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## **Revocation for lack of Integrity and Honesty**

### **Should Current Builders be Burdened by the Records of Prior Companies?**

ONHWP links related companies through common officer(s) or director(s).

For example if a registrant has become insolvent or allowed its registration to expire, and ONHWP was obliged to pay out money for warranty items which such builder could not or would not repair, ONHWP has three choices available to recoup the payment of the claim:

- 1) If security is being held it can use the security to repay itself;
- 2) If there are guarantees or indemnities agreements it can sue on these documents or agreements;
- 3) If an officer/director of the former registrant subsequently applies for registration under another company, ONHWP can make it a condition of registration that the debts of the prior company be paid by the new registrant.

In my opinion, and that of an increasing number of members of LAT, the first two methods may be used to recover ONHWP's debt, but the third method, preventing registration of a subsequent company until the debt of the prior company is paid, is questionable.

The Licence Appeal Tribunal (LAT) has always been uncomfortable and reluctant being characterized as a collection agent for ONHWP by enforcing the third of those options.

LAT has recently confronted this problem with its decision in a recent case, where for the first time, LAT rejected the notion that, because an officer or director of a prior company which owed money to ONHWP, may be the same as those of a new applicant, that it meant these officers lacked either honesty or integrity.

In other words, just because the prior company was unable or unwilling to pay a debt to ONHWP, that alone does not mean its officers or directors displayed a lack of integrity or were dishonest at the time, such that if a new company is incorporated thereafter containing some of the same officers and directors, it should be refused registration unless the prior debt is paid.

The Tribunal stated as follows:

*"This Tribunal is unable to find any evidence which supports the Registrar's opinion that the past conduct of P.R. as an officer or director of the Applicant (the current company) or of RLD (the prior company) affords reasonable grounds for belief that the Applicant's undertakings will not be carried on in accordance with the law and honesty...the obligations of another registrant cannot prejudice in any way the Applicant's reputation or its registration ...*

*...this Tribunal cannot share the Respondent's (ONHWP) opinion that the past conduct of P.R. affords reasonable grounds for belief that the Applicant's undertaking will not be carried on in accordance with law and with integrity and honesty." (emphasis added)*

In the above case, the Tribunal found the current company had not supplied adequate financial information to be registered, however, the important principle is that ONHWP should no longer be able to tie two companies together such that one must pay the debts of the other just because there is a common officer(s) or director(s). Neither can ONHWP rely on the allegation that a builder is unable “to carry on business with honesty and integrity and compliance with the law” to condemn a current company for the inability or unwillingness of a prior company to pay an ONHWP debt.”

A builder who does not rectify a breach of warranty may be insolvent or may validly disagree with the breach of warranty decision. This does not mean he is dishonest or lacks integrity. It means he cannot fix the breach (i.e. no money) or will not (i.e. disagrees).

As it currently stands ONHWP uses LAT and the threat of deregistration to oblige a current builder to pay a prior company’s debt or face revocation. It can take the security when it pays a claim or propose to revoke the builder for dishonesty or lack of integrity if the debt of a prior company is not paid which means ONHWP need never sue a builder.

This recent case is the first instance where such a proceeding by ONHWP was rejected.

The remedy still available to ONHWP is that it can sue and prove its case, but the builder’s registration should never be in jeopardy as it is a financial or technical disagreement not an issue of dishonesty.

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