

IN THE MATTER OF AN APPEAL BY

JON PAUL POLITYLO

TO SECTION 127(C) OF THE *FAIR TRADING ACT*,
BEING CHAPTER F-2 OF THE REVISED STATUTES OF ALBERTA, 2000

AND

IN THE MATTER OF THE DECISION BY
THE ALBERTA MOTOR VEHICLE INDUSTRY COUNCIL TO REFUSE THE REGISTRATION
OF THE APPELLANT AS AN AUTOMOTIVE SALESPERSON UNDER THE *FAIR TRADING
ACT* AND *AUTOMOTIVE BUSINESS REGULATION* ON DECEMBER 7, 2017

REASONS FOR DECISION

Panel Chair: Ayodola Dahunsi
Members: Ben Iyer
Don Humphreys

Appearances: Paula Hale, legal counsel (Shores Jardine LLP), for the Respondent; and
Ms. Yoneke A [REDACTED], Licensing Supervisor (AMVIC), for the Respondent

Appeal Heard: February 13th, 2018
CAPILANO CENTRE, 9945 – 50th Street, Edmonton, Alberta
Main Floor Boardroom

Introduction

1. Since the decision of the Director, issued on December 7, 2017, the *Fair Trading Act* has been replaced by the *Consumer Protection Act* (being chapter c-26.3 of the Revised Statutes of Alberta, 2000).
2. The change to the legislation does not impact the issues in this appeal.
3. The *Fair Trading Act* will be referred to throughout this decision.
4. This is an appeal pursuant to section 22 of the *Automotive Business Regulation*, AR 192/99 from a decision of the Director of Fair Trading (as delegated) to refuse the registration of Jon Paul Politylo as a provincial automotive salesperson under section 127 and section 104 of the *Fair Trading Act*.

Jurisdiction

5. The *Fair Trading Act* and the *Automotive Business Regulation* regulate, among other things, automotive business licences and salesperson registrations in Alberta.

6. Under section 104 of the *Fair Trading Act*, no person may engage in a designated business unless that person holds a licence under the *Fair Trading Act* that authorizes them to engage in that business. The automotive sales business is a designated business.
7. 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.
8. 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(3),
 - (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,
 - (v.1) fails to comply with any other legislation that may be applicable,
 - (vi) 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,
 - (vii) is convicted of an offence referred to in section 125 or is serving a sentence imposed under a conviction, or
 - (viii) fails to pay, in accordance with the notice of administrative penalty and the regulations, an administrative penalty imposed under this Act;
 - (c) in the opinion of the Director, it is in the public interest to do so.
9. 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.
 10. Section 127 of the *Fair Trading Act* applies to both automotive business licences and salesperson registrations.
 11. 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.

- 12. 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.
- 13. 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 CEO of AMVIC not later than thirty (30) days after AMVIC issues notice of its decision.
- 14. This is an appeal pursuant to section 22 of the *Automotive Business Regulation*.
- 15. Pursuant to section 3(ii)(o) of the Appeal Policy:

The Panel shall determine if the decision by the Director of Fair Trading (as delegated) that is the subject of the appeal was consistent with the provisions of the Fair Trading Act, the Designation of Trades and Business Regulation, the Automotive Business Regulation, and the Bylaws and policies of AMVIC.

Evidence before the Appeal Panel

- 16. Counsel for AMVIC reviewed the authority of the Appeal Panel and the relevant legislation as outlined in the previous section.
- 17. Mr. Politylo was self-represented.
- 18. Mr. Politylo applied for salesperson registration with AMVIC. His application was referred to the Director for consideration. The Director conducted an Administrative Review on December 5, 2017 with Mr. Politylo in attendance.
- 19. On December 7, 2017 the Director issued a decision refusing to grant Mr. Politylo an automotive salesperson registration (the "Registration"). Mr. Politylo provided notice of his intention to appeal the decision of the Director on December 12, 2017.
- 20. Counsel for AMVIC called oral evidence from AMVIC's Licensing Supervisor, Ms. Yoneke A [REDACTED]. Ms. A [REDACTED] noted:
 - a. The salesperson registration application is completed online. The application requires answers to a series of questions. A print-out of the full list of questions was entered as Exhibit 3;

- b. Applicants answer questions by checking a "yes" or a "no" box. Applicants who answer "yes" are asked to provide an explanation;
- c. Applicants are advised that AMVIC conducts a criminal history background check on all applicants;
- d. Once a salesperson registration application is completed, the application is reviewed by internal management;
- e. AMVIC will perform the following searches as part of AMVIC's criminal history background check:
 - o Criminal record searches, including: Canadian Police Information Centre ("CPIC") and Justice Online Information Network ("JOIN");
 - o A Google search; and
 - o An AMVIC database search.
- f. If a concern is noted in a salesperson registration application or as a result of the searches conducted, the application will be further considered and may be subject to an administrative review by the Director;
- g. Having a criminal record does not automatically result in a refusal of registration and approximately 20% of applicants have a criminal record;
- h. When an applicant does have a criminal record, AMVIC will consider the:
 - o Severity of the charges or convictions;
 - o Number of charges or convictions; and
 - o Recency of charges or convictions.

21. Ms. A [REDACTED] processed Mr. Politylo's online application, she noted:

- a. Mr. Politylo answered "no" to Question A of the eligibility questions (marked as Exhibit 1) which asks whether the applicant has a criminal record or any pending charges;
- b. Question A contains a warning which indicates that "false or insufficient information may result in the refusal of the registration";
- c. The criminal history background check revealed that Mr. Politylo had been charged with various offences including: [REDACTED]
- d. The Google search conducted by AMVIC (marked as Exhibit 2) revealed numerous newspaper articles that had been written about Mr. Politylo's charges and the circumstances surrounding his arrest;

- e. It was a concern to AMVIC that Mr. Politylo answered "no" to Question A when he had charges pending; and
 - f. The charges were sufficiently serious to warrant an administrative review.
- 22. Mr. Politylo, acting on his own behalf, acknowledged that he had answered "no" to Question A of the eligibility questions on the salesperson registration application. Mr. Politylo advised the Appeal Panel that:
 - a. He does not recall completing the application. He believes that he misread Question A. When he answered Question A, he believes that he assumed Question A referred only to whether or not he had any convictions;
 - b. He does not have any convictions;
 - c. He does have pending charges. These charges include [REDACTED]
[REDACTED]
 - d. His bail supervisor told him that he would not have to disclose the charges to an employer because they would not show up on his criminal record;
 - e. He plans to plead not guilty to the charges; and
 - f. He has a preliminary inquiry in May.
- 23. Mr. Politylo argued that that his charges should not be considered as he is innocent until proven guilty.
- 24. In response to questions from the Appeal Panel, Mr. Politylo advised that he is currently unemployed but has previously held jobs in engineering consulting.
- 25. Mr. Politylo took the position that the newspaper articles entered as Exhibit 2 should not be considered by the Appeal Panel because they contain hearsay evidence. He initially took the position that the newspaper articles contained false information, but later acknowledged that some of the information contained in the newspaper articles was correct.
- 26. AMVIC's counsel submitted that the primary task of the Appeal Panel is to ensure the protection of the public. The automotive industry is a regulated industry for which the threshold for entry is not high, but it requires good character, honesty and integrity.
- 27. AMVIC's counsel submitted that even if the Appeal Panel accepted that Mr. Politylo's answer to Question A was a misreading of the question his actions demonstrated a callous disregard for AMVIC as a regulator.
- 28. AMVIC's counsel submitted that Mr. Politylo's charges are serious in nature. As a result, AMVIC's duty to protect the public is fulfilled only by upholding the Director's decision to refuse Mr. Politylo's registration. AMVIC emphasized that there has been no presumption that Mr. Politylo will be convicted of the charges.

29. The decision of *Ahmad v Alberta Motor Vehicle Industry Council*, 2010 ABQB 293 [*Ahmad*] was put forward for the proposition that the criminal history of an applicant should be considered even in circumstances where charges have been withdrawn or stayed. Given that Mr. Politylo's charges are pending, AMVIC's counsel submitted that *Ahmad* supports taking into account Mr. Politylo's charges when deciding whether or not he should be granted a salesperson registration. The decision in *Ahmad* was marked as Exhibit 4.
30. AMVIC's counsel noted that Mr. Politylo is not indefinitely prohibited from obtaining a salesperson registration and he would be entitled to reapply.
31. AMVIC's counsel also submitted that should the Appeal Panel be inclined to allow Mr. Politylo's appeal, conditions would be appropriate.
32. Mr. Politylo concluded by stating that his charges should be not considered because he has not been convicted of those charges. Mr. Politylo submitted that he is not a threat to the public. In support of that statement, Mr. Politylo advised that his bail conditions had been lifted. Furthermore, Mr. Politylo submitted that he is not a violent offender and he is not accused of committing fraud.
33. As a result of the fact that he has not been convicted of any charges and that he believes he is not a danger to the public, Mr. Politylo submitted that it was not contrary to the public interest to grant him a salesperson registration.

Appeal Panel Decision

34. The Appeal Panel dismisses the appeal of Jon Paul Politylo and upholds the decision of the Director to refuse the application of Jon Paul Politylo for an automotive salesperson registration.
35. The Appeal Panel has considered Mr. Politylo's evidence and submissions and those of AMVIC.
36. Mr. Politylo has submitted that he misread Question A and as a result, erroneously answered "no" to that question. However, Mr. Politylo also submitted that based on the advice of his bail supervisor, he believed no charges would appear in a criminal record search. The Appeal Panel is concerned about the inconsistency of the evidence put forth by Mr. Politylo.
37. Nevertheless, the Appeal Panel finds that even if it accepts Mr. Politylo's evidence that he misread the question and therefore did not intentionally mislead AMVIC, it would still not be in the public interest to grant Mr. Politylo an automotive salesperson registration at this time.
38. The Director was entitled to consider Mr. Politylo's charges notwithstanding he has not been convicted. "AMVIC has been given delegated authority to protect the public interest,...the Applicant's past criminal and regulatory history are relevant considerations" (*Ahmad* at para 34).
39. Mr. Politylo's charges are sufficiently serious, recent and numerous that they warrant the refusal of Mr. Politylo's application at this time. The nature of the charges, that is,
[REDACTED]

_____ is extremely troubling to the Appeal Panel and is of particular concern to the motor vehicle industry as a whole.

40. As AMVIC has noted, the Appeal Panel is not making a finding of Mr. Politylo's guilt or innocence with respect to the charges he is facing.
41. There is a need for public confidence in AMVIC as a regulator. This need could not be met if the Appeal Panel overlooked the seriousness of Mr. Politylo's charges.
42. The Appeal Panel is of the opinion that given the serious nature of Mr. Politylo's charges, a registration with conditions would not be appropriate.
43. The decision of the Appeal Panel does not preclude Mr. Politylo from reapplying for an AMVIC salesperson registration upon the resolution of his current court matters.
44. The Appeal Panel finds that the decision of the Director was reasonable having regard to all the evidence. It is in the public interest not to grant Mr. Politylo a salesperson registration at this time. No information provided by Mr. Politylo at the hearing suggests that the Appeal Panel should interfere with the Director's decision.
45. The Appeal Panel finds the decision of the Director to be consistent with the provisions of the *Fair Trading Act*, the *Designation of Trades and Business Regulation*, the *Automotive Business Regulation*, and the Bylaws and policies of AMVIC.
46. The Appeal Panel is satisfied that Mr. Politylo was given an exhaustive and fair opportunity to be heard. All evidence before the Appeal Panel has been reviewed and the Appeal Panel is satisfied that the decision to uphold the Director's refusal of Mr. Politylo's application for an automotive salesperson registration is in the best interest of the public at large and of the industry.

Issued and Dated:

"original signed by"

Ayodola Dahunsi
Chair – AMVIC Salesperson Appeal Committee

March 13, 2018
Date