

**DISCIPLINE COMMITTEE OF THE
ONTARIO COLLEGE OF TRADES**

BETWEEN:

ONTARIO COLLEGE OF TRADES

-and-

JOHN KERR

NOTICE OF HEARING

THE COMPLAINTS COMMITTEE OF THE ONTARIO COLLEGE OF TRADES, pursuant to section 44, subsection (5) of the *Ontario College of Trades and Apprenticeship Act, 2009* (the “Act”), S.O, 2009, chapter 22, has directed that the matter hereinafter described regarding the conduct or actions of John Kerr (Membership No. 13179230), a member of the Ontario College of Trades, be referred to the Discipline Committee of the College. The Discipline Committee, pursuant to section 46, subsection (1) of the *Act*, shall hear and determine matters referred to it by the Complaints Committee under section 44 of the *Act*.

IT IS ALLEGED that John Kerr has engaged in professional misconduct as defined in subsection 46(2) of the *Act* and/or Ontario Regulation 97/13 made under the *Act* in that he:

- a) failed to take reasonable steps to safeguard the life, health or property of a person who may be affected by his work, when he knew or ought to have known that there was a risk to life, health or property (Ontario Regulation 97/13, subsection 1(1));
- b) failed to act to correct or report a situation that he knew or ought to have known may endanger the safety or welfare of the public (Ontario Regulation 97/13, subsection 1(2));

- c) signed or issued, in the member's capacity as a member of the College, a document that the member knew or ought to have known contained a false, improper or misleading statement (Ontario Regulation 97/13, subsection 1(8));
- d) was found guilty of contravening a law that is relevant to his suitability to hold a certificate of qualification (Ontario Regulation 97/13, subsection 1(9));
- e) failed to maintain the standards of a trade (Ontario Regulation 97/13, subsection 1(10)); and
- f) acted or failed to act, in respect to the practice of a trade, in a manner that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional (Ontario Regulation 97/13, subsection 1(11)).

PARTICULARS OF THE ALLEGATIONS ARE AS FOLLOWS:

The Member

1. John Kerr, Membership No. 13179230 (the "Member"), is a member of the Ontario College of Trades (the "College") in the Journeypersons class.
2. During the relevant period, the Member held Certificates of Qualification in the trades of Automotive Service Technician (310S) and Truck and Coach Technician (310T).
3. During the relevant period, the Member was the owner, controlling mind, and/or technician at Sunrise Auto Repair Limited ("Sunrise"), located at 2245 Highway 12, Brechin, Ontario.
4. At all relevant times, Sunrise was licensed by the Ontario Ministry of Transportation ("MTO") as a Motor Vehicle Inspection Station ("MVIS") and the Member was the individual licensee with oversight of the MVIS. Further, by virtue of being a Certificate of Qualification holder, the Member was registered with the MTO as a Motor Vehicle Inspection Mechanic at Sunrise and had authority to sign and issue Annual Inspection Certificates and Safety Standards Certificates for vehicles and

to certify that vehicles he inspects meet minimum safety standards, pursuant to the *Highway Traffic Act*, RSO 1990, ch. 8 (the “HTA”) and its Regulations.

5. The Member has never been registered as a motor vehicle dealer or salesperson with the Ontario Motor Vehicle Industry Council (“OMVIC”) under the *Motor Vehicle Dealers Act, 2002*.

January 2016 Conviction in Provincial Offences Court

6. On or about September 8, 2015, the Member signed and issued Annual Inspection Certificate and annual sticker [NUMBER] for a trailer (VIN [NUMBER]), certifying that he had inspected the trailer and that it met the prescribed safety standards.
7. The Member did not perform an adequate safety inspection and the trailer did not meet the prescribed safety standards at the time of the inspection.
8. On or about November 18, 2015, MTO officers inspected the trailer and found many serious defects. The trailer’s licence plates were removed and it was deemed unfit for use.
9. On or about December 2, 2015, an MTO officer performed a follow-up audit inspection of Sunrise and the Member. The officer recorded violations of the rules governing the operation of an MVIS and removed all blank Annual Inspection Certificates and stickers previously provided by the MTO to Sunrise.
10. On or about January 27, 2016, the Member pled guilty and was convicted for improperly issuing Annual Inspection Certificate [NUMBER] and affixing annual sticker [NUMBER] for the trailer when the trailer did not meet the prescribed safety standards.

February 2017 Conviction in Provincial Offences Court

11. On or about August 13, 2016, the Member signed and issued Safety Standards Certificate #24145691 for a vehicle (VIN [NUMBER]) (the “2006 Ford Ranger”), certifying that he had inspected the vehicle and that it met the prescribed safety standards.

12. The Member did not perform an adequate safety inspection and the vehicle did not meet the prescribed safety standards at the time of the inspection.
13. The Member-issued Safety Standards Certificate was then used to transfer ownership of the 2006 Ford Ranger to a member of the public. The Member was directly or indirectly involved in the sale and subsequent transfer of ownership, even though he was not the registered owner of the vehicle.
14. In or about August 2016, as a result of a complaint from the purchaser, MTO officers inspected the 2006 Ford Ranger and found many serious defects. The vehicle's licence plates were removed and it was deemed unfit for use.
15. An MTO officer subsequently performed a follow-up audit inspection of Sunrise and the Member. The officer again recorded violations of the rules governing the operation of an MVIS and removed blank books of safety certificates previously provided by the MTO to Sunrise.
16. On or about February 22, 2017, the Member plead guilty and was convicted for improperly issuing Safety Standards Certificate [NUMBER] for the vehicle when the vehicle did not meet the prescribed safety standards.

May 2018 Convictions under the Motor Vehicle Dealers Act

17. Following the public complaint to the MTO about the 2006 Ford Ranger, the Ontario Motor Vehicle Industry Council ("OMVIC") investigated the Member for selling vehicles while not being registered with OMVIC.
18. On or about May 14, 2018, the Member pled guilty and was convicted of eleven offences under section 4(1)(a) of the *Motor Vehicle Dealers Act, 2002* (arising from two separate sets of charges laid by OMVIC) for acting as a motor vehicle dealer without being registered with respect to the trade(s) of the following vehicles:
 - a. VIN: [NUMBER] (two convictions for two offences on different dates);
 - b. VIN: [NUMBER] (two convictions for two offences on different dates);

- c. VIN: [NUMBER];
- d. VIN: [NUMBER];
- e. VIN: [NUMBER];
- f. VIN: [NUMBER];
- g. VIN: [NUMBER];
- h. VIN: [NUMBER]; and
- i. VIN: [NUMBER].

The Member's convictions on May 14, 2018 were for offences spanning from January 2016 to December 2017.

- 19. As a result of these convictions, the Member was fined \$7,000 and given a probation order for a period of one year. The Member's probation order prohibited him from committing the same offence, a related or similar offence, or any other offence punishable by imprisonment.
- 20. The Member certified the safety and issued Safety Standards Certificates needed for the sale of one or more of the vehicles listed in paragraph 18.
- 21. The Member's convictions under the *Motor Vehicle Dealers Act, 2002* are relevant to his suitability to hold a certificate of qualification.

October 2018 Charges in Provincial Offences Court

- 22. On or about October 31, 2018, the Member was charged under the *Provincial Offences Act* for breaching his May 2018 probation order and with five offences under the *Motor Vehicle Dealers Act, 2002* for acting as a motor vehicle dealer without being registered with respect to the trade of the following vehicles:
 - a. VIN:[NUMBER];
 - b. VIN:[NUMBER];
 - c. VIN:[NUMBER];
 - d. VIN:[NUMBER]; and
 - e. VIN:[NUMBER].

23. The Member certified the safety and issued Safety Standards Certificates needed for the sale of all the vehicles specified in the October 2018 OMVIC charges.

A PANEL OF THE DISCIPLINE COMMITTEE WILL HOLD A HEARING pursuant to sections 46 and 48 of the *Act* for the purpose of deciding whether the Member has engaged in professional misconduct. A copy of the *Rules of Procedure of the Discipline Committee & Fitness to Practise Committee* is enclosed.

AN APPEARANCE WILL TAKE PLACE BEFORE THE PANEL by teleconference on **THURSDAY, APRIL 11, 2019 AT 12:00 P.M. (EASTERN)** to set a date for the hearing of this matter on its merits (the "Hearing"). The teleconference call-in details will be provided to all parties at least two (2) weeks prior to the teleconference. The Hearing, once scheduled, will be held at Victory Verbatim, 222 Bay Street, Suite 900, Toronto, Ontario or such other venue as the College may advise, on a date to be determined after consultation between College Counsel and the Member or his legal counsel/representative, and fixed by the Hearings Coordinator.

THE MEMBER IS ENTITLED AND ENCOURAGED TO PARTICIPATE IN THE ABOVE-NOTED APPEARANCE BY TELECONFERENCE AND AT THE HEARING, AND IS ENTITLED TO BE REPRESENTED BY LEGAL COUNSEL OR A REPRESENTATIVE THROUGHOUT THIS PROCEEDING.

The Member or his legal counsel/representative may contact College Counsel to discuss the scheduling of the Hearing or a pre-hearing conference to determine whether a date for the Hearing can be agreed upon. College Counsel's contact information is provided below.

IF A DATE FOR THE HEARING IS NOT AGREED UPON AND THE MEMBER DOES NOT ATTEND THE APPEARANCE BY TELECONFERENCE ON Thursday, April 11, 2019 at 12:00 p.m. (EASTERN) TO SET A DATE FOR THE HEARING, THEN THE PANEL MAY PROCEED IN HIS ABSENCE TO SET A DATE FOR THE HEARING. NOTICE OF THE HEARING DATE WILL BE PROVIDED TO THE MEMBER IN WRITING AT HIS LAST KNOWN ADDRESS AS SHOWN IN THE RECORDS OF THE COLLEGE.

IF THE MEMBER DOES NOT ATTEND THE HEARING ON THE DATE SCHEDULED, THE PANEL MAY PROCEED IN HIS ABSENCE AND HE WILL NOT BE ENTITLED TO ANY FURTHER NOTICE OF THE PROCEEDING.

IF THE PANEL FINDS THE MEMBER GUILTY OF PROFESSIONAL MISCONDUCT, the panel shall make one or more of the following orders, pursuant to subsection 46(4) of the Act:

1. Directing the Registrar to revoke the Member's certificate of qualification or statement of membership.
2. Directing the Registrar to suspend the Member's certificate of qualification or statement of membership for a specified period, not exceeding 24 months.
3. Directing the Registrar to impose specified terms, conditions or limitations on the Member's certificate of qualification or statement of membership.
4. Directing that the Registrar not carry out a direction made under paragraph 1, 2 or 3 for a specified period and not carry out the direction at all if specified terms are met within that period.

IN ADDITION, IF THE PANEL FINDS THE MEMBER GUILTY OF PROFESSIONAL MISCONDUCT, the panel may make an order doing one or more of the following, pursuant to subsection 46(5) of the Act:

1. Requiring that the Member be reprimanded, admonished or counselled by the panel or its delegate and, if considered warranted, directing that the fact of the reprimand, admonishment or counselling be recorded on the register for a specified or unlimited period.
2. Imposing a fine in an amount that the panel considers appropriate, to a maximum of \$2,000, to be paid by the Member to the Minister of Finance for payment into the Consolidated Revenue Fund.
3. Directing that the finding and the order of the panel be published, in detail or in summary, with or without the name of the Member, in the official publication of the College and in any other manner or medium that the panel considers appropriate in the particular case.
4. Fixing costs to be paid by the Member.

A member whose conduct has been directed or referred to a proceeding before the Discipline Committee or panels thereof may examine before the hearing any written or documentary evidence that will be produced or any report, the contents of which will be given as evidence at the hearing. The College must provide the member with complete disclosure at least fifteen (15) days before the hearing on the merits of all evidence in the College's possession or control relevant to the allegations that are not privileged. To obtain disclosure in this matter, the Member or his legal counsel/representative should contact Jordan Glick or Jordan Stone, College Counsel(s) in this matter, using the contact information noted below.

Date: March 5, 2019

"George Gritziotis"

George Gritziotis
Registrar & Chief Executive Officer
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To: John Kerr
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[ADDRESS]

From: Jordan Glick, College Counsel
Jordan Stone, College Counsel
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