

IN THE MATTER OF AN APPEAL BY

WAYNE TRAN

TO SECTION 127(C) OF THE *CONSUMER PROTECTION ACT*,
BEING CHAPTER C-26.3 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 *CONSUMER
PROTECTION ACT* AND *AUTOMOTIVE BUSINESS REGULATION* ON SEPTEMBER 6, 2018

REASONS FOR DECISION

Committee Chair: Ayodola Dahunsi
Members: Pauline Andruik
Barry Johnson

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

Appeal Heard: November 5, 2018
CAPILANO CENTRE, 9945 – 50th Street, Edmonton, Alberta
Main Floor Boardroom

Introduction

1. This is an appeal pursuant to section 22 of the *Automotive Business Regulation*, AR 192/1999 (the "ABR") from a decision of the Registrar (the Director of Fair Trading (as delegated)) to refuse the registration of Wayne Tran as a provincial automotive salesperson under section 127 and section 104 of the *Consumer Protection Act* (the "CPA").

Jurisdiction

2. The CPA and the ABR regulate, among other things, automotive business licences and salesperson registrations in Alberta.
3. Under section 104 of the CPA, no person may engage in a designated business unless that person holds a licence under the CPA that authorizes them to engage in that business. The automotive sales business is a designated business.
4. Pursuant to section 16 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.

5. The Registrar's jurisdiction with respect to automotive business licences and salesperson registrations is found at section 127 of the *CPA*:

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.

6. Section 18 of the *ABR* states that sections 125, 127 and 128 of the *CPA* apply, with necessary changes, to the registration of salespersons.
7. Section 127 of the *CPA* applies to both automotive business licences and salesperson registrations.
8. Accordingly, section 22(1) of the *ABR* states that:

A person

- (a) whose application for registration or renewal of registration has been refused,
- (b) whose registration is made subject to terms and conditions, or
- (c) whose registration has been cancelled or suspended under section 127 of the *Act*,

may appeal in accordance with the process established by the Director.

9. Section 22(2) states that the Director may establish an appeal process for the purposes of subsection (1), including forming or designating an appeal body.
10. In accordance with section 22(2) of the *ABR*, 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 Registrar of AMVIC not later than 30 days after the Registrar issues notice of the decision.
11. This is an appeal pursuant to section 22 of the *ABR*. Pursuant to section 3.2(2)(m) of the Appeal Policy:

The committee shall determine if the decision by the Registrar that is the subject of the appeal is consistent with the provisions of the *Consumer Protection Act*, the Automotive Business Regulation, and the Bylaws and policies of AMVIC.

Evidence before the Appeal Committee

12. In their submissions, AMVIC reviewed the authority of the Appeal Committee and the relevant legislation as outlined above.
13. Mr. Tran was self-represented.
14. Mr. Tran was granted a salesperson registration on August 2, 2012. His salesperson registration expired on August 31, 2016.
15. Mr. Tran applied for a reinstatement of his salesperson registration on or about August 7, 2018 (the "2018 Application"). The 2018 Application was referred to the Registrar for consideration. The Registrar conducted an Administrative Review on September 4, 2018 with Mr. Tran in attendance.
16. On September 6, 2018, the Registrar issued a decision refusing Mr. Tran an automotive salesperson registration (the "Registration"). The Registrar's decision was as follows:
 - It is in the public interest under section 127(c) of the *CPA* NOT to issue Mr. Tran a salesperson registration at this time.
 - Mr. Tran disclosed that he had a criminal record. He was open in his discussion about his past however evasive of his current matters before the court and provided little detail. The weight of his convictions along with the serious charges he is facing before the courts cannot be ignored. Mr. Tran has not shown that he

is capable of meeting the code of conduct requirements and integrity as a salesperson. He has not shown the ability to comply with the law for any significant period of time.

- Accurate disclosure of information is part of the code of conduct expected for anyone who is to be licensed or registered with AMVIC and the applicant did not meet this standard. Under section 17.1(2) of the *ABR*, if an applicant provides insufficient information it may lead to the [Registrar] refusing the applicant for a salesperson registration.

17. On September 12, 2018, Mr. Tran provided a Notice of Appeal to AMVIC.

18. AMVIC called oral evidence from AMVIC Licensing Supervisor, Ms. [REDACTED]. Ms. [REDACTED] provided an overview of the salesperson application process. She noted:

- She has been the AMVIC Licensing Supervisor and has been employed with AMVIC for approximately five (5) years.
- To maintain a salesperson registration, renewal fees must be paid annually. A salesperson has ninety (90) days to pay their renewal fees after their salesperson registration expires.
- When a salesperson renews their salesperson registration, they are asked whether or not they have any new criminal charges or convictions.
- If a salesperson fails to renew their salesperson registration within ninety (90) days after their registration expires, they must apply for a reinstatement.
- A criminal record check is automatically conducted when a reinstatement is applied for.
- In 2012, Mr. Tran applied for a salesperson registration (the "2012 Application"). As a result of his criminal record, Mr. Tran appeared before the Registrar (the "2012 Administrative Review"). Mr. Tran had indicated on his 2012 Application that he had no criminal charges or convictions. At the 2012 Administrative Review, he explained that he had reformed. In 2012, Mr. Tran was granted a salesperson registration with no conditions.
- Mr. Tran allowed his salesperson registration to expire in 2016 and did not pay his renewal fee within ninety (90) days of its expiration.
- The 2018 Application was an application for reinstatement. As a result, a criminal record check was automatically conducted by AMVIC.
- The criminal record check conducted by AMVIC included CPIC and JOIN searches and revealed that Mr. Tran had new criminal charges (the "2017 Charges").
- Before referring an application to the Registrar, AMVIC considers the seriousness of the offence(s), the recency of the offence(s) and whether the offence(s) reveal(s) a pattern of behaviour.

- The 2017 Charges were serious, recent and similar to Mr. Tran's prior convictions. The 2018 Application was referred to the Registrar.

19. The 2017 Charges were described by the Registrar as:

...five outstanding charges before the courts including four Controlled Drugs and Substances Act (CDSA) and one Criminal Code (CC) charge, which include trafficking controlled substance x 3 – [REDACTED] (s. 5(1) CDSA), producing a controlled substance to wit: [REDACTED] (s. 7(1) CDSA) and possession of currency – proceeds obtained by crime over \$5000.00 (s. 355(a) CC).

20. Mr. Tran confirmed that the Registrar's description of the 2017 Charges was accurate.

21. Ms. [REDACTED] did not attend the administrative review before the Registrar.

22. Ms. [REDACTED] reviewed Mr. Tran's charges and criminal history, and provided an overview to the Appeal Committee. She noted that the charges pre-dating 2012 would have been considered by the Registrar at the 2012 Administrative Review. The chart detailing Mr. Tran's charges and convictions was marked as Exhibit 1.

23. Ms. [REDACTED] also provided the Appeal Committee with handwritten notes from the Manager of Investigations, taken at the time of the 2012 Administrative Review. These notes were marked as Exhibit 2.

24. Ms. [REDACTED] noted that she was initially surprised that Mr. Tran had been granted a salesperson registration in 2012. Upon reviewing Exhibit 2, she understood:

- On his application for a salesperson registration, Mr. Tran had not disclosed his criminal charges or convictions.
- When asked about his charges and convictions, Mr. Tran was honest about his convictions, his lifestyle and associations and his time in custody.
- Mr. Tran excused his prior criminal charges and convictions by noting that the convictions had occurred when he was younger and he had since reformed.
- Mr. Tran indicated that he respected his family and did not want to disappoint them again.
- Mr. Tran enjoyed working in the automobile industry and wanted to continue in that career path. He believed that he could succeed in the automobile industry.
- Mr. Tran has since stopped socializing with his former associates.

25. Mr. Tran's submissions to the Appeal Committee were that:

- He has a mother and a step-father, an older brother and an older sister.
- He has a fiancé.

- When he was younger, he was involved with the wrong crowd.
- A number of charges shown on Exhibit 1 were withdrawn, notably all charges from 2004.
- He did serve time in jail as a result of some of his convictions.
- He became involved in car sales because it was difficult for him to get a job when he was released from jail. He thought car sales would be a temporary occupation. However, he enjoyed and was good at car sales.
- At first, he did not understand that he was required to obtain a salesperson registration in order to be able to sell cars. Prior to applying for his salesperson registration in 2012, he worked for a few months at a car dealership.
- Once he obtained his salesperson registration, he was employed as a salesperson, an assistant sales manager, and was an assistant in finance when he left the automotive sales industry in 2016.
- He left the automotive sales industry because he was feeling burnt out. His brother wanted to start a car tinting and vinyl company. They went into business together.
- He did not find quick financial success working with his brother. He determined that he was not going to be able to make a go of the company and sought to return to the automotive sales industry.
- In 2018, he worked for approximately one and a half months at a dealership ("DA") at which time he applied to renew his salesperson registration. He believed that once he paid his fees, his salesperson registration would be renewed automatically. He then started working at a different dealership ("ST").
- While he was working at ST, he received a letter from AMVIC which advised that he would have to attend an administrative review and that he was not permitted to "solicit, negotiate or conclude any agreement to buy, sell, lease, exchange or consign a vehicle...until [he had] been issued a salesperson registration." This letter was provided in the Record and is dated August 30, 2018 (the "August 30 Letter").
- He resigned from ST shortly after he received the August 30 Letter. He advised ST that he had some ongoing legal issues that he needed to deal with and that he would advise them of any changes. Mr. Tran initially told the Appeal Committee that he disclosed the 2017 Charges to ST but later clarified this statement.
- He did not disclose his criminal record on his 2012 Application because he was ashamed of his convictions.
- He previously associated with the "wrong crowd". However, he no longer socializes with his former associates.
- He was advised by his legal counsel not to discuss the 2017 Charges.

- The 2017 Charges occurred as a result of his associations with the "wrong people", and said that to stay out of trouble he should probably not leave his house.
 - He believed that he did nothing wrong and that the 2017 Charges against him would be withdrawn.
 - He is presently working as a landscaper.
 - He knows that he could seek employment in other sales industries, but wanted to focus his effort on obtaining a salesperson registration.
26. No witnesses were called by Mr. Tran. No supporting documentation was provided by Mr. Tran.

AMVIC's Closing Submissions

27. Mr. Tran's pre-2012 criminal record was known at the time of the 2012 Administrative Review. At that time, Mr. Tran was given a second chance.
28. That second chance was given despite Mr. Tran's failure to disclose his convictions on the 2012 Application.
29. Mr. Tran did not have any interactions with AMVIC as a regulator while he held a salesperson registration.
30. Mr. Tran has not been convicted of the 2017 Charges. However, the pattern of behaviour between the 2017 Charges and Mr. Tran's pre-2012 criminal record is troubling to AMVIC as a regulator.
31. Because Mr. Tran has been unwilling to provide AMVIC with details of the 2017 Charges, AMVIC has insufficient information which would justify his registration, pursuant to section 17.1(2) of the *Automotive Business Regulation*.
32. It is AMVIC's position that Mr. Tran should be denied a salesperson registration and the decision of the Registrar should be upheld.
33. AMVIC submitted that if the Appeal Committee was of the opinion that the decision of the Registrar was inconsistent with AMVIC's governing legislation, a conditional salesperson registration would be appropriate. AMVIC suggested the following conditions:
- 1- Mr. Tran would be required to report on the status of his charges.
 - 2- If Mr. Tran were convicted of any charges, his registration would automatically be cancelled.
 - 3- If Mr. Tran breached any current conditions, his registration would automatically be cancelled.
 - 4- Mr. Tran would be required to fully disclose his 2017 Charges to prospective employers and employers would have to acknowledge in writing that they were aware of Mr. Tran's 2017 Charges.

34. AMVIC's submitted that the Registrar's decision was reasonable and correct. Mr. Tran's pattern of behaviour is of serious concern to AMVIC. The 2017 Charges are serious and are similar to his past convictions.
35. It is AMVIC's function to protect the public from harm. While there are no allegations that Mr. Tran has any charges relating to consumers or to his professional obligations in the automotive sales industry, AMVIC is required to maintain integrity and public confidence in the automotive sales industry. If the public were aware that AMVIC had given a salesperson registration to Mr. Tran, given his current charges and past criminal record, it would detract from the reputation of the industry.
36. The industry relies on the honesty and integrity of its participants. Mr. Tran has made efforts to be forthcoming, but has evaded telling the whole truth when it suits him to do so.

Mr. Tran Closing Submissions

37. Mr. Tran acknowledged that if he was found guilty of the 2017 Charges, he would expect to be denied a salesperson registration. He stated that he believed that he would be incarcerated if found guilty of the 2017 Charges.
38. Mr. Tran submitted that the Appeal Committee should recognize that he is innocent until proven guilty.
39. Mr. Tran submitted that he should not have received the 2017 Charges and he is confident that he will be found not guilty of the 2017 Charges. He submitted that there would be no harm to the public if he was given a salesperson registration that was later cancelled because he was found guilty of the 2017 Charges.
40. Mr. Tran stated that he was honest and wanted to be transparent. Mr. Tran stated that he was very familiar with the Code of Conduct.
41. Mr. Tran stated that all salespeople are well aware that it is important not to be caught lying to AMVIC.
42. Mr. Tran advised the Appeal Committee that he was told by ST that he would have a job with them.
43. Mr. Tran argued that if the Appeal Committee put conditions on his registration, he should not be required to tell prospective employers, in detail, of the 2017 Charges. He submitted that he would not be hired if he was required to disclose the 2017 Charges.
44. Mr. Tran requested that the Appeal Committee give him a second chance.

Appeal Committee Decision

45. Upon hearing the evidence and arguments put forward by Mr. Tran and AMVIC, the Appeal Committee has decided to uphold the decision of the Director to refuse the application of Wayne Tran for a reinstatement of his automotive salesperson registration under section 127(c) and section 104 of the *Consumer Protection Act*.

46. The facts before the Appeal Committee were not in dispute.
- Mr. Tran was granted a salesperson registration in 2012 notwithstanding he had failed to disclose the existence of a criminal record on his application.
 - Mr. Tran held a salesperson registration until August of 2016, when he allowed it to expire.
 - Mr. Tran is currently facing five criminal charges, the 2017 Charges.
 - Mr. Tran has not been convicted of the 2017 Charges.
47. The Appeal Committee was provided with limited information by Mr. Tran regarding the 2017 Charges. He advised the Appeal Committee that he believed that he would be found not guilty of the 2017 Charges as they resulted from his association with other people.
48. Though Mr. Tran initially advised the Appeal Committee that he had told his prior employer about the 2017 Charges, it is clear and was later admitted by Mr. Tran that he told his prior employer only that he had "legal issues" which he needed to deal with but did not provide any details to his employer.
49. The Appeal Committee has concerns that Mr. Tran has not been forthcoming with his employers in the past.
50. Mr. Tran did not make submissions with respect to the Registrar's reliance on section 17.1(2) of the *ABR*. The Appeal Committee's conclusion was reached after a consideration of Mr. Tran's serious criminal record and the 2017 Charges. The Appeal Committee's decision regarding Mr. Tran's application for reinstatement of his salesperson registration would be unchanged even if the Registrar had not considered section 17.1(2) of the *ABR*.
51. In response to questions from the Appeal Committee, Mr. Tran asserted that he was familiar with the Code of Conduct. Nevertheless, Mr. Tran's actions and representations suggest that he is willing to evade the truth when telling the truth may cause him embarrassment.
52. Mr. Tran's bare assertions that he is a valued and skilled employee in the automotive sales industry are not sufficient to persuade the Appeal Committee that he should be granted an automotive salesperson registration.
53. Though Mr. Tran requested that the Appeal Committee give him a second chance, the Appeal Committee finds that Mr. Tran was given a "second chance" in 2012, when he was granted a salesperson registration notwithstanding he had a serious criminal record which he had failed to acknowledge on his application.
54. The Appeal Committee acknowledges that Mr. Tran has not been convicted of the 2017 Charges. The Appeal Committee finds that the 2017 Charges are serious, recent and given Mr. Tran's previous convictions, suggest a pattern of behaviour which may reasonably cause concern to AMVIC as a regulator.
55. AMVIC has a responsibility to protect the public interest and to maintain the integrity of the automotive sales industry as a whole.

56. Given the 2017 Charges, the Appeal Committee finds that the Registrar's decision, that it is in the public interest not to grant Mr. Tran a salesperson registration at this time, was reasonable.
57. The Appeal Committee finds that the Registrar's decision is consistent with the provisions of the *Consumer Protection Act*, the *Automotive Business Regulation*, and the bylaws and policies of AMVIC.
58. This Appeal Committee is satisfied that the hearing given to Mr. Tran has been exhaustive and fair. We have reviewed all of the evidence before us. We are satisfied that the Appeal Committee's decision to uphold the original decision of the Registrar not to grant Mr. Tran a reinstatement of his salesperson registration is appropriate in all the circumstances.

Issued and Dated:

"original signed by"

Ayodola Dahunsi
Chair – AMVIC Salesperson Appeal Committee

November 30, 2018
Date