

Licence Tribunal  
Appeal d'appel en  
Tribunal matière de permis



DATE: 2013-08-02  
FILE: 7679/MVDA  
CASE NAME: 7679 v. Registrar, *Motor Vehicle Dealers Act 2002*

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An Appeal from a Notice of Proposal by the Registrar, *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Sch. B to Refuse Registration

John Greico

Applicant

-and-

Registrar, *Motor Vehicle Dealers Act 2002*

Respondent

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**REASONS FOR DECISION AND ORDER**

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**ADJUDICATOR:** Laurie Sanford, Vice-Chair

**APPEARANCES:**

**For the Applicant:** John Romano, Agent

**For the Respondent:** Jane Samler, Counsel

Heard in Toronto: May 5, 7, July 8, 9, 2013

## REASONS FOR DECISION AND ORDER

This hearing arises from an appeal by Mr. John Greico to the Licence Appeal Tribunal (the "Tribunal") from a Notice of Proposal issued by the Registrar, *Motor Vehicle Dealers Act 2002* (the "Registrar") dated October 1, 2012 which proposes to refuse to register Mr. Greico as a motor vehicle salesman under the *Motor Vehicle Dealers Act, 2002* (the "Act").

### FACTS

In August, 2011, Mr. Greico applied to become a motor vehicle salesman. The Registrar is proposing to refuse to register Mr. Greico on two grounds. First, the Registrar alleges that Mr. Greico answered two questions on his application for registration incorrectly which may be a grounds for refusal under subparagraph 6(1)(a)(iii) of the Act. The second ground for the Registrar's proposed refusal to register is the Registrar's allegation that Mr. Greico stole over \$6,000 in money, tokens and metro passes from his then employer, the Toronto Transit Commission ("TTC"). He was charged for this offence in July, 2010. The charge was stayed in May, 2012 as the Court found there had been an undue delay in the prosecution. No evidence was heard on the merits of the allegations.

Concerning the allegation that Mr. Greico falsely answered two questions on his application for registration, the first of these questions is question 5, which reads:

Have you been involved in bankruptcy proceedings or had a petition filed against you under any bankruptcy or insolvency legislations in any jurisdiction in the past 10 years?

The second of these questions is question 6 which reads:

Have you ever been found guilty or convicted of an offence under any law or are there any charges pending?

Mary Jane South, Deputy Registrar of the Ontario Motor Vehicle Council of Ontario ("OMVIC"), the regulatory body for motor vehicle salespeople, testified that Mr. Greico first faxed an application form to OMVIC which was received on August 15, 2011. Mr. Greico answered questions 5, and 6 in the negative. A member of the OMVIC staff contacted Mr. Greico and advised him that he needed to send in an original application and he needed to include an updated "Criminal Records Search" or "CPIC". In a form received by OMVIC on September 23, 2011, Mr. Greico completes some details of his previous employment and corrects an answer about garnisheed wages. He continues to answer questions 5 and 6 in the negative. However, he attached a CPIC form showing that he had been charged with "Theft under \$5,000" and that the charges are still pending. Mr. Greico also attached a brief explanation of the charge. According to Ms. South's testimony, what concerned the Registrar about this form of answer was that the application form, which was signed by Mr. Greico's prospective employer, showed that no criminal charges were outstanding against Mr. Greico. However, Mr. Greico had notified OMVIC, by means of the attachment, that he did in fact have criminal charges outstanding against him. In response to further queries

from OMVIC, Mr. Greico submitted a third application, which OMVIC received on October 3, 2011. In this application, Mr. Greico acknowledged his criminal charges and disclosed that he had declared bankruptcy. Bankruptcy records show that Mr. Greico declared bankruptcy in August, 2006 and was discharged in May, 2007. In the fall of 2012, Mr. Greico explained to OMVIC that he had misunderstood the question about bankruptcy because he understood the bankruptcy related to a business he had started and which had failed. However, Ms. South testified that the bankruptcy documents show that Mr. Greico in fact declared personal bankruptcy.

Mr. Greico testified that he had answered these questions to the best of his knowledge and abilities and had no intention of misleading the Registrar. He testified that he did not understand the questions and that he may not have read them all completely. He produced a certificate from his doctor saying that at the time of the application he was suffering from depression and anxiety, which had an adverse effect on his concentration.

The Registrar's second allegation is that Mr. Greico committed theft against his then employer, the TTC. The evidence of the Registrar's witnesses was that money and money's worth was stolen from a drawer that was accidentally left unlocked at around 1:30 am on the morning of July 2, 2010. The theft was not discovered until about 5:30 pm on July 2<sup>nd</sup>. The TTC conducted an investigation and concluded that only four people had access to the vault containing the unsecure drawer in the period between 1:30 am and 5:30 pm. Of these four, the TTC investigation concluded the guilty party was Mr. Greico and on this basis he was charged with the theft.

Mr. Greico worked for over 31 years with the TTC and on July 2, 2010 he was working as a ticket collector on the early morning shift from shortly after 4:30 am to shortly after 1:00 pm. TTC ticket collectors operate in some respects as small business owners. They have a TTC-provided float with which they purchase TTC tokens and various passes, which are collectively referred to as "fare media". Both the money and the fare media are kept in locked drawers. Each ticket collector has his or her own drawer and each drawer has a specialised Abloy lock. The collector has one copy of the key to that lock. TTC management maintains a separate copy of that key and but there is no evidence that TTC management accessed any of the locked drawers in question on July 2<sup>nd</sup>. At the station where Mr. Greico was working there were two vaults in the ticket collector booth. One vault was to the left of the wicket window and the other to the right. These vaults each contain three of the locked drawers. All ticket collectors have keys which open both vaults. The vaults sit directly below an unlocked drawer that ticket collectors may use to hold cash and fare media during their shift. Which cash drawer is used depends on whether the ticket collector is right or left-handed and depends as well on the location of the individual ticket collector's locked drawer. The cash drawer is replenished from the locked drawer as required. The individual TTC collector's locked drawer need not be kept locked during a shift but is always locked at the end of the shift.

The top locked drawer in each vault is considered "prime real estate" as there is less bending to access that drawer. On the day in question, Mr. Greico had the top locked drawer in the left hand vault and a TTC employee of 25 years, who shall be referred to as

“DM” had the top locked drawer in the right hand vault. A third TTC ticket collector, “GN”, had the second drawer in the right hand vault. Mr. Greico testified that he also had a second drawer, the bottom right drawer, where he kept a briefcase which he used to carry funds and fare media with him to use during overtime shifts, which he testified he accepted regularly.

In the late afternoon of July 2, 2010 a shortfall which was eventually calculated at over \$6,000 was reported from the drawer of DM. There were a number of people in and out of the ticket booth throughout the day but most of these people did not have access to the vaults. The evidence of Staff Sergeant Mark Russell, of the TTC Special Investigations Unit, was that of the various people who entered the booth between the end of DM’s shift at approximately 1:30 am and the discovery of the theft at approximately 5:15 pm, only four people both had access to the vaults and opened them.

The first of the four men identified as accessing the vaults was DM who had the late night shift which ended at 1:30 am on July 2, 2010. DVDs are routinely taken from several angles during each shift. Due to an internal misunderstanding, no DVD of DM’s shift was retained. DM does not recall but does not believe anyone visited him in the booth during his late night shift other than his “supply man”, the person who sells him the fare media and possibly his supervisor. According to DM, the supply man and the supervisor would have a key to the vaults but not to the locked drawers. There is no evidence that the supply man or the supervisor in this case accessed the vaults. When DM finished his shift at approximately 1:30 am, he set the alarm on the booth and locked the booth door. Staff Sergeant Russell testified that his investigators confirmed with the TTC that no one triggered the alarm from the time DM set it until Mr. Greico disabled the alarm at the beginning of his shift.

Mr. Greico had the shift immediately following DM. From 1:30 am to 4:30 am, the particular station where both men worked is closed. The station reopens at 4:30 but the first train doesn’t run until sometime between 5:30 and 6:00, according to Staff Sergeant Russell. Portions of the DVDs taken during Mr. Greico’s shift were shown during the hearing by both parties. Various people visit the booth during Mr. Greico’s shift but in each case they are standing at some distance from the vaults or their hands are clearly visible in the DVD. Staff Sergeant Russell testified that the DVD evidence showed that no one other than Mr. Greico accessed either the left or right hand vault during his shift.

The third TTC collector to have access to the vaults was GN, whose shift followed Mr. Greico’s. Staff Sergeant Russell’s staff reviewed the DVDs taken during GN’s shift and these DVDs were made available to Mr. Greico. Portions of the DVDs of GN’s shift were reviewed by Mr. Romano, Mr. Greico’s agent, during his cross-examination of Staff Sergeant Russell. The review of the tapes, according to Staff Sergeant Russell’s testimony, revealed that no one other than GN accessed the vault. GN also testified that he alone accessed the vaults during his shift.

The next person who had access to the vaults was DM, again. DM was working the afternoon shift from approximately 5:15 pm. It was at the beginning of this second shift

that DM noted that there were items missing from his drawer. He contacted the TTC supervisor but there was a delay in dispatching someone to assume control of the drawer. DM became quite distressed and, according to notes of an interview with his relief collector, he was disorganised with money "scattered all over". The relief man tidied up and took over the till from about 8:13 pm until approximately 8:30 pm when the TTC supervisor arrived and took control of the drawer. The relief man is the fourth person to have access to the vaults on July 2<sup>nd</sup> before the inspector arrived, according to the testimony of Staff Sergeant Russell.

When asked why the TTC investigation concluded that the theft had taken place on July 2<sup>nd</sup>, Staff Sergeant testified that several factors led to this conclusion. The first answer to that question is that at the end of his shift in the early morning of July 2, 2010, DM left his drawer containing his funds and fare media unlocked. This created the opportunity for someone to take the money. The theft was discovered late on the afternoon of July 2, 2010 when DM returned to start a new shift and opened his drawer. The TTC investigation concluded that it followed from the timing of the discovery that the theft must have occurred between the end of DM's first shift and the beginning of his second. However, this logic only applies if DM himself can be eliminated as a suspect.

When asked why the TTC concluded that DM was not the thief, Staff Sergeant Russell testified that each collector is responsible for the funds in his or her care. If funds are left unsecured or are otherwise lost by a TTC collector, it is that collector who must reimburse the TTC for the shortfall. Shortages in the till that are in excess of approximately \$500 also usually give rise to disciplinary proceedings. Even if DM raised the suspicion that someone else took the money, he would still be at risk for repayment of it on the grounds that he lost custody and control of the funds. Therefore, it is unlikely, according to Staff Sergeant Russell, that DM took the funds from his own drawer. Further, Staff Sergeant Russell testified that DM left his daily account balance in good order at the end of his first shift on July 2<sup>nd</sup>. In Staff Sergeant Russell's experience, collectors who take money from their own drawer usually try to hide that fact with their bookkeeping. The third reason that Staff Sergeant Russell eliminated DM as a suspect is that he and his investigators found DM to be a credible witness.

Each of the TTC collectors gave evidence about what occurred during his shift. As noted above, there is no DVD tape available for DM's shift. DM testified that marked his lock with a distinctive tape to help identify it. He had a practice of keeping his lock on a shelf at eye height during his shift so he would not miss it and forget to lock up. The shelf is easily visible from the inside of the booth. He thought he had locked the drawer on the night in question but subsequent events have caused him to think that after locking the drawer, he was approached by a female passenger in distress who asked for change. He now believes he opened the drawer to get the change, putting his lock in its usual spot and then forgot to re-lock it when he closed up. Before leaving, DM prepared a "Collector's Daily Balance". His daily balance showed a shortfall of \$206.48. According to Staff Sergeant Russell, shortfalls in the low hundreds of dollars are not uncommon and are often the result of a miscount when the collector puts surplus money in a secure box for banking. The discrepancies are often resolved when the bank clears and reports the funds. Each

collector was given an annual allowance of, at that time, approximately \$550 to pay for any shortfalls. Any shortfall above this amount results in disciplinary action.

There was a period of time, from approximately 1:30 am to 4:30 am when the station was closed and no one was in the booth. As noted above, the TTC control confirmed that no one accessed the booth in this interval.

There is DVD of Mr. Greico's shift. Both Ms. Samler, counsel for the Registrar and Mr. Romano, Mr. Greico's agent, reviewed portions of the DVDs during the hearing. As well, Mr. Greico testified about the activities shown on the DVDs. In the DVD it is possible to see a shiny object about the size of a lock sitting on the same ledge where DM testified he routinely leaves his lock. On the DVD, one of the first things that Mr. Greico does on entering the booth is to look directly at that shiny object. He is seen walking across the booth and picking up the object and putting it down in the same spot. Within a few moments of entering the booth, Mr. Greico opens the right side vault, appears to reach inside and move unidentified items over to the left hand side of the counter. Shortly after this, Mr. Greico removes the shiny object from the ledge and puts it out of sight on the counter. He then gathers his newspaper out of sight of the DVD and leaves the booth with the newspaper. When he returns, he does not appear to have the newspaper.

Shortly after 5:00 am, before the trains start running, the DVD shows Mr. Greico again opening the right hand vault. He looks around, including directly at the camera and then looks into the vault area. He again looks around and bends down to the right side vault. Shortly before 6:00 am, Mr. Greico is seen in the DVD to repeatedly reach into the left vault and lean back in his chair. The person on Staff Sergeant Russell's staff who reviewed the DVD concluded that Mr. Greico is placing something in his left pocket but this is not clear from the DVD. Mr. Greico then takes the black lunch bag he brought into the booth with him at the beginning of the shift and places it on the counter above the left vault. He removes items from the lunch bag and puts them on the counter. The person who reviewed the DVD believes it was food items which were taken from the bag and Mr. Greico confirmed this in his testimony. Mr. Greico walks to the other side of the booth and returns to the vault area with a clear plastic bag. He again looks around, including at the camera, and places something in the bag. It is not possible to identify what Mr. Greico is placing in the plastic bag. He appears to place the plastic bag into his lunch bag and then puts the items he had previously removed from the black lunch bag back into it. He then places the lunch bag on the counter near the entrance to the booth.

Shortly after 6:00 am, in the DVD Mr. Greico retrieves a set of keys from the rear counter and bends down to the right hand vault. He takes a large black bag, which appears to be a briefcase, and places it on the back counter and opens it. He did not enter the booth with this bag. He looks around, including at the camera. He then bends over the right hand vault and straightens to pick up what appears to be two more clear plastic bags. He bends again over the right hand side vault. Because of the angle of the camera and the notices on the front of the booth it is not possible to identify the item which Mr. Greico is seen moving to the rear counter. Customers begin arriving. Mr. Greico moves the briefcase to the left hand side near the left vault. At shortly before 10:30, Mr. Greico picks up the

briefcase, again looks around and takes an unidentifiable object from the counter on the right and appears to place it in the briefcase. Again, at 10:40, Mr. Greico retrieves an unknown object and places it inside the briefcase. He closes the briefcase and places it near his personal belongings. Again at shortly after 11:00 am, Mr. Greico is seen bent over the right side vault. He retrieves something, which may be a bag, from the counter and bends back down over the right vault. He places some items which cannot be identified onto the counter and serves a customer. At shortly before 12:30, Mr. Greico bends over the right side vault for the last time.

At several times during Mr. Grieco's shift, for a total of about 2 ½ hours, a second collector was in the booth working at a different window. Staff Sergeant Russell testified that a review of the DVD shows that the only time the Mr. Greico accessed the right hand vault was when he was alone. When the other collector was present, he accessed only the left hand vault, which is where he had his drawer.

Mr. Greico testified that he never saw DM's lock. He was unaware that DM's drawer was unsecure as he never looked at it. He did not access the drawer and did not take the funds or the fare media. He did open the right hand vault and he did leave it open but that was only to access his briefcase. He testified that he is a person who likes to keep his work area very clean and tidy. He reviewed portions of the DVD that show him bending to access the right hand drawer and he pointed out that he was taking a "clean wipe" from a dispenser before bending over to the right. He cannot remember what he was cleaning up. He produced some wooden dowels that he testified he used to hold change and tokens in place in his dispenser. It was these dowels that he was holding up in the clear plastic bag in the DVD, he testified.

Mr. Greico testified, and Staff Sergeant Russell appeared to agree, that the objects he is seen placing into his briefcase around 10:30 am are token boxes. As a demonstration, Mr. Grieco produced dowels representing both change and tokens that he testified represented the approximate amount missing from DM's drawer. He was able to fit the fare media and funds into his briefcase. However, he testified that the cash and fare media would not all fit into the two token boxes that the DVD shows him loading items into around 10:30 am.

The next collector who accessed the right hand vault is GN, who took over from Mr. Greico at approximately 1:30 pm. GN has been a TTC employee for 27 years and a collector for 14. He worked with Mr. Greico for six or seven years and during the investigation, he advised Staff Sergeant Russell's staff that he had never seen Mr. Greico access the right hand vault as his draw is on the left. When GN began his shift, he did access the right hand vault as his drawer is the second from the top. He immediately noticed that the top drawer was unlocked. According to his testimony, he thought the drawer must be empty and available for his use. According to GN, he said to Mr. Greico, who was still in the booth at this time, "I won the lottery. I can move to number one!" The DVD shows Mr. Greico leaving the booth with both the lunch bag and the briefcase and GN opening the drawer. According to GN's testimony, he only opened the drawer an inch or so before seeing an Order Form on which he recognised DM's signature. He immediately called Mr. Greico back to the booth, showed him the drawer and asked him to be GN's witness that

the drawer was unlocked. GN had the option of calling a TTC inspector but did not because he did not want to get DM into trouble. Instead, because he knew that DM would be returning to fill the shift directly after him, GN decided to wait and deal with DM directly. He planned to castigate DM for leaving his drawer unlocked. GN testified that he didn't think anything would be missing from DM's drawer because he had worked with Mr. Greico for years. The rest of GN's shift passed uneventfully. Staff Sergeant Russell testified that his staff reviewed the DVDs of GN's shift and saw no suspicious activity. These DVD's were available to Mr. Greico and, as noted above, Mr. Romano reviewed portions of them during his cross-examination of Staff Sergeant Russell. GN's drawer and accounts were audited during the subsequent investigation and found to be in order.

According to GN's evidence, when DM relieved him, he said he thought he had locked the drawer but recalled that he had made change at the end of the shift and may have left it open. He looked for his lock on the ledge where it normally sat but it was missing. DM looked in his drawer and told GN that he thought things were missing because the drawer had been rearranged. At that point, DM, who was very upset, called for a TTC inspector. There was a delay in the inspector arriving. During the delay, DM became increasingly agitated. A relief collector was summoned to take over DM's duties but DM remained in booth. The relief collector is the fourth person who accessed the right hand vault on July 2, 2010.

During the subsequent investigation, Mr. Russell testified, the drawers and accounts of DM, GN and Mr. Greico were audited. The drawers and accounts of DM and GN were found to be in order. The accounts of Mr. Greico were found to be in disarray for a period of about 15 days prior to the theft and there was a shortfall in the drawer of over \$1,700.

As noted above, Mr. Greico testified and strongly denied taking any money or fare media from DM's drawer. His testimony was that he never looked at DM's drawer and was unaware that it was unsecure. He testified that he used the lowest shelf of the right hand vault to store a briefcase, which he used to carry some of his float and fare media with him when he worked an overtime shift at another station. He testified that he could not open the briefcase when it was in the drawer so the only reason to access it was to pull the briefcase out or to put it in. He testified that there would be no reason to access it at the beginning of his shift.

## **DECISION**

This is not a criminal trial. The purpose of these proceedings is to establish, on a balance of probabilities, whether or not Mr. Greico is disentitled to registration as an automobile salesman under either subparagraph 6(1)(a)(ii) or (iii), which read:

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



(iii) the applicant or an employee or agent of the applicant makes a false statement or provides a false statement in an application for registration or for renewal of registration;

The Registrar's first allegation is that Mr. Greico made false statements on his application form in contravention of subparagraph 6(1)(a)(iii) cited above. The Tribunal does not accept Mr. Greico's explanations for the false statements. He did not acknowledge the criminal charges against him until OMVIC requested him to produce a CPIC. Even then, on his second attempt at an application, he signed, and had his prospective employer sign, a document showing that he had no criminal charges outstanding. At the same time, he submitted a CPIC search that was not signed by his employer and that showed the criminal charges. This suggests that by the time of his second application, he understood what was required of him by way of disclosure. He chose not to disclose his criminal charges on the only form that his prospective employer was required to sign. This is suspicious conduct and raises the concern that Mr. Greico was attempting to withhold relevant information about his past conduct from his employer. It was not until the third attempt, on further inquiries by OMVIC, that Mr. Greico chose to complete the application form correctly. Mr. Greico may have been under stress but the application questions are very straightforward and ought not to give rise to confusion. The fact that Mr. Greico did not admit to his bankruptcy until his third attempted application is a further concern. If Mr. Greico was confused about the question, which is very straightforward, he could have asked for clarification from the Registrar's office.

This was Mr. Greico's first test of honesty in the industry he proposes to join and he failed the test. A single error on an application form may not be sufficient grounds for refusal depending on the circumstances. In this case, it is more probable than not that neither false answer was an error. Both answers appear to the Tribunal to have been deliberate attempts to mislead the Registrar. This reason alone is sufficient grounds to conclude that Mr. Greico should not be registered as an automobile salesperson under the Act.

Concerning the Registrar's second allegation, that Mr. Greico stole money from the TTC, Mr. Romano in his closing submission submitted that the TTC investigation of the theft was flawed. He argued that there appeared to be a rush to judgment as evidenced by documents produced at the beginning of the investigation which referred to DM as the "victim". It is not the function of the Tribunal to review the investigation of the TTC. The Tribunal's role is to make a fresh decision based on the evidence before it. Thus, the question for the Tribunal is not whether the investigation was thorough or professional but whether the evidence coming from the investigation is credible and sufficient to reach a conclusion.

The first question for the Tribunal is whether the theft occurred on July 2<sup>nd</sup>. That question depends critically on whether DM committed the theft or not. If he did, then the theft could have occurred at any time. DM might have deliberately left his drawer unlocked in order to divert suspicion from himself. The Tribunal found DM to be a credible witness whose testimony was not convincingly challenged on cross-examination. He gave his evidence in a straightforward manner and he appeared to be genuinely distraught when he discovered that he had left his drawer unlocked and that items were missing from it. The logic of Staff

sergeant Russell is also persuasive, although in itself not conclusive. It makes little sense for a TTC collector to steal from his own drawer given the TTC policy of holding the collector responsible for losses from the drawer. However, that logic is not irrefutable. Staff Sergeant Russell implied in his evidence that TTC collectors do try to remove money from their own drawers. The Staff Sergeant testified that the TTC was influenced by the fact the DM's accounts were in order. In his experience, TTC collectors who are taking money from their own drawer often try to disguise the fact through bookkeeping errors. DM testified that he completed his accounts prior to the end of his first shift and only a modest shortfall was recorded; the Tribunal accepts this evidence. The Tribunal accepts DM's testimony that he accidentally left his drawer unlocked. Therefore, the theft occurred sometime between the end of DM's first shift at approximately 1:30 am and the beginning of his second shift at approximately 5:30 pm.

The next question is who had access to DM's unlocked drawer in that sixteen hour period. The evidence of Staff Sergeant Russell was that his investigation showed that only four men accessed the right hand vault, where DM's drawer was located, in the crucial sixteen hour period. While the Staff Sergeant was a credible witness, he did not personally review all the DVDs of the collectors' activities on July 2<sup>nd</sup>. As noted above, the Tribunal accepts DM's testimony and accordingly, concludes that no one had access to the right hand vault and his drawer during his shift other than himself.

DVDs of Mr. Greico's shift were introduced into evidence. Based on the portions of the DVDs that were shown during the hearing, it is clear that no one but Mr. Greico accessed the right hand vault. It is important to note that Mr. Greico had the opportunity to present any portion of the DVDs of his shift and produced no evidence that anyone other than he accessed the vaults.

The next shift was GN's. GN was a credible witness whose evidence was not convincingly challenged on cross-examination. The Tribunal accepts his evidence that no one but he accessed the right hand vault during his shift. Again, it is relevant to note that Mr. Greico had access to the DVDs of GN's shift and had the opportunity to produce evidence that someone else accessed that vault. At the end of his shift, DM returns. He accesses the vault as does his relief man later in the evening. The Tribunal concludes that four people accessed the right hand vault during the relevant sixteen hour period: DM, Mr. Greico, GN, and DM's relief man.

As noted above, the Tribunal found both DM and GN to be credible witnesses. The Tribunal has found that DM did not commit the theft. The Tribunal accepts GN's testimony that he did not touch DM's drawer after he determined that it had DM's work materials in it. It is relevant to note that GN's first reaction on finding the unlocked drawer was to call for a witness. This is not the instinctive reaction of a man who is planning theft. It is highly improbable that DM's relief man stole the money and fare media from DM's drawer for two reasons. First, DM had already reported the theft and second, DM was with the relief collector in the booth during the time he was on duty. There was no evidence of any collusion between DM and the relief collector.

That leaves Mr. Greico. In addition to the process of elimination, there is positive evidence connecting Mr. Greico to the theft. The DVD shows Mr. Greico accessing the right hand vault on several occasions during his shift. He had no legitimate reason to do that as his drawer was in the left hand vault. Although he kept his briefcase on the right side, his testimony is that he could not open it when it was in the drawer and that he would have no reason to access it at the beginning of his shift.

The DVD also shows Mr. Greico glancing around in what may fairly be described as a furtive manner at various times before he accesses the right hand vault and before he removes unseen objects and places them out of sight on the counter. He is also seen placing unseen objects into his lunch bag and into a briefcase. He only engages in these activities when he is alone in the booth and most of the suspicious behaviour occurs before the station opens. It is also relevant that on the DVD, Mr. Greico does not habitually look around while he is working and that the only time he is seen looking directly at the camera is when he is either accessing the right hand vault or moving unidentified items as detailed above. Mr. Greico left with both the lunch bag and the briefcase when his shift was over.

The Registrar is not alleging that Mr. Greico also took money or media fare from his own drawer. However, it is significant to note that when the investigation audited Mr. Greico's accounts and drawer, the records were in disarray for some 15 days prior to the theft and there was a shortfall of over \$1,700 in his balance. The drawers and accounts of both DM and GN, by contrast, were in order when they were audited.

The Tribunal does not find Mr. Greico's explanations of his activities convincing. He testified that he was bending over the right hand vault in order to clean something there because he is a very clean man. However, apart from a brief period where Mr. Greico appears to be wiping the counter top, he does not clean any other part of the booth. It is not convincing that he would return time and again to clean in the same spot and would only do it when he was alone. Mr. Greico's demonstration of placing the dowels and token boxes into his briefcase is a red herring. It is not possible to be certain of the composition of the missing money and fare media because DM completed most of a second shift before a TTC official arrived and sealed the drawer. Therefore, it is quite possible that the goods stolen were of a smaller volume than the volume used by Mr. Greico in his demonstration. Moreover, Mr. Greico's demonstration does not account for the fact that he is shown taking food out of his lunch box, placing something else in and re-placing the food on top of it.

The suggestion that Mr. Greico never noticed that DM's drawer was not locked is also unconvincing. Mr. Romano attempted to demonstrate that DM's lock would not have been visible on the DVD but the Tribunal prefers DM's evidence that he habitually left it on the ledge that Mr. Greico is seen approaching at the outset of his shift. At the beginning of his shift, Mr. Greico picks up a shiny object, puts it down and almost immediately investigates the right hand vault. By his own testimony, he would have no need to access his briefcase at the beginning of the shift. It is more likely than not that DM identified the lock and checked to see if DM's drawer was unlocked. Then, using the cover of the cleaning wipe,

Mr. Greico repeatedly accessed the right hand vault and moved items from it, first to the counter and then to either his lunch box or his briefcase.

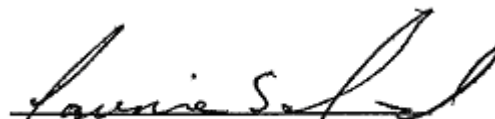
The Tribunal is satisfied that there is sufficient evidence, in the DVD tapes and the testimony of DM, GN, Staff Sergeant Russell and Mr. Greico, to establish on a balance of probabilities that Mr. Greico stole the money and fare media from DM's drawer.

The fact that Mr. Greico stole money and monies' worth from both his fellow employee and from his employer affords ample grounds for the belief that, if registered, he would not carry on his business in accordance with the law or with integrity and honesty. By refusing to accept responsibility for his theft, he has left three co-workers – DM, GN and the relief collector – under a cloud of suspicion. This too is not the act of an honest man or a man of integrity. The theft and Mr. Greico's on-going refusal to take responsibility for it are grounds to deny him registration under subparagraph 6(1)(a)(ii).

### **ORDER**

Acting under the authority of section 9 of the Act, the Tribunal directs the Registrar carry out his Proposal of October 1, 2012.

LICENCE APPEAL TRIBUNAL



Laurie Sanford, Vice-Chair

*Released: August 2, 2013*