

IN THE MATTER OF AN APPEAL BY

IMAD ASSI

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 OCTOBER 22, 2019

**REASONS FOR DECISION**

Committee Chair: Ayodola Dahunsi

Members: Griffin Jarvis  
Wayne Paulsen

Natalie Tymchuk,  
legal counsel (Emery Jamieson LLP) for the Committee

Appearances: Imad Assi, Appellant

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

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

Appeal Heard: February 12, 2020  
Summerside Business Centre  
1233 - 91 Street SW, Edmonton, Alberta

**Introduction**

1. This is an appeal before the AMVIC Salesperson Appeal Committee (the "Committee") 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 Imad Assi 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) 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. Assi was first granted a salesperson registration on October 6, 2016. His salesperson registration expired on October 31, 2017.

13. Mr. Assi applied for a reinstatement of his salesperson registration on or about September 18, 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 October 22, 2019 with Mr. Assi in attendance.



14. On October 22, 2019, the Registrar issued a decision refusing to grant Mr. Assi an automotive salesperson registration (the "Decision"). The Decision noted that Mr. Assi is facing two criminal charges for [REDACTED] stemming from offence dates of [REDACTED]

15. The Decision also stated the following:

*The Justice Online Information Network ("JOIN") reflects that Mr. Assi has been [REDACTED]. Although Mr. Assi does not have a criminal record he did have charges of [REDACTED] withdrawn.*

*Open source information reflects that the Alberta Gaming, Liquor and Cannabis ("AGLC") and Alberta Sheriffs in a joint investigation seized \$2.5 million dollars of contraband waterpipe (shisha) tobacco and cigarettes found in a central Edmonton storage locker facility and weighing about 3,039 kilograms or 6,700 pounds. The total potential lost tax revenue is estimated to be more than \$972,000. Mr. Assi and other co-accused persons were charged with trafficking in contraband tobacco.*

16. The Decision was as follows:

*It is in the public interest under section 127(c) of the CPA NOT to issue Mr. Assi a salesperson registration at this time.*

*The Director found it concerning that Mr. Assi has two serious unresolved CC charges before the court, yet he could not relate the type of offences he is charged with. As a result, he came across as not being forthright and rather evasive by simply stating his lawyer is handling everything. It was not until he was further probed that he disclosed some limited details. Mr. Assi acknowledged that his charges were serious and it was pointed out to him that if convicted he could face a period of incarceration. If found guilty of an indictable offence the maximum term of imprisonment for Section 121.1(1) of the CC is not more than five years. The weight and nature of his unresolved charges before the court cannot be ignored. It is the opinion of the Director that Mr. Assi has not demonstrated he is capable of meeting the code of conduct requirements and integrity as a salesperson at this time.*

*The Alberta Court of Queen's Bench in Ahmad v. Alberta Motor Vehicle Industry Council, 2010 ABQB 293 ["Ahmad"] 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.*

17. On November 19, 2019, Mr. Assi provided a Notice of Appeal to AMVIC, stating as his reasons for appeal that he would like to get his "AMVIC" because he has "been in the car/automotive for 3 years", that is how he lives, and his licence was "just cancelled".

18. 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 are no material facts in dispute. The facts are clear. Mr. Assi applied for registration and was denied because he is facing two charges under the criminal code. The Registrar declined Mr. Assi's registration following an administrative review. The Decision was proper and was made in the public interest.
19. AMVIC called oral evidence from AMVIC Manager of Licensing, Ms. Yoneke A [REDACTED]. Ms. A [REDACTED] provided the following information:
- She has been in the role of AMVIC Manager of Licensing since November of 2019. She was previously the Acting Manager of Licensing and has worked for AMVIC for six years. She is familiar with AMVIC's salesperson registration and business licensing processes.
  - Salesperson registration applicants are required to complete the application online. In the salesperson registration application process, AMVIC asks whether the applicant has a criminal history. Once an application fee is paid, AMVIC conducts routine background checks. AMVIC does Canadian Police Information Centre ("CPIC") and Justice Online information Network System ("JOINS") searches of applicants for salesperson registration. AMVIC will also search salesperson registration history and online open source information for each applicant.
  - If an applicant has a criminal history, AMVIC will consider the seriousness, frequency and recency of that history. If there are concerns arising from this review, an application report is prepared and forwarded to the Registrar.
  - In 2016, Mr. Assi applied for and was granted a salesperson registration. Mr. Assi's salesperson registration expired in 2017. He applied again for a salesperson registration in 2019. Upon receipt of the 2019 Application, background checks of Mr. Assi were conducted by AMVIC.
  - The results of the background checks for Mr. Assi revealed that he had been charged criminally with [REDACTED] on two separate occasions. Due to these charges, AMVIC prepared an application report for the Registrar. The Registrar consequently held an administrative review with Mr. Assi.
  - The Registrar examined the open source information during the administrative review and Mr. Assi acknowledged the seriousness of the criminal charges he was facing. Mr. Assi's advised the Registrar that his employer was aware of the charges.
  - Mr. Assi had previously been working as a registered salesperson for a year and he had not renewed his registration. AMVIC was not aware of any complaints regarding his previous work in the industry. AMVIC noted that Mr. Assi was not convicted for previous criminal charges he had previously faced. Mr. Assi's salesperson registration was denied due to the pending criminal charges.



- Mr. Assi previously held an AMVIC business licence for wholesale sales which expired on October 31, 2017.

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

*At the administrative review, Mr. Assi acknowledged he had two outstanding [REDACTED] charges before the court, however he would or could not explain what the charges involved. He simply stated that his lawyer was handling everything and lets him know when he has court. Mr. Assi advised that he was at the wrong place and wrong time both in February 2019 and in April 2019.*

*He explained that in February 2019 he was with a father and a son who are co-accused but he never [REDACTED] he was simply just there. Mr. Assi stated that in relation to the April 2019 offence, there is one other co-accused who happens to be one of the owner/Directors of his current employment and that he never [REDACTED] that time either. These individuals are not family or friends simply people he knows. Mr. Assi indicated that he has reviewed and read his disclosure material.*

*Mr. Assi was given the opportunity several times to share any information respecting his outstanding charges, however he downplayed the details. He acknowledged his alleged offences were serious but indicated his lawyer is handling it and believes that if he was convicted he would only get a fine.*

*Mr. Assi advised that he is the owner and Director of Green Line Services Ltd. and has an AMVIC wholesale business licence, which is still operating. He states, that he is the only salesperson despite the fact that his salesperson registration expired Oct. 31, 2017. He admitted that the last vehicle he sold was in Dec. 2017, as he remembers it was close to the end of the year. It was pointed out to him that it is an offence to sell a motor vehicle without a valid salesperson registration.*

*The Acting manager of Licencing asked Mr. Assi about who AMVIC was and he struggled to provide an answer or did not know what a curber was despite stating he has been in the automotive industry for three years.*

*Mr. Assi indicates that since coming to Canada in 2000, he has been a painter for about 15 or 16 years however the work is hard on his body therefore he stopped doing it the end of 2015. He could not explain how he has been earning a living for the past three years other than he has saved a lot of money.*

*Mr. Assi's current employer is aware he had an administrative review and of his outstanding charges before the court.*

*During the administrative review, Mr. Assi expressed that it is his dream to sell cars and he has been involved in the automotive industry for three years. He believes he is smart enough to do it and has been working in it for a while. He appreciated the opportunity to explain himself.*

21. During the appeal hearing, Mr. Assi made the following statements:

- He has worked in this business and he does not think that the charges he is facing are as bad as AMVIC states. He did not hurt anyone. It was a mistake.
  - Regarding the non-renewal of his salesperson registration, he states that he attended at the AMVIC office to pay for both his business licence and salesperson registration renewals. He then "went back home" as his mother was ill. AMVIC contacted him to advise they were unable to process his full payment for his salesperson registration and that he would need to attend at the AMVIC office again to pay the full amount. He did not get around to doing so and his registration lapsed.
22. Mr. Assi responded to questions from counsel for the Registrar and from the Committee as follows:
- The criminal charges are still pending. [REDACTED]  
[REDACTED] He cannot speak about the charges outside of Court, but he maintains that he is not guilty.
  - Currently, he is making a living by detailing cars for an employer. He is not selling cars.
23. No witnesses were called, and no supporting documentation or additional evidence was provided by Mr. Assi during the appeal hearing.

#### AMVIC's Closing Submissions

24. AMVIC's legal counsel noted that the facts are not in dispute and Mr. Assi has been cooperative and forthcoming with AMVIC.
25. However, AMVIC's legal counsel submitted that the purpose of the CPA, and the Committee's task, is to regulate the automotive industry, such that businesses and individuals involved in this industry must meet minimum requirements for the protection of the public. AMVIC notes that the integrity of the industry is at issue, considering Mr. Assi's charges. AMVIC's position is not that Mr. Assi can never be reinstated as registered salesperson. Instead, AMVIC's position is that it is not appropriate to reinstate Mr. Assi at this time.
26. Counsel for AMVIC cited a previous decision of this Committee which relied upon the *Ahmad* case. In particular, the following was noted by this Committee:
- *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 Act makes this clear as a factor that the public interest must be taken into account in the salesperson registration process. Given the serious nature of the pending criminal charges, the Appeal Committee agrees that if [the appellant] was granted registration as an automotive salesperson pending the determination of the criminal charges, there is a significant risk that this would result in damage to the reputation of the automotive industry and the public's perception.*



27. AMVIC indicated that, if this Committee were to find that the decision of the Registrar was inconsistent with AMVIC's governing legislation, a conditional salesperson registration would be appropriate. AMVIC suggested that, in such circumstances, the following conditions should be imposed:

- Mr. Assi would be required to report on the status of the criminal charge;
- Mr. Assi would be required to fully disclose his criminal charges to his employer;
- Mr. Assi would be required to report the outcome of his charges to AMVIC and an administrative review may be required based on the outcome.
- Mr. Assi would not be able to allow his salesperson registration to expire.

#### Mr. Assi's Closing Submissions

28. Mr. Assi made no closing submissions to the Appeal Committee. However, he confirmed to the Committee during the appeal hearing that he felt he had received an opportunity to be heard.

#### **Appeal Committee Decision**

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

30. The facts before the Appeal Committee were not in dispute.

- Mr. Assi was granted a salesperson registration in 2016, which he held until October of 2017, when he allowed it to expire.
- Mr. Assi is currently facing criminal charges involving [REDACTED] arising from two occasions.
- Mr. Assi has not been convicted of the criminal charges.

31. Mr. Assi advised that he has worked in the automotive sales industry as a registered salesperson for only one year, more than two years ago. He also admitted to having sold a vehicle after his previous salesperson registration expired in October 2017. It is not clear what type of employment Mr. Assi has held since October of 2017. The Appeal Committee acknowledges Mr. Assi's evidence that his current employer is aware of the outstanding charges that he faces.

32. The Appeal Committee was provided with limited information by Mr. Assi regarding the criminal charges. The Appeal Committee was only advised that he is contesting the criminal charges. The limited information received from Mr. Assi regarding the pending criminal charges is insufficient to persuade the Appeal Committee that he should be granted an automotive salesperson registration.



33. The Appeal Committee acknowledges that Mr. Assi has not been convicted of the criminal charges. However, the Appeal Committee finds that the criminal charges, relating to the [REDACTED] are serious and reasonably cause concern to AMVIC as a regulator. In particular, the open source search regarding the criminal charges has revealed significant concerning information, including that there are two relatively recent alleged occurrences, involving a large quantity of alleged contraband tobacco. In addition, the offence is severe in terms of the potential for lost tax revenue and the risk to public safety that could result from the alleged conduct.
34. The Registrar has the discretion to determine what is in the public interest, in considering the particulars of each registration application. As noted at paragraph 27 of the *Ahmad* decision:
- *...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.*
35. Given the seriousness and recency of the criminal charge, the Appeal Committee finds that the Registrar's Decision, that it is in the public interest not to grant Mr. Assi a salesperson registration at this time, was reasonable.
36. 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.
37. This Appeal Committee is satisfied that the hearing given to Mr. Assi 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. Assi 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

February 28, 2020

Date