

IN THE MATTER OF AN APPEAL BY
COLIN STRUTH
OF THE DECISION BY
THE ALBERTA MOTOR VEHICLE INDUSTRY COUNCIL (“AMVIC”)
DATED NOVEMBER 26, 2020
TO REFUSE THE REGISTRATION OF THE APPELLANT
AS AN AUTOMOTIVE SALESPERSON UNDER THE
CONSUMER PROTECTION ACT, RSA 2000, C-26.3
AND THE *AUTOMOTIVE BUSINESS REGULATION*, REG. 192/99, AS AMENDED

REASONS FOR DECISION OF THE APPEAL COMMITTEE

Committee Chair: Erol Yersel
Members: Paul Williams
Barry Johnson

Appearances: Colin Struth, Appellant
Heather Beyko (Ackroyd LLP) [February 23, 2021, only]

Paula Hale (Shores Jardine LLP) counsel for AMVIC
Yoneke A [REDACTED], AMVIC Manager of Licensing

Mylène Tiessen (Peacock Linder Halt & Mack LLP) counsel for the Appeal
Committee

Original Hearing Date: February 23, 2021, by video and teleconference

Appeal Hearing Heard: May 6, 2021, by videoconference

INTRODUCTION

This is an appeal of a decision of the Director of Fair Trading (as delegated) (the “Registrar”) to refuse Colin Struth’s reinstatement of an automotive salesperson registration pursuant to sections 104 and 127 of the *Consumer Protection Act* (the “CPA”).

LEGISLATIVE AUTHORITY

The CPA governs the registration of salespeople in Alberta. The Director of Fair Trading has delegated its authority relative to the automotive industry in Alberta to AMVIC, including automotive salesperson registrations. Section 16 of the *Automotive Business Regulation* (the “ABR”) requires that salespeople be registered before acting on behalf of a business operator.

Section 127 of the CPA gives the Registrar authority to refuse to issue or renew a licence for any of the reasons enumerated in that section including, but not limited to, the applicant is convicted of an offence referred to in section 125 (s. 127(b)(vii)). Pursuant to section 125:

“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 the Act.

The Registrar may also, pursuant to s. 127(c), refuse to issue or renew a licence if it is in the public interest to do so.

While section 127 specifically refers to business licences, section 18 of the ABR provides that section 127 (as well as sections 125 and 128 of the CPA) apply, with the necessary changes, to the registration of salespersons.

Section 22 of the ABR permits a person, whose application for registration has been refused, to appeal that decision in accordance with the process established by the Registrar. That process is set out in the AMVIC Salesperson Appeal Committee Policy (the “Appeal Policy”).

Pursuant to section 3.2(2)(m) of the Appeal Policy, the Appeal Committee is required to determine if the decision of the Registrar that is the subject of the appeal is consistent with the provisions of the CPA, the ABR, and the Bylaws and policies of AMVIC.

THE APPEAL COMMITTEE

No objections were raised with respect to the jurisdiction or composition of the Appeal Committee.

ADJOURNMENT OF THE HEARING

This matter was originally scheduled to be heard February 23, 2021. On the morning of the hearing Mr. Struth’s counsel, Ms. Beyko, advised that her services had been terminated. Ms. Beyko then excused herself from the proceedings. Mr. Struth asked that the hearing be adjourned to allow him an opportunity to retain other counsel. AMVIC did not object to Mr. Struth’s request.

The hearing was adjourned and if Mr. Struth determined that he wished to continue with his appeal, such appeal was to be heard within 90 days of February 23, 2021. At the request of AMVIC, and there being no objection raised by Mr. Struth, the committee members agreed that they would be the committee members that would hear the appeal if it proceeded.

BACKGROUND

On April 17, 2015, Mr. Struth was first registered as an automotive salesperson with AMVIC. He was granted a conditional salesperson registration at that time. He had a criminal record. His registration last expired August 31, 2019. On April 1, 2020, Mr. Struth applied for his salesperson registration. The Registrar refused his reinstatement application following an administrative review. Mr. Struth appealed that decision and on September 22, 2020, his appeal was denied and the Registrar’s decision was upheld.

On November 11, 2020, Mr. Struth submitted a further reinstatement application. That application was referred to an administrative review held November 25, 2020. The Registrar refused Mr. Struth's reinstatement application on the basis that:

1. It was in the public interest to do so.
2. Mr. Struth does not have a demonstrated time of governability and of the five criminal convictions from 2017 and 2019, four of them directly relate to governability which cause the Registrar concerns regarding Mr. Struth's ability to abide by conditions.
3. The seriousness and nature of Mr. Struth's criminal record in the context of his entire history are a concern to the public, AMVIC as a regulator and to the automotive industry. Mr. Struth does not have a long enough period of demonstrating consistent compliance with the law and has not demonstrated he is capable of meeting the code of conduct requirements and integrity as a salesperson.

On December 8, 2020, Mr. Struth gave notice to AMVIC of his appeal of the Registrar's decision. His stated reason for the appeal was:

I feel like the Director is being unreasonable. I have no other way to survive during this pandemic and over the last year of dealing with AMVIC and their refusals nothing else has come up.

EVIDENCE BEFORE THE APPEAL COMMITTEE

Pursuant to Part 3 section 3.2(2)(s) of the Appeal Policy, Mr. Struth was, at the appeal hearing, given the opportunity to make representations by way of argument and to introduce evidence.

Evidence presented at the appeal hearing consisted of the following:

1. Materials prepared by AMVIC including:
 - TAB 1 November 19, 2020 - Letter from Registrar to Mr. Struth regarding notice of proposed administrative action (**pages 3 - 5**)
 - November 26, 2020 - Decision letter of the Registrar (**pages 6 - 10**)
 - December 8, 2020 – Notice of Appeal (**pages 13 - 14**)
 - December 10, 2020 - Letter from the Registrar to Mr. Struth acknowledging receipt of his notice of appeal (**page 15**)
 - TAB 2 January 19, 2021 - Letter from AMVIC to Mr. Struth confirming appeal date and particulars (**pages 16 – 17**)
 - January 19, 2021 - AMVIC letter to Appeal Committee Chair (**page 18**)
 - January 19, 2021 - AMVIC letters to Appeal Committee Members (**pages 19 - 20**)

TAB 3 November 17, 2020 - Application Report - Licensing (pages 21 - 40)

2. The following additional documents entered as exhibits, without objection, during the appeal hearing:
 - (i) Document entitled “Summary of Criminal Charges” (1 page) [Exhibit 1]
 - (ii) Letter from [REDACTED], dated 02/03/2021 [Exhibit 2]
 - (iii) Letter from Dawson Duckett Garcia & Johnson, Barristers, Ms. Kathryn A. Quinlan, dated February 19, 2021 [Exhibit 3]
 - (iv) Letter from Dawson Duckett Garcia & Johnson, Barristers, Ms. Kathryn A. Quinlan, dated November 19, 2020 [Exhibit 4]
3. The unsworn testimony of:
 - (a) Yoneke A [REDACTED], AMVIC Manager of Licensing; and
 - (b) Mr. Struth.

AMVIC - Opening Statement

There is no real dispute with respect to the facts in this case.

AMVIC submits that Mr. Struth’s criminal record and [REDACTED] make him unsuitable for a salesperson registration at this time.

Summary of Opening Statement and Testimony of Colin Struth

Mr. Struth strongly encouraged to review and consider the letter from his counsel, Ms. Quinlan. He has been a client of Ms. Quinlan’s for 12 years. She knows him well and has commented to him that he is the only person she has seen who has worked as hard to overcome the past adversity in his life. He has been [REDACTED]. Most people like him do not try to change and they get stuck. He does what he needs to do to support his family. He endeavours to be a better person every day.

With respect to the most recent [REDACTED], Mr. Struth submits that he is [REDACTED]. He says that he cannot change what the Edmonton Police Service thinks of him.

Mr. Struth expects that the outcome of these proceedings will not be favourable, but he asks that this panel give him a chance.

Summary of the Testimony of Yoneke A [REDACTED] – AMVIC Manager of Licensing

Before hearing from Ms. A [REDACTED], counsel for AMVIC reviewed the applicable legislative authorities as outlined above.

Ms. A [REDACTED] has been the Manager of Licensing for two years. She has been employed by AMVIC for about seven years in the licensing department, which handles licensing of businesses and registration of salespeople.

As part of the salesperson registration process, AMVIC conducts background checks including a Canadian Police Information Centre (CPIC) search, a Justice Online Information Network (JOIN) search, and open-source searches of information available on the internet including searches of other regulatory bodies in Canada.

Criminal record searches are reviewed with respect to the recentness, seriousness and frequency of any charges and convictions noted. With respect to recentness, the concern is whether there has been a lapse in time since the individual has had any charges or convictions reflecting that the individual has been rehabilitated. Given AMVIC's role of consumer protection, the seriousness of the charges and convictions are relevant. More serious charges/convictions involving fraud, drugs or violence, for example, are more concerning than traffic violations. In terms of frequency, repeated instances of charges/convictions are relevant. Ms. A [REDACTED] confirmed that having a criminal record does not automatically preclude someone from obtaining a salesperson registration.

Open-source searches are conducted to (1) ensure that the applicant has been open and honest in completing their application and (2) to ascertain if any other regulatory body has concerns or decisions involving the applicant.

If there is anything arising of concern from these searches, a report is prepared by the licensing team. As the Manager of Licensing, Ms. A [REDACTED] reviews the report and if she agrees that the matter should be presented to the Registrar and an administrative review requested, she signs the report. The report is then submitted. It is the Registrar who then determines the outcome of the registration application.

In the absence of concerns, the registration application proceeds in the normal course.

In the case of Mr. Struth's November 11, 2020, reinstatement application, there were two concerns. Firstly, his AMVIC registration history; and secondly, his criminal history, particularly the recent, [REDACTED].

Mr. Struth's AMVIC registration history is as follows:

- April 2015 Initial application for salesperson registration. Following an administrative review requested based on Mr. Struth's criminal history at the time, he was granted a conditional salesperson registration. Registration expired April 2016.
- September 2016 Reapplied for and was granted a salesperson registration without conditions. Registration expired September 2017.
- August 2018 Reapplied for and was granted a salesperson registration without conditions. Registration expired August 2019.

- April 2020 Reapplied for salesperson registration. Given [REDACTED], an administrative review was requested and undertaken. The Registrar denied Mr. Struth's application. Mr. Struth appealed and the appeal was denied.
- November 11, 2020 Submitted further application for reinstatement. The matter came before the Registrar and Mr. Struth's application was denied. At that time there were no outstanding criminal charges [REDACTED].

A summary of criminal charges was presented to the Appeal Committee and entered as an exhibit [Exhibit 1]. On April 27, 2021, AMVIC conducted a further JOIN search which showed [REDACTED]. [REDACTED] are of concern to AMVIC as they indicate that Mr. Struth has current, [REDACTED], he would be unable to sell vehicles. His last conviction prior [REDACTED] were from 2019.

When questioned by Mr. Struth, Ms. A [REDACTED] confirmed that when Mr. Struth was granted a conditional salesperson registration in 2015 he had a criminal record that included convictions. At the time the Registrar granted Mr. Struth a conditional registration. He had no criminal matters before the court in 2018. In the case of his April 2020 reinstatement application, he had convictions that were less than a year old and, accordingly, the matter was brought before the Registrar.

When questioned by the panel, Ms. A [REDACTED] advised that the conditions attached to Mr. Struth's registration included keeping the peace and being of good behaviour. His criminal history at the time is contained in the "Background" portion of the Registrar's November 26, 2020, decision.

Summary of the Testimony of Colin Struth

Mr. Struth strongly encourages the panel to review the two letters from his lawyer [entered as Exhibits 4 and 5]. They speak very highly of him. His lawyer is a personal friend. She is the only person who really knows him.

During his time fighting with AMVIC he has still been making a living in the automotive industry. It is his passion. There have been no complaints about him to AMVIC. He holds himself to a high standard and is frustrated when he sees how others operate in the business and do not come under the scrutiny of AMVIC.

Mr. Struth acknowledges that he has outstanding criminal matters.

When questioned by counsel for AMVIC about his working in the industry Mr. Struth responded that he would not answer her questions unless and until he is granted a registration. Ms. Hale confirmed Mr. Struth's refusal and explained that she had several questions for Mr. Struth but noted his refusal to answer them.

When questioned by the panel about his work history in the industry, Mr. Struth confirmed that when he was first registered, he was selling 30 vehicles per month. Although he is no longer registered and his networking abilities are limited as a result, he notes that he has a significant social media following and continues to receive requests for vehicle sales which he passes on to someone who is licensed and, in turn, he receives a referral cheque.

When asked by the panel about the lapses in his registration, Mr. Struth explained that he was taking time to work on himself. When he was employed in the industry he was never dismissed from his job. Approximately five years ago he made the decision to turn his life around and became a better man. In that timeframe he has only had five criminal charges and five convictions. He is a work a progress. He acknowledges that the most recent charges are associated with poor choices on his part.

The panel also questioned Mr. Struth about his friends and associates. Mr. Struth denies having friends. His lawyer has become everything to him.

SUMMARY OF CLOSING SUBMISSIONS

Closing Submissions on Behalf of AMVIC

Mr. Struth's refusal to answer questions during these proceedings speaks volumes with respect to how he will interact with the regulator when it is not in his best interest. This refusal is entirely unacceptable. Participants in the AMVIC registration process are required to cooperate.

Mr. Struth's argument that he has shown significant improvement with respect to his criminal record since 2015 may be an attractive argument but the question is not whether he has improved. Counsel for AMVIC agrees that Mr. Struth's more recent criminal history is remarkably different compared to his criminal history prior to 2015 when he had over 70 criminal convictions. That, however, does not change the fact that he has a criminal history since that time and Mr. Struth has not had a sufficient time period without a criminal conviction. His last convictions were from April 2019. That was the basis for the Registrar's refusal to grant Mr. Struth registration.

Mr. Struth is an example of someone having a criminal history and being granted registration. For some period of time things went well.

The Registrar's decision was reasonable based on the facts before him. The only difference is that since that time Mr. Struth's record now shows [REDACTED]. AMVIC is not saying that Mr. Struth is [REDACTED] but it does raise a concern regarding the integrity of the industry. AMVIC asks that this panel uphold the Registrar's decision on the basis that it is reasonable and consistent with the CPA and the ABR. Mr. Struth should not reapply for a salesperson registration until his [REDACTED] have been dealt with.

Closing Submissions by Mr. Struth

Mr. Struth apologized for his outburst during this hearing and explained that he was only trying to defend himself.

ISSUE TO BE DETERMINED ON THIS APPEAL

The sole issue before this Appeal Committee is whether, pursuant to section 3.2(2)(m) of the AMVIC Appeal Policy, the November 26, 2020 decision by the Registrar to refuse to grant a salesperson registration to Mr. Struth was consistent with the provisions of the CPA, the ABR, and the Bylaws and policies of AMVIC (collectively the "Governing Authorities").

DECISION

It is the unanimous decision of this Appeal Committee that the Director's November 26, 2020 decision to refuse Mr. Struth's reinstatement application be upheld and, accordingly, to dismiss Mr. Struth's appeal. In reaching its decision, the Appeal Committee considered the oral and documentary evidence presented and the arguments of the parties.

AMVIC regulates the automotive industry in Alberta. Its mandate is to, among other things, provide consumer protection in that industry through mandatory licensing of automotive businesses and salespeople in accordance with the CPA. The Registrar is given the discretion to refuse to issue a licence or registration for any of the reasons set out in section 127 of the CPA.

In this case, the Registrar was of the view that it was in the public interest, pursuant to section 127(c) of the CPA, not to grant a salesperson registration to Mr. Struth. He was also of the view that Mr. Struth had not shown a sufficient period of time without interactions with the law. Mr. Struth's criminal record in the context of his entire history was, in the Registrar's opinion, a concern to the public, AMVIC as a regulator and the automotive industry.

The letters of reference submitted on behalf of Mr. Struth from his lawyer and his [REDACTED] describe the struggles Mr. Struth has faced in his life and the significant strides that he has made to overcome them. This committee applauds his efforts. However, AMVIC's mission is to protect the public interest and promote trust and confidence in the automotive industry. We agree that the recentness and seriousness of his criminal convictions from as recent as 2019 are concerning and the addition of [REDACTED] arising from an [REDACTED], in the context of his entire criminal history add further concern. While this committee acknowledges that these are only [REDACTED], the Alberta Court of Queen's Bench in the 2010 decision of *Ahmad v. Alberta Motor Vehicle Industry Council*, recognized that a person's past criminal history could be considered, including [REDACTED].

Mr. Struth's behaviour during the appeal was also concerning. It is appreciated that Mr. Struth was emotional at times but that he did apologize for his behaviour. That said, his refusal to answer AMVIC's questions and, therefore, his unwillingness to participate in at least certain aspects of this process that he may not have perceived as being unfavourable to his position, did provide added evidence of concerns regarding his governability.

Given these circumstances a refusal to grant Mr. Struth a salesperson registration as being in the public interest is consistent with the provisions of the Governing Authorities and, in particular, section 127(c) of the CPA, and was reasonable based on the evidence before the Registrar.

Dated this 25 day of May 2021.

"original signed by"

Erin Yersel

Chair – AMVIC Salesperson Appeal Committee