

IN THE MATTER OF AN APPEAL BY
JOSEPH LEGAULT
TO SECTION 127(c) OF THE
***FAIR TRADING ACT*, BEING CHAPTER F-2**
OF THE REVISED STATUTES OF ALBERTA, 2000

AND

IN THE MATTER OF THE DECISION BY THE ALBERTA MOTOR
VEHICLE INDUSTRY COUNCIL TO REFUSE THE APPLICATION FOR AN AUTOMOTIVE
SALESPERSON REGISTRATION UNDER THE *FAIR TRADING ACT*
and AUTOMOTIVE BUSINESS REGULATION ON JULY 22, 2014

REASONS FOR DECISION

Panel Chair: Mr. P. Lokstadt
Members: Mr. B. Kirkland
Mr. J. Shoulders

Appeal Heard: September 23, 2014
Capilano Centre, 9945 – 50 Street, Edmonton, Alberta
Main Floor Boardroom

1. Introduction

This is an appeal under S. 22 of the Automotive Business Regulation from a decision of the Director refusing the application for a salesperson registration of Mr. Joseph Legault under section 127(c) of the Fair Trading Act.

2. Jurisdiction

The Fair Trading Act and the Automotive Business Regulation regulate, among other things, automotive business licences and salesperson registrations in Alberta.

Under s. 104 of the *Fair Trading Act*, no person may engage in the automotive sales business unless that person holds a licence that authorizes the person to engage in that business.

Pursuant to s. 16 of the *Automotive Business Regulation*, a salesperson of an automotive sales business operator must be registered for automotive sales before acting on behalf of the business operator.

The Director's jurisdiction with respect to automotive business licences and salesperson registrations is found in s. 127 of the *Fair Trading Act*:

127 The Director may refuse to issue or renew a licence, may cancel or suspend a licence and may impose terms and conditions on a licence for the following reasons:

- (a) the applicant or licensee does not or no longer meets the requirements of this Act and the regulations with respect to the class of licence applied for or held;
- (b) the applicant or licensee or any of its officers or employees
 - (i) fails to comply with an order of the Director under section 129 or 157, unless, in the case of an order under section 129 or 157, the order has been stayed,
 - (ii) fails to comply with a direction of the Director under section 151(5),
 - (iii) furnishes false information or misrepresents any fact or circumstance to an inspector or to the Director,
 - (iv) fails to comply with an undertaking under this Act,
 - (v) has, in the Director's opinion, contravened this Act or the regulations or a predecessor of this Act,
 - (vi) fails to comply with any other legislation that may be applicable,
 - (vii) fails to pay a fine imposed under this Act or a predecessor of this Act or under a conviction or fails to comply with an order made in relation to a conviction, or
 - (viii) is convicted of an offence referred to in section 125 or is serving a sentence imposed under a conviction;
- (c) in the opinion of the Director, it is in the public interest to do so.

This section applies to both automotive business licences and salesperson registrations. S. 18 of the *Automotive Business Regulation* states that s. 125, 127 and 128 of the *Fair Trading Act* apply, with necessary changes, to the registration of salespersons.

Section 22 of the *Automotive Business Regulation* states that:

22(1) A person

- (a) whose application for registration or renewal of registration has been refused,
- (b) whose registration is made subject to terms and conditions, or
- (c) whose registration has been cancelled or suspended under section 127 of the Act

may appeal in accordance with the process established by the Director.

(2) The Director may establish an appeal process for the purposes of subsection (1), including forming or designating an appeal body.

In accordance with s. 22(2) of the *Automotive Business Regulation*, AMVIC created the AMVIC Salesperson Appeal Committee Policy (the "Appeal Policy"). The Appeal Policy allows an Appellant to appeal a decision of AMVIC by delivering a written Notice of Appeal to the Executive Director within 30 days after AMVIC issues notice of its decision to the Appellant.

This is an appeal pursuant to s. 22 of the *Automotive Business Regulation*. Pursuant to 3 ii o) of the Appeal Policy:

The Panel shall determine if the decision by AMVIC that is the subject of the Appeal was consistent with the provisions of the Fair Trading Act, the Designation of Trades and Business Regulation, the Automotive Business Regulation, and the bylaws and policies of AMVIC.

3. Evidence before the Appeal Panel

- a. At the hearing, Mr. Legault presented on his own behalf and AMVIC was represented by the Manager of Licensing, Ms. Stephanie P [REDACTED].
- b. Ms. P [REDACTED] reviewed the application for a salesperson registration received May 29, 2014, from the Appellant, Mr. Joseph Legault.
- c. Ms. P [REDACTED] also reviewed the process that AMVIC follows with respect to reviewing an application prior to AMVIC granting a Provincial Salesperson Registration. Ms. P [REDACTED] confirmed that all applicants must agree to undergo a criminal record check. All applicants provide consent to AMVIC to obtain their criminal record history. Mr. Legault's criminal record was obtained. Mr. Legault also provided a list of recent charges with his application form.
- d. Mr. Legault provided evidence on his own behalf. Mr. Legault provided a letter dated September 22, 2014 from [REDACTED].
The letter read:
"Please accept this letter as written confirmation that we are fully aware of Mr. Joseph Legault's background history. We have offered Mr. Legault a full time position with our company and we are confident that he will respect and abide by all of AMVIC's and our conditions."
- a. Mr. Legault acknowledged that he had made bad decisions in the past and accepted responsibility for those decisions. He further acknowledged that his last bad decision had "cost him everything, including his family".
- e. Ms. P [REDACTED] provided evidence on behalf of AMVIC. Ms. P [REDACTED] called Ms. Pamela S [REDACTED], AMVIC Licensing Officer, as a witness to give evidence. Ms. S [REDACTED] had attended the Administrative Review with the Director of Fair Trading (as Delegated) on July 22, 2014.
- f. It was Ms. S [REDACTED]'s testimony that Mr. Legault acknowledged during the Administrative Review that he had an extensive criminal history for offences such as [REDACTED]
[REDACTED]
- g. Ms. Smith's further evidence was that Mr. Legault had provided a list of recent charges (2013) with his application form. [REDACTED]
[REDACTED]
- h. During questioning, Mr. Legault provided an explanation of how he came into possession of marijuana plants, harvested those plants and sold the drugs [REDACTED].

- i. Mr. Legault provided verbal assurance to the Panel he would not do anything to jeopardize his job as a salesperson. He confirmed he was working hard to obtain his salesperson registration. He confirmed that he liked the job, like the people and he would whatever it took to obtain his salesperson registration.

4. Appeal Panel Decision

It is the decision of this Appeal Panel to uphold the decision of the Director to REFUSE the application for registration as an automotive salesperson of Joseph LEGAULT. The panel has based its decision on the following reasons:

- 1. Mr. Legault freely admitted to his past criminal history along with his more recent charges and subsequent conviction. It is a concern for this Panel that Mr. Legault would refrain from criminal activity for an extended period of time but when presented with a situation where a choice was required to remain lawful, he appeared to easily return to his previous behaviour.
- 2. Mr. Legault admitted to using [REDACTED] to sell drugs. The Panel believes it is not in the interest of consumers or the industry to place Mr. Legault in a position where similar networking tools are used to earn a living.

This panel is satisfied that the hearing given to Mr. Legault has been exhaustive and fair. We have reviewed all of the evidence before us. We are satisfied that the Panel's unanimous decision to uphold the original decision of the Director to refuse the application for a salesperson registration of Mr. Legault is in the best interest of the public at large and of the industry.

"original signed by"

Peter Lokstadt
Chair – AMVIC Salesperson Appeal Committee

September 30, 2014
Date