

IN THE MATTER OF AN APPEAL BY

JUSTIN QUACH

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 REFUSE THE REGISTRATION
OF THE APPELLANT AS AN AUTOMOTIVE SALESPERSON UNDER THE
FAIR TRADING ACT and *AUTOMOTIVE BUSINESS REGULATION* ON DECEMBER 9, 2015

REASONS FOR DECISION

Panel Chair: Peter Lokstadt
Members: Don Humphreys

Appeal Heard: February 25, 2016
CAPILANO CENTRE, Main floor boardroom
9945 – 50 Street, Edmonton AB T6A 0L4

1. Introduction

This is an appeal under section 22 of the *Automotive Business Regulation* from a decision of the Director to refuse the application for a provincial automotive salesperson registration of Mr. Justin Quach 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 section 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 section 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 section 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.

Section 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 section 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 President and Chief Executive Officer not later than 30 days after AMVIC issues notice of its decision to the Appellant.

This is an appeal pursuant to section 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

- a. At the hearing, Mr. Quach failed to attend. AMVIC was represented by Stephanie P, AMVIC Manager of Licensing.
- b. The panel was advised that AMVIC had received notice that Mr. Quach would not be attending the hearing. The panel attempted to contact Mr. Quach by phone as the notice received by AMVIC was not provided by Mr. Quach himself. An attempt was made to contact Mr. Quach on his cell phone. The call went to voice mail. A further attempt to contact Mr. Quach was made to the main phone number that Mr. Quach has on record with AMVIC. A female answered and confirmed that Mr. Quach would not be attending the hearing.
- c. There was no further evidence before the panel.

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 Justin QUACH due to the lack of new evidence being presented and the Appellant's failure to attend.

This panel is satisfied that the hearing given to Mr. Quach 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. Quach is in the best interest of the public at large and of the industry.

"original signed by"

Peter Lokstadt
Chair – AMVIC Salesperson Appeal Committee

MARCH 07 - 2016
Date