

IN THE MATTER OF AN APPEAL BY

COLIN STRUTH

PURSUANT 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 APRIL 27, 2020

REASONS FOR DECISION

Committee Chair: David Quest

Members: Wayne Paulsen
Tony Plett

Ally H. Ismail,
Legal Counsel (Emery Jamieson LLP) for the Appeal Committee

Appearances: Colin Struth, Appellant

Kathryn Quinlan,
Legal Counsel (DDSG Criminal Law) for the Appellant

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

Paula Hale,
Legal Counsel (Shores Jardine LLP) for the Respondent

Appeal Heard: August 17, 2020
Via Videoconference

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 Colin Struth 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) of the *ABR*, 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.

Summary of Evidence

Background

13. Mr. Struth was first granted a conditional salesperson registration on April 17, 2015. His salesperson registration last expired on August 31, 2019.

14. Mr. Struth applied for reinstatement of his salesperson registration on April 1, 2020 (the "2020 Application"). The 2020 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 April 27, 2020 with Mr. Struth and his legal counsel in attendance (the "2020 Administrative Review").
15. On April 27, 2020, the Registrar issued a decision refusing Mr. Struth an automotive salesperson registration (the "Decision"). The Decision was as follows:

It is my decision, as Director of Fair Trading (as delegated), to NOT grant the reinstatement application of Mr. Colin STRUTH for an automotive salesperson registration under Section 127(c) of the CPA based on the following reasons:

1. It is in the public interest under Section 127(c) of the CPA NOT to issue Mr. Colin Struth a salesperson registration at this time.
2. Mr. Struth did not meet the conditions of his conditional registration issued in 2015 by failing to keep the peace and be of good behaviour. Since 2017, Mr. Struth has convictions of five serious offences in which he was incarcerated twice. In addition, he also has 12 other serious charges that were either stayed or withdrawn stemming from these incidents.
3. Currently, Mr. Struth has two unresolved charges of [REDACTED] that are set for plea. Given Mr. Struth's criminal record, if convicted he could face a period of incarceration. The weight and nature of his unresolved charges before the Court cannot be ignored. It is the opinion of the Director that Mr. Struth 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 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.

16. On May 26, 2020, Mr. Struth provided a Notice of Appeal to AMVIC. The reason provided for the appeal was: "There are certain things that were not brought forward correctly in original application."

Evidence of AMVIC

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 opening statement:
 - Mr. Struth is currently facing criminal charges that are serious and recent. His history in the past few years includes several criminal convictions. Taken together, these convictions and current charges have led AMVIC to the conclusion that it is not in the public interest to have Mr. Struth registered as a salesperson at this time.

18. AMVIC called oral evidence from AMVIC's manager of licensing, Ms. Yoneke A [REDACTED] Ms. A [REDACTED] provided the following evidence:

- She has been AMVIC's manager of licensing for 10 months. Previously, she was the licensing supervisor of AMVIC for a period of 6.5 years.
- A salesperson registration is for a term of one year. A salesperson has a 90-day grace period to renew their registration. If a salesperson does not apply for renewal during the grace period, they must apply for reinstatement of their registration.
- She described the process for salesperson registration applications. All applications are made online. 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, AMVIC reviews the criminal record based on the seriousness of the incident, the frequency of convictions in the applicant's criminal record, and the recency of the convictions or current 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. The manager of licensing does not provide a recommendation regarding whether the application should be granted or refused. The report is sent to the Registrar who makes the final decision to grant or refuse the application registration.
- A criminal record does not preclude an applicant from being a salesperson. If an applicant has an older criminal convictions or less serious convictions, that is of less concern to AMVIC. 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.
- Mr. Struth first applied for salesperson registration on March 15, 2015. That application led to an administrative review (the "2015 Administrative Review") after which Mr. Struth was granted a one-year conditional registration. The terms of the conditional registration included that Mr. Struth must remain in compliance with the laws relating to the motor vehicle industry and the Criminal Code of Canada, that Mr. Struth's employer must submit a letter to AMVIC confirming they were aware of his background history, and that he must inform any new employer of the circumstances surrounding his past.
- Mr. Struth's conditional salesperson registration expired, and he applied for reinstatement on September 26, 2016. He was granted a salesperson registration that expired on September 20, 2017. He then applied for reinstatement again on August 28, 2018. He was granted a salesperson registration that expired on August 31, 2018.
- Mr. Struth applied for reinstatement on April 1, 2020. AMVIC completed a CPIC and JOINS search because it had been more than one year since Mr. Struth's last salesperson registration had expired. AMVIC determined that Mr. Struth had criminal

charges before the Court and criminal convictions in November 2017 and April 2019. Ms. A [REDACTED] identified concerns with Mr. Struth's criminal record based on the nature of his current criminal charges and the frequency of his criminal convictions. The charges and convictions for [REDACTED] raised concerns about Mr. Struth's ability to follow the rules of the automotive sales industry.

- The terms of Mr. Struth's conditional salesperson registration granted in 2015 were not re-imposed in 2016 or in 2018. There were no conditions attached to the salesperson registrations granted to Mr. Struth in 2016 and 2018.

19. In response to questions posed by legal counsel for Mr. Struth and by the Appeal Committee, Ms. A [REDACTED] provided the following evidence:

- Mr. Struth complied with the terms of the conditional salesperson registration granted in 2015. He was not convicted of any criminal offences while he was subject to a conditional salesperson registration. Mr. Struth changed employers while he was subject to the conditional salesperson registration. In compliance with the conditional salesperson registration, Mr. Struth's new employer provided a letter to AMVIC indicating they were aware of his history.
- Mr. Struth does not have a negative disciplinary history with AMVIC. There were no consumer complaints made against him during any of the periods while he was registered as a salesperson.
- No information was found regarding Mr. Struth as a result of the open source checks completed during the registration process.
- According to the employment information provided by Mr. Struth to AMVIC, he was not acting as a salesperson when he was convicted of criminal offences in November 2017 and April 2019.
- In her role as manager of licensing, she did not determine the nature of Mr. Struth's charges for [REDACTED]. She identified the charges to the Registrar and Mr. Struth had the opportunity to explain the charges to the Registrar.
- She did not speak to Mr. Struth's previous employers when reviewing his application. AMVIC registers over 10,000 salespeople and 7,000 businesses on a quarterly basis. AMVIC does not have the resources to contact an applicant's previous employers. AMVIC relies on the integrity and honesty of salespeople when reviewing salesperson registration applications.
- Based on the evidence that Mr. Struth withdrew from the automotive sales industry whenever he was unable to meet the standards of the industry, Ms. A [REDACTED] stated that her concerns regarding his registration might be alleviated but that it is not her decision to make.

Evidence of the Appellant

20. Legal counsel for Mr. Struth provided the following opening statement:

- This appeal does not involve a significant factual dispute. It is in the public interest to grant Mr. Struth's application for a salesperson registration and the Appeal Committee can limit the terms of his registration to protect the public. The public interest is broader than the factors considered by AMVIC.
- The Registrar erred in the conclusion that Mr. Struth had violated the terms of his conditional salesperson registration.

21. Mr. Struth provided the following evidence:

- He grew up on his own [REDACTED] He had a difficult childhood and had to learn to survive on his own. He has made mistakes along the way, but he has been changing his life since 2014 when he decided [REDACTED] is the most important thing in his life.
- He used to work in [REDACTED] where [REDACTED] is rampant. Changing industries helped him change his circumstances. He is very good at sales and holds himself to a higher standard than others because of the hard lessons he has learned. His life will never be easy, but he tries to be better every day.
- He regularly attends church and is close friends with a long-time registered salesperson, Mr. John Costouros. Mr. Costouros is his spiritual advisor and father figure and has helped him become a better man.
- When the Registrar granted him a conditional salesperson registration in 2015, it gave him the opportunity to discover his gifts. He has had troubles and lost friends since that time, but he steps back from the automotive sales industry until he can meet the standards of the industry.
- He was introduced to [REDACTED] He realized [REDACTED] was an issue for him when he was [REDACTED] years old. He saw that his lifestyle was hurting him and his friends. His legal counsel, Ms. Quinlan, has helped him improve his life since that time.
- He has made efforts to change his life. He has not had [REDACTED] for a long time, he runs every day, he is involved in church, and he volunteers. He focuses on what he can give back to others. Being registered by AMVIC helps him stay on track and follow the rules.
- In June 2015, one of his best friends passed away. He took a break from being a salesperson and moved to Ontario to live with his family. He did not work as a salesperson between June to September 2015 or between October 2015 to his application for reinstatement in September 2016. He has not been working as a salesperson since September 2018, when his last salesperson registration expired.
- He cannot recall if he was working as a salesperson when he was convicted of obstruction in November 2017. He was not working as a salesperson when he was convicted of offences in 2019.
- He knows the complainant involved in his current criminal charges for [REDACTED]. He denies the allegations related to those charges. He has never intentionally [REDACTED]

[REDACTED]. His conviction for failure to comply resulted from his struggles with [REDACTED]. He believes he has overcome his [REDACTED].

- He is not the same person he used to be. He is trying his best to be a man with integrity. AMVIC gave him a chance to feed his family and save money for his children's education. When he was granted a salesperson registration in 2015, he changed everything. He asked for an opportunity with whatever conditions the Appeal Committee feels are proper. At any sign of non-compliance, he would not have any issue with having his salesperson registration removed.
22. In response to questions posed by legal counsel for AMVIC, Mr. Struth provided the following evidence:
- He has a criminal record pre-dating 2015 that was considered during the 2015 Administrative Review. That criminal record was lengthier and more recent. During the 2015 Administrative Review, the Registrar carefully reviewed his criminal record and decided to give Mr. Struth a chance, for which he is very grateful.
 - He does not recall the circumstances of his November 2017 conviction for obstruction.
 - In April 2019, he was convicted of flight while pursued by a peace officer, failure to comply with a recognizance, failure to appear in court, and failure to comply with a probation order. The charges resulted from him still working through old beliefs. He slipped up but he picked himself up again.
 - The trial for the charges he is currently facing has not yet occurred.
23. Mr. Struth called oral evidence from Mr. John Costouros. Mr. Costouros provided the following evidence:
- He has known Mr. Struth for 5.5 years. They attend the same church. Mr. Struth was a good friend of his son, who passed away in 2015. He views Mr. Struth like an adopted son.
 - He was registered with AMVIC for 22 years. He is impressed with Mr. Struth's ability to deal with customers and with the number of vehicles Mr. Struth is able to sell.
 - He believes AMVIC should give Mr. Struth a chance. People coming out of jail or who have had problems in their past need to be given a chance to integrate into society. He believes Mr. Struth is honest, good with customers, and will give a good name to the industry. As a previous salesperson and manger, Mr. Costouros would not have any concerns managing Mr. Struth as an employee.

Summary of Arguments

AMVIC's Closing Submissions

24. Counsel for AMVIC argued that there is not a significant factual dispute in this appeal. AMVIC concedes that the terms of Mr. Struth's conditional salesperson registration granted in 2015 did not extend beyond the term of that registration. AMVIC does not have evidence that Mr. Struth was subject to criminal charges during the 12-month period when

he was subject to a conditional salesperson registration. However, AMVIC argues that it is still relevant that Mr. Struth has failed to keep the peace and remain in compliance with the law since 2015.

25. AMVIC notes that, since 2015, Mr. Struth has faced a number of serious criminal charges that have been stayed or withdrawn. The Appeal Committee may consider Mr. Struth's stayed or withdrawn charges based on the decision in *Ahmad v Alberta Motor Vehicle Industry Council*, 2010 ABQB 293 [*Ahmad*]:

[29] 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. In addition, Mr. Struth was convicted of obstruction in November 2017 and of criminal flight, failing to comply with his recognizance, failure to appear in court, and failure to comply with a probation order in April 2019. While the terms of Mr. Struth's probation order may have been broad, counsel for AMVIC argued that these breaches are failed opportunities for Mr. Struth to demonstrate compliance with the law.
27. With respect to Mr. Struth's outstanding charge for [REDACTED] AMVIC does not presume Mr. Struth will be found guilty. However, the outstanding charge may be considered by the Appeal Committee because of its seriousness, recency, and impact on the integrity of the profession as a whole. Counsel for AMVIC argued that the outstanding charge raises questions about Mr. Struth continued ability to comply with the law.
28. 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 127(b)(vii) and 127(c) of the *CPA* provide broad authority for the Registrar to deny an application for salesperson registration based on the applicant's criminal convictions and the public interest. The purpose of the legislation is to allow the Registrar and the Appeal Committee to consider serious convictions and their impact on the public interest and consumer protection. Counsel for AMVIC argued that a reasonable member of the public would not think it is acceptable for someone with a recent criminal record and who is facing serious outstanding charges to be in the industry.
29. Counsel for AMVIC emphasized that she did not wish to detract from Mr. Struth's difficult personal history and the progress he has made. Counsel lauded Mr. Struth's efforts at rehabilitation and his engagement with his community and church. However, counsel argued that it is not AMVIC's function to assist Mr. Struth with his rehabilitation. The duty of the Appeal Committee is to ensure that registered salespeople can be relied on to consistently follow the law and the standards of the profession.
30. AMVIC argued that Mr. Struth should not be granted a salesperson registration at this time. Mr. Struth does not have a long enough period of demonstrating consistent compliance with the law. However, Mr. Struth can reapply for salesperson registration once he has demonstrated a sustained period of compliance with the law.

31. AMVIC concluded that, if the Appeal Committee grants Mr. Struth's salesperson registration, a number of conditions are necessary:
- A. Mr. Struth would be required to report on the outcome of his outstanding criminal charges within a week of receiving that decision. Mr. Struth's registration would be subject to a further administrative review, depending on the outcome of those charges.
 - B. Mr. Struth would be required to report any new criminal charges to AMVIC, after which his registration would be subject to a further administrative review.
 - C. Mr. Struth 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. Struth's specific criminal charges.
 - D. Mr. Struth would be required to immediately report any change of employer and would have to disclose his criminal record to his new employer.
 - E. Mr. Struth must not allow his salesperson registration to expire.
 - F. Mr. Struth must keep the peace and be of good behaviour.

Appellant's Closing Submissions

32. Mr. Struth's legal counsel made the following closing submissions to the Appeal Committee:
- The Registrar made an error by relying upon an inaccurate understanding that Mr. Struth violated the terms of his conditional salesperson registration. This error affects the reasonableness of the Decision and allows the Appeal Committee to consider anew whether the Decision should be upheld. The Decision should not be upheld and Mr. Struth should be granted a salesperson registration.
 - The Appeal Committee and AMVIC are concerned for members of the public and ensuring that they are protected. That is why it is important to determine how a salesperson conducts themselves in the automotive industry. An individual's history in the industry is the most relevant information to their registration.
 - Mr. Struth's life outside of the industry is full of missteps, but the record reflects that he withdrew from the industry during the times when his life made him unsuitable to act in a salesperson capacity.
 - Mr. Costouros's testimony about Mr. Struth demonstrates that there is a public interest in having people such as Mr. Struth engaged in the industry. Mr. Struth has integrity, is good with customers, and would bring a good reputation to the industry.
 - The concept of public interest is broader than only considering consumer protection. While consumer protection is at the heart of the *CPA*, the registration process also encompasses factors such as the reputation of the industry and the impact of registration in individual members of the public. That includes the impact of registration on Mr. Struth. Consumers who work with Mr. Struth will be protected by AMVIC, which

can be accomplished through conditions on his registration. The public would be aided by having a valuable member as part of the industry.

- When asked, Ms. A [REDACTED] confirmed that her concerns regarding Mr. Struth's registration might be alleviated based on the evidence that Mr. Struth withdrew from the automotive sales industry whenever he was unable to meet the standards of the industry.
- Any registration would require Mr. Struth to work under an employer, who would be obligated to report to AMVIC if he does not comply with the requirements of his registration or the industry. Mr. Struth does not have a history of any complaints within the industry.
- With respect to Mr. Struth's convictions for failure to comply, the courts have cautioned that violations of conditions should be looked at in the context of the person's life. It is often the case that when people fall of the track, their life is not as easy as other people's lives. Mr. Struth testified about his struggles with [REDACTED] and [REDACTED]. While these do not excuse a failure to comply, they offer context to the challenges he faces.
- In *Ahmad*, the Court made clear that stayed or withdrawn charges can be considered because they go to the whole context of a person's history. It is important to consider the whole context of Mr. Struth's life and that he withdrew from the industry whenever he could not meet its standards.
- Mr. Struth would accept any conditions to his registration that the Appeal Committee finds appropriate. The only concern is with the condition that Mr. Struth not allow his registration to expire. He should be able to choose to let his registration expire.

Reasons of the Appeal Committee

33. Upon hearing the evidence and arguments put forward by Mr. Struth and AMVIC, the Appeal Committee dismisses the appeal and upholds the Decision of the Registrar to refuse the application of Mr. Struth for reinstatement of his automotive salesperson registration under section 127(c) of the *Consumer Protection Act*.
34. The task of the Appeal Committee is set out in 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.
35. The Appeal Committee finds that the Registrar erred in finding that Mr. Struth did not meet the conditions of his conditional salesperson registration. However, based on Mr. Struth's recent criminal convictions and outstanding criminal charges, the Appeal Committee finds that the Decision is nonetheless consistent with the provisions of the *CPA*, *ABR*, and the Bylaws and policies of AMVIC.

36. The facts before the Appeal Committee were not in dispute. The history of Mr. Struth's salesperson registrations is as follows:
- Mr. Struth was granted a conditional salesperson registration on April 2, 2015. One of the terms of the conditional salesperson registration was that Mr. Struth "keep the peace and remain in full compliance with all laws and regulations relating to the motor vehicle industry including but not limited to the Fair Trading Act of Alberta and the Criminal Code of Canada." The conditional salesperson registration expired in 2016.
 - Mr. Struth applied for reinstatement of his salesperson registration on September 26, 2016. He was granted a salesperson registration valid to September 30, 2017. The terms of the 2015 conditional salesperson registration did not carry forward. Mr. Struth did not renew his registration and it expired on September 30, 2017.
 - Mr. Struth applied for reinstatement of his salesperson registration on August 28, 2018. He was granted a salesperson registration valid to August 31, 2019. He did not renew his registration and it expired on that date.
 - Mr. Struth applied for reinstatement of his salesperson registration on April 1, 2020, resulting in the 2020 Administrative Review and this appeal.
37. The following evidence was before the Appeal Committee regarding Mr. Struth's criminal record and current criminal charges:
- On November 19, 2017, Mr. Struth was convicted of obstruction.
 - On April 16, 2019, Mr. Struth was convicted of flight while pursued by a peace officer, failure to comply with a recognizance, failure to appear in court, and failure to comply with a probation order.
 - Since 2015, 12 charges against Mr. Struth have been stayed or withdrawn. These charges include [REDACTED]
 - Currently, Mr. Struth is facing two outstanding charges for [REDACTED] arising from an incident that occurred on [REDACTED], and [REDACTED]. According to counsel for Mr. Struth, the [REDACTED] charge is going to be resolved. A trial is set on September 29, 2020 in relation to the charge for [REDACTED].
38. In denying Mr. Struth's application for salesperson registration, the Registrar found, in part, that Mr. Struth did not meet the conditions of his conditional registration issued in 2015 by failing to keep the peace and be of good behaviour. Based on the evidence before it, the Appeal Committee finds that the terms of Mr. Struth's 2015 conditional salesperson registration did not carry forward when his registration was reinstated in 2016 and 2018. There is no evidence before the Appeal Committee that Mr. Struth was convicted of an offence while he was subject to the conditional salesperson registration. As a result, the Registrar erred in concluding that Mr. Struth did not meet the conditions of his conditional registration issued in 2015.

39. However, the terms of Mr. Struth's conditional salesperson registration were only one factor considered by the Registrar. The Registrar also considered Mr. Struth's convictions in November 2017 and April 2019, the 12 charges that have been stayed or withdrawn since 2015, and the charges Mr. Struth is currently facing. In light of the totality of evidence considered by the Registrar, the Appeal Committee finds that the Decision was reasonable.
40. The Appeal Committee finds that Mr. Struth's November 2017 and April 2019 convictions, when considered in the context of his entire history, including the 12 charges that have been stayed or withdrawn since 2015 and his current criminal charges, are serious and reasonably cause concern to AMVIC as a regulator.
41. 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."
42. 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."
43. Mr. Struth's criminal convictions in November 2017 and April 2019 are serious and are directly related to his ability to comply with the law and the requirements of court orders. These convictions raise legitimate concerns regarding Mr. Struth's ability to comply with the terms of a conditional salesperson registration, should one be granted at this time. Therefore, these convictions were sufficient basis for the Registrar to refuse to issue a salesperson registration to Mr. Struth pursuant to section 127(b)(vii) of the *CPA*.
44. In the Appeal Committee's view, these sections also permit the Registrar, and the Appeal Committee on appeal, to consider the entire context of the applicant's criminal convictions and charges 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.
45. In *Ahmad*, the Court held that AMVIC may consider criminal charges that have been stayed or withdrawn when considering an applicant's entire history in the motor vehicle industry in order to properly exercise its mandate to protect the public interest. As a result, the Appeal Committee finds that it was also appropriate for the Registrar to consider the 12 criminal charges against Mr. Struth that have been stayed or withdrawn since 2015 and Mr. Struth's current criminal charges.
46. The Appeal Committee acknowledges that Mr. Struth has not been convicted of the current charge for [REDACTED]. However, the Appeal Committee finds that the criminal charge is serious and reasonably causes concern to AMVIC when considered in the context of Mr. Struth's criminal record. Given the recency and seriousness of the charges, and the frequency and seriousness of Mr. Struth's previous criminal convictions, the Appeal Committee finds that if Mr. Struth 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 public interest and the public's perception of the automotive industry.

47. The Appeal Committee acknowledges Mr. Costouros's evidence regarding Mr. Struth's character. However, subjective character witnesses do not necessarily reflect the interest of the public. The Appeal Committee finds that Mr. Struth 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.
48. The Appeal Committee notes that Mr. Struth is likeable and engaging and appears to be committed to his rehabilitation. Mr. Struth presented as sincere and forthright about his issues with his criminal history and his efforts at rehabilitation. However, Mr. Struth'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 industry, the Appeal Committee is not persuaded, at this time, that conditions could adequately protect the public in the event that Mr. Struth should not be able to maintain his current path of recovery. The Appeal Committee notes that Mr. Struth has the ability to apply for salesperson registration again and should endeavour to demonstrate a sustained period of rehabilitation.

Conclusion

49. Given the serious nature of Mr. Struth's criminal convictions, the frequency of his criminal convictions, and the recency of Mr. Struth's outstanding criminal charges, the Appeal Committee finds that the Registrar's Decision, that it is in the public interest not to grant Mr. Struth a salesperson registration at this time, was reasonable.
50. 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.

Issued and Dated:

"original signed by"

David Quest
Chair – AMVIC Salesperson Appeal Committee

Sept 22, 2020
Date