

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 JUNE 13, 2019

REASONS FOR DECISION

Committee Chair: Kirby Soon

Members: Adam Mohl
Wayne Paulsen

Ally H. Ismail,
legal counsel (Emery Jamieson LLP) for the Appeal Committee

Appearances: Wayne Tran, Appellant

Simon Renouf,
legal counsel (Renouf Law) for the Appellant

Yoneke A [REDACTED]
AMVIC Manager of Licensing for the Respondent

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

Appeal Heard: October 21, 2019
Summerside Business Centre
1233 – 91 Street SW Edmonton, Alberta

Introduction

1. This is an appeal before the AMVIC Salesperson Appeal Committee (the "Appeal Committee") pursuant to section 22 of the Automotive Business Regulation, AR 192/1999 (the "ABR") from a decision of the Director of Fair Trading (as delegated) (hereafter the "Registrar") to refuse the registration of Wayne Tran as a provincial automotive salesperson under section 104 and section 127 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. "Conviction" is defined in section 125 of the *CPA*:

In this Part, "conviction" means a conviction for an offence under any criminal or other law in force in Alberta or elsewhere that, in the Director's opinion, indicates that the person convicted is unsuitable to be licensed under this Act.

7. Section 18 of the ABR states that sections 125, 127 and 128 of the *CPA* apply, with necessary changes, to the registration of salespersons.
8. Section 127 of the *CPA* applies to both automotive business licences and salesperson registrations.
9. 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.

10. 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").
11. 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.
12. 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

13. Mr. Tran was first granted a salesperson registration in 2012. His salesperson registration last expired on August 31, 2016.

14. Mr. Tran applied for a salesperson registration on or about May 23, 2019 (the "2019 Application"). The 2019 Application was referred to the Registrar for consideration as information received in conducting routine background checks was concerning. The Registrar conducted an Administrative Review on June 13, 2019 with Mr. Tran in attendance (the "2019 Administrative Review").
15. On June 13, 2019, the Registrar issued a decision refusing Mr. Tran 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. Tran a salesperson registration at this time.

Mr. Tran did not truthfully answer the eligibility question on the application for a salesperson registration by providing complete details regarding his criminal past. Although Mr. Tran expressed it was not his intention, he had access to the information as it was provided to him for his salesperson appeal. 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 127(b)(iii) of the CPA if an applicant furnishes false information or misrepresents any fact or circumstance to the director, the director may refuse to issue a license. [Citation omitted]

During his administrative review, Mr. Tran acknowledged his criminal past, however he failed to take responsibility for his actions in relation to his recent conviction and was more concerned of trying to explain to the Director the fact that the more serious charges were withdrawn and that he was not guilty of those charges. It is the opinion of the director that Mr. Tran has not demonstrated he is capable of meeting the code of conduct requirements and integrity as a salesperson at this time nor has he shown the ability to comply with the law for any significant period of time.

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 charged were stayed, dismissed or withdrawn.

16. On July 10, 2019, Mr. Tran's legal counsel provided a Notice of Appeal to AMVIC which set out the following:

Paragraph 2 of the Decision indicates that Mr. Tran did not truthfully answer questions about his criminal record. However the Decision goes on to acknowledge that AMVIC already had in its possession accurate information about Mr. Tran's criminal record. As a result, the claim that Mr. Tran filed false information or misrepresented facts is immaterial to his application, and is irrelevant to the application process, even if true (which is denied).

Paragraph 3 of the Director's decision claims that Mr. Tran failed to take responsibility for his recent conviction "and was more concerned with trying to explain to the Director the fact that more serious charges were withdrawn and that he was not guilty of those charges." The fact that the more serious charges were withdrawn by the Crown was highly relevant and the significance of that information was improperly discounted by AMVIC in the Director's decision.

The Director relied on other information received about Mr. Tran that was not disclosed to Mr. Tran, in breach of the duty of fairness.

The Director erred in law in relying on Ahmad v Alberta Motor Vehicle Industry Council, 2010 ABQB 293 [Ahmad] for the proposition that "one's past criminal and regulatory history could be considered even if the charges were stayed, dismissed or withdrawn." In fact, the Court in Ahmad held that AMVIC "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." [Emphasis Added].

17. At the outset of the appeal hearing, 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:
 - There is not a significant factual dispute in this appeal. The key issue is Mr. Tran's criminal record, his history and how that should impact his application for a salesperson registration. The Registrar properly considered Mr. Tran's criminal record and charges that were recently before the Court. The Registrar's Decision is reasonable and appropriately considered Mr. Tran's application for salesperson registration, the content of his criminal record and his forthrightness during the 2019 Administrative Review.
18. AMVIC called oral evidence from AMVIC's manager of licensing, Ms. Yoneke A [REDACTED]. Ms. A [REDACTED] provided the following evidence:
 - She was the licensing supervisor for AMVIC from 2014 to July 2019. Since July 2019, she has been the manager of licensing for AMVIC. As licensing supervisor, her role was to review applications for salesperson registration.
 - She described the process for salesperson registration applications. All applications are made online. The applicant is asked questions about eligibility based on their background history and must provide authorization for AMVIC to complete a criminal record check. Once the registration fee is paid, the application is reviewed by a licensing advisor who is trained to complete a Canadian Police Information Center ("CPIC") check, Justice Online Information Network System ("JOINS") search, a background check with other automotive jurisdictions, a search of AMVIC's database for background within the automotive industry in Alberta and an open source search on the applicant.
 - If the applicant has a criminal record, his or her application will be sent to the licensing supervisor for review. The licensing supervisor is trained to review the criminal record based on the seriousness of the incident, the frequency of convictions in the applicant's criminal record and whether there are any current criminal charges before the Court. The licensing supervisor prepares a report to the manager of licensing with this information and recommends a face-to-face review of the applicant, but does not provide a recommendation regarding whether the application should be granted or refused. The report is then sent to the Registrar who makes the final decision.
 - During the application process, the applicant is asked eligibility questions, including whether they are currently charged with any criminal offence or if they have had a licence in any regulated industry revoked since the date of their last application.

- If an applicant is facing criminal charges, which they disclose during the application process, their registration will not be automatically cancelled. The criminal charges will be assessed based on the recency, frequency and seriousness of the charges, as well as the history of any other criminal convictions and whether the offences reveal a pattern of behaviour.
- A criminal record does not preclude an applicant from being registered as a salesperson. From a licensing perspective, when an applicant has a criminal record or current criminal charges, the Registrar must decide whether to grant the registration. The Registrar conducts an in-person Administrative Review where the applicant can explain their criminal record or charges. The Registrar must then issue a written decision granting or refusing the application for registration. If an applicant has an older criminal conviction without new charges, that may be a sign of rehabilitation that can be considered when deciding whether to grant the registration.
- A salesperson registration is for a term of one year. A salesperson will receive a reminder to renew their registration 45 days before their registration expires. A salesperson has a 90 day grace period to renew their registration. If a salesperson applies for renewal during the grace period, the renewal is an automatic process. If a salesperson applies for renewal during the grace period, a new criminal record check will not be completed unless the salesperson indicates they have been charged with a criminal offence since the date of their last application. If a salesperson does not apply for renewal during the grace period, they must apply for reinstatement of their registration.
- At the time of this appeal, there were 10,578 salespersons registered in Alberta. AMVIC receives an average of 250 salesperson registration applications per month.
- Mr. Tran's salesperson registration expired on August 31, 2016. Mr. Tran previously applied to reinstate his salesperson registration in 2018 (the "2018 Application"). That application was denied by the Registrar and Mr. Tran appealed the decision. An appeal occurred on November 5, 2018 (the "2018 Salesperson Appeal"). A decision was issued by the Appeal Committee on November 30, 2018 upholding the decision to deny Mr. Tran's application for reinstatement of his salesperson registration. The Appeal Committee denied Mr. Tran's application for reinstatement due to concerns with the seriousness of his 2017 criminal charges (the "2017 Charges").
- On or about May 23, 2019, Mr. Tran applied for a salesperson registration. During the application, issues were brought to Ms. A [REDACTED]'s attention as she was the licensing supervisor at the time. Ms. A [REDACTED] prepared an Application Report and recommended a face-to-face review of the applicant based on Mr. Tran's criminal record, a recent criminal conviction and open source searches, which raised concerns based on the seriousness of his criminal record and charges.
- In the 2019 Application, Ms. A [REDACTED] stated the criminal record history provided by Mr. Tran was "fairly accurate." At the time of the 2019 Application, Mr. Tran had recently been convicted in February 2019. As the licensing supervisor, Ms. A [REDACTED] had concerns with the recency and seriousness of Mr. Tran's February 2019 criminal conviction and the frequency of the convictions in his criminal record. She considered the charges arising in 2017 and the conviction in February 2019 to be recent. Based on an Edmonton Journal article found during the open source search and the

information contained in Mr. Tran's criminal background check, she considered the charges to be serious. The frequency of his criminal record in its totality was also concerning.

19. In response to questions posed by legal counsel for Mr. Tran and by the Appeal Committee, Ms. A [REDACTED] responded as follows:

- She prepared the Application Report to the Registrar and recommended a face-to-face review of Mr. Tran's application. The Application Report was signed by the manager of licensing at the time, Mr. John L [REDACTED].
- On Mr. Tran's 2019 Application, he reported that he had a criminal record and provided a list of his criminal convictions and charges that had been dropped. Ms. A [REDACTED] went through each of the criminal convictions, including the dates and the nature of the conviction.
- In 2007, Mr. Tran was convicted of [REDACTED] At the time, Mr. Tran was [REDACTED] years old.
- In 2011, Mr. Tran was convicted of [REDACTED] and sentenced to three years in jail.
- In 2019, Mr. Tran was convicted of [REDACTED] At the time of the 2018 Application, Mr. Tran was facing several serious criminal charges. At the time of the 2019 Application, he had been convicted of one of the charges. The rest of the charges had been withdrawn. Mr. Tran served the sentence for his February 2019 conviction prior to making the 2019 Application.
- The Application Report provided to the Registrar prior to the Administrative Review included a copy of Mr. Tran's criminal record, which was not provided to the Appeal Committee, and a news article from the Edmonton Journal about the 2017 Charges against Mr. Tran.
- She did not do any independent research or speak to anyone at the police department to confirm the accuracy of the Edmonton Journal article about Mr. Tran's criminal charges.
- Ms. A [REDACTED] clarified her comments that the criminal record history provided by Mr. Tran in the 2019 Application was "fairly accurate." Mr. Tran did not list his 2011 conviction for [REDACTED] in the 2019 Application.
- Administrative Reviews are normally recorded. Ms. A [REDACTED] is not aware if the 2019 Administrative Review was recorded as she was not a part of the review.

20. Counsel for AMVIC advised the Committee that the 2019 Administrative Review was not recorded due to technical difficulties. The Registrar, Mr. Gerald Gervais, initiated the recording, but the recording equipment did not work. AMVIC had technical difficulties with its recording equipment for a period of three weeks.

21. Mr. Tran's legal counsel provided an opening statement:

- Mr. Tran's application was denied, in part, for not providing truthful answers on his application as he did not list his 2011 criminal conviction. This was immaterial as AMVIC had accurate information concerning Mr. Tran's criminal record, including his complete criminal record. In the 2018 Salesperson Appeal, AMVIC presented materials demonstrating it possessed a complete record of Mr. Tran's criminal convictions, including the 2011 conviction. As a result of the 2018 Salesperson Appeal, Mr. Tran was also aware that AMVIC had his complete criminal record. It was an oversight on Mr. Tran's part not to include his 2011 conviction on his 2019 Application.
- The Registrar's Decision stated Mr. Tran failed to take responsibility for his recent conviction and was more concerned with explaining that the more serious charges were withdrawn. The fact that the more serious charges were withdrawn was highly relevant and the significance of this fact was improperly discounted. In the 2018 Salesperson Appeal, the Appeal Committee stated they were concerned with the seriousness of the 2017 Charges; Mr. Tran was attempting to address this concern during the Administrative Review.
- The Registrar relied on information that was not disclosed to Mr. Tran. The Edmonton Journal article and Mr. Tran's criminal record were provided to Mr. L [REDACTED] and Mr. Gervais, but not to Mr. Tran prior to the 2019 Administrative Review.
- The Director made an error in law by relying on *Ahmad* and misquoting it.

22. Mr. Tran provided the following evidence:

- Mr. Tran, Mr. John L [REDACTED] (manager of licensing) and Mr. Gerald Gervais (Registrar) were present during the 2019 Administrative Review. It was not easy for Mr. Tran to speak on his behalf during the 2019 Administrative Review. Mr. L [REDACTED] and Mr. Gervais interrupted him as he spoke and repeatedly told him that they did not believe him.
- During the 2019 Administrative Review, Mr. L [REDACTED] and Mr. Gervais told Mr. Tran that they were former police officers. Mr. L [REDACTED] said that "he had friends in the force and he was digging up as much dirt as he could" on Mr. Tran.
- Mr. Tran thought the 2019 Administrative Review was being recorded as he saw the recording software being activated on a phone.
- If his application for salesperson registration is granted, Mr. Tran plans to move on from his history and rebuild his life. This experience has slowed down his life. He was a business manager in his employer's finance office. He wants to return to that role, grow in the automotive industry and work his way towards a sales manager and general manager position.
- Mr. Tran presented the Appeal Committee a summary of his criminal charges that was submitted by AMVIC to the Appeal Committee during the 2018 Salesperson Appeal. That summary lists his [REDACTED] conviction from 2011. He plead guilty to

[REDACTED] in relation to only one of the four named individuals related to the charge. The summary of criminal charges was entered as **Exhibit 1**.

23. In response to questions posed by legal counsel for AMVIC and by the Appeal Committee, Mr. Tran responded as follows:

- Mr. Tran was sentenced to serve three years in federal prison as a result of the 2011 conviction for [REDACTED]. Mr. Tran was released after one year due to good behaviour and for demonstrating rehabilitation. Mr. Tran did not list that conviction in the 2019 Application as he was completing the application at work and failed to copy that conviction from his criminal record.
- Mr. Tran was sentenced to 90 days in jail as a result of the February 2019 conviction for [REDACTED]. Mr. Tran served two-thirds of this sentence and completed his legal obligations; he is not currently subject to any conditions as a result of this conviction.
- In the 2018 Salesperson Appeal, Mr. Tran told the Appeal Committee that if he was convicted of the 2017 Charges, he would expect his registration to be cancelled. He made this statement due to the serious nature of the 2017 Charges. However, he was not convicted of the 2017 Charges except for [REDACTED]. The evidence underlying the February 2019 conviction was completely different than the circumstances underlying the 2017 Charges and the information in the Edmonton Journal article. Mr. Tran did not have anything to do with the money and drugs found that were described in the Edmonton Journal article.
- As a result of his 2007 convictions, he was given a conditional sentence order and served two years in his home under strict conditions. In 2007, he was convicted of [REDACTED].
- Mr. Tran started selling cars in 2012. He worked in floor sales for three and half years, before becoming an assistant finance manager. He began working after his 2011 conviction and was hired as an automotive salesperson within a week of being released from federal prison.
- In 2012, when Mr. Tran first applied for salesperson registration, he did not disclose his convictions. An Administrative Review of Mr. Tran's application occurred in 2012 (the "2012 Administrative Review"). Mr. Tran's criminal record was known during the 2012 Administrative Review and he was given a "second chance" despite his failure to disclose his convictions.

AMVIC's Closing Submissions

24. Counsel for AMVIC argued that it is incorrect to say it is immaterial that Mr. Tran did not list all his criminal convictions in the 2019 Application because AMVIC already had Mr. Tran's criminal record. The application process invites the applicant to explain their history, which requires forthrightness. Given the significant number of registered salespeople and monthly applications for salesperson registration received by AMVIC, the system relies on the honesty and integrity of its participants. The requirement for honesty and integrity are manifested in the CPA and the ABR.

25. AMVIC notes that it processes numerous licensing applications. AMVIC registrants are subject to a Code of Conduct that requires a high level of integrity. AMVIC's application process plays a gatekeeping function and AMVIC relies upon the integrity of its registrants. It is AMVIC's position that Mr. Tran's registration would detract from the integrity of the industry and the public's confidence in and perception of the industry. AMVIC has thus concluded that it would not be in the public's interest to grant Mr. Tran a salesperson registration at this time.
26. AMVIC argued that there was no breach of fairness during the 2019 Administrative Review. If there was a breach of fairness, that breach has been corrected as: (i) Mr. Tran received extensive disclosure prior to this appeal; and, (ii) Mr. Tran is represented by legal counsel in this appeal. Further, Mr. Tran's allegations of Mr. L. [REDACTED]'s comments during the 2019 Administrative Review would carry more weight if they were supported by a recording.
27. AMVIC's legal counsel cited paragraphs 27-29 of the *Ahmad*, which was marked as **Exhibit "2"**:

Mr. Wilson notes the Legislature has delegated the responsibility to protect the public interest with respect to the issuance and review of Salesperson Registration and that this is necessarily a broad mandate that requires the A.M.V.I.C. to consider any and all factors that may be relevant to the public interest. In the context of this mandate, he submits that the facts of the case, although some are historical, are sufficient to support the Appeal Panel's finding that the cancellation of the Applicant's conditional Salesperson Registration was in the public interest.

Although the A.M.V.I.C. reviewed the history of this Applicant's Salesperson Registration over the years and, as a result, the various contacts he had with the A.M.V.I.C., I do not find that the Panel's review of the history and its reinvestigation of the incidents constitute an error of law.

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.

28. AMVIC argued that the Registrar did not misquote *Ahmad*. Although the decision states "A.M.V.I.C. was entitled to consider the Applicant's entire history in the motor vehicle industry," this was in the context of criminal fraud activities of the applicant. The Registrar's decision does not raise concerns that the Registrar misunderstood the context of the decision in *Ahmad*.
29. AMVIC argued that the purpose of the CPA is to protect the public interest and establish a regulatory system to protect consumers in Alberta. Counsel reviewed various sections of the CPA and the ABR that reflect this public interest mandate. Counsel argued that sections 125 and 127(b)(vii) of the CPA provide broad authority for the Registrar to deny an application for salesperson registration based on the applicant's criminal convictions. AMVIC argued that the legislation does not restrict the Registrar, or the Appeal Committee, to consider only those convictions related to the applicant's history in the

motor vehicle industry. The purpose of the legislation is to allow the Registrar to consider serious convictions and their impact on the public interest and consumer protection.

30. Counsel for AMVIC conceded that Mr. Tran was only convicted on one of the five 2017 Charges, but argued that the single conviction was still serious. Further, there is a pattern of criminal charges and convictions in Mr. Tran's history that is problematic. Counsel for AMVIC noted that Mr. Tran was explicitly given a salesperson registration in 2012 as a "second chance," but is now before the Appeal Committee in this appeal with another serious criminal conviction.
31. AMVIC argued that while having a criminal record does not preclude Mr. Tran from being a salesperson, he has not demonstrated a lengthy period without criminal charges or convictions that would indicate he has avoided conflict with the law. Mr. Tran's criminal convictions in 2007, 2011 and 2019 are not a consistent record of rehabilitation. During the 2012 Administrative Review, Mr. Tran provided compelling testimony that his criminal history would not be repeated. AMVIC is not arguing that Mr. Tran's criminal record is so serious that he cannot enter the industry, but he must demonstrate a longer period of time without criminal charges or convictions.
32. 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:
 - A. Mr. Tran would be required to report any new criminal charges to AMVIC within two weeks of the new charges, after which his registration would be subject to a further Administrative Review.
 - B. Mr. Tran would be required to fully disclose his criminal record to current and prospective employers and employers would have to acknowledge in writing on company letterhead that they are aware of Mr. Tran's specific criminal charges.
 - C. Mr. Tran would be required to immediately report any change of employer and would have to disclose his criminal record to his new employer.
 - D. Mr. Tran would not be able to allow his salesperson registration to expire.

Mr. Tran's Closing Submissions

33. Mr. Tran's legal counsel made the following closing submissions to the Appeal Committee:
 - While the purpose of this appeal is to cure unfairness and errors made by the Registrar, there was some unfairness in the 2019 Administrative Review that the Appeal Committee must address. It was unfair for the Registrar to have and rely on materials that were not provided to Mr. Tran. It was also unfair for the Registrar "to wait in the weeds" by penalizing Mr. Tran for not listing his entire criminal record in the 2019 Application. While Mr. Tran's explanation for not including his entire criminal record may not be adequate, Mr. Tran knew that AMVIC already had his criminal record and was aware of his 2011 conviction. The Registrar should have disclosed to Mr. Tran that AMVIC had Mr. Tran's entire criminal record prior to the 2019 Administrative Review.

- The Registrar's decision states Mr. Tran failed to take responsibility for his criminal charges and he emphasized that the more serious charges were dropped. That assessment failed to appreciate the history of this matter. In the 2018 Salesperson Appeal, the Appeal Committee expressly indicated they had concerns with the serious nature of the outstanding 2017 Charges. Mr. Tran focused on explaining that he was not convicted of the more serious 2017 Charges because the Appeal Panel told him this was their concern in the 2018 Salesperson Appeal.
- The Edmonton Journal article about the 2017 Charges was not disclosed to Mr. Tran prior to the 2019 Administrative Review. The Edmonton Journal article is written like a "tabloid" and lists huge number of drugs and money seized. However, the more serious charges against Mr. Tran described in the article were withdrawn. It was not reasonable of the Registrar to say that Mr. Tran was more concerned in trying to explain that the more serious charges were withdrawn when this was highly relevant and a critical fact.
- In *Ahmad*, the Court said that offences or withdrawn charges that have a direct bearing on the applicant's history in the automotive industry are more relevant than those that are not. The salesperson in *Ahmad* was convicted of fraud offences directly relating to the automotive industry. The Court's decision in *Ahmad* specifies that AMVIC is "entitled to consider the Applicant's entire history in the motor vehicle industry" and the omission of these words from the Registrar's Decision indicates he misapplied the case to Mr. Tran's situation.
- It was unfair that the 2019 Administrative Review was unrecorded, especially given the comments Mr. Tran alleged were made by Mr. Gervais and Mr. L [REDACTED]. If the Registrar and manager of licensing are phoning people in the police for information about an applicant, that information should be disclosed to the applicant. It is a fundamental legal principle that a person must know the case against them.
- Mr. Tran's previous offences were committed when he was [REDACTED] and [REDACTED] years old. He is now [REDACTED] years old and has only been convicted of a single offence since his previous offences, of which AMVIC was aware during the 2012 Administrative Review. The only change since Mr. Tran was last granted a salesperson registration is the conviction for [REDACTED] Counsel for Mr. Tran argued that a member of the public would not lose confidence in the public perception of the automotive industry knowing that a salesperson had been convicted of that offence and all of Mr. Tran's other convictions were known to AMVIC when Mr. Tran was previously licensed.
- Mr. Tran would be very willing to comply with the conditions suggested by AMVIC if his salesperson registration is granted.

34. In response to questions from the Appeal Committee, Mr. Tran and his legal counsel answered the following:

- Mr. Tran plans to stay out of trouble by going back to the automotive industry and never leaving again. His trouble with the law resulted from his decision to leave the automotive industry.

- Mr. Tran has been humbled by his attempts to make money and run a business outside the automotive industry. If he can pay his necessities by working in the automotive industry, that is all he can ask for.
 - Mr. Tran does not associate with the individuals that contributed to his conflict with the law. He has learned to only keep positive people in his life.
35. Legal counsel for AMVIC replied to the arguments made on behalf of Mr. Tran as follows:
- The information before the Registrar was Mr. Tran's criminal record and details of the 2017 Charges. Mr. Tran was aware of his own criminal record and charges, he pulled the details up on his phone during the administrative review. It is not accurate to argue that AMVIC was "waiting in the weeds" by raising his criminal record at the 2019 Administrative Review. The Registrar's Decision shows what factors the Registrar relied on to deny Mr. Tran's application for salesperson registration.
 - AMVIC is not arguing that Mr. Tran's February 2019 conviction is the sole reason his application should be denied. The February 2019 conviction must be considered in the context of Mr. Tran's entire history.

Appeal Committee Decision

Criminal Record and Recent Conviction

36. Upon hearing the evidence and arguments put forward by Mr. Tran and AMVIC, the Appeal Committee has decided to dismiss the appeal and uphold the Decision of the Registrar to refuse the application of Mr. Tran for a reinstatement of his automotive salesperson registration under section 127(c) and section 104 of the *Consumer Protection Act*.
37. The facts before the Appeal Committee were not in dispute. Mr. Tran was forthright with respect to his past criminal history:
- Mr. Tran was granted a salesperson registration in 2012, which he held until August of 2016, when he allowed it to expire.
 - In 2007, Mr. Tran was convicted of [REDACTED] He was given a conditional sentence order and served two years in his home under strict conditions.
 - In 2011, Mr. Tran was convicted of [REDACTED] and sentenced to three years in jail.
 - In 2019, Mr. Tran was convicted of [REDACTED] and sentenced to 90 days in jail.
 - At the time of the 2018 Application, Mr. Tran was facing several serious criminal charges. At the time of the 2019 Application, he had only been convicted of one of those charges, as noted above.

38. The Appeal Committee finds that Mr. Tran's February 2019 conviction, when considered in the context of his entire criminal record, including his criminal convictions in 2007 and 2011, is serious and reasonably cause concern to AMVIC as a regulator.
39. Section 127(b)(vii) of the *CPA* grants the Registrar authority to refuse to issue a licence where the applicant "is convicted of an offence referred to in section 125 or is serving a sentence imposed under a conviction."
40. Section 125 of the *CPA* defines a "conviction" as "a conviction for an offence under any criminal or other law in force in Alberta or elsewhere that, in the Director's opinion, indicates that the person convicted is unsuitable to be licensed under this Act."
41. In the Appeal Committee's view, these sections permit the Registrar, and the Appeal Committee on appeal, to consider the entire context of the applicant's criminal convictions in light of the public interest and consumer protection mandates of the *CPA*. AMVIC has a responsibility to protect the public interest and to maintain the integrity of the automotive industry as a whole. Section 127(c) of the *CPA* makes it clear that the public interest must be taken into account in the salesperson registration process.
42. The Appeal Committee finds that Mr. Tran has not demonstrated a sustained period of recovery which provides confidence to the Appeal Committee that he would not be a risk to the public or consumers if his application for salesperson registration is granted at this time.
43. The Appeal Committee notes that Mr. Tran is likeable and engaging and appears to be committed to his rehabilitation. Mr. Tran presented as sincere and forthright about his issues with his criminal history. However, Mr. Tran's history evinces a tendency to relapse into prior patterns of behaviour, even after a period without incidents. Given this history and the nature of the automotive sales industry, the Appeal Committee is not persuaded that at this time conditions could adequately protect the public in the event that Mr. Tran should not be able to maintain his current path. The Appeal Committee notes that Mr. Tran has the ability to apply for salesperson registration again and should endeavour to demonstrate a sustained period of rehabilitation.

Truthfulness in Salesperson Application

44. The Appeal Committee notes that Mr. Tran did not disclose his entire criminal record in his 2019 Application. In particular, Mr. Tran did not disclose his 2011 conviction for [REDACTED] that resulted in a sentence of three years in jail.
45. The Appeal Committee does not accept the argument that this omission is immaterial as AMVIC already possessed Mr. Tran's entire criminal record. The *CPA* and the Code of Conduct requires salespeople to act honestly. AMVIC relies on the honesty and integrity of salespeople during the application process. The evidence before the Appeal Committee indicates that AMVIC would not have conducted a new criminal record search if Mr. Tran had not let his registration expire and had applied for renewal; AMVIC would have relied on Mr. Tran providing accurate information about his criminal record and charges. As a result, it is crucial for applicants to provide honest and complete answers during the application process.

46. In addition, the Appeal Committee is concerned that Mr. Tran did not provide his complete criminal record in his 2019 Application given he failed to disclose his convictions in his initial application for salesperson registration in 2012. At that time, Mr. Tran was given a "second chance" despite his failure to disclose his convictions. Mr. Tran ought to have known the importance of disclosing his convictions as a result of the 2012 Administrative Review.
47. The Appeal Committee finds that Mr. Tran's truthfulness in the 2019 Application was a legitimate concern and the Registrar's reliance on this factor was reasonable.

Disclosure Prior to the 2019 Administrative Review

48. The Appeal Committee finds that the Registrar did not rely on information that Mr. Tran was not aware of prior to the 2019 Administrative Review in a manner that was unfair to Mr. Tran.
49. Although the Registrar had a copy of Mr. Tran's criminal record that was not provided to Mr. Tran, Mr. Tran also had a copy of his criminal record prior to the 2019 Administrative Review. Mr. Tran testified that he looked at his criminal record as he completed the 2019 Application. In addition, the Edmonton Journal article was a publicly available article published on the internet. The article was shown to Mr. Tran during the 2019 Administrative Review and he explained that the 2017 Charges described in the article had been withdrawn. That is reflected in the Registrar's Decision.
50. Mr. Tran testified that the manager of licensing stated he was "digging up dirt" on Mr. Tran with his friends on the police force. The Appeal Committee notes that these comments are not appropriate. However, if these comments were made, the Appeal Committee finds that they did not impact the Registrar's Decision. First, Mr. Tran testified that these comments were made by the manager of licensing, not the Registrar. The Registrar made the decision to deny Mr. Tran's application, not the manager of licensing. Second, the Registrar's Decision contains the information relied upon to deny Mr. Tran's application for salesperson registration and does not include information about Mr. Tran from other sources.
51. Further, Mr. Tran received fulsome disclosure prior to this appeal. The Appeal Committee did not have any information about Mr. Tran from sources that were not disclosed to Mr. Tran. The Appeal Committee was not impacted by any such information.

The Registrar's Reliance on *Ahmad*

52. The Appeal Committee finds that the Registrar did not err in relying on *Ahmad*. The Appeal Committee accepts the argument from AMVIC that the statutory scheme, the Court's reasoning in *Ahmad* and common sense allow the Registrar to consider convictions that occur in relation to circumstances outside the motor vehicle industry. Sections 125 and 127(b)(vii) of the CPA do not restrict the Registrar to consider convictions related to the applicant's history in the motor vehicle industry.
53. Mr. Tran's criminal record, although not directly linked to his history in the motor vehicle industry, demonstrates a pattern of behaviour and raises serious concerns that granting his salesperson registration at this time would result in damage to the reputation of the

automotive industry and the public's perception and would result in a risk to the public interest.

Conclusion

54. Given the serious nature of Mr. Tran's criminal convictions, the frequency of his criminal convictions, and the recency of Mr. Tran's February 2019 conviction, 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.
55. 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.
56. 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 our 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"


Kirby Soon
Chair – AMVIC Salesperson Appeal Committee

November 29, 2019
Date