

IN THE MATTER OF AN APPEAL BY

ZACHARY MRAZEK

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 NOVEMBER 18<sup>th</sup>, 2016

**REASONS FOR DECISION**

Panel Chair: Cindy Clark  
Members: Pat Asplund  
Beverley Bell

Appearances: Zachary Mrazek (self-represented) and [REDACTED] [REDACTED] (Grandfather)

Paula Hale, legal counsel (Shores Jardine LLP) for the Respondent and  
Stephanie P [REDACTED], Manager of Licensing and Consumer Services (AMVIC)  
for the Respondent

Appeal Heard: January 18<sup>th</sup>, 2017  
HOLIDAY INN EXPRESS  
12025 Lake Fraser Drive  
Calgary, Alberta

**Introduction**

1. This is an appeal under s. 22 of the *Automotive Business Regulation* from a decision of the Director of Fair Trading (as delegated) not to grant Zachary Mrazek a provincial automotive salesperson registration under s. 127(c) of the *Fair Trading Act*.

**Jurisdiction**

2. The *Fair Trading Act* and the *Automotive Business Regulation* regulate, among other things, automotive business licences and salesperson registrations in Alberta.
3. 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 them to engage in that business.

4. 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.
5. The Director's jurisdiction with respect to automotive business licences and salesperson registrations is found at 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.

6. 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.
7. Section 127 of the *Fair Trading Act* applies to both automotive business licences and salesperson registrations.
8. 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.

9. 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.
10. 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 applicant 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.
11. 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.

#### **Evidence before the Appeal Panel**

12. Counsel for AMVIC in her opening statement reviewed the authority of the Director and the legislation relevant to this matter specifically, section 16 of the *Automotive Business Regulation*, in addition to page 4 of the Appeal Policy. It was submitted that the facts of this case were not in dispute: Mr. Mrazek submitted an application; the application was reviewed by AMVIC; an administrative review was scheduled because of Mr. Mrazek's previous conviction and took place by telephone conference; and, a decision was made to deny his application. AMVIC's position is that the Director's decision not to grant Mr. Mrazek a salesperson registration ought to be upheld.
13. Counsel for AMVIC advised the Panel that she intended to enter the following documents as exhibits, to which Mr. Mrazek had no objection,:
  - Exhibit 1 – AMVIC Decision letter dated November 18<sup>th</sup>, 2016;
  - Exhibit 2 – Article from the Lethbridge Herald dated October 22<sup>nd</sup>, 2016 setting out the details of Mr. Mrazek's recent conviction; and,
  - Exhibit 3 – AMVIC Application Report.
14. Ms. Stephanie P. [REDACTED] gave evidence on behalf of AMVIC as the Manager of Licensing and Consumer Services. It is her responsibility to review applications from businesses



and salespeople and ensure licensing and consumer service departments run smoothly. At the time of her testimony, she had been with AMVIC for ■ years and ■ months.

15. It was Ms. P ■'s evidence that AMVIC receives approximately 3,200 salesperson applications each year and that approximately 20% of those applications are individuals who have a criminal record. She denied that having a criminal record knocked an applicant out of contention for receiving a license or registration. Ms. P ■ advised that a criminal record check is performed on all new applicants and if a hit is found, the licensing advisor reviews the charge and then decides if the application should move forward or be referred for administrative action. If referred for administrative action, the application is given to a "team lead" for further review and preparation of the application report which Ms. P ■ reviews prior to making a recommendation and refers the matter to the Director. It was her further evidence that in applications involving criminal charges, AMVIC is considering how recent the crime was, the type of crime committed and the seriousness of the crime. She acknowledged that Mr. Mrazek fully disclosed his criminal history on his application.
16. In his opening remarks, Mr. Mrazek advised the Panel of the following:
  - At the time of his administrative review, he had just been released from jail.
  - After being released, he went to ■ looking for a job as he wanted to better himself.
  - Currently, he has been working at ■, going to meetings with his probation officer once a week and going to different counselling sessions.
17. Mr. Mrazek was forthright in saying the events giving rise to his conviction had occurred. He advised the panel that he knew he had "screwed up" and that he would like the opportunity to show he has changed. Mr. Mrazek stated that he understood why his application had been denied in the circumstances but, reported that:
  - he meets with his probation officer weekly;
  - he sees an addictions counsellor (although he denied having any addiction);
  - he has not "used" anything since the incident and will not use anything for the foreseeable future; and,
  - he is seeing a psychologist regularly.
18. Mr. Mrazek's grandfather tendered a statement. He acknowledged that he was biased given the familial connection between the two of them. He indicated that Mr. Mrazek had done a bad thing and understood that. Further, Mr. Mrazek's grandfather said that Mr. Mrazek was under the influence of alcohol and drugs at the time of the incident but, notwithstanding, was honest and up front throughout the process.
19. Mr. Mrazek did not tender any other witnesses or documentary evidence. He advised the Panel that he did not bring any documentation with him in support of his application because he was under the impression that he did not have to bring such documentation to the hearing.

20. The parties agreed, with the approval of the Panel, that Mr. Mrazek would be given time to provide the Panel with any documentation he wished to produce in support of his position. AMVIC would then have the opportunity to submit their position in response to the document(s) provided.
21. In closing, counsel for AMVIC reiterated the emphasis that is placed on the public interest sections of the *Fair Trading Act* and advised that as a regulator AMVIC had an obligation to consider the public risk and public confidence in making decisions with respect to applications for salesperson registrations. Specific reference was made to the general codes of conduct at section 12 of the *Automotive Business Regulation* and, it was submitted that this section spoke directly to the type of conduct reflected in Mr. Mrazek's recent charges which were serious and led to very recent convictions. It is AMVIC's position that Mr. Mrazek does not meet the threshold for a salesperson at this time and may be in a better position to re-apply after his probation is complete.
22. Counsel acknowledged that Mr. Mrazek had been forthcoming and honest regarding his circumstances but, reiterated that AMVIC had a responsibility to assess the appropriate risk and ensure protection of the public and consumers.
23. In closing, Mr. Mrazek pointed out that honesty and his prior behaviour had been continually raised in the proceedings along with worry about public interest. He submitted that 18 months in a correctional facility was punishment enough and has changed the behaviour which led him to incarceration in the first place. He submitted that he had not been dishonest and reminded the Panel that people go to jail to be corrected, which he felt he had been.
24. In response to questions from the Panel, the Appellant advised that:
  - he was prohibited from driving;
  - that the dealership where he had applied to work was aware of that restriction on his ability to drive; and,
  - he anticipated continuing to live with his grandfather for the three years he is under probation.
25. The appeal hearing was adjourned to allow Mr. Mrazek to submit additional documentation from his probation officer, his current employer, his potential automotive employer and/or any professionals that may be treating him. On January 25<sup>th</sup>, 2017, he provided the following additional information to the Appeal Panel:
  - Progress Summary dated January 23<sup>rd</sup>, 2017 from [REDACTED] the Appellant's probation officer;
  - Letter dated January 23<sup>rd</sup>, 2017 from [REDACTED], Registered Psychologist, confirming that Mr. Mrazek is attending counselling with her;
  - Email dated January 24<sup>th</sup>, 2017 from [REDACTED], Addictions Counsellor referencing a letter "as requested" (however no copy of the letter was provided);
  - Phone number for [REDACTED] at [REDACTED] in Lethbridge; and,



- Statement of Remuneration Paid from Lethbridge [REDACTED].
26. In his correspondence attaching the above documents, Mr. Mrazek remarked that his criminal record had nothing to do with the “public” and that this was a domestic issue with a significant other, not a random stranger.
  27. AMVIC’s response with respect to the documentation provided was received on January 27<sup>th</sup>, 2017. The Panel agrees with the position that it is not an investigative body and should not undertake any independent information gathering and confirms that it did not take any such investigative steps. AMVIC did not dispute the content of the documents provided and accepted that Mr. Mrazek is complying with the conditions of his probation, is gainfully employed, and is seeing a family violence counsellor and addiction counsellor. While AMVIC commends Mr. Mrazek’s actions, it maintains the position that his remedial efforts must continue for some time to ensure the public is not put at risk and to maintain public confidence in the system.

### **Appeal Panel Decision**

28. It is the decision of the Panel to uphold the decision of the Director not to grant the application of Zachary Mrazek for an automotive salesperson registration under section 127(c) of the *Fair Trading Act*.
29. This decision is based upon consideration of all of the evidence presented including the additional documentation received on behalf of the Appellant following adjournment of the appeal hearing.
30. The Panel has based its decision on the following reasons:
  - It is in the public interest under section 127(c) of the *Fair Trading Act* not to issue Mr. Mrazek a salesperson registration at this time.
  - Mr. Mrazek has not yet had sufficient time, or opportunity, since his release in October of 2016 to show sufficient remedial steps.
  - There has been insufficient time for Mr. Mrazek to show that he is governable in a regulated industry and the short period of time since his release does not give the Panel confidence that there is no risk to the public.
  - The Director’s decision 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.
31. It is the further decision of the Panel that Mr. Mrazek is not entitled to re-apply for a salesperson registration for a period of one year, and that he may re-apply at that time if the following conditions are met:
  - That Mr. Mrazek meet all of his probation and health services obligations and appointments to October 27<sup>th</sup>, 2017 and have written proof of this commitment to submit to AMVIC;

- That Mr. Mrazek obtain his driver's license and provide evidence that it is in good standing or, alternatively, if not able to obtain his driver's license until his probation is complete, have written confirmation from a car dealership employer that they are aware of the fact that he does not have a driver's license;
  - That Mr. Mrazek provide written confirmation from a car dealership employer that they are aware of Mr. Mrazek's past circumstances and are committed to hiring him notwithstanding;
  - That Mr. Mrazek retake the salesperson exam and pass that exam; and,
  - That Mr. Mrazek provide documentation showing that he has been working, studying, or engaged positively in his community since his release.
32. This Panel is satisfied that the hearing given to Mr. Mrazek has been exhaustive and fair. We have reviewed all of the evidence before us. We are satisfied that the Panel's decision to uphold the original decision of the Director not to grant Mr. Mrazek a salesperson registration is appropriate in the circumstances.

Issued and Dated:

"original signed by"

Cindy Clark  
Chair – AMVIC Salesperson Appeal Committee

Feb 24, 2017.  
Date