

IN THE MATTER OF AN APPEAL BY

ALI EL-CHERKAWI

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  
NOVEMBER 10, 2020

**REASONS FOR DECISION**

Committee Chair: David Quest

Members: Beverley Bell  
Wayne Paulsen

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

Appearances: Ali El-Cherkawi, Appellant

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

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

Appeal Heard: February 3, 2021  
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 Ali El-Cherkawi as a provincial automotive salesperson under sections 104 and 127 of the *Consumer Protection Act* (the "CPA").

## Jurisdiction

1. The CPA and the ABR regulate, among other things, automotive business licences and salesperson registrations in Alberta.
2. 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.
3. 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.
4. The Registrar's jurisdiction with respect to automotive business licences and salesperson registrations is found at section 127 of the CPA:

The Director may refuse to issue or renew a licence, may cancel or suspend a licence and may impose terms and conditions on a licence for the following reasons:

- (a) the applicant or licensee does not or no longer meets the requirements of this Act and the regulations with respect to the class of licence applied for or held;
- (b) the applicant or licensee or any of its officers or employees:
  - (i) fails to comply with an order of the Director under section 129 or 157, unless, in the case of an order under section 129 or 157, the order has been stayed,
  - (i.1) fails to repay a fund created under section 137 in respect of amounts paid out in claims against the licensee,
  - (i.2) fails to pay a levy of assessment under section 136(8) or a levy of assessment for a fund created under section 137,
  - (ii) fails to comply with a direction of the Director under section 151(3),
  - (iii) furnishes false information or misrepresents any fact or circumstance to an inspector or to the Director,

- (iv) fails to comply with an undertaking under this Act,
- (v) has, in the Director's opinion, contravened this Act or the regulations or a predecessor of this Act,
- (v.1) fails to comply with any other legislation that may be applicable,
- (vi) fails to pay a fine imposed under this Act or a predecessor of this Act or under a conviction or fails to comply with an order made in relation to a conviction,
- (vii) is convicted of an offence referred to in section 125 or is serving a sentence imposed under a conviction, or
- (viii) fails to pay, in accordance with the notice of administrative penalty and the regulations, an administrative penalty imposed under this Act;

(c) in the opinion of the Director, it is in the public interest to do so.

5. "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.

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. 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) of the *ABR*, 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. The role 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.

## Summary of Evidence

### Background

12. Mr. El-Cherkawi applied for a salesperson registration on October 29, 2020. In his application, Mr. El-Cherkawi stated he had a criminal record related to [REDACTED]. Background checks completed by AMVIC revealed that Mr. El-Cherkawi had additional criminal convictions that he did not report in his application. As a result, his application was referred to the Registrar. The Registrar conducted an administrative review via teleconference on November 10, 2020 with Mr. El-Cherkawi in attendance.

13. On November 10, 2020, the Registrar issued a decision refusing Mr. El-Cherkawi 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 application of Mr. Ali EL-CHEKAWI for an automotive salesperson registration under Sections 127(b)(iii), 127(c) and 104 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. El-Cherkawi a salesperson registration at this time.
2. Although it was not Mr. El-Cherkawi's intention to falsify his application, he failed to disclose his extensive criminal record which spans from 2011 to 2019. 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 licence.

[Legislation omitted]

3. Mr. El-Cherkawi has seven *Criminal Code* and three *Controlled Drugs and Substances Act* convictions and [REDACTED]. It is the opinion of the Director that Mr. El-Cherkawi has not demonstrated he is capable of meeting the code of conduct requirements and integrity as a salesperson at this time. As a regulatory body, AMVIC must ensure the protection of consumers but also the protection of the industry itself.

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.

4. Mr. El-Cherkawi's 10 criminal convictions include failure to comply with his release conditions x6. This creates a concern regarding Mr. El-Cherkawi's governability and his ability to act appropriately to comply with conditions. In the Director's opinion, Mr. El-Cherkawi needs to demonstrate a reasonable period of time in which he does not have any new criminal charges. He was just recently [REDACTED]
14. On November 26, 2020, Mr. El-Cherkawi provided a Notice of Appeal to AMVIC. The reason provided for the appeal was that he was unfairly denied his application because he was very forthcoming with his criminal record.

#### Evidence of AMVIC

15. 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:
  - The Appeal Committee's task is to determine if the Registrar's decision is reasonable. The Registrar's Decision should be upheld. Mr. El-Cherkawi's extensive criminal record makes him unsuitable for salesperson registration at this time.
16. 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 18 months. Previously, she was the licensing supervisor of AMVIC for six years.
  - She described the process for salesperson registration applications. All applications are made online. The online application asks the applicant if they have any criminal convictions, pending charges, outstanding warrants, conditional or absolute discharges, and stayed charges. If the applicant answers affirmatively, they are asked to provide details explaining each conviction. The application includes a notice that AMVIC completes thorough background checks on all applicants.
  - AMVIC's licensing department completes background checks, including a Canadian Police Information Centre ("CPIC") check, a Justice Online Information Network System ("JOINS") search, a background check with other automotive jurisdictions, and an open-source search on the applicant. AMVIC completes these background checks because the automotive industry requires trust and integrity. Consumers expect salespeople to be upfront and honest and rely on them as subject matter experts. AMVIC fulfils its consumer protection mandate by reviewing who is allowed into the industry.

- If there are concerns with an applicant's criminal record, the manager of licensing completes an Application Report for the Registrar's review. The Registrar then schedules an administrative review with the applicant. No decision is made regarding the application until the Registrar has spoken to the applicant during the administrative review.
- AMVIC receives between 90 and 400 applications per month. There are approximately 10,000 registered salespeople and 7,500 licensed businesses at any given time.
- Mr. El-Cherkawi does not have a licensing history with AMVIC. He completed the online application for a salesperson registration and the salesperson registration course. In his application, he identified that he had a criminal record. When asked to provide details of his criminal record, he only stated [REDACTED]
- Background checks revealed that Mr. El-Cherkawi was convicted of possession for the purpose of trafficking in 2019 and received a sentence of 30 months jail and an indefinite firearms prohibition. In 2014, he was convicted twice of failing to comply with a recognizance, unauthorized possession of a firearm, and possession for the purpose of trafficking. In 2012 and 2013, he was convicted of failing to comply with a recognizance. In 2011, he was convicted of possession of a controlled substance and two counts of failing to comply with a recognizance.
- The recency and seriousness of Mr. El-Cherkawi's conviction in 2019 is concerning. Mr. El-Cherkawi is still [REDACTED] as a result of the conviction. The recency of the conviction is a concern because AMVIC considers whether an applicant has demonstrated an extended period of time complying with the law. Older charges followed by a significant period without new charges are not as concerning because it demonstrates the applicant's rehabilitation and governability.
- Mr. El-Cherkawi's repeated convictions for failing to comply demonstrates a lack of governability over an extended period of time. Mr. El-Cherkawi's freedom was dependent on being in compliance and he jeopardized his freedom by failing to comply. This raises concerns about his ability to follow the rules of the industry when dealing with consumers.
- Ms. A [REDACTED] attended the administrative review on November 10, 2020 with Mr. El-Cherkawi. During the administrative review, Mr. El-Cherkawi provided more details about his criminal convictions.

#### Evidence of the Appellant

17. Mr. El-Cherkawi provided the following evidence:

- The information provided by Ms. A [REDACTED] about his criminal record is accurate. He was last charged with a criminal offence in 2016, for which he was convicted in 2019. Since 2016, he has not breached his recognizance. He was [REDACTED] and did not breach the terms of his [REDACTED] or even receive a speeding ticket.



- He has been growing since his last criminal charges. Shortly after 2016, he had a [REDACTED] It has changed his life considerably and he would like to do great for his [REDACTED] He is trying to move on the right path and has not had any breaches or charges since 2016. He will be finished [REDACTED]
18. In response to questions from legal counsel for AMVIC and the Appeal Committee, Mr. El-Cherkawi provided the following evidence:
- He is not currently working in the automotive sales industry. He spent a few days at an automotive business shadowing sales associates. If his application is granted, he was advised they would hire him. He disclosed his criminal record to his potential employer and they were fine with it. However, they told him to wait until he received his salesperson registration. When his application was initially denied, they told him that they did not have work for him but they would hire him if his appeal was successful.
  - He believes the automotive sales industry is right for him because he is infatuated with cars and knows a lot about them. He is also good at listening and conversing and feels that he has knowledge about vehicles that is relevant to consumers. He is very hard working and would put in extra hours to do a good job.

## Summary of Arguments

### AMVIC's Closing Submissions

19. Counsel for AMVIC argued that the Registrar's Decision should be confirmed. The purpose of the CPA is to protect consumers in various industries where consumers are vulnerable. The salesperson registration process provides a gatekeeping function. It establishes a minimum threshold to enter the industry, which is that an applicant should have no obvious history to indicate they would be a physical or financial risk to other participants in the industry.
20. It is expected that registered salespeople will abide by the laws and rules of the automotive industry given the magnitude of a vehicle transaction for most consumers. Given the number of salespeople and businesses in the automotive industry, AMVIC does not have the resources to proactively regulate the industry. Regulation is primarily complaint-based. Salesperson registration is important because it provides some security that members will follow AMVIC's rules and deal honestly with consumers.
21. Mr. El-Cherkawi's criminal record makes him unsuitable for registration as a salesperson at this time. He has made a good point that his most recent charges are from 2016. However, in the larger context of his criminal record, this argument is not compelling. There needs to be a longer period, at least through his [REDACTED] where he demonstrates successful compliance with his [REDACTED] and the law.
22. It would be detrimental to the public perception and the integrity of the automotive sales industry if an individual with recent convictions who is currently [REDACTED] is admitted into the industry. The Registrar's decision was consistent with the legislation and does not bar Mr. El-Cherkawi from applying for salesperson registration in the future.



23. Counsel for AMVIC concluded that Mr. El-Cherkawi has not established that he should be granted a salesperson registration at this time. However, if the Appeal Committee grants a salesperson registration, it should be subject to the following conditions:
- A. Mr. El-Cherkawi must immediately report any new criminal charges to AMVIC, including any allegations of failing to comply with his probation conditions.
  - B. Mr. El-Cherkawi 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. El-Cherkawi's specific criminal charges.
  - C. Mr. El-Cherkawi would be required to immediately report any change of employer to AMVIC and would have to disclose his criminal record to his new employer.
  - D. Mr. El-Cherkawi must not allow his salesperson registration to expire, providing an opportunity to demonstrate his governability and acknowledgment that he must be registered.

#### Appellant's Closing Submissions

24. Mr. El-Cherkawi thanked the Appeal Committee for the opportunity to present his case. He reiterated that he is on a new track in life, he wants to do great for his [REDACTED] and he wants to have a career selling vehicles. He stated that he would be willing to comply with a conditional registration and would appreciate the opportunity to show AMVIC that he can follow the rules.

#### **Findings of the Appeal Committee**

25. Upon hearing the evidence and arguments put forward by Mr. El-Cherkawi and AMVIC, the Appeal Committee dismisses the appeal and upholds the Decision of the Registrar to refuse the application of Mr. El-Cherkawi for an automotive salesperson registration under sections 104, 127(b)(iii), and 127(c) of the *Consumer Protection Act*.
26. Under section 3.2(2)(m) of the Appeal Policy, the task of the Appeal Committee is to determine if the Decision is consistent with the provisions of the *CPR*, the *ABR*, and the Bylaws and policies of AMVIC. Based on El-Cherkawi's criminal record, the Appeal Committee finds that the Decision is consistent with the provisions of the *CPA*, *ABR*, and the Bylaws and policies of AMVIC.

#### **Reasons of the Appeal Committee**

27. The following evidence was before the Appeal Committee regarding Mr. El-Cherkawi's criminal record:
- In 2019, Mr. El-Cherkawi was convicted of possession for the purpose of trafficking. He was sentenced to 30 months jail and an indefinite firearms prohibition. He [REDACTED] until [REDACTED] He is on [REDACTED]

- In February 2014, Mr. El-Cherkawi was convicted of failing to comply with a recognizance.
  - In November 2014, Mr. El-Cherkawi was convicted of unauthorized possession of a firearm, possession for the purpose of trafficking, and failing to comply with a recognizance.
  - In 2013, Mr. El-Cherkawi was convicted of failing to comply with a recognizance.
  - In 2012, Mr. El-Cherkawi was convicted of failing to comply with a recognizance.
  - In 2011, Mr. El-Cherkawi was convicted of possession of a controlled substances and two counts of failing to comply with a recognizance.
28. The Registrar found that Mr. El-Cherkawi's ten convictions demonstrate that he is not capable of meeting the code of conduct requirements and integrity as a salesperson at this time. In addition, the Registrar found that Mr. El-Cherkawi's six convictions for failing to comply with release condition creates a concern regarding his governability and his ability to comply with conditions. The Registrar found that Mr. El-Cherkawi must demonstrate a reasonable period of time in which he does not have any new criminal charges.
29. 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."
30. 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 [Registrar's] opinion, indicates that the person convicted is unsuitable to be licensed under this Act."
31. Mr. El-Cherkawi's conviction in 2019 was serious and resulted in a lengthy jail sentence. His numerous convictions for failing to comply with a recognizance directly relate to his ability to comply with the law and the requirements of court orders. These convictions raise legitimate concerns regarding Mr. El-Cherkawi's ability to comply with the terms of a conditional salesperson registration, should one be granted at this time, and the code of conduct applicable to salespeople. Therefore, these convictions were sufficient basis for the Registrar to refuse to issue a salesperson registration to Mr. El-Cherkawi pursuant to section 127(b)(vii) of the *Act*.
32. The Appeal Committee acknowledges the progress Mr. El-Cherkawi has made since 2016. He was open and sincere about his criminal record and his efforts at rehabilitation. Mr. El-Cherkawi has not faced new criminal charges since 2016. However, the Appeal Committee notes that Mr. El-Cherkawi [REDACTED] during that period, he was only recently [REDACTED] and he is [REDACTED]. Given that Mr. El-Cherkawi is [REDACTED] in relation to the conviction in 2019, the Appeal Committee finds that it was reasonable for the Registrar to find that Mr. El-Cherkawi must demonstrate a longer period of time in which he does not have any new criminal charges.

33. The Appeal Committee notes that Mr. El-Cherkawi appears to be committed to his rehabilitation. However, his criminal record is primarily related to trafficking and failing to comply with release conditions. Given this history and the nature of the automotive sales industry, the Appeal Committee is not persuaded, at this time, that conditions could adequately protect the public in the event that Mr. El-Cherkawi should not be able to maintain his current path of recovery. The Appeal Committee notes that Mr. El-Cherkawi has the ability to apply for salesperson registration in the future.

#### Conclusion

34. 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.
35. Given the seriousness and frequency of Mr. El-Cherkawi's criminal convictions, and the fact that he is still [REDACTED] in relation to his most recent conviction, the Appeal Committee finds that the Registrar's Decision, that it is in the public interest not to grant Mr. El-Cherkawi a salesperson registration at this time, is reasonable.

Issued and Dated:

"original signed by"

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David Quest  
Chair – AMVIC Salesperson Appeal Committee

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March 16, 2021  
Date