

IN THE MATTER OF AN APPEAL BY

ERIC MACDONNELL

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 JANUARY 28, 2019

### **REASONS FOR DECISION**

Committee Chair: Ayodola Dahunsi  
Members: Gerry Lorente  
Mike Kwasek

Appearances: Paula Hale, legal counsel (Shores Jardine LLP) for the Respondent; and  
Mr. John L. [REDACTED] AMVIC Manager of Licensing for the Respondent

Appeal Heard: July 8, 2019  
Radisson Hotel & Convention Center Edmonton  
4520 76 Ave NW, Edmonton, Alberta  
Sierra Room

### **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 Eric MacDonnell 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,
    - (i.1) fails to repay a fund created under section 137 in respect of amounts paid out in claims against the licensee,
    - (i.2) fails to pay a levy of assessment under section 136(8) or a levy of assessment for a fund created under section 137,
  - (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) of the ABR states that the Director may establish an appeal process for the purposes of subsection (1), including forming or designating an appeal body. In accordance with section 22(2), AMVIC has created the AMVIC Salesperson Appeal Committee Policy (the "Appeal Policy").

10. 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. 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. Mr. MacDonnell was first granted a salesperson registration on August 27, 2013. His salesperson registration last expired on February 28, 2018.

13. Mr. MacDonnell applied for a reinstatement of his salesperson registration on or about November 20, 2018 (the "2018 Application"). The 2018 Application was referred to the Registrar for consideration. The Registrar conducted an Administrative Review on January 18, 2019 with Mr. MacDonnell in attendance.

14. On January 28, 2019, the Registrar issued a decision refusing Mr. MacDonnell an automotive salesperson registration (the "Decision"). The Decision was as follows:

- It is in the public interest under section 127(c) of the *CPA* NOT to issue Mr. MacDonnell a salesperson registration at this time.
- During the administrative review, Mr. MacDonnell acknowledged his two outstanding charges before the court however on the advice of his lawyer could only provide minimal details. If convicted of these alleged offences, Mr. MacDonnell is likely facing a period of incarceration which cannot be ignored. Based on the serious nature of the unresolved criminal charges of Mr. MacDonnell,



it is the opinion of the Director that Mr. MacDonnell has not demonstrated he is capable of meeting the code of conduct requirements and integrity as a salesperson.

The Alberta Court of Queen's Bench in *Ahmad v. Alberta Motor Vehicle Industry Council*, 2010 ABQB 293 recognized that one's past criminal and regulatory history could be considered even if charges were stayed, dismissed or withdrawn.

In the opinion of the Director, current and pending charges are even more important to consider as they are more recent and the Courts have not made a decision regarding their validity.

15. On February 20, 2019, Mr. MacDonnell provided a Notice of Appeal to AMVIC which states:

*"The director's decision to refuse my licence renewal based of pending charges is a direct violation of section 11 of the Charter of Rights and Freedoms therefore violating my rights."*

16. In their submissions, legal counsel for AMVIC reviewed the authority of the Appeal Committee and the relevant legislation as outlined above. Legal counsel for AMVIC also provided the following further opening comments during the appeal hearing:

- The facts in this matter are not in dispute; and
- The seriousness of the 2015 Charges merited the Registrar declining Mr. MacDonnell's registration.

17. Mr. MacDonnell was self-represented, though he advised during the appeal hearing that he was recording the proceedings as he had been directed to do so by his lawyer.

18. AMVIC called oral evidence from AMVIC Manager of Licensing, Mr. John L [REDACTED] Mr. L [REDACTED] provided an overview of the salesperson application process. He noted:

- He is the AMVIC Manager of Licensing whose role is to ensure that registration of salespeople and licensing of businesses are carried out.
- An application to be a salesperson needs to be completed online. The information provided in the application is processed by AMVIC. If there are no issues, a salesperson registration may be issued. If an individual is working in multiple locations, their registration must extend to the multiple locations.
- AMVIC does Canadian Police Information Center ("CPIC") and Justice Online Network System ("JOINS") searches of applicants for salesperson registration and AMVIC also has access to open source information regarding applicants (the "Searches").
- In 2013, Mr. MacDonnell applied for a salesperson registration. In 2013, Mr. MacDonnell was granted a salesperson registration. Historically, AMVIC did not always perform Searches in all situations, including at the time that Mr. MacDonnell first applied for his salesperson registration in 2013. Based on the current

information available to AMVIC Mr. MacDonnell did not have a criminal background at the time of his first application in 2013.

- Mr. MacDonnell's salesperson registration expired in February of 2018 and he reapplied for salesperson registration in November of 2018. Upon receipt of the 2018 Application, Searches of Mr. MacDonnell were conducted by AMVIC.
- The Searches revealed that Mr. MacDonnell had outstanding criminal charges (the "2015 Charges").
- Mr. MacDonnell did not disclose the 2015 Charges in the 2018 Application. In the reinstatement process, Mr. MacDonnell was not specifically asked about whether he had any criminal charges pending.
- AMVIC will not automatically refuse to grant a salesperson registration if there are criminal convictions or charges pending. Before referring an application to the Registrar, AMVIC considers the seriousness and the recency of any charges. The 2015 Charges were serious. As such, the 2018 Application was referred to the Registrar.
- Mr. MacDonnell is not precluded from reapplying for salesperson registration in the future.
- A registered salesperson is subject to a Code of Conduct, which is available online.
- Mr. MacDonnell did not provide an explanation of the 2015 Charges to the Registrar.

19. The 2015 Charges were described by the Registrar in his Decision as:

*... two serious criminal charges: [REDACTED] and the [REDACTED] The Justice Online Information Network ("JOIN") database search reveal that these outstanding matters are set for [REDACTED] Mr. MacDonnell is currently subject to a [REDACTED] Open source information states, Mr. MacDonnell was arrested along with a coaccused in connection with the seizure of \$435,000 worth of drugs during a New Years Eve bust at a home in southeast Edmonton on December 31, 2015. Police conducted a search where they found a drug lab making various quantities of fentanyl pills, counterfeit Cialis pills, counterfeit Viagra pills, fentanyl powder, MDMA, Benzocaine, Phenacetin and Methamphetamine HCL.*

20. Mr. MacDonnell confirmed that he had charges pending for [REDACTED] and the [REDACTED]

21. Mr. MacDonnell's submissions to the Registrar during the Administrative Review were described by the Registrar in his Decision as follows:

- He was recording the administrative review on his phone as directed by his lawyer and could not provide details of the 2015 Charges. His lawyer told him "everything is going to be fine". He was in the wrong place at the wrong time and when he was



arrested, he was outside the house that the police raided. He recognizes the 2015 Charges are serious and if convicted he could be facing a period of incarceration.

- He is innocent until proven guilty and he has no previous record or history. He has never had a complaint against his AMVIC salesperson registration previously and could provide character references if required.
- His potential employer is aware of the 2015 Charges and that he was subject to an Administrative Review. He allowed his salesperson registration to expire as he has been dealing with a medical issue and has been [REDACTED]
- He is an asset to the automotive industry and keeps in touch with his clients. He is trying to move forward with his life.

22. Mr. MacDonnell's submissions to the Appeal Committee were that:

- He has been charged with the two 2015 Charges relating to [REDACTED] and [REDACTED]. The 2015 Charges are scheduled for [REDACTED]
- He was currently employed in the automotive industry when the 2015 Charges were laid.
- His salesperson registration expired in 2018. He became ill and did not reapply until November of 2018. Since November of 2018, he has not worked in the automotive industry but he has been on [REDACTED] and has also worked various jobs.
- He feels that he has not been treated as "innocent until proven guilty" and that AMVIC's decision is a violation of his rights.
- He does not want to say too much about the 2015 Charges.

23. No witnesses were called by Mr. MacDonnell. No supporting documentation was provided by Mr. MacDonnell.

#### AMVIC's Closing Submissions

24. AMVIC's legal counsel noted that Mr. MacDonnell has asserted his rights, including his right under section 11(d) of the *Canadian Charter of Rights and Freedoms*. AMVIC submitted that it is not suggesting Mr. MacDonnell's rights should be disregarded. However, AMVIC submits that criminal charges and related Charter rights are in the context of significant and lifelong impact on an individual, as opposed to salesperson registration which occurs in a different context, namely, the regulation of the automotive industry.

25. AMVIC cited paragraph 29 of the *Ahmad* case as providing authority that is even more relevant with respect to current criminal charges than to past charges. Paragraph 29 states:

*Rather, I agree with the submission of the A.M.V.I.C. that while it is true that the criminal and regulatory charges against the Applicant in the past were either*

*stayed, dismissed or withdrawn, the A.M.V.I.C. was entitled to consider the Applicant's entire history in the motor vehicle industry in order to properly exercise its mandate to protect the public interest.*

26. It is AMVIC's position that Mr. MacDonnell should be denied a salesperson registration and the decision of the Registrar should be upheld as both reasonable and correct.
27. The 2015 Charges are of serious concern to AMVIC. AMVIC made the following further submissions:
  - The Appeal Panel must review this matter in the manner of a reasonably well-informed member of the public. Reputational issue for the industry. Would detract from the integrity of the industry if individuals facing charges were granted registration.
  - It is AMVIC's function to protect the public from harm. While there are no allegations that Mr. MacDonnell has any charges relating to consumers or to his professional obligations in the automotive industry, AMVIC is required to maintain its integrity and the public's confidence in the automotive industry. If the public were aware that AMVIC had issued a salesperson registration to Mr. MacDonnell, given his current charges, it would detract from the reputation of the industry.
28. AMVIC concluded 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. MacDonnell would be required to report on the status of the 2015 Charges and any further charges he may face in the future.
  - 2- If Mr. MacDonnell were convicted of any charges, his registration would automatically be suspended and would be subject to an immediate Administrative Review.
  - 3- Mr. MacDonnell would be required to fully disclose his 2015 Charges to current and prospective employers and employers would have to acknowledge in writing that they were aware of Mr. MacDonnell's specific 2015 Charges.

#### Mr. MacDonnell's Closing Submissions

29. Mr. MacDonnell provided evidence during the appeal hearing that he was granted bail in relation to the 2015 Charges as the judge did not believe he was a danger to the public. The co-accused who was also charged with him was granted bail as well.
30. The facts in the *Ahmad* case do not relate to an individual facing current charges.
31. Even if he was convicted of the 2015 Charges, Mr. MacDonnell submits that they are not of a serious enough nature to warrant refusal of his salesperson registration reinstatement.



## Appeal Committee Decision

32. Upon hearing the evidence and arguments put forward by Mr. MacDonnell and AMVIC, the Appeal Committee has decided to uphold the decision of the Registrar to refuse the application of Mr. MacDonnell for a reinstatement of his automotive salesperson registration under section 127(c) and section 104 of the *Consumer Protection Act*.
33. The facts before the Appeal Committee were not in dispute.
  - Mr. MacDonnell was granted a salesperson registration in 2013, which he held until February of 2018, when he allowed it to expire.
  - Mr. MacDonnell is currently facing two criminal charges (the 2015 Charges).
  - Mr. MacDonnell has not been convicted of the 2015 Charges.
34. The Appeal Committee was provided with limited information by Mr. MacDonnell regarding the 2015 Charges. He only advised the Appeal Committee that he believed that he would be found not guilty of the 2015 Charges as they resulted from his being in the wrong place at the wrong time, that he was outside of the house that the police had raided and that he had been granted bail.
35. The circumstances and factors examined in the context of Mr. MacDonnell having been granted bail are likely distinct from the factors that the Registrar is required to consider in Mr. MacDonnell's application for a salesperson registration. The limited information received from Mr. MacDonnell regarding the pending 2015 Charges, including the limited information he provided regarding the circumstances of his bail, is insufficient to persuade the Appeal Committee that he should be granted an automotive salesperson registration.
36. The Appeal Committee acknowledges that Mr. MacDonnell has not been convicted of the 2015 Charges. However, the Appeal Committee finds that the 2015 Charges, relating to the [REDACTED] are serious and reasonably cause concern to AMVIC as a regulator. In particular, the open source search regarding the 2015 Charges has revealed significant concerning information.
37. The Code of Conduct requirements are applicable to registered automotive salespeople and they are reasonable requirements.
38. AMVIC has a responsibility to protect the public interest and to maintain the integrity of the automotive industry as a whole. If Mr. MacDonnell was granted registration as an automotive salesperson pending the determination of the 2015 Charges, there is a significant risk that this would result in damage to the reputation of the automotive industry.
39. Given the seriousness and recency of the 2015 Charges, the Appeal Committee finds that the Registrar's decision, that it is in the public interest not to grant Mr. MacDonnell a salesperson registration at this time, was reasonable.
40. 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.



41. This Appeal Committee is satisfied that the hearing given to Mr. MacDonnell 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. MacDonnell a reinstatement of his salesperson registration is appropriate in all the circumstances.

Issued and Dated: \_\_\_\_\_

"original signed by"

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Ayodola Dahunsi  
Chair – AMVIC Salesperson Appeal Committee

\_\_\_\_\_  
July 26, 2019  
Date