

IN THE MATTER OF AN APPEAL BY

STEVEN SANTILLANA

TO SECTION 127(c) OF THE *FAIR TRADING ACT*,  
BEING CHAPTER F-2 OF THE REVISED STATUTES OF ALBERTA, 2000  
AND THE *AUTOMOTIVE BUSINESS REGULATION, Reg.152/2013*

AND

IN THE MATTER OF THE DECISION BY  
THE ALBERTA MOTOR VEHICLE INDUSTRY COUNCIL (“AMVIC”)  
TO NOT GRANT A PROVINCIAL AUTOMOTIVE SALESPERSON REGISTRATION  
UNDER THE *FAIR TRADING ACT* ON DECEMBER 1<sup>st</sup>, 2016

### **REASONS FOR DECISION**

Panel Chair: Peter Lokstadt  
Members: Ben Iyer  
Scott Held

Appearances: Robert D. Gillespie, legal counsel for the Appellant

Paula Hale, legal counsel (Shores Jardine LLP) for the Respondent and  
Stephanie P [REDACTED], Manager of Licensing and Consumer Services (AMVIC)  
for the Respondent

Appeal Heard: February 7<sup>th</sup>, 2017  
CAPILANO CENTRE, 9945 – 50<sup>th</sup> Street, Edmonton, Alberta  
Main Floor Boardroom

### **Introduction**

1. This is an appeal under s. 22 of the *Automotive Business Regulation* from a decision of the Director of Fair Trading (as delegated) not to grant Steven Santillana a provincial automotive salesperson registration under s. 127(c) and s. 104 of the *Fair Trading Act*.

### **Jurisdiction**

2. The *Fair Trading Act* and the *Automotive Business Regulation* regulate, among other things, automotive business licences and salesperson registrations in Alberta.
3. Under section 104 of the *Fair Trading Act*, no person may engage in the automotive sales business unless that person holds a licence that authorizes them to engage in that business.

4. Pursuant to section 16 of the *Automotive Business Regulation*, a salesperson of an automotive sales business operator must be registered for automotive sales before acting on behalf of the business operator.
5. The Director's jurisdiction with respect to automotive business licences and salesperson registrations is found at section 127 of the *Fair Trading Act*:

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(5),
    - (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*,
    - (vi) fails to comply with any other legislation that may be applicable,
    - (vii) 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, or
    - (viii) is convicted of an offence referred to in section 125 or is serving a sentence imposed under a conviction;
  - (c) in the opinion of the Director, it is in the public interest to do so.
6. Section 18 of the *Automotive Business Regulation* states that sections 125, 127 and 128 of the *Fair Trading Act* apply, with necessary changes, to the registration of salespersons.
  7. Section 127 of the *Fair Trading Act* applies to both automotive business licences and salesperson registrations.

8. Accordingly, section 22(1) of the *Automotive Business Regulation* 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 *Automotive Business Regulation*, 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 Executive Director within 30 days after AMVIC issues notice of its decision.
11. This is an appeal pursuant to section 22 of the *Automotive Business Regulation*. Pursuant to section 3(ii)(o) of the Appeal Policy:

The Panel shall determine if the decision by AMVIC that is the subject of the Appeal was consistent with the provisions of the *Fair Trading Act*, the *Designation of the Trades and Business Regulation*, the *Automotive Business Regulation*, and the bylaws and policies of AMVIC.

### **Evidence before the Appeal Panel**

12. In her opening statement, counsel for AMVIC summarized the reasons given by the Director in support of not granting the application of Mr. Santillana including that: "it was not in the public interest to register Mr. Santillana as an automotive salesperson due to the [REDACTED] nature of his most recent convictions; there has not been enough time for Mr. Santillana to rehabilitate and demonstrate a proper code of conduct; and, Mr. Santillana made misrepresentations during the application process with respect to his criminal past, suggesting that he had not been convicted of any offence under any law". AMVIC's position is that the Director made the correct decision not to grant Mr. Santillana a provincial salesperson registration, and that it ought to be upheld.
13. Counsel for the Appellant highlighted in his opening remarks that the nature of Mr. Santillana's criminal record was not that of fraud or misappropriation of funds and, that the nature of AMVIC's primary concern should be consumer protection. It was submitted that Mr. Santillana's past convictions did not constitute evidence of a risk to the public in the realm of automotive sales. While it was admitted that incorrect information was submitted by Mr. Santillana on his original application to AMVIC; it was submitted that: this was unintentional as Mr. Santillana was not familiar with computers; and, that the online portal may have been one that automatically defaulted to a "no" response. Alternatively, it was suggested that Mr. Santillana simply gave the wrong answer to the question "Have you ever been convicted of and/or found guilty of an offence under any

law in force in Canada or elsewhere and/or are there any charges pending and/or outstanding warrants” given his employer was already aware of his criminal past.

14. In direct examination, Mr. Santillana gave the following evidence:

- He completed the AMVIC application form at the Go Auto Ericksen Nissan dealership on one of their computers with no specific direction from anyone.
- He did not recall answering the questions on the application form, specifically the inquiry relating to whether he had any convictions or charges pending.
- While in high school he fell in with the wrong crowd which lead to “stupid” decisions however; he was no longer in contact with that particular group of individuals.
- He is currently employed at Go Auto Ericksen Nissan.
- When interviewed at Go Auto Ericksen Nissan and asked if he had ever been charged with a crime, he advised them of his prior charges and convictions and provided a finger print criminal record check upon request.
- He completed Grade 12 [REDACTED] [REDACTED] and has had no further education or formal training in computers (with his job at Go Auto Ericksen Nissan being the only job that has required him to use a computer).

15. In cross examination, Mr. Santillana confirmed his criminal history [REDACTED]. Further, Mr. Santillana acknowledged that he knew he could not work as an automotive salesperson without a license. It was his further evidence that he did not know he was applying with AMVIC at the time of his online application; instead, he thought he was being licensed by Ericksen Nissan.

16. Mr. Santillana’s further evidence, in response to inquiries from the Panel, was that:

- he was the only one convicted following the 2011 [REDACTED] incident; and,
- while he knew the other two individuals involved [REDACTED], they were not charged because the police could not identify them.

17. Counsel for the Appellant advised that while the original intention was to call two witnesses on behalf of Mr. Santillana, only one was available to appear at the hearing (Jesse Camat) and while he had expected something in writing from the other, the letter had not arrived prior to his departure from his office that morning.

Jesse Camat

18. Mr. Camat is a sales consultant for Go Auto Ericksen Nissan. He has worked with Go Auto for two years and with Ericksen Nissan for the last six months. Mr. Camat has been a registered salesperson for six months and worked as a technician prior to that. He is not Mr. Santillana’s boss or supervisor, they are co-workers.

19. Mr. Camat has worked with Mr. Santillana over the last two months. It was his evidence that he became aware of Mr. Santillana's prior criminal history through another co-worker. He reported that Mr. Santillana had not shown any unacceptable behavior at the work place and had not exhibited any anger or outbursts in the two month period that he has known him. While prepared to agree with the suggestion that Mr. Santillana's past criminal history did not affect his work; it was Mr. Camat's evidence that it did affect how people viewed Mr. Santillana.
20. In cross examination, it was Mr. Camat's evidence that over the last two months Mr. Santillana had been selling cars, completing training and learning topics such as "AMVIC" and the different types of vehicles. It was his further evidence that Mr. Santillana was being paid on a commission basis.
21. In response to this evidence, counsel for the Appellant asked Mr. Santillana about his work at Go Auto Ericksen Nissan. Mr. Santillana's evidence was that he had only been working at the dealership calling past clients to determine whether they were interested in upgrading their vehicle(s) and booking appointments for clients who showed interest with other sales representatives.

Stephanie P ■■■

22. Stephanie P ■■■ was called by AMVIC to give evidence on behalf of AMVIC. It was her evidence that she is the Manager of Licensing and Consumer Services with AMVIC and has been for the last ■■■ years. She provided the following additional evidence in direct examination:
  - AMVIC receives approximately 3200 salesperson applications annually with approximately 20% of those applicants having some form of criminal background.
  - Having a criminal background does not automatically eliminate an individual from obtaining a salesperson registration.
  - She was in attendance at Mr. Santillana's administrative review with the Director on November 24<sup>th</sup>, 2016 at which time Mr. Santillana advised that he did not remember answering the question on the application relating to past charges or convictions as "he had skipped that question".
  - When shown an article found by AMVIC in the Toronto Sun describing the events leading up to his recent incarceration at the administrative review, Mr. Santillana confirmed to the Director that the article was an accurate representation of the incident.
  - There is no default setting for the online portal where individuals complete their AMVIC application therefore applicants must make a conscious decision in responding to each question asked, either "yes" or "no".
  - Based on Mr. Camat's testimony, it appeared as though Mr. Santillana may have been selling vehicles without a salesperson registration which would provide a further example of him attempting to circumvent the rules.

23. In cross examination, it was Ms. [REDACTED] evidence that there is no dealer “training time” or allowance for individuals to sell vehicles before they have received their AMVIC registration and that it is very clear on the AMVIC portal that an individual cannot sell a vehicle until they have received their registration.
24. When asked by the Panel whether a “yes” response by Mr. Santillana to the inquiry about his criminal past would have drastically changed the outcome of the review, Ms. P [REDACTED] evidence was that it would not have changed the result given [REDACTED] his previous convictions.
25. In AMVIC’s closing statement, the relevant sections of the *Fair Trading Act* were reiterated with emphasis placed on the public interest sections of that Act. The Panel was asked to consider the risk to the public and the fact that Mr. Santillana had admitted to a pattern of [REDACTED] criminal charges and convictions [REDACTED], with no evidence being advanced to show that this pattern has changed. The Panel was reminded that Mr. Santillana had been released [REDACTED] in [REDACTED] 2016 and it was submitted, that to date there had not been enough time to show that his past pattern of criminal behavior had truly ceased.
26. Further, it was submitted by AMVIC’s counsel that the threshold to become a registered salesperson while not high, starts with honesty on one’s application and Mr. Santillana was not even able to meet that threshold in light of his negative response to the inquiry relating to past charges or convictions [REDACTED]. While not the main factor for refusal of the Appellant’s registration, it was submitted that the theme of honesty permeates through the *Fair Trading Act* and the *Automotive Business Regulation* and noted that it is an offence to lie on one’s AMVIC application.
27. Counsel for AMVIC submitted that, currently, Mr. Santillana was in a “grey zone” with his current employer acting in a role that is dangerously close to selling vehicles. It was suggested that given his current circumstances and his upcoming appeal hearing, Mr. Santillana might have tried to be more cautious or conscientious of the boundaries that he was pushing and the rules as it relates to selling vehicles without a registration.
28. It was the recommendation and position of AMVIC’s counsel that the arguments and evidence put before the Panel on behalf of Mr. Santillana were insufficient to deviate from the Director’s decision and that the evidence heard further supported the Director’s decision.
29. In closing, counsel for Mr. Santillana reiterated that his failure to complete the AMVIC application correctly was as a result of his poor computer skills. It was submitted that Mr. Santillana had not committed any further criminal acts [REDACTED] in six years however; it was acknowledged that Mr. Santillana had been incarcerated for that period of time making it difficult for him to reoffend but, that there had been no pattern of criminal behavior since his release [REDACTED].
30. Mr. Gillespie submitted that there is no “actual risk” in relation to Mr. Santillana receiving his salesperson registration and that the apprehension of a possible problem should not guide the Panel in their decision. Further, it was submitted that Mr. Santillana has the right to work and that receiving a salesperson registration as regulated under the *Automotive Business Regulation* was not a privilege.

31. Counsel for the Appellant invited the Panel to consider a March 23, 2016 decision of the Edmonton Appeal Panel regarding "J.C." in coming to their decision with respect to Mr. Santillana. Counsel for AMVIC was given the opportunity to respond to this suggestion and submitted that the decision was distinguishable for a number of reasons, including that:
- J.C. had spent nine years in prison for conspiring to traffic cocaine;
  - J.C.'s rowdy lifestyle was isolated to his teenage years and he did not have ongoing serious offences;
  - there was confusion and a recent change in the licensing regulations implemented at that time with respect to temporary registrations being available; and,
  - evidence was given by character witnesses to support J.C.'s position.
32. It was the position of the Appellant that the decision of the Director should be quashed based on the evidence and arguments presented.

### **Appeal Panel Decision**

33. It is the decision of the Panel to uphold the decision of the Director not to grant the application of Steven Santillana for an automotive salesperson registration under section 127(c) and section 104 of the *Fair Trading Act*.
34. This decision is based upon consideration of all of the evidence presented including the witnesses who were heard and arguments made by counsel.
35. The panel has based its decision on the following reasons:
- It is in the public interest to not issue Mr. Santillana a salesperson registration at this time;
  - There is insufficient evidence before the Panel that Mr. Santillana has taken appropriate steps to ensure that his history of [REDACTED] criminal behavior will not recur;
  - The [REDACTED] nature of Mr. Santillana's convictions and the short period of time since his release [REDACTED] does not give the Panel confidence that there is no risk to the public;
  - The previous decision of the Edmonton Appeal Board referenced by counsel for the Appellant is distinguishable from this case as argued by counsel for AMVIC; and,
  - The Director's decision is consistent with the provisions of the *Fair Trading Act*, the *Designation of the Trades and Business Regulation*, the *Automotive Business Regulation*, and the bylaws and policies of AMVIC.

36. This Panel is satisfied that the hearing given to Mr. Santillana has been exhaustive and fair. We have reviewed all of the evidence before us. We are satisfied that the Panel's decision to uphold the original decision of the Director to not grant Mr. Santillana a salesperson registration is appropriate in the circumstances.

Issued and Dated:

"original signed by"

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Peter Lokstadt  
Chair – AMVIC Salesperson Appeal Committee

FEB-24-2017  
Date