

**Licence  
Appeal  
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LAT File No. 5968/MVDA**Decision****TO/Destinataire(s):**

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August 19, 2010

**MEMORANDUM**

***Re: Frederik (Erik) D. Meeder v.  
Registrar, Motor Vehicle Dealers Act, 2002***

Enclosed herewith please find a copy of the Decision of the Licence Appeal Tribunal with respect to this matter.

**DISTRIBUTION LIST:**

Anthony E. Bak, Counsel for the Applicant  
Christopher Ezrin, Counsel for the Respondent

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FREDERICK (ERIK) D. MEEDER

AN APPEAL FROM NOTICE OF PROPOSAL BY THE  
REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*, S.O. 2002  
c. 30

TO REVOKE REGISTRATION

TRIBUNAL: DONALD BENNINGER, Presiding Member

APPEARANCES: ANTHONY E. BAK, Counsel representing the Applicant

CHRISTOPHER L. EZRIN, Counsel representing the Registrar,  
*Motor Vehicle Dealers Act, 2002*

DATE OF HEARING: July 28, 2010 Toronto

## REASONS FOR DECISION AND ORDER

### BACKGROUND

This is an appeal to the Licence Appeal Tribunal (the "Tribunal") from a Notice of Proposal (the "Proposal") pursuant to Section 9 of the *Motor Vehicle Dealers Act, 2002* (the "Act"). The proposal dated February 25, 2010, sets out the Registrar's reasons for revoking the registration of Frederik (Erik) D. Meeder (the "Applicant") as a motor vehicle salesperson under the Act as follows:

"The intention and objective of the Act is to protect the public interest. In doing so the Act prohibits the making of false statements in an application for registration or renewal and requires that Applicant be financially responsible in the conduct of business and that they carry on business in accordance with the law and with integrity and honesty. Frederik (Erik) D. Meeder's past conduct is inconsistent with the intention and objective of the Act, and therefore warrants disentanglement to registration under the Act".

In the particulars, the Registrar states the following reasons for the proposal:

1. Frederik (Erik) Meeder ("Meeder") is currently registered as a motor vehicle salesperson and was originally registered under the Act on or about December 11, 1999.
2. On the individual short-form application for renewal of registration submitted by Meeder on or about June 25, 2009, question 1(a) of Section A asks:

"Are there currently any charges pending or has the applicant ever been found guilty or convicted under any law?"

Meeder answered "no".
3. Meeder engaged in conduct which resulted in the following conviction in the United States contrary to the Michigan Penal Code:

January 26, 2005, accosting, enticing or soliciting child for immoral purpose.
4. On or around August 10, 2009, a representative of the Registrar requested Meeder provide written particulars of his criminal history.
5. Meeder provided a letter of written particulars in or around January 13, 2010.
6. Meeder has failed to disclose his criminal history on previous applications for registration submitted to the Registrar.
7. Meeder is currently listed as a "non-compliant" registered sex offender on the Michigan Public Sex Offender Registry with the Michigan State Police.

## ISSUE

Does the past conduct of Applicant provide reasonable grounds to conclude that he will not carry on business with honesty and integrity and in accordance with the law?

## EVIDENCE

The evidence of the Registrar consisted of a book of documents (Exhibits #3) and the oral testimony of Carey Smith.

The evidence of the Applicant consisted of a book of documents (Exhibit #4) and the Applicant's oral testimony and that of his spouse and his employer.

The following is a summary of the relevant evidence.

A witness for the Registrar was Carey Smith, who was sworn and testified he has been the Director of Investigations for Ontario Motor Vehicle Industry Council ("OMVIC") since 2003. Prior to this position he was employed for 26 years by Halton Police Services retiring as a Detective Sergeant.

Mr. Smith explained that OMVIC is a non-profit organization established by the government in 1997 with delegated authority to administer the *Motor Vehicle Dealers Act*, which is a public protection statute.

He testified that disclosure of information by an applicant seeking registration as a motor vehicle salesperson is the backbone of the Act. He stated it is incumbent upon the dealer and the salesperson to disclose the state of the vehicle, advertising factually, as this could alter a customer's decision. He stated that disclosure is deemed by the Registrar as the test of the applicant's honesty, integrity and ability to act within the law.

Mr. Smith reviewed the Notice of Proposal to Revoke Registration of the Applicant, dated February 25, 2010 (Exhibit # 3, Tab#1) by reading the seven reasons for the proposal issued by the Registrar.

Mr. Smith testified that when the Applicant completed the short form application for renewal of his registration on July 27, 2005, in Section 1 (a) the Applicant checked the box "no" when asked the question whether or not there are currently any charges pending, or has the applicant ever been found guilty or convicted under any law? Mr. Smith stated that the Applicant signed this application form as the Applicant and as the dealer because he was the president of a dealership at the time. Mr. Smith testified that there is a warning in bold print immediately below the applicant's signature stating:

"WARNING - It is an offence to knowingly provide false information on this application. Provision of false information may result in revocation of your registration and/or in charges being laid".

Mr. Smith also stated that the same thing happened at time of renewal dated August 3, 2007.

Mr. Smith testified that in June 2009, the Applicant applied for renewal of his registration and this application was with another dealership. Again, he stated under Section A question 1(a) the Applicant answered "no" when the honest answer would be "yes". Mr. Smith reviewed the court appearance document from the court serving the jurisdiction where the Applicant was charged in 2004 with accosting/soliciting a child for immoral purposes and sentenced to six months in prison in the United States. He testified this criminal history should have been disclosed on the Applicant's application in 2005, 2007 and 2009, but it was not disclosed until the Registrar wrote to him in 2009 requesting details. The Applicant then responded with a letter outlining his criminal record and the circumstances around the matter.

Mr. Smith stated it was the Applicant's brother-in-law and business partner who had advised the Registrar's office of the offence and sentence in 2004. However, for some unknown reason, the Registrar did not pick this matter up at the renewal application time in 2005 or 2007, but did in 2009. Mr. Smith stated that the Applicant himself did not advise the Registrar's office concerning his 2004 offence and sentence until requested. During cross-examination, Mr. Smith stated that Senior Counsel with OMVIC was made aware of the Applicant's offence and prison time, but he was unsure why the Registrar

did not commence the revocation process at that time. He further stated the Applicant had received his registration in 2005, 2007 and 2009, and all dated before the notice of proposal in 2010.

Mr. Smith during cross-examination agreed there have been no material changes since 2005 until present. He further agreed there have been no further charges, no judgments and no complaints because he checked before he came to the hearing.

With regard to the application for renewal of registration form, Mr. Smith agreed, during cross-examination, that this format is not found in the statutes, but was developed by OMVIC to collect the data it needs to make an informed decision. He continued that this is why full disclosure of a criminal history, by the Applicant, is expected even if the offences are not Criminal Code offences. He stated that some leeway is given if the offences are not Criminal Code or industry related offences and are not serious in nature. Mr. Smith concluded his testimony by agreeing that there are some motor vehicle salespeople who have criminal records.

Before the Applicant took the stand, his Counsel requested the Tribunal include in the Decision and Order that any evidence given by the Applicant cannot be used against him in any criminal trial or criminal proceedings. Counsel referred to The *Canada Evidence Act* Section 5 (2), the *Ontario Evidence Act*, Section 9(2), the *Statutory Powers Procedure Act*, Section 14 (1), and The *Canadian Charter of Rights and Freedoms*, Section 13. The Tribunal concurred and the Applicant gave his testimony and he is deemed to have objected to each question on that basis.

The Applicant testified he is a married man with two children ages 9 and 11 years. He confirmed he has been licenced under the Act since December 1999, originally as a dealer, then as a salesperson.

The Applicant testified that he was internet chatting with what he thought was a young under-age girl in Michigan. He stated they spoke about meeting in November 2004 and what they could do. He stated it was a sexual act. He was not aware this person was a police officer. When he went to meet the young girl he was met by the police who identified him by his picture and his vehicle. The police charged him and took him into custody. He testified he contacted his wife when he was arrested and she was in a state of shock.

The Applicant stated that after spending a couple of days in jail he arranged counsel and was eventually let out on bail, but not allowed to return to Canada. On return to court he was allowed to return to Canada for Christmas.

The Applicant testified he plead guilty, was convicted and found guilty and was sentenced to six months in jail and had to be registered as a sex offender in Michigan. There was no probation to follow because he was from Ontario and out of the United States. After serving five months and on satisfaction of sentence, he testified he was brought to the border and released without any conditions.

The Applicant testified that since this incident he has had no contact with the law, has not returned to Michigan since the incident, and had no probation in Canada.

He testified that his wife came to visit him every week while he was in prison and they both attended counseling individually and as a couple during and after this time. He stated this was beneficial to them as they are still together and communicate better than before. In addition, he continued, they have placed a filter on the home computer called "safe-eyes" and his wife has control of it and receives a weekly report. The filter monitors any sites viewed. Also, his employer has the same program on the Applicant's computer and other computers at his dealership.

The Applicant testified he has no criminal record in Canada, no convictions under the Act and with respect to OMVIC, has never been subject to discipline to any prior notice of proposals, or to consumer complaints.

With regard to his non disclosure of his criminal record, he testified he did not feel it was relevant in another part of the world, because it was not a Canadian offence, charge or sentence. He stated he never discussed this matter with a lawyer and never thought of calling OMVIC to ask about his record in this country. He stated he did not know his brother-in-law had made OMVIC aware of the Michigan incident.

The Applicant testified that when he was contacted in December 2009 by an OMVIC employee and asked for a letter about the Michigan incident, he was advised the letter would be placed on his file and the file would be closed. As a result, he did not discuss this matter with anyone and did not have any interviews with OMVIC, but received the Notice of Proposal.

In conclusion, he testified, the only business he knows is the motor vehicle one, and if he did not get his registration, he did not know what he would do. If granted registration, he testified, he would abide by any conditions imposed by the Tribunal. He stated he has a good relationship with his employer and, if needed, his employer will monitor his terms and conditions too.

On cross-examination the Applicant stated he understands his obligations to OMVIC, but he thought this Michigan incident was, at the time it occurred, not in Canada and not an offence in Canada, so he did not need to advise OMVIC. He also stated at the time he was released from prison and returned home, he placed all his efforts into making amends, attending counseling and proving himself to his wife and family. He stated that, when asked for the details and circumstances of the offence by an OMVIC employee, he responded with honesty and integrity.

The Applicant's wife was sworn and testified the Applicant and she had been married for 14 years. She stated she was aware of the 2004 incident in Michigan and first became aware when her husband telephoned her from jail. She stated she had no idea he was doing such activities on the internet from their home and was shocked when he

was arrested. She testified that, although she was shocked by this, she visited him in prison and he has since proven he was sorry and realizes it was a big mistake. She stated she gave him three years to prove himself and he did and they are still together. If he did not prove himself to her, she stated, she would not be with him now.

In her testimony, the Applicant's wife confirmed that she and the Applicant attended individual counseling and they had some counseling together. She testified that they have installed a filter on their home computer and the employer has installed the same program on computers at the dealership. The Applicant's wife stated it was the Applicant who wanted the filters installed on the computers at their home and his place of employment and she has the password for the computer filter program at home. She monitors it closely by receiving weekly reports indicating all the sites their computer visits.

At the conclusion of her testimony, she stated she knows the Applicant has "turned over a new leaf and he is an honest and reliable guy".

The next witness for the Applicant was his employer who was sworn and testified he has known the Applicant for 15 years and has worked with him for the last two years.

The employer testified he was aware of the 2004 incident and that the Applicant was forthright about it. He stated the Applicant is an excellent employee who can do almost anything because he had his own dealership and knows what to do especially when it comes to paperwork. He testified there was one complaint by a customer who claimed the Applicant did not get back to her quickly enough, but he stated there are no issues regarding honesty and integrity.

With regard to the filters on the internet, the employer stated that the Applicant installed the program on any computers he has access to at the dealership and has done everything he can to be sure there are no repeat offences. The employer testified he would supervise any terms and conditions imposed by the Tribunal and stated if there were any further charges and convictions he would advise OMVIC accordingly.

In conclusion, the employer testified he is not concerned about the Applicant because he has paid for his offence, suffered enough and he is sure the Applicant has reformed.

## THE LAW

The *Motor Vehicle Dealer Act, 2002* states as follows:

5. (1) An applicant is entitled to registration or renewal of registration by the Registrar except where,
  - a) having regard to financial position of the applicant, the applicant cannot reasonably be expected to be financially responsible in the conduct of business; or



- b) 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; or
- c) the applicant is a corporation and,
  - (i) having regard to its financial position, it cannot reasonably be expected to be financially responsible in the conduct of its business, or
  - (ii) the past conduct of its officers or directors affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty;

6. (2) Subject to section 7, the Registrar may refuse to renew or may suspend or revoke a registration for any reason that would disentitle the registrant to registration under section 5 if the registrant were an applicant, or where the registrant is in breach of a term or condition of the registration.

8. A further application for registration may be made upon new or other evidence or where it is clear that material circumstances have changed.

### **FACTS FOUND PROVEN**

1. The Applicant is currently registered as a motor vehicle salesperson and was originally registered under the Act on or about December 11, 1999.
2. On the individual short-form application for renewal of registration submitted by the Applicant on or about June 25, 2009, the Applicant answered the question in Section A with a "no" answer indicating he had no charges pending and has never been found guilty or convicted under any law.
3. The Applicant did engage in conduct in late 2004, which resulted in criminal conviction in the United States contrary to the Michigan State Penal Code.
4. In January 2005, the Applicant was sentenced to 6 months in prison and a requirement to be registered as a sex offender in Michigan, but was released on satisfaction of sentence after serving 5 months and returned to Canada with no conditions.
5. The Applicant's business partner (brother-in-law) advised OMVIC of the charge and the Applicant's conduct in December 2004.
6. In July 2005, August 2007 and 2009, the Applicant received his renewal registration as a motor vehicle salesperson from OMVIC.
7. The Applicant did not indicate on any of his requests for renewal of registration that he had been charged and sentenced in the State of Michigan.

8. The Applicant has a spotless record since his 2004 charge with no criminal charges or convictions, no pay-out from OMVIC, no unpaid judgments and meets his financial obligations.
9. The Applicant has installed filters on his home and work-place computers that are monitored to ensure no inappropriate internet sites are contacted.
10. The Applicant and his wife attended counseling designed to address the issues of relationships and communication.

## ANALYSIS

The issue before the Tribunal is whether the past conduct of the Applicant provides reasonable grounds to conclude that he will not carry on business in accordance with the law, and with honesty and integrity.

In this case, the Tribunal needs to consider two concerns. First, does the criminal conviction registered against the Applicant in the United States afford reasonable grounds for the Registrar's belief that the Applicant will not carry on business in accordance with the law and with integrity and honesty. Second, has the Applicant failed to make disclosure of material facts in his applications for renewal of registration and, if so, does such non-disclosure afford reasonable grounds for the Registrar's belief that the Applicant will not carry on business in accordance with the law and with integrity and honesty.

In considering the past conduct of the Applicant the Tribunal owes no deference to the deliberations of the Registrar. It must arrive at its own conclusion in an unfettered manner. As was stated by Divisional Court in *First Place Fine Cars Inc. and Dominic Cerullo v. Ontario (Motor Vehicle Dealers Act)* (2007) O.J. 1043, it is clear that the Registrar believes there are such grounds; otherwise there would be no proposal. The question to be decided is in light of all the evidence does the Tribunal find there are reasonable grounds for this belief.

The *Motor Vehicle Dealers Act* is a public protection statute, but the unexplained delay from December 2004 to February 2010 by the Registrar would lead one to the belief that the offence and time served in Michigan were not in and of themselves a threat to the public and thus not worthy of revocation action. Furthermore, during that timeframe the Applicant applied for registration renewal three times and was issued his certificate by OMVIC. By virtue of the Applicant having his registration as a motor vehicle salesperson he was able to prove his conduct in the motor vehicle industry is spotless, including no formal complaints. In addition, he has no further criminal charges or convictions and has proven to his wife he has turned over a new leaf. Also, the Applicant has taken steps during the last five years to take counseling for his issue and has installed filters on his home and business computers to prevent further temptation. The Tribunal is of the opinion that the Applicant was very fortunate the Registrar did not

act on the information provided to OMVIC by his business partner and thus had time to prove himself in the business of his choice.

If the Registrar had acted on the information received in 2004, the Applicant would now be able to re-apply for registration as sufficient time has passed and the Applicant could demonstrate material circumstances have changed in his situation. However, that will not be necessary at this time.

The issue of the Applicant's non disclosure of the offence and sentence is a concern to the Tribunal. However, in his testimony, the Applicant explained when this offence occurred in Michigan there was no such law in Canada. There was no evidence to the contrary provided to the Tribunal. The Applicant testified he was more concerned about his wife and family relationship and never thought of advising OMVIC. He also thought the conviction was not in Ontario or in Canada so it did not need to be disclosed.

A review of the Tribunal decisions would show that the Tribunal would generally rule that non-disclosure would demonstrate a lack of honesty and integrity. At this hearing the Applicant presented as sincere when he explained his rationale for non disclosure and was considered as acting with honesty and integrity. Given the Applicant's focus on his family relationships, the Tribunal finds that the non-disclosure was not an act of dishonesty or an attempt to mislead the Registrar, but a reasonably thought out belief he was only required to reveal charges and convictions when the offence occurred in Ontario or in Canada.

Although the Tribunal gave the Applicant the benefit of any doubt the question in Section A 1(a) of the short-form application for renewal clearly states "under any law" and the Tribunal views this as intending to include any laws in any country including the United States and not just laws in Canada. Thus, the Tribunal suggests anyone else using the argument of this Applicant may not be successful.

With regard to the non compliance status listed on a Michigan release document, there was no evidence presented to explain it. The only attempt to explain it came from Mr. Smith who thought it could be a status used for out of United States residents. However, in the final analysis it was a non issue for both parties. The Applicant could be well served if he requested his lawyer to follow up and get clarification of this issue and provide OMVIC with the explanation.

In conclusion, after considering all the evidence and for the reasons outlined above, the Tribunal finds that the Applicant's past conduct does not provide reasonable grounds to conclude that he will not carry on business with honesty, integrity and in accordance with the law.

The Applicant must be given the opportunity to prove his worthiness to continue as a salesperson on conditions one (1) and two (2) for two years; conditions three (3) and four (4) for 5 years from the date this decision is released and condition five (5) as directed below:

1. That the Applicant retain the filter program "safe-eyes" or an acceptable alternative on his home and place of employment computers.
2. Should the Applicant be charged, plead guilty, be found guilty or convicted of any offence under any law, he will advise his employer and OMVIC accordingly.
3. Should the Applicant be convicted of any sex related offence, he will surrender his registration to the Registrar without it being requested by OMVIC.
4. Failure to satisfy these conditions will automatically authorize the Registrar to revoke the salesperson registration of the Applicant.
5. The Applicant, until such time as he obtains a pardon, if this is possible, on any future applications for renewal of his registration or when applying for any licence asking if he has a criminal record, declare his present criminal history and any other if it should occur, no matter where the offence occurred.

## DECISION

By virtue of the authority vested in it pursuant to the provisions of section 7(4) of the Act, the Tribunal directs the Registrar to not to carry out the Proposal dated February 25, 2010 to refuse the registration of Frederik (Erik) D. Meeder as a motor vehicle salesperson under the Act but to register him with the above conditions.

LICENCE APPEAL TRIBUNAL

  
Donald Benninger, Member

*RELEASED: August 19, 2010*

The hearing was recorded. Transcripts can be made available at your expense. The period to appeal a decision to the Superior Court of Justice or Divisional Court 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.