

IN THE MATTER OF AN APPEAL BY

SAMMY HABIB

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. 192/1999,
AS AMENDED.

AND

IN THE MATTER OF THE DECISION BY
THE ALBERTA MOTOR VEHICLE INDUSTRY COUNCIL ("AMVIC")
NOT TO GRANT A PROVINCIAL AUTOMOTIVE SALESPERSON REGISTRATION
UNDER THE *FAIR TRADING ACT* ON MAY 17, 2017

REASONS FOR DECISION

Panel Chair: Peter Lokstadt
Members: Pat Asplund
Kirby Soon

Appearances: Sammy Habib (self-represented)

Paula Hale, legal counsel (Shores Jardine LLP) for the Respondent

Mylène Tiessen (Peacock Linder Halt & Mack LLP) counsel to the Panel

Appeal Heard: August 1, 2017
Holiday Inn Express, 12025 Lake Fraser Drive
Calgary, Alberta

BACKGROUND

On August 25, 2014, Mr. Habib was convicted on 21 counts of double doctoring and one count of possession of Oxycodone for the purposes of trafficking in violation of the *Controlled Drugs and Substances Act*. At the time of his arrest he had in his possession over 7,000 Oxycodone and Oxycontin pills in his home having an estimated street value between \$140,000 and \$560,000. He obtained over 39,000 pills between February 4, 2009 and July 12, 2010 with an estimated street value of \$1,425,756. Mr. Habib appealed his convictions. His appeal was dismissed by the Alberta Court of Appeal on June 15, 2016.

Mr. Habib initially applied for a salesperson registration in 2013. He was given a 90 day conditional registration on December 18, 2013, which was subsequently suspended and was then unsuspended in September 2014. That registration was automatically renewed in August, 2015.

On August 24, 2016, Mr. Habib's registration was cancelled following an investigation by AMVIC.

On March 20, 2017, Mr. Habib applied for an AMVIC salesperson registration. By letter dated April 10, 2017, the Director wrote to Mr. Habib and advised him that he was considering the status of his application and whether or not it was in the public interest to issue a salesperson registration; and, that he had scheduled an administrative review. The review, pursuant to s. 128(1) of the *Fair Trading Act* (the "FTA"), was held on April 26, 2017. By letter dated May 17, 2017, the Director wrote to Mr. Habib and advised that it was his decision not to grant Mr. Habib's application for the following reasons:

1. It was in the public interest under section 127(c) of the FTA to refuse Mr. Habib's salesperson registration at that time;
2. Mr. Habib had just been released on probation and there had not been significant time to indicate that he was able to demonstrate a proper code of conduct; and
3. Mr. Habib had not shown appropriate conduct acceptable to be an AMVIC registered salesperson.

On May 17, 2017, Mr. Habib gave notice to AMVIC of his appeal of the Director's decision.

Pursuant to clause 3.ii.u) of the *AMVIC Salesperson Appeal Committee Policy* dated May 9, 2017 (the "AMVIC Appeal Policy"), Mr. Habib was provided with the opportunity to make representations by way of argument and to introduce evidence at the hearing. At the time of the appeal hearing Mr. Habib was on parole and residing in a halfway house.

LEGISLATIVE AUTHORITY

AMVIC regulates the automotive industry in Alberta, including automotive salesperson registrations. Section 16 of the Automotive Business Regulation (the "ABR") requires that salespersons be registered before acting on behalf of a business operator. Anyone who wishes to be registered must submit an application to the Director. Section 127 of the FTA gives the Director authority to refuse to issue or renew a licence for any of the reasons enumerated in that section including, but not limited to, that it is the opinion of the Director that it is in the public interest to do so (s. 127(c)). While section 127 specifically refers to business licenses, s. 18 of the ABR provides that that section (as well as sections 125 and 128 of the FTA) apply, with the necessary changes, to the registration of salespersons.

Section 22 of the ABR permits a person, whose application for registration has been refused, to appeal that decision in accordance with the process established by the Director. That process is set out in the AMVIC Appeal Policy.

EVIDENCE BEFORE THE HEARING PANEL

Evidence presented at the hearing consisted of:

1. The following exhibits, entered with the consent of counsel for AMVIC and with the consent of Mr. Habib:

Exhibit 1: Cerlox bound materials consisting of a copy of the following:

- TAB 1 May 17, 2017, Decision of the Director of Fair Trading
- TAB 2 Application Report - Licensing, dated 04/10/2017
- TAB 3 Salesperson or Business Application wording
- TAB 4 Presentence Report (Regina v. Habib, Sammy, Sandy)
- TAB 5 September 8 & 9, 2016 - email to and from S. Habib re: AMVIC - Appeal of Decision of the Director of Fair Trading
- TAB 6 June 1 & 8, 2017 - email to and from S. Habib re: AMVIC - Salesperson Appeal - Application for Interim Registration
- TAB 7 June 14, 2017 - email to and from S. Habib re: 10222 Submission on Habib Interim Application for Salesperson Registration
- TAB 8 July 27, 2017 - email exchange between [REDACTED] of AMVIC and VSA Licensing, re: Habib, Sammy Sandy
- TAB 9 *R v Habib*, [2016] A.J. No. 669 (Alberta Court of Appeal)
- TAB 10 April 21, 2017, Gregory Garbutt Salesperson Appeal Decision

Exhibit 2: Letter from [REDACTED] Caseworker, of The Alberta Seventh Step Society dated July 29, 2017 re: Letter of Support for Sammy Habib

Exhibit 3: Program Performance Report - Final, Correctional Service Canada dated June 7, 2017 (page 2 missing from copy provided by Mr. Habib)

2. Direct examination and cross-examination by Mr. Habib of the following witnesses called on behalf of AMVIC:
 - (a) Stephanie P [REDACTED] Manager of Licensing/Consumer Services, AMVIC; and
 - (b) [REDACTED] Peace Officer/Investigator, AMVIC.
3. Testimony of Mr. Habib and cross-examination of Mr. Habib by counsel for AMVIC.

Summary of the Evidence

- (a) Stephanie P [REDACTED] - Direct Examination by Ms. Hale

Ms. P [REDACTED] is the Manager of Licensing/Consumer Services. She has held that position for [REDACTED] years. She deals with salesperson registrations. AMVIC receives approximately 3,200 new registration applications annually and 11,000 registrations are renewed annually. 20 to 25% of AMVIC registrants have a criminal record.

Ms. P [REDACTED] reviewed the salesperson registration process, generally. An application is received. A criminal record check is then conducted which may include a Canadian Police Information Centre ("CPIC") search and a Justice Online Information System ("JOIN") search. The applicant is also asked if they have a record. If there are no convictions or no convictions of concern, the application proceeds. If there are convictions of concern, a copy of the criminal record check is provided to the team leader who, in turn, prepares an application report which is provided to Ms. P [REDACTED]. If she determines that the matter does not warrant a referral to the Director, she will permit the registration to proceed. If, however, she feels a referral is warranted, she will make a recommendation to the Director. The Director does not always follow her recommendation.

In assessing whether or not a referral to the Director is warranted, she reviews the totality of the information available. A conviction that appears to be a one-off may not be a big concern. She looks at the frequency and severity of the convictions, as well as if there is an escalation and how recent the conviction(s) is/are.

Exhibit 1, Tab 2 is a copy of Ms. P [REDACTED] report to the Director with respect to Mr. Habib's 2017 registration application. Ms. P [REDACTED] advised that the licensing history portion of that report is incomplete and provided the following, additional history. Mr. Habib initially applied for salesperson registration in 2013. He was given a 90 day conditional registration to allow him to complete the necessary FTA course and to permit AMVIC to complete its review. Mr. Habib did not complete the course and his registration was suspended. Ms. P [REDACTED] noted that since December 2014 conditional registrations are no longer available - registrations are only granted when everything that is required is complete (i.e. FTA course and AMVIC review). When Mr. Habib's conditional registration was granted in 2013 his previous criminal record at the time was known to AMVIC and was not of concern.

Mr. Habib subsequently took the FTA course and his registration was unsuspended in September 2014. AMVIC was not aware of the status of his criminal record at that time. His registration was automatically renewed on August 31, 2015. Ms. P [REDACTED] acknowledged that AMVIC was aware of his previous criminal record, but as there was no alert on AMVIC's system, his registration was automatically renewed. On August 24, 2016, Mr. Habib's registration was cancelled pursuant to an investigation. That investigation was initiated on the basis of information received from police which was not, at that time, showing on CPIC. Mr. Habib sought a stay pending an appeal of the Director's decision to cancel his registration, but Mr. Habib was not available to proceed with his appeal.

Ms. P [REDACTED] advised that AMVIC does receive calls from the police service. That information will result in AMVIC conducting more thorough research with respect to the registrant/licensee involved. AMVIC will not, however, cancel an individual's registration by virtue of the information received from the police, alone. Ms. P [REDACTED] also confirmed that when a person has been charged with a crime AMVIC does not automatically cancel the person's registration unless warranted, but an alert can be put in the system and noted when that person seeks to renew their registration.

Exhibit 1 (tab 6), the email from Mr. Habib to the Director dated June 8, 2017, was reviewed. In the list of items Mr. Habib sought to have the Director consider with respect to whether or not to

grant him an interim registration pending his appeal, Mr. Habib referenced a criminal charge of possession of goods over \$5,000 (item #4). Ms. P [REDACTED] confirmed that that charge had yet to appear on CPIC.

With respect to item #5 of that same email, Mr. Habib referenced a purchase of a few vehicles at wholesale that were traded-in and later sold by him for a profit. This was of concern to AMVIC - while a consumer can sell their own vehicle to another consumer, AMVIC was concerned that Mr. Habib may be operating as a wholesaler or retailer without the appropriate AMVIC business licence.

Ms. P [REDACTED] also noted that, in reference to Exhibit 1 (tab 7) - a subsequent email from Mr. Habib, information contained in this email conflicted with the information contained in Mr. Habib's previous, June 8, 2017 email - he was now saying that the vehicles were not bought to make a profit. This conflict in information was of concern to Ms. P [REDACTED]. In addition to her concern that he was selling vehicles for a profit and was not licensed or registered as a salesperson or as a business.

The controlled substances charges found at page 2 of the Presentence Report (Exhibit 1 (tab 4)) (Presentence Report) were also of concern to her. In addition, the escalation in the nature of Mr. Habib's convictions was also of concern. Based on the criminal record information available at the time, it was Ms. P [REDACTED] recommendation to the Director that Mr. Habib's registration be refused.

(b) Stephanie P [REDACTED] - Cross-Examination by Mr. Habib

Mr. Habib questioned Ms. P [REDACTED] with respect to her familiarity with the Vehicle Sales Authority of British Columbia (VSA). Ms. P [REDACTED] testified that it is a company similar to AMVIC, with similar registration mandates. She believes VSA requires a person to have a licence to operate as a wholesaler.

Mr. Habib explained to the panel that he was residing in British Columbia from 2009 to 2011 and that the vehicles in issue had been purchased in Alberta and transported to British Columbia. Mr. Habib also noted that the information with respect to these purchases and sales was provided to AMVIC after his registration had been cancelled and, therefore, could not have been the basis for Ms. P [REDACTED] to recommend that his registration not be granted. Ms. P [REDACTED] explained that her concern was that Mr. Habib was not AMVIC licensed.

Mr. Habib also cross-examined Ms. P [REDACTED] on the information requested by AMVIC at the time of his various applications. Counsel on behalf of AMVIC confirmed that AMVIC was not denying that Mr. Habib had a criminal record, that AMVIC was aware that he had a criminal record and that he was issued a registration in the face of that criminal record in 2015. Ms. P [REDACTED] testified that she could not say what was on the CPIC report in 2013 (it was shredded once the decision to grant the registration was made), but when the CPIC report in 2016 was brought to her attention she had concerns and hence why he was asked to attend the administrative review.

Ms. P [REDACTED] once again confirmed that the 2016 investigation was prompted by information from the police, but that that information did not influence her decision to recommend that his

registration not be renewed. She also confirmed that when a review is done she does not take on the role of Director. She confirmed that she would not be unbiased.

Mr. Habib questioned Ms. P [REDACTED] as to the number of applicants from [REDACTED] Avenue SW, Calgary (the location of the halfway house where Mr. Habib currently resides). Ms. P [REDACTED] did not know, but testified that the same screening is used for each applicant. She did advise that the screening has been more detailed and research based since she has been with AMVIC.

Mr. Habib explained the circumstances leading up to the possession and trafficking charges. He became [REDACTED] as a result of the [REDACTED]. His point was that for [REDACTED] he had a clean record. AMVIC was aware of his record. They issued and then pulled his registration based on the same information and without any investigation - they made a decision based on a piece of paper and on information that was previously available.

Mr. Habib asked about standards with respect to whether a registration is given. Ms. P [REDACTED] explained that there is no set standard. Every person is a different individual.

Mr. Habib questioned Ms. P [REDACTED] with respect to the most recent charge of theft over \$5,000. Mr. Habib explained that this charge involved a Honda Odyssey vehicle and [REDACTED]. Ms. P [REDACTED] explained that she understood the vehicle was owned by [REDACTED], that Mr. Habib was using the vehicle while employed with [REDACTED] and that he kept the vehicle after he was no longer employed with [REDACTED] because Mr. Habib thought he was owed money for unpaid commissions. Mr. Habib explained that the vehicle was leased and that it was insured and registered by him. When they parted ways he agreed that he would return to the vehicle. He kept it for a month after he was no longer with [REDACTED].

(c) Stephanie P [REDACTED] - Redirect by Ms. Hale

Ms. P [REDACTED] explained that there are three sections of AMVIC - licensing, industry standards and investigations.

Ms. P [REDACTED] confirmed that AMVIC does not cancel a person's registration just because they have criminal charges against them.

(d) [REDACTED] - Direct Examination by Ms. Hale

Ms. [REDACTED] has been an investigator with the Calgary office of AMVIC for the last [REDACTED] years. She is also a peace officer. Prior to her employment with AMVIC she was employed with [REDACTED] (approximately [REDACTED] years) and prior to that was in [REDACTED].

She explained that investigations through AMVIC are initiated in one of three ways:

1. A consumer complaint;
2. AMVIC investigator initiated; or

3. From outside sources such as law enforcement, city bylaw officers, Alberta Transportation and City business licensing.

With respect to the May 17, 2017 decision to refuse to grant Mr. Habib as salesperson registration, Ms. [REDACTED] did confirm that she attended the April 26, 2017 administrative review. This refusal was not as a direct result of an investigation - an investigation was done in 2016 and resulted in the cancellation of Mr. Habib's registration. She attended the administrative review in 2016 with respect to the recommended cancellation and the one in 2017 with respect to the recommended refusal.

The 2016 investigation was initiated through the investigation section of AMVIC. Ms. [REDACTED] recalls that sometime in 2016 (she did not recall exactly when) she was contacted by a detective from the Calgary Police Service ("CPS") [REDACTED] with respect to Mr. Habib. She received information indicating that Mr. Habib was working as an automotive salesperson and had been convicted of a number of offences. He was out on bail, pending an appeal. He had been fired from his job at [REDACTED]

Ms. [REDACTED] testified that it was a very normal practice to be contacted by the police.

She recalled forwarding the email to one of her supervisors and inquiring as to whether she should open a file or if someone else was to open a file. She was told to open her own investigation file. She recalled speaking to one or two CPS officers, she completed and reviewed a CPIC and JOIN search for Mr. Habib, and prepared an application report recommending that Mr. Habib's registration be cancelled. That recommendation triggered the administrative review which took place on August 24, 2016. Ms. [REDACTED] confirmed that his registration was not cancelled due to any consumer complaints.

She did not believe that AMVIC was aware of the convictions until she was contacted by CPS in 2016.

(d) [REDACTED] - Cross-Examination by Mr. Habib

Mr. Habib submitted that he and CPS officer had a dispute. CPS stated to AMVIC, according to Mr. Habib, that he was doing side deals on dealership cars and that was the reason for his termination. With that background, Mr. Habib questioned [REDACTED] as to whether she followed-up with [REDACTED]. She had not as the convictions were her concern.

She and one of her supervisors made the substantive submissions at the review in 2016. Ms. [REDACTED] confirmed that during the review Mr. Habib did not dispute his convictions and he was forthcoming about them.

In her experience the number and level of the convictions was clearly of concern to her as was the street value of the drugs involved and the repeated offences. Other charges on his record which had been stayed were also of concern.

Mr. Habib took the witness to Exhibit 1 (tab 5) and, in particular, item #5 and the reference to [REDACTED]. Ms. [REDACTED] advised that this email had no bearing on her recommendation -

this was not her email. She reiterated that her recommendation to cancel his registration was based on the convictions.

When asked about the charge of theft over \$5,000 involving [REDACTED] she believes that she was aware of this charge when she made the recommendation in 2016 to refuse Mr. Habib's registration, but would need to review her notes to confirm. Mr. Habib questioned that testimony given that the charge was from 2017. Mr. [REDACTED] reiterated that the convictions were her specific concern for recommending the cancellation of his registration. She confirmed that she was not aware of the details of any vehicles Mr. Habib may have bought and sold and, accordingly, such information was not part of her recommendation.

Mr. Habib then submitted that Ms. [REDACTED] received an email from CPS, in turn she called a CPS Detective and during that discussion learned that he had been convicted of charges of double doctoring, that he had spent five months in [REDACTED] was currently released pending his appeal and was working at [REDACTED] Mr. Habib inquired of Ms. [REDACTED] as to how much time transpired between when she received that information and the administrative review in 2016, Mr. Habib asserted that it was less than a month.

When asked about what investigation she did in response to the information from CPS she advised that she conducted a CPIC and JOIN search. Ms. [REDACTED] confirmed that she did not go to [REDACTED] The convictions were her specific concern and her recommendation to cancel his registration was primarily based on the convictions.

She also confirmed that the Court of Appeal's decision was not a consideration in connection with her 2016 recommendation as the appeal decision was rendered after the administrative review. She confirmed that his registration was, however, not cancelled until that appeal had failed. Mr. Habib argued that this was not true. Ms. [REDACTED] clarified that the appeal of his conviction had run its course by the time his registration was cancelled, although his sentencing appeal had not.

Ms. [REDACTED] pulled a CPIC and JOIN search - this information was the extent of her investigation in 2016. She noted the continuous and repeated offences. She confirmed that she also reviewed Mr. Habib's AMVIC file and noted that there were no consumer complaints - she confirmed that this was considered. She did consider the amount of drugs involved and the street value of them.

Mr. Habib took the witness to Exhibit 1 (tab 5) and, in particular, item #5 and the reference to [REDACTED] Ms. [REDACTED] advised that this email had no bearing on her recommendation - this was not her email. She confirmed that she had been aware of Mr. Habib's name while working with [REDACTED]

(e) Submissions on behalf of AMVIC

Mr. Habib expressed concern about the prejudice associated with Ms. [REDACTED] knowledge of Mr. Habib during her employment with [REDACTED] At this juncture counsel for AMVIC confirmed that it has no evidence in its possession of Mr. Habib being involved in [REDACTED] She went on to state that any decision from this appeal hearing should not be based on innuendo or impressions. The events of 2016 and 2107 were related. The initial cancellation

occurred in 2016. Mr. Habib was incarcerated and then in 2017 reapplied. The 2016 cancellation was valid. AMVIC's position given the nature and gravity of the convictions and that there has not been sufficient time with respect to Mr. Habib's rehabilitation.

(f) Continued Cross-Examination of Ms. [REDACTED] by Mr. Habib

Ms. [REDACTED] based her investigation on the information from CPS, the records of charges and convictions and the JOIN search. No other investigation was undertaken. She did review Mr. Habib's file with AMVIC and noted that there were no consumer complaints - this was considered. The amount and street value of the drugs mattered to her. Mr. Habib admitted that he filled 19 prescriptions, but suggested that had absolutely nothing to do with the automotive industry. Ms. [REDACTED] disagreed. Mr. Habib also suggested that the appeal of his convictions had not yet been filed at the time his registration was cancelled in 2016. He also suggested that the appeal had not run its course by the time of AMVIC's decision as the sentencing appeal was still outstanding.

(g) Submissions on behalf of AMVIC

The convictions against Mr. Habib were sufficient to properly found the cancellation of his registration in 2016 and the refusal to grant a registration in 2017. The additional charge associated in connection with the [REDACTED] matter was also in existence at the time of the 2017 refusal. AMVIC's position is that the convictions were serious and any conviction engages the public interest. The number, severity and recentness of the convictions were sufficient to found a refusal to grant him registration.

Mr. Habib was incarcerated and on probation. He broke the law. The older convictions were not the focus of the 2016 cancellation. At a minimum, AMVIC needs to be satisfied that Mr. Habib is going to be a compliant member of the automotive industry. The recent charge does not assist in him doing so.

(h) Stephanie P. [REDACTED] - Recalled by Ms. Hale

In the case of Mr. Habib's most recent applications a CPIC search was undertaken however, before 2017 the drug convictions did not appear on the CPIC search. AMVIC became aware of these convictions through CPS. These convictions do appear on a JOIN search. In the 2013 application AMVIC only requested information with respect to convictions and at that time Mr. Habib had not been convicted of any of the drug charges. Those charges and convictions did not appear on a CPIC report in 2017, but did appear on the JOIN search in 2016 and 2017.

(i) Sammy Habib - Testimony on his own behalf

Mr. Habib is [REDACTED] years old. He is married. He has strong family ties in British Columbia. He moved to [REDACTED] in [REDACTED]. He has owned several businesses. He comes from a boxing background. In [REDACTED] he had an altercation which resulted in the conviction of assault. He made a mistake at [REDACTED] which resulted in a guilty plea of drinking and driving.

In 2000 he started wholesaling cars in British Columbia. In 2008 he moved to Calgary and opened a bar in [REDACTED]. He got [REDACTED] with that

day's [REDACTED] As a result of that injury he became [REDACTED] He shut down [REDACTED] and moved home to British Columbia in about 2008/2009. In 2013 he came back to Calgary to provide an environment for his son to play hockey. He has been off [REDACTED] since 2012.

He did not take the FTA course in connection with his 2013 registration application because he was only in the business a few months. In 2013 and 2014 he was selling 20-25 vehicles per month (33 vehicles was his best month). Working as an automotive salesperson provides a good living for him and his family.

He did not know about the charge associated with [REDACTED] until he was out on parole - his parole officer advised him of the charge.

His criminal past is in the past. He coaches hockey. When his appeal of the drug related convictions was pending he coached his then six year olds [REDACTED] Hockey team. AMVIC has nothing to show that he did anything to compromise the automotive industry. There have been no consumer complaints against him.

Mr. Habib testified about the drug charges and convictions. [REDACTED] During the trial, one of the Crown's witnesses, Detective [REDACTED] was, in his opinion, caught lying on the stand. After the trial, and while working at [REDACTED] Detective [REDACTED] delivered the appeal books - he tried to make sure everyone knew why he was there. The following day AMVIC got a telephone call from the police. But for that telephone call he would still have a registration and AMVIC would still not be receiving any complaints from consumers.

He was in jail for approximately five months. He was let out on bail with strict restrictions, pending his appeal. AMVIC gave him his registration back. After losing the appeal he went back to jail for another five months. He served ten months of jail time at [REDACTED] He was released March 10th of this year and has been residing at a halfway house. He was scheduled to be released ten days from the date of the August 1st hearing. His parole officer is not concerned with him being in society or working in the automotive industry. Mr. Habib provided the panel with an incomplete copy of the Correctional Services Canada Program Performance Report (Exhibit 2) and a letter of support from The Alberta Seventh Step Society. Mr. Habib submitted that if the parole board does not have concerns, why should AMVIC?

(j) Sammy Habib - Cross-Examination by Ms. Hale

Mr. Habib is currently working with [REDACTED] providing credit rebuilding advice.

Mr. Habib explained how he acquired the drugs. He also explained that within two months of being prescribed the drugs he was [REDACTED] He stated that the physicians who provided the prescriptions knew he was seeing other doctors and getting prescriptions from them. All of the prescriptions were legitimate. Because of [REDACTED] he began to stockpile the drugs to ensure that he would not run out and hence the reason he had 7000 pills in his home.

Mr. Habib was originally charged in 2011 with the various drug related charges. In February 2015 he was found guilty and sentenced to 42 months in jail. He spent approximately five months in jail. He appealed and approximately 1.5 years later the appeal was heard. He was sent back to [REDACTED] in about September/October 2016. He was released March 10,

2017 to a halfway house. On August 11, 2017 he is to be released from the halfway house. He states that he has fulfilled his responsibilities with respect to the drug charges.

As for the outstanding charge of theft over \$5,000, Mr. Habib explained that he has been to court on three occasions in connection with that charge. He is waiting to hear if the prosecutor will be proceeding or not. The charge was not brought until nine to ten months after the fact. It was related to his employment at [REDACTED]. While working there he leased a vehicle for a year (\$400/month for the time he was employed). His agreement was that if he left and went to work for another dealership he had to give the car back. When questioned he could not say whether it was a condition of the lease that he be an employee of [REDACTED].

He left his job with [REDACTED]. There was a dispute about his final paycheque. [REDACTED] owed him a paycheque. He told them that when his final paycheque was ready he would return the vehicle. His brother had driven the vehicle to British Columbia. Mr. Habib was contacted by the police and, he says, told that they had been contacted by [REDACTED] about the matter, although they did not know why as, in their view, this was a civil matter between Mr. Habib and [REDACTED]. A couple of weeks later Mr. Habib arranged to have the vehicle shipped back to [REDACTED] from British Columbia.

CLOSING SUBMISSIONS OF THE PARTIES

AMVIC

AMVIC submits that Mr. Habib's application for registration in 2017 was properly refused, based on the serious nature of his recent convictions resulting from a lengthy legal process along with the fact that he has only recently been released from jail. AMVIC argues that in these circumstances it is not in the public interest to grant a salesperson registration to Mr. Habib. The public should have confidence in the system. To register Mr. Habib would detract from the credibility of that registration.

The 2015 convictions eventually showed up on the JOIN search. AMVIC acknowledges that we likely would not be here if not for the information provided by CPS. AMVIC also acknowledged that it did not investigate the circumstances of the convictions, nor should they have, AMVIC argues. The fact of the convictions is what AMVIC acted on. The convictions were serious both in terms of the volume of the drugs involved and the street value of those drugs. AMVIC made a common sense inference - a lot of money and a large number of pills were involved, this is a serious case.

AMVIC pointed out that while Mr. Habib stated during these proceedings that he did advise the doctors who prescribed the medications that he had received prescriptions from other doctors, the Court of Appeal decision states that they found otherwise. In addition, Mr. Habib's defense to the charges was that the pills were for his own personal use. That evidence was rejected by the court.

The RAP Report (Exhibit 3) was also presented to the Director at the April 26, 2017, administrative hearing and considered. While the report states that he is suitable for parole, AMVIC cautioned this appeal panel not to apply the test of the parole board. Counsel

emphasized that to be a registered salesperson is a privilege, not a right. While perhaps regulated less than some professions, the automotive industry is regulated nonetheless.

While Mr. Habib argues that because there were no complaints to AMVIC while he was previously registered and because he has served his time, he should be granted registration now, that is not the test to be applied, AMVIC submits. The public interest purpose of the FTA involves a component of honesty and integrity. Mr. Habib has broken the law. He has a pattern of disobeying the law. He does not meet the requisite threshold.

AMVIC referred to s. 6 of the FTA - unfair practices and argued that that is not an extremely high bar. Here we have an escalating pattern. While having a criminal record does not automatically eliminate someone from being registered, Mr. Habib crossed the threshold with the most recent set of convictions.

Mr. Habib is currently on parole and had not demonstrated that he will go forward and follow not just AMVIC's rules. AMVIC argues that it would shake the public's confidence to simply permit Mr. Habib to reenter the automotive industry. The issue is larger than the lack of consumer complaints; the issue is the potential threat of public harm.

The Appellant

Mr. Habib acknowledges that it is AMVIC's role to govern the automotive industry. However, he submits, it is not to govern the parole board. AMVIC did not do their job and exaggerated the facts. He went to jail for a total of ten months and is now in a halfway house. Did not do anything wrong vis-à-vis AMVIC. AMVIC had no justification to take his registration. Yes, he agrees that the charges are serious and he acknowledges that he was [REDACTED] the drugs for his own purpose. He owns that.

Mr. Habib does not expect AMVIC to be perfect. AMVIC should admit their mistakes and fix the problem. AMVIC made a mistake here. They rushed to judgment when they cancelled his registration in 2016. AMVIC is required to protect its members as well as the public that is why members pay money. AMVIC did not do a very good investigation in this case. His ability to sell cars is not the issue.

He explained what happened with each of the following convictions:

- In the case of the 1985 common assault charge he was a bar owner;
- In 1997 he was pulled over and pled guilty to drinking and driving. He took responsibility for his actions.
- With respect to the failure to attend he says that his lawyer failed to advise him when he needed to attend court. He did seven days in jail. He should have known about the date.
- The obstruction conviction in 2002 concerned an [REDACTED] in Kelowna. He refused to permit the police on his property. He paid the \$500 fine.

This is not a pattern he submits. There was a gap of 12 years of no criminal convictions. He did not go out of his way to cause trouble. He took responsibility for his situation.

ISSUE TO BE DETERMINED ON THIS APPEAL

Pursuant to s. 3.ii.o) of the AMVIC Appeal Policy, this appeal panel must determine if the May 17, 2017 decision of the Director to refuse to grant a salesperson registration to Mr. Habib was consistent with the provisions of the FTA, the Designation of Trades and Business Regulation, the Regulation, and the Bylaws and policies of AMVIC (collectively the "Governing Authorities").

DECISION

It is the unanimous decision of this appeal panel that the May 17, 2017 decision of the Director was consistent with the Governing Authorities and as such the decision of the Director is upheld.

The Director is given the discretion to refuse to issue a registration for the reasons set out in s. 127 of the FTA. Those reasons include where, in the opinion of the Director, it is in the public interest to do so (s. 127(c)). In this case the Director gave three reasons for refusing to issue a registration to Mr. Habib, including that it was in the public interest to do so. The other two reasons articulated by the Director fall under that public interest umbrella.

AMVIC is empowered to regulate the automotive industry in Alberta. Its mission is to protect the public interest and to promote trust and confidence in the automotive industry.

Mr. Habib is no stranger to the criminal justice system. While Mr. Habib provided explanations for his various convictions, the nature and seriousness of his most recent 22 drug related convictions is, as it is to AMVIC, concerning to this panel. Mr. Habib has repeatedly disobeyed the law.

Mr. Habib's explanation with respect to his most recent criminal charge was also troubling. His explanation that he kept a vehicle that he knew was not his to keep once his employment with [REDACTED] had ended, as ransom in respect of a dispute over his final pay, does not exemplify integrity.

Portions of Mr. Habib's evidence during these proceedings were also troubling. When describing the circumstances of his drug related charges, Mr. Habib stated that, the physicians who provided the prescriptions knew he was seeing other doctors and getting prescriptions from them. However, the Court of Appeal decision (see Exhibit 1 (tab 9 at paragraph 9)) states that, with respect to the physicians that testified at the trial that they had prescribed the drugs to Mr. Habib, that "each testified that Mr. Habib did not tell them he had been prescribed these same or similar medications by another physician within the preceding 30 days". In addition, Mr. Habib maintained during these proceedings that the pills were for his own personal use. That same testimony at trial, however, was rejected by the court (see Exhibit 1 (tab 9, at paragraphs 10 and 11)).

We do note that lack of consumer complaints. However, the lack of consumer complaints is only one consideration and is, in our view, insufficient to overcome our concerns with respect to the

recentness and extent of Mr. Habib's criminal record, his recent release from jail, as well as concerns with respect to Mr. Habib's ability to act with honesty and integrity generally.

We agree that to grant Mr. Habib registration as a salesperson would erode the public's trust and confidence in the industry and in AMVIC's regulation of that industry; and, in the circumstances, we also agree that the Director's refusal to grant Mr. Habib registration as a salesperson is in the public interest.

Mr. Habib did, during the course of his testimony suggest that there were Charter issues in connection with this matter, but he did not articulate them in detail. Regardless, this panel does not have jurisdiction to determine such issues.

Dated this 24 day of August, 2017.

"original signed by"

Peter Lokstadt
Chair – AMVIC Salesperson Appeal Committee