

IN THE MATTER OF AN APPEAL BY

JEFFREY CAINES

TO SECTION 127(c) OF THE *FAIR TRADING ACT*,
BEING CHAPTER F-2 OF THE REVISED STATUTES OF ALBERTA, 2000
AND THE *AUTOMOTIVE BUSINESS REGULATION*, Reg.152/2013.

AND

IN THE MATTER OF THE DECISION BY
THE ALBERTA MOTOR VEHICLE INDUSTRY COUNCIL ("AMVIC")
TO NOT GRANT A PROVINCIAL AUTOMOTIVE SALESPERSON REGISTRATION
UNDER THE *FAIR TRADING ACT* ON DECEMBER 7th, 2015.

REASONS FOR DECISION

Panel Chair: Peter Lokstadt
Members: Gerry Lorente
Chad Zender

Appeal Heard: March 14th, 2016
CAPILANO CENTRE, 9945 – 50th 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 not to grant Jeffrey Caines a provincial automotive salesperson registration under s. 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*:

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.

Section 127 of the *Fair Trading Act* applies to both automotive business licences and salesperson registrations.

S. 18 of the *Automotive Business Regulation* states that sections 125, 127 and 128 of the *Fair Trading Act* apply, with necessary changes, to the registration of salespersons.

Accordingly, section 22(1) of the *Automotive Business Regulation* states that:

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.

Section 22(2) states that 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 section 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 the Trades and Business Regulation*, the *Automotive Business Regulation*, and the bylaws and policies of AMVIC.

3. Evidence before the Appeal Panel

At the hearing Mr. Caines represented himself.

AMVIC was represented by Stephanie P [REDACTED] and [REDACTED].

Ms. P [REDACTED] reviewed the authority of the Director and the relevant legislation. In her opening statement, she outlined the circumstances leading up to the appeal including Mr. Caines' past criminal history and the misrepresentation made on his AMVIC application that he had not been convicted of an offence under any law.

Mr. Caines made an opening statement to the Appeal Panel providing background on his criminal history and context to the time period between his release from prison and the appeal hearing as follows:

- He had recently served nine years in prison for conspiring to traffic cocaine.
- Following his release, one of the parole conditions placed on him was that he maintain employment. He immediately found employment at an excavation company but received an opportunity to sell vehicles with Crosstown Motors.
- As part of his training, Mr. Caines was required to take an AMVIC course and acknowledged that while filling out his AMVIC application, he selected "no" to the criminal history inquiry on the advice of someone at the dealership that he could come back to that section later.
- He was never trying to hide that he had a criminal history and while he acknowledged it was wrong to select "no"; he was naive in completing the AMVIC application form. He advised that if he could go back and disclose his history accurately, he would have no problem doing so as everyone at the dealership knew of his past.

- He worked at Crosstown Motors for approximately one month without his AMVIC licence during which time he sold seven vehicles.
- People at Crosstown have given him an opportunity to turn his life around and change his ways. He wants to prove that he can be trustworthy and honest and put his criminal history behind him.

Mr. Caines called three witnesses to speak to his character in the six months since his release.

Husny Ismael

Husny Ismael is a sales manager at Crosstown Auto Centre and has known Mr. Caines for approximately six months. They were introduced through a mutual friend who asked that he give Mr. Caines a chance. Mr. Ismael [REDACTED]

Mr. Ismael's evidence was that once Mr. Caines was notified of an administrative review, they stopped allowing him to sell any vehicles on behalf of the business. It was his further evidence that he was unaware of the "new" rule that an individual was not allowed to work at a dealership until they had received their AMVIC licence.

Mr. Ismael's impression was that Mr. Caines wants to change and move forward in his life. He reported seeing a change in Mr. Caines who wants to stay in the car business.

When asked about his decision-making process in hiring Mr. Caines, Mr. Ismael indicated that Mr. Caines was good with people and that they discussed the need for him to be AMVIC licensed.

Abe Sleiman

Abe Sleiman owns the excavating company where Mr. Caines was first employed following his release. Mr. Sleiman has never spent any time in jail. He reported that Mr. Caines had been working for him for approximately five months and that he was completely aware of Mr. Caines' criminal record from the beginning of their relationship.

Mr. Sleiman's evidence was that Mr. Caines was a reliable employee. Further, that he understood why Mr. Caines would choose to leave his company to go into auto sales. When asked why he chose to rehire Mr. Caines following his inability to work at Crosstown, Mr. Sleiman's evidence was that he was a good employee and he was always looking for good workers.

Mazin Fakhreddine

Mazin Fakhreddine has been in auto sales since 2007. He has worked at Crosstown (where he met Mr. Caines) for the last five years and is top ten in Canada for salesman. He found Mr. Caines to be a family man who was eager and asked good questions.

Mr. Fakhreddine's evidence was that he acted as a mentor to Mr. Caines who shadowed him for approximately one month at Crosstown. He reported that he meets all kinds of people in the car business but that Mr. Caines asked questions about networking and

other topics that showed he was someone who wanted to be successful. Mr. Fakhreddine stated that, in his opinion: Mr. Caines is a low risk to the public; he is ready for a second chance; and, the Appeal Panel will never hear a consumer complaint about Mr. Caines.

Mr. Caines also gave the following evidence through his presentation and responses to questions put to him by AMVIC and the Appeal Panel:

- The individual who assisted in filling out his AMVIC application no longer works for the dealership.
- The dealership was unaware of the rule change that a conditional window did not exist for individuals considering entering into sales.
- He was under the mistaken impression that completion of the AMVIC course was not a big deal as no one who he talked to about it suggested it was serious or that it was a governing body that policed salespeople.
- It was a "game changer" for him to be surrounded by people at a dealership who he knows will help support him to better himself.
- He has a network of friends that are law abiding citizens and do not have a criminal history. He does not associate with the people involved in the drug business that got him arrested and never socialized with these people.
- He is on parole and is very careful about who he associates with.
- He continues to see his parole officer who wants to see him do well and is a positive influence.
- Being in the car business changed his outlook and made him feel good. He is passionate about vehicles and sales make him feel good because he likes to make people happy.
- Prior to his imprisonment, he owned and operated a Booster Juice and five tanning salons in Fort McMurray with his father (who passed away while he was in prison). After his father's death, [REDACTED]. He was also a partner in a bar and a gym.
- Prison was very difficult. In the time he was in prison Mr. Caines lost his fiancé, missed watching his child grow up, had his father pass away and, lost all of his businesses. He re-entered society broke and homeless turning to friends for help.
- He lived a rowdy lifestyle as a teenager and as an adult; his criminal record only included minor offences including minor possession of cocaine and marijuana.
- If he is convicted of an offence while on parole, he will be sent back to jail.

- Manual labour and trades jobs do not appeal to him. Further, he has a back injury which makes physical labour difficult. He wants a job where he wears a suit and tie and works with the public.

Evidence was presented by AMVIC setting out Mr. Caines' past charges and convictions.

In AMVIC's closing statements, the relevant sections of the *Fair Trading Act* were reiterated and a recommendation was made that the Panel uphold the decision to refuse Mr. Caines' registration.

In Mr. Caines' closing statement he summarized that there were a lot of people involved in the auto industry with criminal pasts and that he took bad advice, but was prepared to take responsibility for his actions. He stated that, moving forward, he was very aware of why AMVIC existed, what its mandate was and that his knowledge would make him able to help others by teaching them about AMVIC so they take it seriously.

4. **Appeal Panel Decision**

It is the decision of this Appeal Panel to quash the decision of the Director to not grant Mr. Caines a provincial automotive salesperson registration and, considering all of the evidence presented including the witnesses who were heard, grant Mr. Caines a conditional salesperson registration.

The conditions of Mr. Caines' registration will be as follows:

1. Mr. Caines shall only work at Crosstown Motors;
2. If his employment at Crosstown Motors ends and he is able to find alternative employment in the industry, he shall advise AMVIC of this change immediately and provide evidence to AMVIC that his new potential employer has been fully informed of his past criminal history; and,
3. Mr. Caines must renew his registration within the designated time as required and will undergo a background check and meet with an AMVIC representative to provide a status update. If any new details arise associated with his criminal history that can or would impact consumer protection, Mr. Caines will not receive his licence. He may again request an appeal at that time should he choose.

The Panel has based its decision on the following reasons:

- Based on the evidence before it, the Panel did not consider Mr. Caines to be a high risk to re-offend.
- Mr. Caines would make a good salesman because of his personality and entrepreneurial background.
- Mr. Caines is not a risk to the consumer and should be given an opportunity in the industry.

- Based on the evidence, it is in the public interest to impose conditions on Mr. Caines' registration.

This Panel is satisfied that the hearing given to Mr. Caines has been exhaustive and fair. We have reviewed all of the evidence before us. We are satisfied that the Panel's decision to quash the original decision of the Director to grant Mr. Caines a conditional salesperson registration is appropriate in the circumstances.

"original signed by"

Peter Lokstadt
Chair – AMVIC Salesperson Appeal Committee

MARCH 23-2016

Date