

DECISION OF THE APPEAL PANEL

In the matter of an Appeal by Zain Auto Sales Ltd

Appellant

and

The Director of Fair Trading (as delegated)

Respondent

Appeal Board Panel Virginia May Chair

William Klasky panel member

Fred W R Clarke panel member

Decision Appealed Directors decision of March 2nd 2017.

The Decision of the Director of Fair Trading (as delegated) to refuse a provincial automotive business licence to Zain Auto Sales Ltd and to refuse Zain Al Azzawi's application for a salesperson licence.

Appearances:

For the Director

Paula Hale as counsel

Stephanie P [REDACTED] licensing Manager of Consumer affairs

[REDACTED] investigator with AMVIC

For the Appellant

No counsel

Zain Al Azzawi on his own behalf and on behalf of Zain Auto Sales Ltd

Decision of the Panel

The Panel CONFIRMS the Decision of the Director to refuse the Appellant's wholesale licence and salesmen licence applications with the following VARIANCE to be added to the Decision :

The Appellant is allowed to reapply for the licences any time after November 11th 2017 with the following conditions and Undertakings forming part of the process as AMVIC sees fit ;

(1) The AMVIC process for the licencing application review be conducted without oral or written historical reference to the 2015 and 2017 application reviews.

(2) If the Appellant is granted licences , AMVIC obtain the following Undertakings from the Appellant.

(i) An Undertaking to cease and desist advertising on Kijiji under any phone number or ID

(ii) An Undertaking to maintain and produce all documents and paper work of any kind as requested and required by statute.

(iii) An acknowledgement that AMVIC has the right to assess an administrative penalty for any breach of these Undertakings without the Appellant having any right of Appeal in relation to the penalty.

Observer Nina M [REDACTED] from Consumer Affairs

Location of

The hearing 301, 7015 Macleod Trail SW Calgary AB T2H2K6

Hearing date June 27th 2017

Award date August 11th 2017

Appendix Attached copy of the Directors decision of March 2nd 2017.

List of Directors documents

Exhibit D1

Exhibit D2

List of Appellants documents

None provided

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INTRODUCTION

1. The Appellant filed a Notice of Appeal pursuant to section 179 of the Fair trading Act (the FTA) from the Decision of the Director of Fair Trading (as delegated) to REFUSE his application for an automotive business wholesale licence (file number B2014957) and for REFUSING a personal automotive salesperson registration (file number S2015223.)
2. The Director's decision was made pursuant to section 127 (c) and 126(3) of the FTA and section 18 of the ABR.
3. The Appellants applications were dated November 2016.
4. An Administrative Review was held in Calgary on February 23rd 2017.
5. The Directors decision was dated March 2nd 2017.
6. The Notice of Appeal was dated March 22nd 2017.
7. Pursuant to section 179(2) of the FTA of the FTA, Tim Grant, Deputy Minister of Service Alberta appointed an appeal board to hear the Appeal of Zain Auto Sales Ltd.
8. The Panel Appointment date was 19th April 2017.
9. The Appeal Board hearing took place on June 27th 2017 for one day.
10. It was conducted by a three person panel consisting of Chair Virginia May and panel members William Klasky and Fred WR Clarke.
11. The Directors case was heard first by agreement.
12. Oral evidence was called by the Director and by the Appellant.
13. Documentary evidence was entered by the Director and not by the Appellant.
14. A list of exhibits entered in the hearing is attached as an Appendix to this decision.
15. This decision of the appeal panel is provided under the jurisdiction of Section 15 (1) of the Appeal Board R 195/99 Regulation (ABR) under which the order, appeal, hearing and decision was made.
16. It was agreed at the end of the hearing by the parties and panel members that written submissions were not required by the panel.
17. Counsel for the Director and the Appellant provided brief oral submissions at the end.
18. The panel advised they would provide a decision by August 11th 2017.

JURISDICTION

19. The jurisdiction for the appeal hearing and for the Director to make his decision of March 2nd 2017 comes from the Fair Trading Act RSA 2000 C F2 and its

Regulations, the Automotive Business Regulation Alta Reg 192/99 (ABR) and the Appeal Board Regulation Alta Reg 195/99 (ABR)

20. Copies of these Documents can all be found in Exhibit D1 together with the Appointment documents, the Decision, and the Appeal.

21. They include:

22. Tab1 of Exhibit D1

Decision of the Director dated March 2nd 2017;

Notice of Appeal dated March 22nd 2017;

Service Alberta's acknowledgment of the appeal dated April 10th 2017.

23. The FTA and ABR regulate, among other things, automotive business licences and salesperson registrations in Alberta. The Directors power comes from Section 104 of the FTA. No person may engage in the automotive sales business unless that person holds a licence that authorizes the person to engage in that business.

24. Pursuant to section 16(1) of the ABR a salesperson of an automotive sales business operator must be registered for automotive sales before acting on behalf of the business operator.

25. The Directors jurisdiction with respect to automotive business licences and salesperson registrations is found in section 127 of the FTA.

26. Under section 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 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 other 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 Directors 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.

27. Section 127 applies to automotive business licences and salesperson registrations.

28. Section 18 of the ABR states that section 125, 127 and 128 of the FTA apply with necessary changes to the registration of salespersons.
29. Tab 2 of Exhibit D1
Appointment documents for the Appeal
30. Tab 3 of exhibit D1
Copy of the Fair Trading Act (FTA)
31. Tab 4
Copy of the Automotive Business Regulation (ABR)
32. Tab 5
Copy of the Appeal Board regulation (ABR)
33. Pursuant to section 179(1) of the FTA a person in the Appellant's position has the right to Appeal the decision of the Director within 30 days after being notified in writing of the decision.
34. Pursuant to section 179(6) of the FTA an appeal board may CONFIRM, QUASH or VARY the order of the Director.
35. The panel acknowledges that pursuant to section 179(8) of the FTA an Appeal is a new trial of the issues.
36. No objection was made at any time to the composition of the Appeal panel.

PROCEDURAL GUIDELINES FOR HEARING

37. On May 24th the Chair provided all parties and panel members by email with procedural guidelines for the hearing.
38. The hearing took place according to those guidelines.
39. They included :
 - Witness names provided at the hearing
 - Evidence to be sworn but there would be no recording of the evidence
 - Director presenting case first by agreement
 - Witnesses to be available for cross examination and questions from the panel
 - Witnesses to be excluded from hearing room until evidence given
 - Hearing open to the public
 - Documentary disclosure by the parties at the beginning of the hearing
 - No written submission required by the panel at the beginning of the hearing or its conclusion
40. Decision to be provided by 11 August 2017

SUBSTANTIVE ISSUE TO BE DETERMINED BY THE PANEL ON THIS APPEAL

41. Should the decision of the Director issued on March 2nd 2017 be confirmed, quashed or varied pursuant to Section 179(6) of the FTA ?

DIRECTORS ORDER

Full copy of Order available in Tab 1 of Exhibit D1 and attached as an Appendix to this Decision.

ORAL INTRODUCTION TO THE DIRECTOR'S CASE BY COUNSEL

42. Counsel for the Director Paula Hale introduced the parties in a brief opening statement. She introduced Nina M [REDACTED] from the department who was the only observer present.
43. Ms. Hale pointed out that the authority for the Director's decision and the appeal came from section 179(8) of the Fair Trading Act (the Act).
44. She provided her disclosure document which was entered as Exhibit D2.
45. Exhibit D2 contained 2015 documents which had resulted in the Appellant losing his licence in September 2015.
46. Counsel pointed out that this appeal was not about the 2015 issues.

ORAL EVIDENCE OF THE DIRECTOR

47. Evidence of Stephanie P [REDACTED]

48. Stephanie P [REDACTED] is the manager of Licensing at consumer services. She reviews all applications for licences.
49. In reference to the November 2016 application she stated that the Appellant had lied on his application in the basic information portion of his business application on the AMVIC portal.
50. She acknowledged the Appellant had paid a surety of \$ 50,000.00 .
51. The Appellant was applying for a wholesale licence and a salesman licence.

52. An applicant salesman can be registered with more than one wholesaler or retailer
53. An applicant always applies for the two licences, wholesale and salesmen when applying for a wholesale or retail licence.
54. On the application of the appellant she found no criminal record and no public complaints against him.
55. Ms. P [REDACTED] initiated a google search and found that he had been registered before. This led to his application being flagged and searches made and recommendations being made by an unnamed team leader for a review. The concerns of the team leader had been brought to Ms. P [REDACTED] attention.
56. Ms. P [REDACTED] made a recommendation to the Director for an Administrative Review to take place. A letter was then sent to notify the Appellant.
57. An administrative review was then set up for February 23rd 2017.
58. At the Administrative Review the Appellant said the concerns were not valid.
59. Ms. P [REDACTED] stated that at the review it was up to the Appellant to disprove AMVIC's concerns.
60. She said they listened to both sides. They reviewed the issues.
61. Mr Al Azzawi disputed their position.
62. On March 2nd 2017 a Decision was made (Tab 1 Exhibit D1) and the Director refused to grant any licenses to the Appellant.
63. Ms. P [REDACTED] evidence about the February 23rd review then took her back to the first review of 2015 where she stated there was a time lapse of holding no licence, a legal entity change, and a September cancellation, all in 2015.
64. Ms. P [REDACTED] pointed out, amongst other things in her report, that there was a two months and eight days lapse for Mr Al Azzawi without a licence. There had been a legal entity change.
65. Ms. P [REDACTED] then continued to discuss the 2015 review and findings.
66. On September 1st 2015 the Director had cancelled the wholesale licence.
67. Ms. P [REDACTED] said the Appellant had been selling directly to consumers through Kijiji..22 of the vehicles were salvage vehicles and the consumers had not been told this.
68. Ms. P [REDACTED] could provide no proof that the vehicles had been repaired by a licenced mechanic. The Appellant was therefore found to be in breach of s 132(1) of the FTA and ABR s 9.
69. Also Mr. Al Azzawi could not produce the documentation required (see report and Exhibit 3, complaint history page 53).
70. Mr. Al Azzawi said he helped friends to get vehicles at the auctions. They used his AMVIC licence numbers.
71. He admitted they were not his vehicles. Ms. P [REDACTED] says he was using his AMVIC licence before it was cancelled to access auctions.
72. Ms. P [REDACTED] then moved on to talk about the review before the panel.
73. November the 9th 2016 was the start of the matter before us.
74. The Appellant sent in an online application for a wholesale licence and a salesman licence. He completed the ABA, automotive business package (see pages 75 to 77 in Exhibit D2 at Tab 2 and Tab 5).

75. On page 76 he said "no" to question no 8. In answer to question 7 he said yes and added a handwritten sentence
76. "In 2013 I applied and registered as an automotive business in Alberta. I was licenced with AMVIC until 2015 when we cancelled the licence"
77. Ms. P [REDACTED] points out that he did not disclose this fact on the first opportunity available to him.
78. She agreed he had no criminal record.
79. The question was then was this failure to disclose enough to refuse the 2016 application?
80. Ms. P [REDACTED] points out that it was his history with AMVIC that was the real problem for him.
81. In Exhibit D2 her original application report for July 2015 and the Directors cancellation letter of 2015 are attached as part of the disclosure package.
82. Ms. P [REDACTED] contacted the investigators to get further documentation.
83. She said she was totally separated from the investigation.
84. Results are shown in tab B of exhibit D2 (pages 92 to 96) the [REDACTED] report (page 92 replaces page 94).
85. The Applicant's report was sent to the Director in advance of the Administrative review.
86. Ms. P [REDACTED] stated that she had no input into the decision of the Director.
87. When Mr. Al Azzawi's online Application, found at tab 1 and 2 of Exhibit D2 (pages 52 to 59) arrived it was flagged.
88. There was a google search and cross referencing of names. This revealed that there had been a previous AMVIC licence and a cancellation.
89. Under questioning Ms. P [REDACTED] confirmed that the licence refusal did not result from any public complaint to AMVIC.
90. Ms. P [REDACTED] further conceded that the Appellant did write about his cancelled licence and previous application (page 77 of his Business profile form (Tab 5 Exhibit D2), although he had answered it incorrectly on page 76.
91. Ms. P [REDACTED] confirmed she recommended no licence.
92. She said the administrative review followed his wrong answer on page 76. That also led to the licence refusal.
93. Ms. P [REDACTED] also confirmed that some salvage vehicles after repair can pass inspections and be completely rebuilt. She acknowledged that it can be alright to buy salvage vehicles. But it must be disclosed to the consumer under FTA regulations.
94. The damage should be listed on the VIN number of the vehicle.
95. As Ms. P [REDACTED] pointed out in 2015 Mr. Al Azzawi had no licence to sell to the public, initially only a wholesale licence.
96. After his wholesale licence was cancelled in September 2015 he continued to sell to the public.
97. Pages 86, 87 and 88 of Tab 5 (Exhibit D2) of the [REDACTED] report continues to show income from sales in 2017.
98. On March 2nd a Decision was made by the Director to refuse a licence.
99. A Panel member asked if there had been enough evidence to warrant an administrative review. Ms. P [REDACTED] replied that the Appellant essentially gave them the evidence they needed in what he said during the review itself.

100. Evidence of [REDACTED]
101. Ms. [REDACTED] has been an investigator in the Calgary office of Consumer Investigations for 4 years. Before that she was with the [REDACTED] working in the [REDACTED] department. She was a [REDACTED]. She was also a [REDACTED].
102. Ms. [REDACTED] was involved with the 2015 investigation of the Appellant. She said that this 2015 investigation was not the subject of today's hearing, but forms the background to it.
103. In 2015 initially the impetus for the first review came from the public. A vehicle showed up at the registry that had been purchased. The licence plate was not complete. Mr. Al Azzawi then had a licence he used for auction vehicles.
104. Salvage vehicles bought at auctions usually needed repairing. They need to have been to a salvage inspection facility and to have been repaired by a licenced journeyman. The Registry can then list them as rebuilt.
105. It is a highly regulated process.
106. The real issue is safety.
107. Is there superficial or real damage to make the vehicle dangerous?
108. There needs to have been a certified automotive technician working on the vehicle. They have a special certificate. The seller must disclose to the consumer a salvage vehicle that has been rebuilt. There has to be an assessment of certain items.
109. Ms. P [REDACTED] was assigned by her supervisor to deal with curbing. That was her area. She would talk to the Appellant before and during the investigation.
110. It was her understanding that the Appellant had no journeyman or trade certificate to fix cars.
111. She said everything is about the protection of the public.
112. Ms. [REDACTED] then went back to the 2015 review and said that there were two complaints in 2015.
113. 26 vehicles were purchased at auction. Nine of the vehicles were sold retail to the public consumer. The sales are linked to the Appellant.
114. There is no accounting or records for them. Nothing identifies them as salvage.
115. Only one of the 9 vehicles led to a complaint.
116. Tab 3, pages 63 and 64 of Exhibit D2 is labeled Application Report Investigations is Ms. [REDACTED] 2015 report that led to the removal of the licences in September 2015.
117. It is dated July 22nd 2015. are an accurate summary of her findings and the several areas of concern in 2015.
118. Ms. [REDACTED] first became involved with the Appellant as an investigator in March 2015.

119. Her two main concerns in 2015 were curbing and a consumer complaint that raised the issue of a purchaser not knowing that the car had been rebuilt until the purchaser tried to register the vehicle.
120. Ms. [REDACTED] said she spoke to two consumers.
121. Ms. [REDACTED] seemed to suggest that she thought it was the Appellant's brother in law who was fixing up the auction cars.
122. Page 64 of Tab 3 of Exhibit D2 sets out Ms. [REDACTED] recommendations in 2015.
123. Her recommendations were to cancel the licences, and to allow the Appellant to re apply in 12 months if he wanted a new licence issued. And pay a bond of \$50,000.00.
124. She recommended he would have to complete the salesperson course again.
125. She recommended he would have to pay \$3,000.00 cost of the investigation and that an administrative penalty of 10 per cent of his estimated profit be levied against him.
126. These recommendations were made by Ms. [REDACTED] in July 2015.
127. She attended the August 11, 2015 administrative review that led to the cancellation of the licences in 2015.
128. In November 2016, as allowed by AMVIC, the Appellant reapplied. An Administrative Review was ordered.
129. In 2017 an administrative review took place on February 23rd. Ms. [REDACTED] says that she was requested to attend because of her knowledge of the first.
130. Ms. [REDACTED] attended the February 23rd review.
131. She did not take any investigative steps on February 23rd 2017
132. She reviewed the information, and "maybe" she reviewed the 2015 application report but she could not remember.
133. She did review the November 2016 application enough to find the Appellants phone number 403 [REDACTED] in order to initiate a [REDACTED] report, found at Tab B of Exhibit D2, pages 92 to 94.
134. This investigative tool is not open to the public. It is used by investigators in consumer services.
135. The [REDACTED] report provided in exhibit D 2 is not a complete report.
136. The data showed that since the Appellant had had his licence cancelled he had purchased a further 16 vehicles starting one month after his licence was cancelled in September 2015.
137. The report also showed other phone numbers of the Appellant that had been previously used for posting cars for sale including 403 [REDACTED].
138. The user ID for [REDACTED] is an email address. It identifies an exclusive user.
139. She stated that the Appellant was not required to have only one phone number. Nor did he have to register in his own name.

140. Ms. [REDACTED] said , however, that it was unusual for a curber to have two ID emails which she had found .
141. She suggested that this might be considered "subversive".
142. Ms. [REDACTED] stated that the Appellant continued curbing after his licence was cancelled. At the review he was asked if he sold and listed cars for sale and he had said yes.
143. To sell to the public he needed a retail licence.
144. He never had one.
145. He fell under the terms of the ABR through the act of trying to sell which made him a potential salesman and therefore subject to the FTA and ABR.
146. Ms. [REDACTED] stated that the act of advertising items for sale, she believed, made him engaged in selling.
147. There was a pattern to his conduct. He offered items for sale in order to sell them. He did this when he had no AMVIC licence at all.
148. Even if his licence had not been cancelled in September 2015 it would not have helped him with curbing because it was a wholesale, not a retail licence.
149. There was no change in the pattern of his conduct.
150. There were obstacles to him obtaining a retail sales licence. He would have needed a business licence at his location and it had not been given to him yet.
151. He had to follow the processes established by the Minister of Fair Trading. A retail licence needed a higher standard to be met than a wholesale licence.
152. He had lost his wholesale licence for failure to comply with the compliance regime.
153. The regime is to protect the buyer.
154. Ms [REDACTED] said she was not invited to the review application.
155. Questions to Ms [REDACTED] from the Appellant.
156. In 2015 could you confirm that the Appellant never got the details of the disclosure package?
157. Ms [REDACTED] confirmed he did not get the disclosure.
158. In 2015, could you confirm that you knew that it was his brother in law in the yard working on tires on a car and that he had left a phone number but that she did not call with answers. She only showed up to look around. The witness did not disagree or agree.
159. Could she confirm that he asked for a chance to correct everything in 2015?
160. He had acknowledged that he had made a mistake and wanted a chance to put it right. There was no spoken response of agreement or denial.
161. With reference to the phone number 403 [REDACTED], she explained that was the number of a buyer on the bill of sale. He did not know where the number came from.

162. She explained the cars advertised were salvaged vehicles that would have been repaired. There were no documents or records for them. This had led to the internal review of 2015.
163. AMVIC regulates such sales. There should be a lot of paper.
164. The Appellant asked if he could see the paper. He acknowledged some of the vehicles had considerable damage, for example, needed a new air bag. This was done before they were registered.
165. He was aware of safety concerns.
166. Ms. Hale, counsel for AMVIC, interrupted to say on behalf of AMVIC, that they accept the Appellant's statement that he did not do the mechanical work himself. He was not a licenced mechanic and did not hold himself out to be.
167. Ms. [REDACTED] concluded that there was generally a lack of paper and record keeping.

ORAL EVIDENCE FOR THE APPELLANT

168. The Appellant explained he operated in 2015 under the name Zain Al Azzawi.
169. He felt he had no chance.
170. There were no salvage vehicles. He personally knew that. All the vehicles were fixed and they were never fixed by him but by licenced mechanics.
171. He knew not to put peoples life at risk.
172. With reference to the vehicles on page 93 of the [REDACTED] report he did sell those vehicles personally. He thought he was allowed to sell them personally.
173. In 2015 he did not have much experience. He had no pay.
174. AP Autobody had been shut down by AMVIC. They had been his mentor.
175. AMVIC has accepted that he did not personally work on the vehicles.
176. He had no criminal record.
177. Licenced journeymen working on the cars.
178. After the wholesale licence was cancelled in 2015 by AMVIC, the Appellant thought he did not need a licence to sell anymore because he was not under AMVIC.
179. He now knows that was wrong.
180. He said that AMVIC had no proof that he had sold salvaged vehicles. They just said that they were salvage vehicles.
181. He had no mentor.
182. In 2015 he had hoped that he would get a chance to go retail.
183. Yes he made mistakes. He is still selling cars.
184. He lost his licence.
185. He does not lie. He is honest and he feels he lost his licence for being honest.
186. He knows he cannot hide stuff from AMVIC.
187. He needed money. He was very happy when he got a licence.

188. Questions from Ms . Hale, counsel for AMVIC.
189. You knew that having a licence was a privilege and that you had to follow the rules, whether a wholesale or retail licence.? The Appellant nodded.
190. His salvage car had low mileage, 84000. When fixed it could be under warranty. He got the headlights fixed.
191. In 2015 it was easy to fix the vehicles and bring them under warranty.
192. The Appellant explained that he was 27 years old.
193. He is starting automotive school in August this year. It is a four year course.
194. He loves cars and wants to run his own business.
195. He acknowledged that he had taken the Fair Trading Act course on line and got very good marks for his understanding of it. 88 per cent in 2013 and 96 per cent on the second time.
196. Ms . Hale asked him to confirm that the course was about who he could sell cars to, so he knew he could not sell wholesale.
197. The Appellant said yes he knew that because of taking the course.
198. He said that at the administrative review in 2015 he had admitted his mistakes. He had told them that he wanted to have a chance to fix the issues and instead they cancelled his licence.
199. So he continued to sell to the public direct because he had no AMVIC licence, retail or wholesale.
200. He felt that because he had no licence he did not have to follow the rules. He felt the rules did not apply to him then.
201. Ms Hale suggested that he failed to disclose on his November 2016 application that his licence had been taken away in 2015.
202. The Appellant pointed out that he had put a handwritten note in the application about the cancelled licence.
203. Ms Hale asked if he still believed he did not have to worry about AMVIC anymore after taking the course.
204. He said he knew now that was wrong.
205. He said he had not been afraid of AMVIC.
206. If he had been he would have got himself a new phone number.
207. He acknowledged what he did.
208. He said he was trying to support himself.
209. He comes from Iraq.
210. He was an electrical engineer in Iraq.
211. Because of AMVIC he feels bad.

BRIEF SUMMARY OF THE EVIDENCE FOR THE DIRECTOR

- 212. Issues of fairness apply.
- 213. In 2017 there is a new Administrative Review. February 23rd.
- 214. The Appellant does not have to deal with anything from the first review.
None of that is before the Director.
- 215. The Director decided not to grant a licence using the authority that he had.
- 216. He cancelled the application for a wholesale licence. There is nothing to stop the Appellant applying again.
- 217. The Appellant applied for a wholesale licence and a salesperson licence.
- 218. The 2015 events were part of the record and part of the consideration in 2017.
- 219. The Appellant did not Appeal the first decision. He had the right to have done so.
- 220. The application provisions were set out in a letter. AMVIC's concerns were clear.
- 221. The licences were cancelled for curbing.
- 222. There were other related issues.
- 223. They all went to fundamental issues of safety.
- 224. AMVIC's job is to regulate for safety and protection of the public.
- 225. The Appellant may be honest but the system remains in place for those purposes.
- 226. The Appellant admitted lots of evidence here and at administrative review of continuing to curb. That must make him not credible.
- 227. There is a pattern of failing to apply the regulatory system put in place for safety issues.
- 228. Under section 169 of the FTA on February 23rd 2017 the [REDACTED] report (Exhibit D2 Tab _B_) was presented.
- 229. The [REDACTED] report was not a "fulsome" report as counsel put it.
- 230. But it did not need to be. It was proof enough that the Appellant had committed the offence of curbing.
- 231. AMVIC could rely on that under section 169 to find an offence.
- 232. The next question is has he gained the honest right to participate.
- 233. All that is required is integrity and good character. The legislative framework is to keep honesty and integrity in the business.
- 234. It is not hard to reach.
- 235. It is more difficult to succeed when there is a pattern of conduct following cancellation.

236. DECISION OF THE PANEL

237. The panel CONFIRMS the decision of the Director to refuse the Appellant's wholesale licence and salesman applications with the following VARIANCE added to the decision:
238. The Appellant is allowed to reapply any time after November 11th 2017 for the licences with the following conditions and undertakings forming part of the process as AMVIC sees fit ;
239. (1) The AMVIC process for the licensing application review be conducted without oral or written historical reference to the 2015 and 2017 application reviews.
240. (2) If the Appellant is granted licences , AMVIC obtain the following undertakings from the Appellant.
241. (i) An undertaking to cease and desist advertising on Kijiji under any phone number or ID.
242. (ii) An undertaking to maintain and produce all documents and paperwork of any kind as requested and required by statute.
243. (iii) An acknowledgement that AMVIC has the right to assess an administrative penalty for any breach of these undertakings without the Appellant having any right of appeal in relation to the penalty.

FINDINGS OF FACT

244. The Appellant's resides at [REDACTED] NE Calgary [REDACTED]
245. He is a 27 year young man from Iraq, with an electrical engineering background.
246. He loves cars and has currently signed up to take a licenced motor mechanic four year course of study.
247. He wants to own his own business.
248. His licensing history with AMVIC started in June 2013 when he was issued a Wholesale licence in his name Zain Al Azzawi. (Licence number B1041840). This licence lapsed and was cancelled by the Appellant in July 2015.
249. In November 21st 2014. the Appellant obtained a wholesale licence in the name of his new legal identity, his incorporated company Zain Auto Sales Ltd (Licence Number B2002969).
250. On June11 2013 the Appellant obtained a salesmen licence in his own name Zain Al Azzawi (no S1041841)
251. Both these licences were cancelled by the Director September 1st 2015.
252. They were cancelled by the Director because of two consumer complaints which led to an investigation .
253. The investigation showed that the Appellant was involved in curbing vehicles purchased at auctions which may or may not have been salvage and required mechanical work for them to be safe .
254. There was an absence of supporting paper work given to consumers or on the mechanical work conducted or provided to AMVIC.

255. The Director in his decision in this Appeal before this panel found as a fact that the Appellant was doing automotive repairs himself to vehicles he was illegally selling (Exhibit D1 paragraph 2 page 2 of Tab 1).
256. At the hearing on June 27th 2017, the Appellant denied working on the vehicles himself and counsel for the Director acknowledged that AMVIC accepted that he did not do the work himself.
257. The Appellant had failed to provide paper work to show proper mechanical work for vehicles purchased at auction.
258. In Exhibit D2, Ms. P [REDACTED] provides her application report dated January 24 2017 in response to the Appellant's November 2016 application.
259. On page 54 and 55 Ms. P [REDACTED] provides her recommendation to refuse both applications and her reasons.
260. Page 54 of Exhibit D2 summarizes the reasons for her recommendations. They are not based on new public complaints but rather on references back to the 2015 cancellation.
261. The Appellants conduct was found by the Director in 2015 to have breached Section 127 (c) of the FTA.
262. The Appellant was never licenced to sell to retail customers since the licence he did have was only a wholesale licence.
263. Further the Appellant did not provide the required paperwork to support his sales. He failed in his duty to maintain records, section 132(1) of the FTA and under the ABR.
264. On July 22nd 2015, prior to the September cancellation, Ms P [REDACTED], licensing manager for Consumer Affairs, issued an Application report which resulted in an investigation, and an administrative review in 2015.
265. Ms. ...P [REDACTED] gave evidence on this Appeal on behalf of the Director in relation to why the Appellant had been refused a licence.
266. Ms. [REDACTED], investigator, had investigated the curbing complaints in 2015 and attended the administrative review that preceded the licence cancellation in September 2015.
267. She also gave evidence on this hearing for the Director and recommended that the 2016 applications should be refused.
268. Ms P [REDACTED] also conducted a [REDACTED] search, but not a "fulsome" one (as counsel for the Director put it). The search showed the number of cars listed on Kijiji under the ID for the Appellant. The report is at Tab B_of Exhibit D2.
269. Ms. [REDACTED] explained that email addresses create the ID for Kijiji.
270. Her search revealed two email addresses.
271. Ms. [REDACTED] gave evidence that two email addresses were, in her view, a "subversive" move of the Appellant.
272. Ms. [REDACTED] and Ms. P [REDACTED] confirmed that no consumer had complained after 2015 and that the investigation of 2017 was an internally generated one.
273. The [REDACTED] investigation revealed two telephone numbers that had been used before by the Appellant in his Kijiji ads. They were 403 [REDACTED] and 403 [REDACTED].
274. Ms. [REDACTED] stated that the Appellant had posted a \$50,000.00 bond on his second application.

275. The Appellant had no criminal record.
276. His bank account documents were in order. There was a business account opened with TD Canada trust. A balance sheet was attached.
277. The corporate entity Zain Auto Sales Ltd showed the Appellant as Director and shareholder. It also showed a business plan.
278. No consumer complaints led to the 2017 investigation.
279. Although evidence was led to suggest that the Appellant himself had tried to fix the cars he purchased, without being a mechanic, counsel for the Director stated that there was no evidence to lead the Director to believe that the Appellant had himself undertaken any mechanical work on the cars.
280. The Appellant was told in 2015 that he could apply again for a licence after 12 months.
281. In the documents provided in this appeal Exhibit D 2 there is Ms. P application report and investigation of July 22nd 2015 that led to the first cancellation of September 2015, Tab 3 pages 63 to 67.
282. There is also the Director's decision of September 2015 see Exhibit D2 Tab 4, pages 68 to 74.
283. Ms. P recommended , on page 64 at tab 3, cancellation of the licences, payment of the investigation costs of \$3,000.00 ,that a bond be posted by the Appellant for \$50,000.00 if the Appellant reapplies, recompletion of the salesman course and the payment of an administrative penalty of 10 per cent of an estimated profit figure.
284. In this Appeal Ms. P gave evidence that the Appellant did reapply and did post a bond of \$50,000.00 The documents at tab pages 75 to 89 contain the Appellants application.
285. There was no evidence provided as to whether financial penalties were sought or paid in 2015 as recommended by Ms. P.
286. The Appellant did not appeal the decision of 2015 to be found at Exhibit D2 Tab 4.
287. It was confirmed that he retook the salesman course successfully achieving a 96 per cent score.
288. The Appellants applications for 2016 is found at Exhibit D2 Tab 1, pages 56 to 59, and Tab 5 pages 75 to 89.
289. The Director was concerned with the online entries in Exhibit D2 on pages 58 and 62 (salesman and wholesale application) and pages 74 of his business licence application at Tab 5.
290. The Director found these documents to show lying and lack of credibility (See page 2 paragraph 3 of the Director's Decision, Exhibit D1 Tab 1). (Attached in the Appendix.)
291. The Appellant pointed to his handwritten comments to be found at page 75 of Exhibit D2, wherein he mentioned the cancelled licence.
292. Neither witness for the Director contradicted the Appellants evidence that he acknowledged curbing on both reviews.
293. The Appellant had difficulty getting the paper records that they required from him in 2015.

294. In 2015 the Appellant was not provided with the AMVIC disclosure at the administrative review.
295. Neither did they deny that he sought help from them since he had no mentor.
296. The Appellant provided the evidence required by AMVIC himself at both reviews.
297. He did not deny listing cars for sale, although he did not agree to having directly sold them all.
298. His AMVIC number he said was used by his friends at auctions.
299. The Appellant thought that once his licences were cancelled he was outside the ambit of AMVIC and could carry on listing cars. He had a family to feed. He now knows that was wrong thinking.
300. He had hoped that AMVIC would help him at the time of the 2015 review.
301. Both witnesses for the Director were involved in some aspects of both administrative reviews of 2015 and 2017.
302. The administrative review of 2015 was prompted by a consumer complaint. The 2017 administrative review was internally generated.
303. The Appellant acknowledged himself in the review of 2017 continuing to advertise cars. The [REDACTED] report at Tab B of D2 lists a number of cars.
304. The [REDACTED] report was not a "fulsome" report (as counsel stated).
305. Apart from the two complaints in 2015 there is no further evidence provided of any consumer complaint related to any of the vehicles listed in the [REDACTED] report.
306. The Appellant had no counsel with him the administrative reviews or at this hearing.

REASONS FOR THE DECISION

307. Pursuant to Section 179(8) of the FTA the Appeal hearing that took place on June 27th 2017 was a new trial of the issues before it.
308. "An Appeal under this section is a new trial of the issues that resulted in the decision, order or administrative penalty being appealed."
309. The Decision of the Director of March 2nd 2017 and the process by which it was reached has led the panel to seriously consider its options in deciding whether to confirm, quash or vary the Director's decision.
310. The panel was advised by counsel on two occasions that this appeal hearing did not have to deal with the 2015 licence cancellation.
311. The panel was also advised that the Appellant was free to reapply.
312. The problem with this is the evidence at the hearing and the submissions of counsel for AMVIC.
313. Ms. [REDACTED] stated clearly that the background to the 2016 investigation formed part of her thinking in considering a review on this 2016 application.
314. Ms. P [REDACTED] said that the issue that led her to suggest a review in 2017 was the historical background, that is 2015 review and cancellation.

315. These oral statements of the AMVIC staff under oath are contradictory to counsel's opening submissions on June 27th that the panel did not need to deal with 2015.
316. Furthermore the written disclosure provided on this appeal by the Director, as contained in Exhibit D 2 is full of documents relating to the 2015 administrative review and the Directors decision on that occasion.
317. There is little point in this appeal in allowing the Appellant to apply again, as counsel says he can, if each time the last review and hearing is used by the Director to order a new administrative review and then history can always allow the Director to refuse the application.
318. The panel recognizes the heavy burden on the Director and the AMVIC staff, as established by the statutory scheme, to protect the public and ensure a safe and honest world for Alberta consumers and drivers. We recognize this particularly in relation to the issue of curbing which arises in this appeal.
319. As an administrative panel, acting as new triers of fact, the panel believes it very important to ensure a fair process through the FTA system for the Appellant.
320. If the process seems a little "off", or maybe biased from past interaction, or even factually wrong, then we, as a panel in a trial de novo may not reach the same Decision or may feel the need to VARY the decision by adding some suggestions to AMVIC for the process should the Appellant choose to apply again for his licence.
321. We are setting out below the reasons why we feel the decision of the Director should be VARIED.
322. AMVIC is not there to hold someone's hand through an administrative process. It is not there to train applicants how to be administratively efficient. It is there to protect the public.
323. In this case, however, the Appellant presented to the panel as an intelligent and educated young man, who honestly faced up to his errors and who was ready to learn and move forward in developing a business.
324. The oral evidence showed that he had posted a \$50,000.00 bond and retaken the FTA exam. His corporate entity was properly incorporated.
325. Yet the witness for the Director Ms. [REDACTED] who had been involved in both Administrative reviews, used the word "subversive" to describe the fact that in the [REDACTED] report search which she initiated, the Appellant had two email addresses. That seemed a very strange word to use in the context of this hearing and quite inappropriate.
326. Some other issues that concerned the panel included:

A

327. Counsel for the Director stated in her opening remarks that this appeal hearing was not about 2015 but was about issues arising from the November 2016 reapplication of the Appellant.

328. That was not how the hearing went down.
329. The time confusing written evidence (Exhibit disclosure D2) switched between the written evidence that was led in 2015 and that had led to the September 2015 cancellation and the written evidence that was led in 2017 and that led to the March 2017 refusal to grant a licence.
330. The two oral witnesses for the Director, Ms. P [REDACTED], the licensing manager and Ms. [REDACTED] the main curbing investigator for AMVIC both gave oral evidence that continually drifted between the two events. That was inevitable given their close involvements in both events. The result was that the panel had a hard time distinguishing new issues that justified a review and then refusal as against issues that had led to the first cancellation.
331. For example, in Exhibit D2 pages 52 to 55 we find the Application Report Licensing for this application dated January 24 2017. It is signed by Ms. P [REDACTED]. She recommends on page 55 an administrative review.
332. In addition attached at Tab 1, 2 and 5 of Exhibit D2 is the Appellant's new application . On page page 53 and the top half of 54 Ms P [REDACTED] references facts relating to the September 2015 review.
333. Indeed at Tab 3 of Exhibit D2 she attaches the Application report - Investigations of Ms .. [REDACTED] that led to the first hearing.
334. At Tab 4 of Exhibit D2 Ms. P [REDACTED] has included the Directors cancellation letter of September 2015.
335. In the oral evidence it was made clear that [REDACTED] had been involved in both reviews and attended both reviews and Ms .P [REDACTED] had initiated matters involving both.

B

336. The Appellant never had a lawyer at the administrative review of August 11th 2015. Three AMVIC officials, including Ms. [REDACTED] and the Director then, Mr. Bachinski were present.
337. Having a lawyer, as an Appellant is not a requirement for proceeding, but given the Appellant's apparent tendency to be honest and to admit his faults, that left him in a very unprotected position.
338. The witness Ms [REDACTED] also admitted in her evidence that the Appellant had not been provided disclosure at the 2015 review.
339. That would not likely have happened if a lawyer had been involved and should not have happened just because a lawyer was not involved.
340. There had been two customer complaints in 2015. The Appellant acknowledged his lack of paper work and auction purchases.

C

341. The new allegations for the panel to deal with in relation to the November 2016 application and which led to the administrative review of February 23rd 2017 appear for the first time, half way through page 54 of Exhibit D2 and consist of two issues.
342. The first was the Appellant's failure, on his forms, at the first opportunity to disclose that he had owned a previous licence that had been cancelled. It was suggested that this was indicative of a lying character.
343. The second issue was the expressed fear "that he will once again purchase salvage vehicles from the auctions, repair them using unlicensed mechanics and sell them to unsuspecting customers who have not been told about the history of their new purchase, thus putting them in financial and physical danger."
344. At that point in time, January 2017, a new review was ordered on a possibility.
345. The review was internally initiated.
346. There had been no consumer or public complaints to initiate it as had happened in 2015.
347. The Appellant attended at the review in the presence of four AMVIC officials, including Ms. [REDACTED] who had participated in the 2015 review and who was a witness in this hearing.
348. The Appellant again attended the review without a lawyer.
349. The Appellant admitted to having purchased vehicles without a licence, wholesale or retail. He did not admit to fixing any of the vehicles himself.
350. He pointed out in the hearing that he was not a licensed mechanic and would not do that. He stated he was well aware of safety for the public and the need for mechanical repairs to be conducted by a licensed mechanic.
351. Part of Exhibit D2 consisted of a [REDACTED] report Tab B obtained by [REDACTED] to check curbing car sales.
352. This report showed a fair number of sales made either by, or using the Appellants licence number when he had one. They showed cars listed to the Appellant's phone number and ID in 2017 when he had no licence. The Appellant gave evidence that he thought he was not under AMVIC's authority once they had cancelled his licence.
353. As counsel for the Director puts it, the [REDACTED] Report at Tab B was not a "fulsome "report. It does not track down specific sales and vehicles and track them back to the Appellant.
354. It seems strange to use the tool and not feel the need to finish the task off by connecting the sales back to the Appellant. If an investigative tool is to be used it should not just be half used. At the review AMVIC believed evidence given against himself by the Appellant when he admitted selling cars via Kijiji.

D

355. The administrative review of 2017 was internally generated.

356. There had been no consumer or public complaints that led to it taking place.
357. Again this is within the power of AMVIC, but given the number of cars that the [REDACTED] report suggests may have been listed and sold by the Appellant, and may have been salvaged vehicles that had been fixed up, no issue of actual safety or concern of the public has come forward to AMVIC.
358. This makes the evidence of the Appellant that he cares about safety more compelling.

E.

359. If it is true as AMVIC witnesses' state that the historical background and past events led to the 2017 refusal then there is no point in the Appellant applying again.
360. This differs from the interpretation of counsel at the hearing.

F

361. The Decision of the Panel attempts to vary the Decision of the Director by giving the Appellant another chance to apply for his licences without being trapped by his past history.
362. At the same time if he is genuine in wanting to become a wholesale business man under the AMVIC regime, he will need to give the undertakings and follow through with paperwork if he genuinely recognizes the need to protect the public.
363. The undertakings and the acknowledgment required of the Appellant, if he is granted licences will protect the public and keep AMVIC's goals front and centre.

William Klasky

Panel member

Date Aug 8, 2017

Fred Clarke

Panel member

Date August 8/17

Virginia May

Chair

Date August 11/17