of this hearing, she had been with the Ministry of Finance for twenty-nine years, mostly as a field investigator.

She stated that all vendors are to have a trust account into which they are to deposit the Provincial Retail Sales Tax that they collect and then are to remit that amount once a month to the Ministry. She was familiar with the Total Auto Sales file, having reviewed all the file notes and having spoken to the debts collector.

She identified (Tab 9, Exhibit #3-1) a Business Short Form Application to renew the registration of Total Auto Sales under the Act. Paragraph 4 of the form specifically states that the records at OMVIC indicate that Total Auto Sales is in default in its obligations under the *Retail Sales Tax Act* and requested written confirmation that Total Auto Sales has made repayment arrangements satisfactory to the Minister of Revenue. The form goes on to state, in bold print:

In accordance with Section 11 of the Regulations under the MVDA 2002, the "Registrar shall not grant" a renewal unless you have made repayment arrangements satisfactory to the Ministry of Revenue

Ms. Blazeovich referred page one of a Ministry letter of April 30, 2009 (Exhibit 3.1, page 133), addressed to OMVIC, advising it that Total Auto Sales had not met the requirements of the *Retail Sales Tax Act* for filing of returns, remitting of

taxes due and paying assessments when due. The balance then owing under the *Retail Sales Tax Act* was \$44,936.27. The letter also states that Total Auto Sales agreed to file all defaulted returns by May 15, 2009, with full payment including penalties and interest for the filing period March 31, 2009.

The letter also stated that Total Auto Sales agreed to file all future returns commencing with the October 23, 2009, return by the due date, with full negotiable payment. Total Auto Sales agreed to pay \$500.00 per month commencing May 23, 2009, and each month thereafter until May, 2010, when the arrangement would be reviewed. Total Auto Sales would also pay interest at the prescribed rate or as adjusted by the Minister of Finance.

Subsequently, the Minister sent a further letter dated July 7, 2010, to OMVIC, (Tab 10 of Exhibit #3-1). The arrears noted in that letter were \$44,066.03. By the terms of that letter, Total Auto Sales was to file all defaulted returns by June 30, 2010, with full payment including penalties and interest. Total Auto Sales also agreed to pay \$1,000.00 commencing August 30, 2010, and each month thereafter or until financing had been obtained. The letter specifically stated that if Total Auto Sales failed to comply with any of the terms and conditions, its registration under the Act would be cancelled. The Minister could also refer Total Auto Sales to the Registrar of the Act and the Registrar may issue a proposal to revoke its registration under the Act. The Applicant signed that letter, acknowledging that he received it.

At Tab 11, there is a further letter dated July 29, 2010, from the Ministry to OMVIC requesting that OMVIC issue a Proposal to Revoke the Registration of Total Auto Sales because the registrant failed to keep the terms of the agreement outlined in the letter of July 7, 2010. Schedules "A" and "B" attached to the letter of July 29 set out the vendor history and outlined the years of default by Total Auto Sales.

Ms. Blazeovich stated that an audit had been done in 2007, showing arrears of \$36,784.57 at that time. Total Auto Sales never appealed that assessment.

In summary, Ms. Blazeovich stated that the Ministry entered into three payment arrangements with Total Auto Sales, starting with the assessment in 2007, and then with the letters of April 30, 2009, and July 7, 2010, yet the dealer still defaulted and remained in default as at the time of this hearing. The amount owing on the date of the Ministry's Request for Proposal to Revoke on July 29, 2010 was \$44,066.03.

On cross-examination, the Applicant noted that the letter of July 7, 2010 required a payment of \$1,000.00 on August 30, 2010. However, the Ministry sent their letter to OMVIC requesting a Proposal to Revoke only on July 29, 2010; that is, before the payment was even due on August 30. Ms. Blazeovich explained that the letter of July 29, 2010, was sent because, by that date, Total Auto Sales had

already breached its agreement to file all defaulted returns by June 30, 2010, as required by the terms of the letter of July 7, 2010.

The Applicant did not, through his cross examination of Ms. Blazeovich, evoke any testimony that gave rise to any credible explanation for breaching the agreements that Total Auto Sales had made with the Ministry.

### **Evidence of Carey Smith**

Mr. Smith presented evidence regarding many irregularities and what he considered to be acts of deceit by Total Auto Sales and the Applicant in the sale of vehicles.

Mr. Smith has been the Director of investigations at OMVIC since 2003. Before that, he had been a police officer with the Halton Regional Police Services. From 1991 until 2003 he was in charge of the fraud and arson squad. Many of the fraud cases he investigated were auto related, especially cases related to fraudulent schemes to obtain insurance proceeds. He was involved in the investigation of the largest auto fraud case in Canada, resulting in the arrest of twenty persons.

As part of his work, he travels across Canada to give lectures on the topic of fraudulent crimes and organized crime in the auto industry. He lectures on the topic of "phantom cars," where cars do not exist except on paper and buyers are made up with false identities, whose names are also inserted into the paperwork, the so-called "straw men." Banks rely on this paperwork to advance their funds.

He testified about his investigation of an automobile that was damaged by flooding in the United States, but which was sold to an unsuspecting consumer in Ontario. Vehicles damaged by flooding cannot be sold in Ontario, although they can be sold in some states in the United States. Vehicles damaged by flooding are branded in Ontario as "irreparable."

In the case that Mr. Smith investigated, a consumer, N.A.A., had purchased a vehicle in Ontario, branded as "rebuilt." The N.A.A. made a complaint after the branding error was discovered. The Ministry of Transportation of Ontario, by its letter of October 2, 2008 (page 31 of Exhibit #3-1) instructed the consumer to surrender the original ownership permit so that the branding could be changed to "irreparable." Once she was informed of the error, she made a claim on her insurance policy but was paid only a portion of the amount that she still owed on the vehicle. That gave rise to her complaint. An insurance investigator then contacted OMVIC about the matter by fax on January 14, 2009, (page 28 Exhibit #3-1) because Total Auto Sales was involved. Its name, as well as that of the Applicant, was on the Bill of Sale for that vehicle, dated December 20, 2007 (page 32 Exhibit #3-1).

The N.A.A. had purchased the vehicle from a company that was not even registered under the Act, but the Bill of Sale was made in the name of Total Auto Sales. The Applicant's name also appeared, printed and signed on it. Mr. Smith was satisfied that the printed name and signature were the same as those that appeared on the Applicant's application to be registered as a salesperson, found at Tab 13 of Exhibit #3-1.

The Applicant told investigators that he never dealt with the consumer or with the particular vehicle. The consumer confirmed that she did not deal with the Applicant, yet the Tribunal notes that the Applicant's dealership name and his signature appear on the Bill of Sale.

The records from the Insurance Bureau of Canada ("IBC"), found at pages 33 and 34 of Exhibit #3-1 clearly show that this vehicle was damaged by flooding on July 18, 2007.

The CarProof Vehicle History Report shows that the vehicle entered Canada on October 20, 2007 as "salvage." The consumer purchased the vehicle on December 20, 2007, as "rebuilt." Subsequently, on the date that the CarProof Report was printed, November 11, 2008, it shows that the vehicle was registered in Ontario as "non-repairable." The Tribunal notes that the CarProof branding on November 11, 2008, follows logically from the MTO letter of October 8, 2008, to the consumer informing her that the branding must be changed to "irreparable."

The vehicle passed a vehicle emissions test on December 21, 2007 (page 15 of Exhibit #3-1). The vehicle was also given a Structural Inspection Certificate on December 22, 2007 (page 37 of Exhibit #3-1). Mr. Smith stated that a flooded vehicle could never be granted such a certificate in Ontario and did not consider the Certificate to be valid.

Mr. Smith added the following additional information regarding Vehicle #2, about which Ms. Cohen already testified.

The Applicant reported the fraud on March 9, 2010 to the Peel Regional Police Services. The report is found at Tab 8 of Exhibit #3-1. R.D. could not be found.

The Applicant stated to police that, after the purchaser presented the bank cheque to him, the purchaser wanted Vehicle #2 transferred into her company name and would return later to arrange that. She did not take possession of the vehicle. In the meantime, the Applicant cashed the cheque for \$46,177.50 and kept \$29,041 for the vehicle and paid the purchaser \$17,136.50 in cash, while still retaining possession of the vehicle.

The Applicant subsequently had to return to the bank the sum of \$29,041.00 and was asked to return the additional \$17,136.50.

The Applicant stated that he could not contact the purchaser because her telephones were disconnected. He did not have the purchaser's driver's licence, yet he claimed to have her address.

Mr. Smith, as a fraud investigator, was suspicious of the Applicant because he considered the Bill of Sale to be a false document as it was prepared only to obtain financing. Also, the Applicant knew nothing about the purchaser, and did not even see her driver's licence. The customer bought nothing, yet a Bill of Sale was still prepared, and there was no explanation for how the first purchase price was arrived at.

Mr. Smith, from his experience, believed that no dealer gives cash back as the Applicant said he had done, in the amount of over \$17,000.00. Nor was the vehicle ever registered in the name of Total Auto Sales or of the purported purchaser (see Ontario Vehicle Record, page 22 of Exhibit #3-1).

Mr. Smith testified that, when the Applicant was told that this matter was also going to be reported to the Toronto Police, and not just to Peel Regional Police, the Applicant advised Peel Regional Police that he no longer wished to continue with his complaint of fraud. Mr. Smith was surprised that the Applicant was willing to suffer a loss of over \$46,000.00 without a further police investigation.

Mr. Smith advised this Tribunal that this transaction was a classic example of a "paper crime," albeit a poorly done one.

Mr. Smith noted that Vehicle #3 was reported stolen on October 10, 2009, not long after M.Y.R. purchased it on April 1, 2009. Total Auto Sales held a lien on the vehicle. The insurance proceeds would have been paid to Total Auto Sales and to the owner, but the proceeds were not entered into the bank account of the dealership.

As well, there was no Bill of Sale of the vehicle to Total Auto Sales, so that Mr. Smith questioned how the vehicle ended up in the dealer's inventory. In addition, there are no records of the monthly payments being deposited into the dealer's account.

Regarding Vehicle #4, Mr. Smith noted that there were no repair invoices available even though the Bill of Sale (page 104 of Exhibit #3-1) shows that the vehicle was branded as "rebuilt."

In cross-examination, Mr. Smith acknowledged the point that, except for the complaint about the vehicle damaged by flooding, he did not believe that there was any other complaint against Total Auto Sales in its eleven years of being registered.

Also, Mr. Smith confirmed that, although the complainant never met the Applicant and the Applicant was never involved directly with the complainant, Total Auto Sales was still suspect because Total Auto Sales was named in the Bill of Sale (page 32 of Exhibit #3-1) and the Applicant signed it. Mr. Smith emphasized that this Bill of Sale is not just a quote. It is an actual Bill of Sale. He did not know of any other dealer who gives an estimate on a Bill of Sale form on which is shown the actual price, the amount of GST and PST and the amount of the deposit.

### **Evidence of David Wilson**

David Wilson had been an investigator with OMVIC for over 11 years as at the time of this hearing. Previously, he had been with the Toronto Police Services for almost 24 years. His involvement with the Applicants arose when he became aware that Jeffrey Davis, a previous witness for the Registrar at this hearing, was investigating the importation by Total Auto Sales of over 300 vehicles from the United States into Canada. In 2010, Mr. Wilson investigated twelve of those vehicles in depth and examined their "paper trail" into Canada.

All the vehicles were purchased in a damaged condition under the name of Total Auto Sales from a company in the United States called Copart. Mr. Wilson explained that that company is in the business of selling damaged vehicles. In order to purchase vehicles from Copart, a purchaser must first become a member and then given a member profile number. Total Auto Sales was given such a profile number and, therefore, only Total Auto Sales could purchase vehicles under that number. In the case of all twelve vehicles that he investigated, Mr. Wilson discovered that the original American titles of the purchased vehicles were replaced by forged or altered title information at the Ontario licensing office when the vehicles were first registered in Ontario. As well, the original Transport Canada forms were altered in a process known as "title washing." That process involved changing the branding of the vehicle when it was licensed in Ontario from what the branding was when the vehicle entered Canada.

Mr. Wilson discovered that, when the vehicle entered Canada, the Transport Canada Vehicle Import Form ("Form 1") indicated that the vehicle condition was "severely damaged" and that the title status was "salvage." However, when the Form 1 was presented to the Ontario licensing office, the form had been replaced with another Form 1 in which the vehicle condition had been changed to "normal to minor damage" and the title status had been changed to "clear." In both the original and replacement Form 1, Total Auto Sales was shown as the company importing the vehicle. The Applicant's printed name and signature appeared on most of the forms, but the printing and the signature were not always the same on the two forms.

Mr. Wilson explained the details of all twelve vehicles that he investigated. The documentation is found in Exhibits #3-2 and #3-3. However, since the pattern for



all twelve vehicles was basically the same, the Tribunal sees no need to describe the details of all twelve vehicles. The Tribunal will describe the details of the first five of the vehicles on which Mr. Wilson gave his detailed evidence, in order to illustrate the documentation involved in the transactions and the alterations made to the various documents, and to demonstrate the pattern that was involved in these vehicle transactions. To avoid confusion with the vehicles referred to by number in the summary of Louise Cohen's testimony, the letters "A" through "E" will refer to the first five vehicles about which Mr. Wilson testified. All references to Tabs and page numbers relating to these five vehicles are found in Exhibit #3-2.

Tab 1 is the Copart buyer profile for Total Auto Sales, showing the dealer to be an active member and showing the Applicant as the owner/manager.

### Vehicle "A"

#### Original forms

Tab 2 is the Bill of Sale of this vehicle on March 6, 2006, from Copart to Total Auto Sales for the price of \$1,480.00. Tab "A" is a print-out of the Copart website showing that the vehicle was branded as "salvage." A salvage certificate for the vehicle issued by the State of New York is found at page 2 of Tab A.

Tab "B" is the Transport Canada Form 1 #H093989 stamped March 30, 2006, showing Total Auto Sales as the corporate importer. The individual importer's name is left blank, but the correct address for Total Auto Sales is noted. The Applicant's printed name and signature appear at the bottom of the form as the importer.

The vehicle condition is shown as "severely damaged" and the title status is shown as "salvage."

#### Additional forms and alterations to forms

Some of the above information and documentation was altered when the vehicle was first registered in Ontario. Tab "C" is the Ontario Application for first registration in Ontario, dated May 31, 2006, in the name of an individual, T.M. In support of that application is a replacement Form 1 from Transport Canada, at page 10. The replacement Form 1, #H106087, is stamped on April 21, 2006, and is said to replace #H093989, stamped on March 30, 2006. In addition, the name, T.M., is inserted under the heading, "Name of Importer" which had originally been left blank, yet there is no one named T.M. who is associated with Total Auto Sales.

The vehicle condition has been changed from "severely damaged" to "normal to minor damage" and the title status has been changed from "salvage" to "clear."

The Applicant's name still appears on the bottom of the form, but both his printed name and signature appear to be different.

There is also a document called a "Letter of Authorization," dated May 26, 2006 (page 14), ostensibly signed by T.M., authorizing a named person to, as the form says, "...uplift original ownership for the following vehicle that I have purchased from the U.S.A." The Tribunal notes that it was not T.M. that purchased the vehicle from the U.S.A but, rather, Total Auto Sales, as the Bill of Sale clearly shows.

There is also a Certificate of Title (page 12) ostensibly for this vehicle, but the certificate is from the State of Florida, not New York. The document shows T.M. to be the purchaser on February 9, 2006, a date that is before Total Auto Sales even purchased the vehicle from Copart on March 6, 2006.

The Carfax Report (pages 16 to 20) does not show that this vehicle was ever registered in the State of Florida at any time. It shows, instead, that a salvage certificate was issued in the State of New York.

The CarProof Vehicle History report (page 21) indicates that this vehicle is a "possible total loss," a brand that totally conflicts with the branding that appeared on the replacement Form 1 ("normal to minor damage" and "clear").

### **Vehicle "B"**

#### Original forms

Tab 3 is the Bill of Sale of this vehicle on April 10, 2006, from Copart to Total Auto Sales for the price of \$1,815.00. Tab "A" is a print-out of the Copart website showing that this vehicle was branded as "salvage." A salvage certificate issued by the State of New York is found at page 35.

Tab "B" is the Transport Canada Form 1 #H093975 stamped April 25, 2006, showing Total Auto Sales as the corporate importer. The individual importer's name is left blank, but the correct address for Total Auto Sales is noted. The Applicant's printed name and signature appear at the bottom of the form as the importer.

The vehicle condition is shown as "severely damaged" and the title status is shown as "salvage."

#### Additional forms and alterations to forms

Tab "C" is the Ontario Application for first registration of the vehicle in Ontario, dated May 31, 2006, in the name of an individual, W.B. In support of the

application is a replacement Form 1 from Transport Canada (page 39). The replacement Form 1, #H106025 is stamped May 9, 2006 and is said to replace #H093975, stamped on April 25, 2006. In addition, the name, W.B., is inserted under the heading, "Name of Importer" which had originally been left blank, yet there is no one named W.B. who is associated with Total Auto Sales. The Applicant's printed name and signature still appear at the bottom of the form as the importer or agent.

The vehicle condition has been changed on the replacement form from "severely damaged" to "normal to minor damage" and the title status has been changed from "salvage" to "clear."

Mr. Wilson explained that, at the time these vehicles were registered, the staff at MTO who registered the vehicles relied only on the documentation presented to them, so that they would not know if the Form 1 had been altered in any way.

At page 41 is a Certificate of Title for this vehicle from the State of Florida, not New York. Neither the Carfax Report (Tab "E") nor the CarProof Report (Tab "F") shows that the vehicle was ever registered in Florida. The Carfax Report, at page 47, even suggests that this vehicle might have been the object of "title washing."

At page 43, there is also a "Letter of Authorization" dated May 29, 2006, ostensibly signed by W.B., authorizing the same person to register the ownership as had been authorized to register Vehicle "A."

### **Vehicle "C"**

#### **Original forms**

Tab 4 is the Bill of Sale of this vehicle on June 28, 2005, from Copart to Total Auto Sales for the price of \$2,170.00 Tab "A" shows that this vehicle was branded as "salvage" on the Copart website. At page 60 is a salvage certificate issued by the State of Maryland confirming that the damage to the vehicle is greater than its fair market value.

Tab "B" is the Transport Canada Form 1 #F290998 stamped July 13, 2005, showing Total Auto Sales as the corporate importer. The individual importer's name is left blank but the correct address for Total Auto Sales is noted. A signature purporting to be that of the Applicant appears at the bottom of the form.

The vehicle condition is shown to be "severely damaged" and the title status is shown to be "salvage."

### Additional forms and alterations to forms

Tab "C" is the Ontario Application for the first registration in Ontario of this vehicle, dated March 1, 2006, in the name of an individual, O.S. In support of the application is a replacement Form 1 from transport Canada (page 71). The date stamp on the replacement Form 1 #H092088 is not discernible. Once again, the name of the individual registered owner is inserted under the heading, "Name of Importer" which had originally been left blank, yet there is no one named O.S. who is associated with Total Auto Sales. The Applicant's name is still used in the bottom of the form although the signature does not appear to be his.

The vehicle condition has been changed from "severely damaged" to "normal to minor damage" and the title status has been changed from "salvage" to "clear."

At page 69 is a Certificate of Title from the State of Florida, and not the State of Maryland. Page 70 is the reverse side of the State of Florida Certificate showing that the vehicle was sold by Copart to O.S. Mr. Wilson pointed out that that information is totally incorrect because Copart sold the vehicle to Total Auto Sales, as the Bill of Sale clearly shows.

Page 73 purports to be a Bill of Sale from Copart to O.S. Although the VIN is the same, nothing else is the same as on the original Bill of Sale from Copart at page 59. The format is different, as is the date of sale, purchase price (the lower amount of \$1,670.00), name of the purchaser and the Copart yard address. Mr. Wilson concluded that the form on page 73 was fabricated. The Tribunal notes that subsequent evidence from Mr. Jeffrey Davidson, office manager for Copart, was that the form on page 73 was not a valid Copart Bill of Sale.

On page 75 is another "Letter of Authorization," although this one is hand-written, authorizing the same person to register the vehicle in the name of O.S.

Mr. Wilson stated that he has rarely seen such letters of authorization. They are the exception rather than the rule.

The Carfax vehicle History Report (page 79) shows this vehicle to be a total loss after an accident on March 23, 2005. The report does not indicate that the vehicle was ever registered in the State of Florida.

### Vehicle "D"

#### Original forms

Tab 5 is the Bill of Sale of this vehicle on April 7, 2006, from Copart to Total Auto Sales for the price of \$1,360.00. At page 91 is a Certificate of Title from the State of New Jersey, branding this vehicle as "salvage," as does the Copart website print-out at Tab "A."

Tab "B" is the Transport Canada Form 1 #H093977 stamped April 24, 2006, showing Total Auto Sales as the corporate importer but leaving the individual importer's name blank, but still inserting the correct address for Total Auto Sales. The Applicant's name appears printed and signed at the bottom of the form.

The vehicle condition is marked "severely damaged" and the title status is marked "salvage."

#### Additional forms and alterations to forms

Page 98 is the Application for first registration of this vehicle in Ontario, dated September 22, 2006, in the name of an individual, J.B. Supporting the application is a replacement Form 1 #H358382, stamped September 20, 2006, replacing Form 1 # H093977. The name, J.B., is entered under the heading, "Name of Importer" in the same space that had been left blank in the original Form 1, yet there is no one named J.B. who is associated with Total Auto Sales.

The vehicle condition has been changed from "severely damaged" to "normal to minor damage" and title status has been changed from "salvage" to "clear."

Mr. Wilson added at this point in his testimony that, before he investigated Total Auto Sales, he had never seen a replacement Form 1 used by a motor vehicle dealer.

At page 96 is a certificate of Title from the State of South Carolina, yet the Carfax Vehicle History Report (Tab "E") and the CarProof Vehicle History Report (Tab "F") do not indicate that this vehicle had ever been registered in that State. The Carfax Report again suggests that this vehicle was the object of "title washing."

At page 102 is another Bill of Sale ostensibly from Copart and for a lower price (\$925.00), but which Mr. Wilson believed was fabricated, as in the case of the fabricated Bill of Sale for Vehicle "C." Subsequent evidence from Jeffrey Davidson, on behalf of Copart, confirmed that the Bill of Sale at page 102 was not a valid Bill of Sale from Copart.

At page 103 is another authorization form, purportedly signed by J.B., authorizing an individual to register the vehicle on his behalf.

At page 133 is the Ontario Vehicle Record for this vehicle. Although the Applicant had the vehicle registered in his name on September 22, 2006, his insurance company obtained title on February 7, 2007. The CarProof Vehicle Report (page 144) indicates that a theft claim was paid out on November 17, 2006, in the amount of \$21,297.00. Mr. Wilson was suspicious of the timing of the theft claim and questioned whether the vehicle had ever been repaired before the claim. No evidence was presented to this Tribunal to substantiate his suspicion.

## Vehicle "E"

### Original forms

Tab 6, page 119, is the Bill of Sale of this vehicle on May 30, 2006, from Copart to Total Auto Sales for the price of \$3,115.00. At page 120 is the certificate of Title that Copart provided, issued by the State of New Jersey, branding the vehicle as "salvage," as was the branding on the Copart print-out on page 121.

Tab "B" is the Transport Canada Form 1 #H309078 stamped June 22, 2006, showing Total Auto Sales as the corporate importer, but leaving the individual importer's name blank, but still inserting the correct address for Total Auto Sales. The Applicant did not sign this Form 1. It was signed by an individual, L.L., who signed as the importer but who was not associated with Total Auto Sales, but whom Mr. Wilson believed may have been a border broker for the Applicant.

The vehicle condition is marked on the Form 1 as "severely damaged" and the title status is marked "salvage."

### Additional forms and alterations to forms

At page 127 is the Application for first registration of this vehicle in Ontario, dated September 22, 2006, in the name of the Applicant himself. But, the Title Certificate offered (page 125) is from the State of Florida, not the State of New Jersey. As well, the purported Bill of Sale from Copart on page 129, for the lower price of \$1,150.00, is not the same Bill of Sale that is found on page 119. Subsequent evidence from Jeffrey Davidson, on behalf of Copart, confirmed that the Bill of Sale on page 129 was not a valid Bill of Sale from Copart.

Form 1 is altered, as well. A replacement Form 1 #H358381 stamped September 20, 2006, replaces #H309078, stamped June 22, 2006. The Applicant is shown as the importer, but he still did not sign the replacement Form 1. It was again signed by L.L.

The vehicle condition was changed from "severely damaged" to "normal to minor damage" and the title status was changed from "salvage" to "clear."

At page 132 is another letter of authorization ostensibly signed by the Applicant authorizing a named individual to register the vehicle on his behalf.

The Carfax Vehicle History Report (page 135) again warns that this vehicle might be the object of "title washing." Neither the Carfax Report nor the CarProof Report (page 138) indicates that this vehicle was ever registered in the State of Florida.

### Remaining vehicles investigated by David Wilson

There were seven other vehicles that Mr. Wilson investigated in depth. The Tribunal does not consider it necessary to set out each of the seven other transactions in the detail with which it set out the first five transactions about which he testified. However, having regard to the subsequent testimony of Jeffrey Davidson, the office manager of Copart Canada, and of Stephane Lavallee, Customer Service Representative from Transport Canada, there are certain common documents about which they testified and about which Mr. Wilson also testified. The Tribunal considers that it would be useful to briefly summarize Mr. Wilson's testimony about those documents so as to connect his testimony to that of the other two witnesses.

Briefly stated, Mr. Wilson pointed out additional discrepancies arising from the replacement of or alterations to the Form 1 Transport Canada documents and also arising from what Mr. Wilson described as fabricated title documents, all related to the seven other vehicles. Title documents were presented to the MTO from various states in the United States in which the vehicles had never been registered.

In summary form, the evidence from Mr. Wilson relating to the seven other vehicles involved the following discrepancies.

#### Exhibit #3-2

- Tab 7: The original Form 1 was replaced. The replacement form changed the vehicle condition from "severely damaged" to "normal to minor damage" and the title status from "salvage" to "clear."

The salvage certificate in Copart's records was issued by the State of Pennsylvania. The title Certificate presented to the MTO was from the State of New Jersey.

#### Exhibit #3-3

- Tab 8: The original Form 1 was replaced. The replaced form changed the vehicle condition from "severely damaged" to "normal to minor damage" and the title status from "salvage" to "clear."

The salvage certificate in Copart's records was issued by the State of New York. The title Certificate presented to the MTO was from the State of Florida.

- Tab 9: The original Form 1 was not replaced; however, the Form 1 as presented to the MTO was altered such that the title status was changed

from "salvage" to "clear." The vehicle condition was left as "severely damaged."

The salvage certificate in Copart's records was issued by the State of Pennsylvania. The Title Certificate presented to the MTO was from the State of Florida.

- Tab 10: The original Form 1 was not replaced; however, the original Form 1 as presented to the MTO was altered such that the title status was changed from "salvage" to "clear." The vehicle condition was left as "normal to minor damage."

The certificate in Copart's records was one that David Wilson could not identify. The Title Certificate presented to the MTO was from the State of Florida. That certificate does not resemble the document in Copart's records.

- Tab 11: The original Form 1 was not replaced; however, the original form as presented to the MTO was altered such that, under the heading, "Title Status," the box that was originally clearly marked "salvage" is now almost entirely cleared of any marking. The vehicle condition was left as "normal to minor damage."

The salvage certificate in Copart's records was issued by the State of Massachusetts. The Title Certificate presented to the MTO was from the State of Florida.

- Tab 12: The original Form 1 was not replaced; however, in the form presented to the MTO, the section marked "Title Status" was altered from being marked "salvage" to having nothing marked in that section at all. The vehicle condition was left as "normal to minor damage."

The Title Certificate (not salvage certificate) in Copart's records was issued by the State of Rhode Island. The Title Certificate presented to the MTO was from the State of Florida.

- Tab 13: The original Form 1 was not replaced; however, the document presented to the MTO was altered so that the vehicle condition that was originally marked "normal to minor damage" in that section and the title status that was originally marked "salvage" in that section were both obliterated so that nothing was filled in in either section.

The salvage certificate in Copart's records was issued by the State of Pennsylvania. The Title certificate presented to the MTO was from the State of Florida.



On cross examination, the Applicant referred to the Copart buyer profile at Tab 1 and suggested that other buyers could use the Applicant's bidding number to purchase the damaged vehicles from Copart. Mr. Wilson replied that he had spoken to a representative of Copart who informed him that the Applicant was the only person who could purchase vehicles on behalf of Total Auto Sales. Others might obtain the bidding number from Total Auto Sales, but Total Auto Sales would still be responsible for the purchase.

The Tribunal notes that subsequent evidence from Jeffrey Davidson, an office manager for Copart Canada, was that the Applicant was the only person shown on Copart's records who could purchase vehicles from Copart on behalf of Total Auto Sales.

The Applicant also pointed out that, in the case of Vehicle "A," his printed name on the original Form 1 (page 6, Exhibit #3-2) was different than his printed name on the replacement Form 1 on page 10. Similarly, in the case of Vehicle "B," his signature on the original Form 1 on page 34 appears different from the signature on the replacement Form 1 on page 39. Mr. Wilson responded that parts of the signature are very close in appearance.

Mr. Wilson acknowledged that he was not aware whether anyone had made any complaints about the Applicants to OMVIC about the twelve vehicles that he had investigated in depth.

On cross examination, Mr. Wilson acknowledged that, in the Application for first registration in Ontario of each vehicle, the driver's licence number in section D of the form (being the driver's licence of the person who was actually present to register the vehicle) was different from the driver's licence of the person in whose name the vehicle was being registered. The Tribunal sees little relevance in that evidence, especially since the Applicant did not make any final submissions to this Tribunal based on that line of questioning.

It was when the Applicant questioned Mr. Wilson about Vehicle "D" that the Applicant acknowledged to this Tribunal that the signatures on the original Form 1 documents were his. In comparing the signatures on the replacement Form 1 documents, the Applicant suggested that the signatures were not his. The focus of his cross-examination was whether the signatures on the replacement Form 1 documents were his signatures. Mr. Wilson believed that many were the Applicant's signatures.

#### Evidence of Jeffrey Davidson

Mr. Davidson had been an office manager of Copart Canada Inc. for two years as at the time of this hearing. He described the corporation as a salvage auctioneer. Ninety per cent of its business is made up of salvage vehicles from insurance companies and ten per cent from dealer consignments. There is also a

Copart in the United States with its Head office in California. They have offices in different locations, but operate on a national database so that the same information concerning a particular vehicle can be accessed from any location. He was able to print out the Bills of Sale and other documents that Copart would have had in its records for each of the twelve vehicles that David Wilson had asked him to find during his investigation.

Mr. Davidson identified the profile sheet for Total Auto Sales at Tab 1 of Exhibit #3-2. He explained that Total Auto Sales was a premier member, meaning that it had no limits on buying. Buyers have to be members in order to buy from Copart because Copart does not sell to the public. Its selling is done online, by computer. Copart can act as attorney as a grantee under a Power of Attorney from Total Auto Sales to sign ownership documents for the MTO in Ontario.

Only the Applicant was designated to buy on behalf of Total Auto Sales from Copart under the member number given to Total Auto Sales. Once the vehicle was purchased, however, anyone else could actually pick up the vehicle upon first presenting payment and could then remove it to Canada. If anyone else were permitted to buy on behalf of Total Auto Sales, that person's name would have to be shown on the member profile, but, in this case, no other person was named. On cross-examination, when asked by the Applicant whether there could be similar but different business names on a buyer profile, Mr. Davidson confirmed that only one buyer number is shown on the buyer profile and the Copart system would not allow a new buyer to be registered with the same number.

The Applicant also suggested on cross-examination that, if Total Auto Sales gave a bidder number to several individuals, then those persons could buy the salvage vehicles and the purchases would still look legitimate. Mr. Davidson agreed, but emphasized that Total Auto Sales, as the only member, would still be responsible under the Copart member number that had been assigned to it. Mr. Davidson emphasized that Total Auto Sales was not a broker, whereby it could buy a vehicle on someone else's behalf. A broker's licence is not easily granted.

Only the Applicant was designated to buy on behalf of Total Auto Sales from Copart under the member number given to Total Auto Sales. Once the vehicle was purchased, however, anyone else could actually pick up the vehicle upon first presenting payment and could then remove it to Canada. If anyone else were permitted to buy on behalf of Total Auto Sales, that person's name would have to be shown on the member profile, but, in this case, no other person was named. On cross-examination, when asked by the Applicant whether there could be similar but different business names on a buyer profile, Mr. Davidson confirmed that only one buyer number is shown on the buyer profile and the Copart system would not allow a new buyer to be registered with the same number.

Counsel for the Registrar had Mr. Davidson review certain documents and comment on each of the twelve vehicle transactions that David Wilson had investigated in depth, and on which he already presented his testimony. The Tribunal does not consider it necessary to review in detail each of the twelve transactions on which Mr. Davidson gave evidence. The Tribunal will review that evidence that relates to the documentation that David Wilson also reviewed in his testimony.

First, Mr. Davidson confirmed that, in the case of Vehicles "C", "D" and "E", detailed earlier in the summary of David Wilson's evidence, the purported Bills of Sale from Copart that had been presented to the MTO on each vehicle's first registration in Ontario were not valid Copart Bills of Sale.

Secondly, the State Title Certificates that were presented to the MTO on each vehicle's first registration in Ontario did not appear in Copart's records. Only the salvage or title certificate, as the case may be, from the state in which that vehicle had been registered appeared in Copart's records, and it is that certificate Copart would have given to the purchaser of the vehicle. Entirely different title certificates had been presented to the MTO on the first registration, yet none of those title certificates came from Copart's records.

#### Evidence of Stephane Lavallee

Mr. Lavallee had been, for five years at the time of this hearing, the Manager of Compliance at the Canadian Registrar of Imported Vehicles ("RIV"), operated by Transport Canada. He had worked at the RIV for a total of ten years.

His evidence related to the Form 1 documents that an importer of motor vehicles had to present to the MTO on the first registration of a vehicle in Ontario.

Once an importer brings a vehicle into Canada, the Canada Border Services Agency ("CBSA") submits a copy of Form 1 to RIV. The vehicle must then pass an RIV inspection process through a provincial licensing agent and have required modifications done, if any. After a successful inspection, the inspection centre signs the Form 1 and the importer can then present the Form 1 to the licensing office.

An importer can obtain any number of Form 1 documents at a time from CBSA. The forms are numbered sequentially. There is no limit on how many can be given out at a time.

There are four copies of Form 1 that must be distributed. The importer keeps one copy. CBSA keeps one and sends another to RIV. The provincial licensing office receives the fourth. Mr. Lavallee stated that a Form 1 document could be replaced, if lost, by obtaining the copy kept by CBSA. RIV could also provide a copy of their Form 1, and the importer could return to CBSA to fill out a new one.

Mr. Lavallee checked the RIV records for the Form 1 documents relating to each of the twelve vehicles that David Wilson investigated in depth. He stated that, in reviewing the twelve transactions, his concern was the number of changes that were made to the Form 1 documents. He had never seen as many amended forms for one importer as he had seen in this case.

He compared the original Form 1 with the replacement Form 1 in each of the transactions involving the vehicles in Tabs 2 through 7 in Exhibit #3-2 and in Tabs 8 through 13 in Exhibit #3-3. In each case, he was able to find a copy of the original Form 1 in the records of the RIV, but not of the purported replacement copies, although they should have been in the RIV records if properly done.

In the case of the transactions involving the vehicles in Tabs 9 and 10 of Exhibit #3-3, the Form 1 had not been replaced, but had been altered, as explained earlier in the summary of David Wilson's testimony. However, Mr. Lavallee could not find a copy of the altered Form 1 in the records of the RIV.

As well, in the case of the transactions involving the vehicles in Tabs 11, 12 and 13 of Exhibit #3-3, the Form 1 had not been replaced, but had also been altered, as explained earlier, but the RIV did not have a copy in its records of the altered Form 1.

### **Evidence on behalf of the Applicant**

#### Evidence of Warren Ifill

The Applicant began his testimony on the matter of the two Bills of Sale for the one vehicle made out in the name of the purchaser, R.D. He stated that the vehicle was on consignment to Total Auto Sales from an auto repair shop, and that was why the vehicle had not been transferred into the name of Total Auto Sales. The Tribunal notes that no mention of any consignment is made on the Total Auto Sales Bill of Sale (Tab 7, page 119, Exhibit #3-1) nor did the Applicant produce any written consignment agreement relating to that vehicle.

The Applicant filled out the Bill of Sale only to allow R.D. to obtain approval for a loan. When she returned to Total Auto Sales with a cheque from a bank for the amount of \$46,177.50, the Applicant again stated that R.D. changed her mind about what vehicle she wanted. That is why the Applicant prepared the Bill of Sale for the same vehicle in the reduced amount of \$29,041.00 (page 118, Exhibit #3-1). He gave no evidence that he informed the bank of this change. He cashed the cheque for the higher amount and paid back the sum of \$17,136.50 in cash to R.D. However, R.D. never received the vehicle at the time because she wanted it registered in her company name. According to the Applicant, it was only after R.D. received the \$17,136.50 in cash that she instructed him to register the vehicle in the company name. He produced no documentation that was to have been used to register the vehicle in the customer's company name.

The Applicant emphasized that Total Auto Sales is a "word-of-mouth" business, to use his words, in order to save his customers money. He stated that Total Auto Sales is just a car find service for others. Counsel for the Registrar pointed out that such a category does not qualify for registration under the Act. Total Auto Sales was registered as a dealer, not a car find service.

The Applicant claimed that he cashed every cheque he received and, once the cheque cleared, he candidly admitted that he offered his consignment customers "a little less" than the amount that he received for the vehicle, because the customer would not know the actual sale price. The Tribunal was shocked at this admission. Such conduct demonstrated an egregious lack of honesty and integrity.

On the matter of the alleged consignment sale of the vehicle on behalf of C.P. and its eventual sale to his sister, M.Y.R., the Applicant maintained his position that the transaction was a private sale. The Tribunal notes, as Counsel for the Registrar previously pointed out, that his assertion is a fiction that does not stand up to close scrutiny. The Vehicle Record (page 78, Exhibit #3-1) reveals that the transfers of the vehicle before the transfer to M.Y.R. involved transfers between C.P. and Total Auto Sales. The Applicant does not appear anywhere as the purchaser or transferee of the vehicle. The Vehicle Record shows that the transfers were business transactions between Total Auto Sales and C.P. and were not personal transactions between the Applicant and C.P.

To support his assertion that it was a private transaction, the applicant relied on the UVIP (page 10, Exhibit #5). That portion shows C.P. as the seller and the Applicant as the buyer. However, Counsel for the Registrar correctly pointed out that the date shown on the Bill of Sale portion of the UVIP is December 8, 2009, a date which is after the date on which M.Y.R. received the vehicle on April 6, 2009. The Applicant's timing in claiming that it was a private transaction made no sense.

Subsequently, in October, 2009, M.Y.R. reported that the vehicle was stolen and made a claim on her insurance policy. The police suspected that the vehicle did not actually exist and charged her with various criminal offences, outlined on page 8 of Exhibit #5. The Applicant stated that the records of Total Auto Sales for this transaction were subpoenaed. The Applicant blamed the police for not returning those records to him as the reason that he did not have the records for this transaction available when Louise Cohen performed her inspection of his premises. The Applicant admitted that he never asked the police to return the records to him.

The Applicant insisted that the sum of \$14,000.00 that M.Y.R. paid to Total Auto Sales for the vehicle went through the dealership's bank records. He also insisted that he gave receipts for each monthly payment of \$939.28, even though no deposits of such payments were found in the dealership's bank records.

The Applicant then explained how the salvage vehicles were purchased from Copart in the United States. He explained that Total Auto Sales had set up an account to purchase vehicles at various locations in the United States. With the Applicant's consent, various auto body shops used the Total Auto Sales account to purchase vehicles and then imported them into Canada. Most of the vehicles did not come to the Total Auto Sales dealership. The Applicant gave the body shops his buyer number and a login password so that they could make all purchases by computer online. The body shops paid Total Auto Sales \$100.00 each time they used the Total Auto Sales account number. The body shops would then repair the vehicles after they were brought to Canada and sell them to consumers.

The Applicant would pre-sign the Transport Canada Form 1 documents and then give them to the driver who transported the vehicles into Canada. The driver then gave the Form 1 to the auto body shop. The body shop then transferred the vehicle into a consumer's name without first transferring the vehicle into the name of the auto body shop.

The Applicant admitted that he could not control how many vehicles the body shops would purchase. The auto body shops used the Total Auto Sales account rather than open their own accounts because Total Auto Sales already had trucks to transport the vehicles into Canada. The Applicant admitted pre-signing all but two of the original twelve Form 1 documents that David Wilson had investigated in depth.

The Applicant also admitted that, although the auto body shops used the Total Auto Sales account to bring cars into Canada, the Applicant would not know what condition the vehicles were in when they were sold to the consumer. In response to questioning from the Tribunal, the Applicant stated that this state of affairs did not bother him in the slightest. The consumers never bought from Total Auto Sales and he never saw most of the cars imported into Canada under his dealership's name.

Concerning the Criminal Code charges, the Applicant stated that he never stole the car that he was charged with having stolen. The Tribunal notes that the Applicant was not charged with theft of a vehicle. It was the testimony of Mr. Davis that the Applicant was charged with having committed the crime of fraud over \$5000, involving a vehicle. As for the charge of possession of break-in tools, the Applicant stated that he used the tools in question to remove licence plates when vehicles were transferred.

Concerning the arrears of provincial sales tax, the Applicant stated that there were only two, not three, agreements between Total Auto Sales and the Minister of Revenue. One agreement was confirmed by letter dated April 30, 2009, and the other was confirmed by letter dated July 7, 2009. He admits that he did not make the monthly payments of \$500.00 for the months of April and May, 2010,

as he had agreed to do in the letter of April 30, 2009 (page 133, Exhibit #3-1). He stated that he could not afford to make those payments.

He also admitted that the defaulted returns were not filed by June 30, 2010, as agreed to in the letter of July 7, 2010 (page 140, Exhibit #3-1). He said that his accountant was to do the filings, but he did not know if the accountant had completed them. He admitted that the sum of \$44,066.03 was still owed under the *Retail Sales Tax Act* and that he is not making any monthly payments and that he is still not caught up with his filings. He also blamed the Ministry of Revenue for him not appealing his assessment in 2007 because the Ministry personnel had all his paperwork, so that he never took any steps to appeal his audit.

Concerning the absence of a trust account at his dealership, he stated that he paid no attention to e-mails and other mailings he received about amendments to the Act that came into force on January 1, 2010.

#### Cross-examination of the Applicant

On cross-examination, Counsel for the Registrar questioned the Applicant on the various items stated in the Notice of Proposal.

On the issue of the two Bills of Sale to R.D., the Applicant stated that he did not have at his dealership the vehicle that R.D. eventually wanted to purchase. He stated that it was on consignment from an auto body shop, yet there was no consignment agreement. Even when he drew up the first Bill of Sale for \$46,177.50, he knew that the price of the vehicle was only \$29,041.00. He did not tell the bank that he had given R.D. the sum of \$17,136.50 in cash even though he did not know R.D. and did not even obtain her driver's licence. Counsel for the Registrar labelled this as a scam on the bank, but the Applicant denied that.

On the matter of the transfer of the vehicle to M.Y.R., ostensibly on consignment from C.P., there was no written consignment agreement with C.P. The Applicant claimed that M.Y.R. paid \$14,000.00 by certified cheque and that Total Auto Sales financed the sum of \$16,000.00, yet this latter amount does not appear in the Bill of Sale. The Applicant explained that he paid the sum of \$16,000.00 directly to C.P., together with the sum of \$14,000.00 from M.Y.R. The Applicant had no Bill of Sale or receipt for the total payment of \$30,000.00 to C.P.

The Applicant registered a lien on the vehicle for \$55,000.00, yet had no receipts for the purported monthly payments of \$939.28. Just six months after purchasing the vehicle, M.Y.R., reported it stolen. The Applicant stated that M.Y.R. made an insurance claim, yet, even though the Applicant held a lien, he denied receiving any insurance proceeds.

On the matter of the sale to N.A.A. of the vehicle damaged by floodwater, the Applicant defended himself by saying that the Bill of Sale (page 32 Exhibit #3-1) was only a quote and that he never met the purchaser. He failed to explain who it was to whom he provided the quote given that he had previously stated that he never met the intended purchaser. To the Tribunal, that makes no sense. He also seemed to forget that, with the use of the Total Auto Sales Bill of Sale form and with the Applicant's signature on it, the Applicant and Total Auto Sales enabled a business that was not registered under the Act to sell a vehicle to a consumer, contrary to the provisions of the Act.

On the matter of the purchases from Copart, the Applicant admitted that he obtained the Form 1 Transport Canada documents at the offices of Canada Customs and that he pre-signed them. He denied knowing whether they were used as replacement forms. He made the assertion that someone at MTO told him that, unless the vehicle is entered on the RIN of Total Auto Sales, then Total Auto Sales is not responsible for that vehicle. The Applicant presented no authority for that proposition and Counsel for the Registrar vehemently disputed it.

The Applicant stated that the body shops that used the Total Auto Sales buyer number and login password did some of their own paperwork. He gave no explanation for who it was that altered the branding of the vehicles on the Form 1 and denied any involvement of Total Auto Sales in the so-called "title washing."

Finally, on the matter of the arrears owed under the *Retail Sales Tax Act*, the Applicant admitted that arrears are still outstanding and that he has no agreement to repay. He also acknowledged that he knew such arrears are a pre-condition to his registration and to the registration of Total Auto Sales under the Act.

## THE LAW

The Act states in part as follows:

### **Registration prohibited**

- 5.1 (1) If an applicant for registration or renewal of registration does not meet the prescribed requirements, the registrar shall refuse to grant or renew the registration.

...

### **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
- ...
- (d) the applicant is a corporation and,
  - (i) having regard to its financial position or the financial position of an interested person in respect of the corporation, the applicant cannot reasonably be expected to be financially responsible in the conduct of its business,
  - (ii) having regard to the financial position of its officers or directors or an interested person in respect of its officers or directors, the applicant cannot reasonably be expected to be financially responsible in the conduct of its business,
  - (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
  - (iv) an officer or director of the corporation makes a false statement or provides a false statement in an application for registration or for renewal of registration;
- (e) the applicant or an interested person in respect of the applicant is carrying on activities that are, or will be if the applicant is registered, in contravention of this Act or the regulations, other than the code of ethics established under section 43;

The "prescribed requirements" referred to in sections 5.1 (1) and 6 (1) are set out in Ontario Regulation 333/08. Section 11 (1), paragraph 3 of that Regulation, is relevant to this case, where it states:

- 11 (1) The following are prescribed, for the purposes of subsections 5.1 (1) and 6 (1) of the Act, as requirements for registration or renewal of registration as a motor vehicle dealer:

...

3. The applicant does not owe money to the Crown under the *Retail Sales Tax Act* or, if the applicant does owe such money, the applicant has made arrangements, acceptable to the Ministry of Finance, to pay the money.

The Act sets out the procedure to be followed if the Registrar refuses to register an applicant or to renew a registration. Sections 8 and 9 state as follows:

**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.

**ISSUES**

The issues that this Tribunal was called upon to determine were as follows:

1. Whether, having regard to its financial position or the financial position of an interested person in respect of the corporation, the applicant corporation cannot reasonably be expected to be financially responsible in the conduct of its business?

2. Whether 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?

3. Whether 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?

## **FINDINGS**

### **APPLICATION OF LAW TO FACTS**

#### *Issue #1*

*1. Whether, having regard to its financial position or the financial position of an interested person in respect of the corporation, the applicant corporation cannot reasonably be expected to be financially responsible in the conduct of its business?*

The evidence is uncontradicted that Total Auto Sales is in arrears to the Ministry of Finance for remittances of retail sales tax under the Ontario *Retail Sales Tax Act*. The evidence of Ms. Blazeovich confirmed the arrears. The Applicant himself admitted that Total Auto Sales is in arrears in the amount of \$44,066.03. He admitted that the corporation has been in arrears at least since the assessment in 2007. The Applicant also admitted that the corporation is not making any payments towards those arrears at the present time and has made no arrangements satisfactory to the Ministry of Finance to pay the arrears.

Under these circumstances, paragraph 3 of section 11(1) of Regulation 333/08, referred to above, is a complete bar to the registration of Total Auto Sales under the Act. There is no saving provision in the Regulation or in the Act when money is owed under the *Retail Sales Tax Act*. There are no exceptions. There is no discretion permitted to either the Registrar or to this Tribunal. In these circumstances, Total Auto Sales cannot be registered under the Act.

The arrears have been outstanding since the assessment in 2007. The arrears have now reached an excessive amount. The Applicants have failed to pay the long-standing arrears or to make arrangements satisfactory to the Ministry of Finance to pay the arrears. The Applicant had not set up a trust account, as he should have, so that sales tax could be deposited into it, to be remitted on a monthly basis.

Based on those facts, the Tribunal concludes that the Registrar has proved, on a balance of probabilities, that the Applicants cannot reasonably be expected to be

financially responsible in the conduct of their business.

*Issues #2 and #3*

*2. Whether 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?*

*3. Whether 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?*

The resolution of these issues involves an examination of the numerous vehicle transactions referred to in the evidence of several of the Registrar's witnesses.

The purported sale of Vehicle #2 to R.D.

This was the vehicle referred to as Vehicle #2 in the summary of the evidence of Louise Cohen and of Carey Smith. It was the vehicle for which the Applicant prepared two Bills of Sale with each document having a different purchase price. Each Bill of Sale also recorded a different odometer reading, although they were made out, ostensibly, for the same vehicle.

These three features alone – two Bills of Sale, two different purchase prices and two different odometer readings – would be sufficient to convince this Tribunal that the Applicant was not acting with honesty and integrity, yet there are still more concerns surrounding this purported transaction.

The Applicant did not record the purchaser's driver's licence in either Bill of Sale. Having had eleven years of experience as a motor vehicle salesperson, the Applicant should have known to obtain the information immediately.

The Applicant's explanation for preparing two Bills of Sale and his subsequent handling of the bank proceeds stretches credibility to its limits. He admitted on cross-examination that the higher purchase price on the first Bill of Sale was the incorrect figure, yet he enabled the customer to present the document to the bank to obtain financing in that amount. When she returned with a cheque in that amount, the Applicant prepared the second Bill of Sale in the lower amount of \$29,041.00. The Applicant kept that amount, and the customer pocketed the difference of \$17,166.03. The Applicant did not inform the bank of the lower purchase price. He did not even transfer any vehicle to the customer.

The money received from the bank and then paid out to the customer was not recorded in the dealership's bank account records, as the Applicant was required to do. Surely, after being in the business for eleven years, he should have known

to do that.

Both Ms. Cohen and Mr. Smith stated that it was unusual to prepare a Bill of Sale solely for financing purposes. Giving a customer an immediate cash rebate, especially in the amount of \$17,166.03, was also highly unusual.

In addition, notwithstanding that the Bills of Sale were in the name of Total Auto Sales, the vehicle had not even been registered in the name of the dealership. It had not been registered in the name of R.D. or in the name of her company, as the Applicant said he was asked to do.

Although the Applicant reported the customer's possible fraud to the Peel Regional Police, the police report from that police service stated that he withdrew his complaint when the matter was to be reported to the Toronto Police Services as well, even though the Applicant had suffered a loss of over \$17,000.00.

In the end, at least initially, the Applicant ended up with \$29,041.00, the purported customer ended up with \$17,166.03, yet no vehicle was transferred. R.D. could not be found, so that the bank would not be able to collect its debt from her.

Based on the above evidence that this Tribunal accepts as fact, the Tribunal agrees with Counsel for the Registrar when she characterized this transaction as a scam on the bank. The Tribunal also agrees with Carey Smith, who characterized it as a "paper crime."

The Applicant's version is not logical or believable. The evidence permits the Tribunal to come to the inescapable conclusion that, on this transaction, the Applicant did not act with honesty and integrity and in accordance with law.

#### Transfer of Vehicle #3 to M.Y.R.

This was the vehicle referred to as Vehicle #3 in the evidence of Louise Cohen and of Carey Smith. The Applicant stated that he received the vehicle on consignment from an individual, C.P. There was no consignment agreement.

Section 45(1) of Regulation 333/08 under the Act contains specific provisions for the steps that a motor vehicle dealer must take upon receiving a motor vehicle for sale on consignment. Entering into a written consignment agreement is one of those provisions. In the case of this vehicle, the Applicant did not comply with any of those provisions. Section 45(1) states:

#### **Contracts relating to sales on consignment**

45 (1) A registered motor vehicle dealer shall not enter into a consignment contract for the sale of a motor vehicle, whether or not the consignor is a registered motor vehicle dealer, **unless the contract is in writing.**

**(2) A registered motor vehicle dealer shall sign a consignment contract for the sale of a motor vehicle to which the dealer is a party.**

**(3) A registered motor vehicle dealer shall not enter into a consignment contract for the sale of a motor vehicle unless the other party to the contract also signs it.**

(4) A registered motor vehicle dealer who enters into a consignment contract for the sale of a motor vehicle with a consignor who is an individual exempt from registration as a result of section 5 of the Act shall ensure that the contract includes, in a clear, comprehensible and prominent manner, the following:

1. The name and address of the consignor.
2. The business name, a registered name and the registration number of the dealer, together with the legal name of the dealer if it is different from the registered name.
3. The make, model, trim level and model year of the vehicle.
4. The colour of the vehicle.
5. The vehicle identification number of the vehicle.
6. The body type of the vehicle.
7. If the vehicle is a used motor vehicle, the total distance that the vehicle has been driven if the dealer can determine the distance.
8. If the vehicle is a used motor vehicle and the dealer cannot determine the total distance that the vehicle has been driven but can determine the distance that the vehicle has been driven as of some past date, a statement of that distance and date, together with a statement that the total distance that the vehicle has been driven is believed to be higher than that distance.
9. If the vehicle is a used motor vehicle and the dealer can determine neither the total distance that the motor vehicle has been driven, nor the distance that the vehicle has been driven as of some past date, a statement that the total distance that the vehicle has been driven is unknown and may be substantially higher than the reading shown on the odometer.
10. The total amount that the dealer will charge the consignor on the sale of the vehicle, whether as a fixed amount or as a commission share of the total amount payable by the purchaser on the sale of the vehicle, and an itemized list of all components of those charges.
11. An estimate of the selling price of the vehicle and a minimum selling price of the vehicle.
12. The term of the contract and, if applicable, how the parties can extend it or a statement that the parties cannot extend it.

13. If the contract can be terminated before it is set to expire, the conditions respecting such early termination of the contract, including the fees, if any, payable for early termination.

(5) The registered motor vehicle dealer shall ensure that each contract mentioned in subsection (4) into which the dealer enters includes, in a clear, comprehensible and prominent manner, all restrictions, limitations, conditions and other obligations imposed on the consignor under the contract.

(6) For each contract mentioned in subsection (4) into which the registered motor vehicle dealer enters, the dealer shall,

(a) ensure that, if a registered salesperson is acting on behalf of the dealer, the contract is signed by the salesperson;

(b) ensure that the consignor receives a copy of the contract immediately after signing it; and

(c) use best efforts to obtain from the consignor a copy of the used vehicle information package described in section 11.1 of the *Highway Traffic Act*, if required.

**(7) When the motor vehicle is offered for sale, the registered motor vehicle dealer shall ensure it is clearly indicated, in a manner in which it is likely to be noticed, that the vehicle is being sold on a consignment basis.**

**(8) The registered motor vehicle dealer shall use best efforts to ensure that the consignor and the purchaser of the motor vehicle promptly receive a copy of the sales contract.**

(Emphasis added)

He gave the sum of \$30,000.00 immediately to C.P. because C.P. needed the money. That was in December, 2008, according to what he told Ms. Cohen.

He then sold the vehicle to M.Y.R. who was the sister of C.P. There was no evidence presented to this Tribunal as to why M.Y.R. could not have simply purchased the vehicle directly from her brother. Instead, she purchased it from the Applicant for the purchase price of \$59,000.00 on April 1, 2009. There was no evidence that the Applicant clearly indicated that the vehicle was being sold on consignment, as the above Regulation requires.

The net purchase price was \$52,670.00. She paid a deposit of \$14,000.00, according to the Applicant. The Applicant then paid an additional amount of \$16,000.00 in cash to C.P. to make up the total payment to him of \$30,000.00. No Bill of Sale was given to C.P., nor was there evidence that a copy of the Bill of Sale to M.Y.R. was given to C.P., contrary to the above Regulation. Neither the deposit of \$14,000.00 nor the payment of \$16,000.00 was entered into the dealership's bank records. M.Y.R. supposedly made monthly payments of \$939.28, but those payments were not recorded either.

The Applicant sold the vehicle for the sale price of \$59,000.00. He said he gave C.P. the sum of \$30,000.00. Giving C.P. less than the sale price is consistent with the Applicant's testimony that, by dealing in cash, he offered his consignment customers "a little less" than the amount he received for the vehicle. Such conduct is a flagrant violation of the Regulation and an affront to honesty and integrity in the motor vehicle business.

Notwithstanding his payment of \$30,000.00 to C.P., the Applicant placed a lien on the vehicle in the amount of \$55,000.00. Ironically, in October, 2009, six months after M.Y.R. purchased it, the vehicle was reported stolen and M.Y.R. made an insurance claim. The Applicant denied, in cross-examination, that he received any insurance proceeds, despite being a lien holder.

The Applicant's statement to Ms. Cohen appears to conflict with his testimony during his cross-examination. To Ms. Cohen, he stated that he received the vehicle from C.P. on consignment in December, 2008 and paid him \$30,000.00 at that time because C.P. needed the money. On cross-examination, he stated that he paid \$16,000.00 to C.P. after he received the payment of \$14,000.00 from M.Y.R. when the Applicant sold the vehicle to her. That was on April 1, 2009, approximately four months after he said he received the vehicle on consignment from C.P.

The Ontario Vehicle Record (page 79, Exhibit #3-1) indicates that the vehicle came from California, yet the Carfax Report and the CarProof Report do not show the vehicle as having been registered there.

The Tribunal accepts the above facts which disclose that the Applicant disobeyed the law and acted dishonestly and without integrity towards C.P., and did not keep proper bank records for this transaction. The Tribunal concludes that, in this transaction, the Applicant's conduct affords reasonable grounds for belief that neither he nor Total Auto Sales will carry on business in accordance with law and with integrity and honesty.

#### Sale of the vehicle damaged by floodwater to N.A.A.

This was the vehicle referred to in the summary of the evidence given by Carey Smith.

The Tribunal accepts the evidence of the IBC records (pages 33 and 34, Exhibit #3-1) that the vehicle was damaged by flooding on July 18, 2007. The Tribunal also accepts the evidence that vehicles damaged by flooding are branded in Ontario as "irreparable," yet it was improperly sold to the consumer, N.A.A., as "rebuilt" on December 20, 2007. The business from which the consumer purchased the vehicle was not even registered under the Act, yet the Bill of Sale was done under the name of Total Auto Sales and signed by the Applicant. In other words, the Tribunal finds that the Applicant enabled a non-registered



business to sell an “irreparable” vehicle to an unsuspecting consumer.

The Applicant argued that he did not even see the consumer and that he was not the one who sold the vehicle to her, and that the Bill of Sale form was just a quote. If it were just a quote, he failed to state for whom he prepared it. In his attempt to distance himself from the transaction, he failed to recognize that the use of his dealership’s form and his signature on the form gave an air of legitimacy to the transaction that it was lacking from the very beginning. His participation in the transfer of a vehicle that should not have been put on the road in Ontario and by a business that was not licensed to sell the vehicle is additional evidence of conduct that affords reasonable grounds for belief that both he and Total Auto Sales will not carry on business in accordance with law and with integrity and honesty.

#### Purchase of vehicles from Copart

The Tribunal accepts the evidence that Copart had given Total Auto Sales a member profile number in order to purchase vehicles from Copart. The Tribunal also accepts the evidence that only the Applicant was designated to buy damaged vehicles on behalf of Total Auto Sales from Copart. The Tribunal also accepts, as fact that, for the sum of \$100.00 per vehicle, the Applicant allowed various auto repair shops to use his member number to purchase vehicles from Copart online by computer, contrary to the agreement with Copart. In doing this, the Applicant could not control how many vehicles the auto body shops purchased in this manner.

The Applicant admitted that he obtained the Transport Canada Form 1 documents in advance, filled them in and signed them and gave them to the drivers of the carriers that brought the damaged vehicles into Canada.

The Tribunal accepts the evidence that the brand and the title status of the vehicles in most of the replacement Form 1 documents were changed to a more favourable category upon first registration in Ontario. The title documents that were presented on first registration were false when compared with those that Copart had in its records.

There was no evidence, however, that the Applicant was the one who altered the brand and title status on the Form 1 documents or presented the false title documents on first registration.

What was particularly troubling to the Tribunal, however, was the Applicant’s callous acknowledgement that he was not bothered at all by the fact that, although the auto body shops used the Total Auto Sales account to bring cars into Canada, the Applicant would not know what condition the vehicles were in when they were sold to the consumer. The vehicles were not registered in the name of Total Auto Sales when registered in Canada, or in the name of the auto body repair shops that brought them into Canada. They were, instead, registered

directly into the name of the consumer on first registration. There was no evidence of any inspection having been done on the vehicle to ensure that they were roadworthy despite the "severely damaged" and "salvage" brands given to the vehicles on their sale by Copart.

The Tribunal does not accept the Applicant's argument that Total Auto Sales was only a car find service. The dealership was not registered under the Act as such. The Applicant allowed third parties to use the name and member number of Total Auto Sales to purchase vehicles and then enabled them to sell those vehicles to consumers in a condition that the Applicant did not know about and did not care to know about. The Applicant absolved himself of all his responsibilities under the Act and its Regulations. In so doing, the Applicant demonstrated conduct that affords reasonable grounds for belief that neither he nor Total Auto Sales will carry on business in accordance with law and with integrity and honesty.

#### Effect of charges under the Criminal Code of Canada

The Applicant was charged with fraud over \$5000 and with possession of break-in tools. Both charges were withdrawn without the matters having proceeded to trial.

Counsel for the Registrar urged the Tribunal to consider the laying of the charges as facts to be regarded when considering the Applicant's conduct. In support of this argument, Counsel referred the Tribunal to the case *Omoregie (c.o.b Filazo International Auto Sales) v. Ontario (Motor Vehicle Dealers Act, Registrar)* decided in the Divisional Court of the Ontario Superior Court of Justice [2011] O.J. No. 1378.

In that case, the appellant, Felix Omoregie, appealed from a decision of the Licence Appeal Tribunal which directed that the Registrar of the Ontario Motor Vehicle Industry Council carry out the Registrar's proposal to revoke Mr. Omoregie's dealer registration pursuant to s. 9 of the *Motor Vehicle Dealers Act*, 2002, S.O. 2002, c. 30, Sch. B.

The appellant had been registered as a motor vehicle dealer since May, 2008. Between February and August, 2009, he committed several contraventions of the *Highway Traffic Act*, including making false statements and operating without insurance. On November 18, 2009 he was charged criminally with four counts of possession of property obtained by crime relating to four stolen motor vehicles found by police on the premises of his dealership. The charges were subsequently withdrawn subsequent to the Tribunal decision.

The Registrar of the Ontario Motor Vehicle Industry Council issued to the appellant on March 5, 2010 a Notice of Proposal to Revoke Registration. The matter proceeded to a hearing before the Licence Appeal Tribunal on September 10, 2010.

The Tribunal heard from Detective Hockney, the following facts: On November 17, 2009, he received a call from Durham Police regarding an ongoing investigation of vehicles stolen from driveways. One such stolen vehicle had been followed to the appellant's lot. The police obtained a search warrant and found four vehicles on the property that had been reported stolen. The keys to the vehicles were in the appellant's office. Detective Hockney was present when the search warrant was executed and the four vehicles found.

The appellant testified that he had been approached by two strangers seeking to ship cars overseas. They did not provide him with the proper paperwork and he did not know that the cars were stolen.

The Tribunal, in its reasons, stated that the evidence showed "willful blindness" on the part of the appellant with regard to the alleged stolen property. The appellant failed to exercise due diligence by getting the names, addresses, phone numbers, vehicle documentation and other relevant information from the men who dropped off the vehicles. The education and experience of the appellant suggest that he ought to have known that something was wrong when the men did not return for days and never submitted the requisite paperwork.

The Tribunal further noted that, as a sole proprietor, the appellant is responsible for all that takes place on his premises. He ought to have contacted the police and not having done so is a "failure to act with honesty and integrity ... and is not responsible and law abiding conduct".

The appellant took the position that the Tribunal erred, among other things, by taking into account the criminal charges he was facing, which were ultimately withdrawn after the Tribunal's decision was released.

At paragraph 11 of the decision, L.K. Ferrier J. stated, concerning the withdrawal of the criminal charges:

11 Concerning the first point, in our view, **the fact that criminal charges have been laid is irrelevant to the determination which the Tribunal is required to make in a case such as this. If there had been convictions, those convictions of course would be highly relevant.** However, we note that the fact of the four charges was not material to the decision. The substance of the decision lay in the finding of willful blindness and the Highway Traffic Act convictions.

(Emphasis as added)

The Tribunal accepts the above reasoning as applicable to the case now before it.

The Applicant denied both charges. He explained that the tools he had were those that he used to remove licence plates. Jeffrey Davis could not explain to this Tribunal the basis for his belief that those tools could be used as break-in

tools. In the absence of any contradictory evidence, the Tribunal accepts the Applicant's explanation.

There was no evidence led on the possible fraud relating to the vehicle concerning which the charge was laid.

In the absence of convictions on the two charges, the Tribunal places little weight, in the circumstances of this case, on the charges inasmuch as they were withdrawn without a trial on the merits. In any event, there is sufficient other evidence before this Tribunal on which to base its decision.

## CONCLUSION

Total Auto Sales owes money under the *Retail Sales Tax Act*. It has not made arrangements satisfactory to the Ministry of Finance to pay the money. Those two circumstances are sufficient to deny registration under the Act, pursuant to paragraph 3 of Section 11(1) of Regulation 333/08. Compliance with that provision is a pre-condition to registration under the Act. Total Auto Sales has not complied, so that it cannot be registered as long as the non-compliance exists. There is no exception. There is no saving provision. There is no discretion to disregard or grant relief from that provision.

In addition, the Tribunal concludes that the circumstances surrounding the purported transfer to R.D. are but a poorly disguised scam on the lending institution that loaned the money to R.D. The transfer to M.Y.R. is a flagrant breach of the consignment provisions of Section 45(1) of Regulation 333/08 and a breach of the record-keeping requirements of the Act and a suspect insurance claim. The transfer to N.A.A. of the flood-damaged vehicle is an outright breach of the prohibition on the sale of a water-damaged vehicle and a scheme to enable a non-registered business sell a motor vehicle when the business is not registered under the Act. The selling of the right to purchase vehicles from Copart under the member profile number of Total Auto Sales under the guise of being a car find service is an egregious flaunting of the purpose for which Total Auto Sales was registered under the Act in the first place.

The Applicant attempted to minimize his involvement or his culpability in these matters. He blamed his accountant for not filing the returns on time. He blamed the Ministry of Finance for not returning the documents taken at the time of the assessment in 2007, stating this was the reason that he did not appeal the assessment. He blamed the police and the Crown Attorney for not returning his business records to explain why he did not have them when Louise Cohen conducted her inspection at his dealership. He blamed the various auto body shops for purchasing more vehicles from Copart than he anticipated. He excused his behaviour on the sale of the water-damaged vehicle by saying that he did not see the customer or have any direct dealings with her. He failed to acknowledge

his involvement in or his responsibility for his actions in those matters as the Tribunal has explained in these Reasons.

The reasons that the Applicant gave for his actions in the above matters are not believable. He has shown a complete disregard for the law and for his obligations as a salesperson and for the obligations of Total Auto Sales as a dealership. The Tribunal can come to no other conclusion, on the evidence presented to it, 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.

In addition, the Tribunal concludes that the past conduct of the Applicant, as an officer 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.

Finally, having regard to its financial position, and considering the arrears owing under the *Retail Sales Tax Act*, the applicant corporation cannot reasonably be expected to be financially responsible in the conduct of its business.

## ORDER

Pursuant to the authority vested in it under the provisions of the Act, the Tribunal directs the Registrar to carry out the Proposal to refuse the registration of the Applicant.

LICENCE APPEAL TRIBUNAL

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Kenneth Koprowski,  
Presiding Member

## RELEASED:

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.