

IN THE MATTER OF AN APPEAL BY

BRETT CHARLES

TO SECTION 127(c) OF THE *CONSUMER PROTECTION ACT*, RSA 2000, c. C-26.3  
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")  
DATED AUGUST 8, 2018  
TO NOT GRANT A PROVINCIAL AUTOMOTIVE SALESPERSON REGISTRATION  
UNDER THE *CONSUMER PROTECTION ACT*

**REASONS FOR DECISION OF THE APPEAL COMMITTEE**

Committee Chair: Ms. Cindy Clark

Members: Mr. Andrew Franiel  
Mr. Sean Harms

Appearances: Mr. Brett Charles

Mr. Shawn Kraft (Warnock Kraft Anderson) counsel for Mr. Charles

Mr. John L [REDACTED], AMVIC Manager of Licensing

Ms. Paula Hale (Shores Jardine LLP) counsel for AMVIC

Ms. Mylène Tiessen (Peacock Linder Halt & Mack LLP) counsel to the  
Committee

Appeal Heard: October 11, 2018  
Hampton Inn and Suites by Hilton  
52 East Lake Avenue, NE  
Airdrie, Alberta

**BACKGROUND**

On July 12, 2018, Mr. Charles applied for an AMVIC salesperson registration. He responded in the negative to the following question contained in the application, which provides, in part:

Have you ever been convicted and/or found guilty of an offence under any law in force in Canada or elsewhere and/or are there any charges pending and/or outstanding warrants? Make sure to include all conditional discharges, absolute discharges and/or stayed charges.

By letter dated July 16, 2018, the Director of Fair Trading (as delegated) (the “Director”) wrote to Mr. Charles advising him that he was considering the status of his application and whether 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 *Consumer Protection Act* (the “CPA”), was held on August 1, 2018.

On August 8, 2018, the Director wrote to Mr. Charles and advised that it was his decision not to grant Mr. Charles’ application for the following reasons:

1. It was in the public interest under section 127(c) of the CPA.
2. Mr. Charles failed to truthfully answer the eligibility question on his salesperson registration application. He did not meet the expected standard of an AMVIC registrant of accurate disclosure of information. Under ABR section 17.1(2) a failure to provide sufficient information may lead to the Director refusing a salesperson registration application.
3. Mr. Charles had not shown that he is capable of meeting the code of conduct requirements and integrity as a salesperson.

On August 20, 2018, Mr. Charles gave notice of his appeal of the Director’s decision.

Pursuant to clause 3.2 2.s) of the *AMVIC Salesperson Appeal Committee Policy* dated June 19, 2018 (the “AMVIC Appeal Policy”), Mr. Charles was provided with the opportunity to make representations by way of argument and to introduce evidence at the appeal hearing.

### **LEGISLATIVE AUTHORITY**

AMVIC regulates the automotive industry in Alberta, including automotive salesperson registrations. Section 16 of the Automotive Business Regulation (the “ABR”) requires salespersons to 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 CPA gives the Director authority to refuse to issue 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 CPA) applies, 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 AND ARGUMENT BEFORE THE APPEAL COMMITTEE**

Evidence presented at the hearing consisted of:

1. Cerlox bound materials containing:

## TAB 1

- (i) July 16, 2018 AMVIC letter requesting attendance at Administrative Review;
- (ii) August 8, 2018 AMVIC decision letter;
- (iii) August 20, 2018 Notice of Appeal by Brett Charles of August 8, 2018 decision;
- (iv) August 22, 2018 AMVIC letter acknowledging appeal

TAB 2 August 31, 2018 AMVIC letter confirming date of appeal hearing

TAB 3 July 12, 2018-Application Report-Licensing (Applicant: Charles, Brett)

2. The following, identified as exhibits:

**Exhibit 1:** Cerlox bound materials containing:

TAB 1 – AMVIC salesperson application wording

TAB 2 – July 12, 2018-Application Report-Licensing (Applicant: Charles, Brett)

TAB 3 – Summary of Criminal Charges

**Exhibit 2:** Letter of reference from Nigel Saindon, Director of New Vehicles, Northland Kia (undated)

**Exhibit 3:** Letter for reference from Rev. Darren Dressler of Shepherd of the Hills Lutheran Church, Airdrie (undated)

- 3. Oral submissions on behalf of Mr. Charles and AMVIC
- 4. Direct and cross-examination of AMVIC's witness, Mr. John L [REDACTED], AMVIC Manager of Licensing;
- 5. Cross-examination of Mr. Charles.

Summary of the Oral Evidence and Oral Submissions

(a) AMVIC – Opening Submissions

AMVIC submits that section 3.2 2.m) of the AMVIC Appeal Policy sets out what this appeal committee is required to determine. The Director's decision is entitled to deference.

(b) John L [REDACTED] - Direct Examination



Mr. L [REDACTED] is the AMVIC Manager of Licensing. He oversees the licensing of salespeople and addresses any issues that may arise.

Mr. L [REDACTED] described the salesperson registration application process, generally. All applications are completed online. One of the key questions on the application is that pertaining to the applicant's criminal history. This question causes the most issues. An application is received and vetted. The vetting process includes background checks which, in turn, includes a criminal record check - Canadian Police Information Centre ("CPIC") report and a Justice Online Information System ("JOIN") search; and, a review of open source material including, for example, information found from a Google search. Applicants with criminal records are not automatically refused registration. Factors such as the type, severity, number and recentness of the convictions/charges are considered. Whether the applicant answered the question with respect to their criminal history, accurately, and whether they fully disclosed the details of it are also considered.

In the case of Mr. Charles, Mr. L [REDACTED]'s staff processed his application. Mr. L [REDACTED] did not attend the August 1<sup>st</sup> administrative review.

Exhibit 1 - tab 1 is a screen shot of the actual wording of the questionnaire that Mr. Charles would have completed. Tab 2 is a standardized application report provided to the Director for the purposes of requesting an administrative review. In the interests of fairness, the report does not include details. Tab 3 is a summary of Mr. Charles' criminal charges.

Mr. Charles response to the question about his criminal history was inaccurate based on a review of a CPIC report and JOIN search. The fact that he answered "no" in the face of these reports would have raised concerns as to whether there was anything else not disclosed by Mr. Charles. It would have raised very serious red flags. The decision, however, to deny Mr. Charles' registration was made by the Director following the administrative review. During that review Mr. L [REDACTED]'s department would have presented their concerns.

In advance of this appeal hearing Mr. L [REDACTED] obtained an updated CPIC report and JOIN search. His understanding from these reports was that Mr. Charles was to be in court on October 11<sup>th</sup> on an outstanding matter. There did not appear to be any new charges.

Mr. L [REDACTED] also referenced an email he received late in the afternoon on the day before this appeal hearing, containing information from a third party which seemed to indicate that Mr. Charles was working in the industry despite not being registered. Mr. L [REDACTED] was unable to determine if the information was accurate, but it did cause him concern. The email was not tendered as an exhibit.

(c) John L [REDACTED] - Cross-Examination

Clarification was sought with respect to employment in the industry in advance of obtaining a salesperson registration. Mr. L [REDACTED]'s understanding is that an employer will hire an individual subject to them obtaining their salesperson registration. Until they actually receive that registration, they may observe sales transactions, wash and move vehicles, be involved in training but, cannot be involved in vehicle sales.

Mr. Kraft questioned AMVIC's refusal to grant Mr. Charles' registration when Northland Kia was prepared to hire him. The Chair objected to this line of cross-examination. Mr. Kraft submitted that this committee should strongly consider the fact that a reputable dealership was willing to take a chance on Mr. Charles.

(d) Mr. Charles – Opening Submissions

Although not provided to this committee, counsel submits that there are cases where the court has overturned decisions where the individual has been able to explain the reasons for failing to accurately complete their application for a salesperson registration. Mr. Charles acknowledges his criminal past. Although ashamed of it he was willing to answer any questions the committee had. In an effort to assist Mr. Charles, others "led him down the garden path" and he answered the salesperson application form incorrectly.

Mr. Charles is now surrounded by people who want to help him so that he can move on. Counsel presented two letters of reference on behalf of Mr. Charles: the first from Nigel Saindon, Director of New Vehicles, Northland Kia (**Exhibit "2"**); and the second from Rev. Darren Dressler of Shepherd of the Hills Lutheran Church, Airdrie (**Exhibit "3"**). He submits that these are pretty strong references. They say a lot about where Mr. Charles is now. Mr. Charles is dedicated to working with Pastor Dressler.

Mr. Charles also referred to two additional reference letters in his possession but not presented at the appeal hearing (one from his parole officer and another from an owner of Northland Kia). He asked the committee for an opportunity to locate and provide these additional reference letters following the hearing.

As for the outstanding criminal charges, counsel submits that they are on their way to be being "kicked out."

(e) Mr. Charles - Cross-Examination by Ms. Hale

The Chair inquired about the two additional reference letters. Mr. Charles explained that these letters were provided to him via his Northland Kia email in about early September. He did not realize until two days before this hearing that he was unable to access them. He spoke to Mr. Saindon the day before the hearing to pull the emails and send them to him. In response to a query as to why he had not requested a further copy of the letter from his probation officer, Mr. Charles explained that he reports to his probation officer every 90 days.

Mr. Charles confirmed that he started his employment with Northland Kia on July 22<sup>nd</sup>. He did not apply for the job. He did not know anything about selling cars. During his time with Northland Kia he moved around within the business. He worked as a service advisor. He was given the title of "moral manager", a role he enjoyed. He did his training which he referred to as "Kia University". His last day with Northland Kia was September 1<sup>st</sup>, although he continues to be paid by them. They want him back. They think he would be good at selling cars.

Mr. Charles was asked about the August 9, 2018 court appearance referred to in the Director's August 8<sup>th</sup> decision. Mr. Charles explained that the matter was put over to October 11<sup>th</sup> (the day of this hearing) and that his lawyer was attending court on his behalf.



Mr. Charles was asked to explain why he responded “no” to the question about criminal convictions/charges in his application to AMVIC. He explained that the Northland Kia used car sales director was completing the application with him. Mr. Charles’ evidence was that this individual told him to put “no” to the question and told him that everyone does it. Mr. Charles did not take the application seriously. Mr. Charles had no idea who AMVIC was. He had no idea there was a governing body.

Ms. Hale questioned Mr. Charles with respect to a September 18, 2018 charge of failure to appear, appearing in the recent JOIN search. Mr. Charles explained that he was present in court that day but, the court clerk told him to go home and come back the next day. When the court reconvened later that day his matter was called but he was not present. The issue was sorted out and the charge was withdrawn.

As for his criminal history and his employment with Northland Kia, Mr. Charles did not provide a copy of his criminal record to them but, by virtue of two of his friends working there (the used car director and the new vehicle director) they are well aware of it.

(f) AMVIC – Closing Submissions

AMVIC encouraged the committee to assess the evidence, to look at the summary of criminal charges (**Exhibit “1”** – tab 3).

AMVIC has a number of concerns. Mr. Charles has a history of serious criminal convictions and he is facing serious criminal charges. A pattern of failures to appear is problematic conduct. This is a regulated industry. The granting of a salesperson registration is not a right. AMVIC is not comforted by Mr. Charles’ explanation for why he answered as he did on the application. It is concerned about Mr. Charles ability to act with honesty and integrity. AMVIC is not saying that Mr. Charles is precluded from ever obtaining a salesperson registration – just not now. He has not demonstrated that he will comply with the law. Notwithstanding his recent efforts to turn his life around, this is a regulated industry and it does not have an obligation to facilitate Mr. Charles’ rehabilitation. This industry is not a testing ground. The standards to enter the industry are not onerous but, they do require a minimum standard of good character.

(g) Mr. Charles – Closing Submissions

Mr. Charles acknowledges his criminal past but submits that he is now surrounded by people who support him and his efforts to succeed. He also submits that the majority of his criminal convictions are driving infractions and domestic issues, convictions that are not of the nature that put people at risk in the context of selling cars. Further, convictions and charges of failure to appear are common.

Mr. Charles proposes that this appeal committee grant him his registration as a salesperson with conditions, which conditions might include that his ability to work as a salesperson be limited to working for Northland Kia, a review of his registration every six months or yearly, and a removal of his registration if his life “falls off the rails”. Mr. Charles reiterates that he has a support system in place to ensure he does not fail and, if he does, such conditions on his registration would result in him losing his registration.

Following an inquiry from the Chair, Mr. Charles explained that in 2016 his fiancé passed away. He obtained counselling at the Foothills Hospital where he attended twice weekly for one year. He has gradually decreased his sessions and now attends counseling once a month. He received counseling from his pastor and a psychiatrist. He took an anger management/domestic violence course, which was not court ordered.

(h) AMVIC - Reply Submissions

With respect to the proposal of a registration with conditions, Ms. Hale submits that the 2017 charges followed or occurred during the period of counselling Mr. Charles describes. She further submits the assertion that Mr. Charles' charges and convictions are mainly driving infractions and domestic violence related is incorrect. There is no public interest in registering Mr. Charles. There is more to the decision to refuse registration than risk of imminent harm. The integrity of the industry is at stake here.

**FURTHER MATERIALS FOR CONSIDERATION BY THE APPEAL COMMITTEE**

The Chair requested that the two reference letters entered as Exhibits 2 and 3, be resubmitted by Mr. Charles and that they be dated, on appropriate letterhead and signed. Mr. Charles was also given an opportunity to submit the additional letters of reference he indicated he had in his Northland Kia email. The Chair requested that such additional letters also be dated, signed and, if applicable, on letterhead. Mr. Charles was given until October 18, 2018, one week from the date of the appeal hearing, to provide these letters. No letters were provided within that timeframe, however, an undated letter from Bob Bullock of Northland Kia was provided to AMVIC on behalf of Mr. Charles, by his counsel, on October 30, 2018. AMVIC did not object to the committee being provided with this letter and we confirm that the letter is admitted as evidence in this appeal.

Mr. Bullock's letter states that Mr. Charles is an employee of Northland Kia, provided he meets all Alberta licensing requirements and that Mr. Charles has informed Mr. Bullock of his criminal record and has willingly made it available to him.

**ISSUE TO BE DETERMINED ON THIS APPEAL**

Pursuant to s. 3.2 2.m) of the AMVIC Appeal Policy, this appeal committee must determine if the August 8, 2018 decision of the Director to refuse to grant a salesperson registration to Mr. Charles was consistent with the provisions of the CPA, 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 committee that the August 8, 2018 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 CPA. 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. Charles, 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.

Mr. Charles was not honest when he completed his application for registration. His explanation of why he answered as he did - embarrassment concerning his criminal past, a failure to take the application seriously and reliance on the advice of others to answer as he did - causes us to seriously question Mr. Charles' ability and willingness to conduct himself with honesty and integrity as salesperson in the automotive industry.

Mr. Charles' criminal history is also of concern. This committee agrees with the submissions of AMVIC that Mr. Charles' current criminal charges are serious. Based on the summary (Exhibit "1" - tab 3) there are charges of failures to appear on at least 15 different occasions. He is currently dealing with various criminal charges. This committee agrees that Mr. Charles' criminal history puts his ability to act with integrity and his ability to comply with the law into question.

The reference letters presented during the hearing from Mr. Saidon and Rev. Dressler are encouraging, but do not convince this committee that he is currently able to meet AMVIC's minimum requirements to be granted registration as a salesperson.

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. To grant Mr. Charles' 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 agree that the Director's refusal to grant Mr. Charles' registration as a salesperson is in the public interest. In making our decision we have given no weight to the evidence of Mr. L [REDACTED] with respect to the recent communication he stated he received the afternoon before the appeal hearing.

Dated this 6 day of November 2018.

"original signed by"

Ms. Cindy Clark  
Committee Chair