

IN THE MATTER OF AN APPEAL BY

MICHAEL RITCHIE

TO SECTION 127(C) OF THE *CONSUMER PROTECTION ACT*,
BEING CHAPTER C-26.3 OF THE REVISED STATUES 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 SEPTEMBER 7, 2021

REASONS FOR DECISION

Committee Chair: David Quest

Members: Michael Daubert
Wayne Paulsen

Natalie Tymchuk and Kirsty Vogelesang,
Legal counsel (Emery Jamieson LLP) for the Committee

Appearances: Michael Ritchie, Appellant

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

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

Appeal Heard: February 16, 2022
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 also referred to as the “Registrar”) to refuse the registration of Michael Ritchie as a provincial automotive salesperson under section 127 and section 104 of the *Consumer Protection Act* (the “*CPA*”).

Jurisdiction

2. The *CPA* and the *ABR* regulate, among other things, automotive business licences and salesperson registrations in Alberta.
3. Under section 104 of the *CPA*, no person may engage in a designated business unless that person holds a licence under the *CPA* that authorizes them to engage in that business. The automotive sales business is a designated business.
4. Pursuant to section 16 of the *ABR*, a salesperson of an automotive sales business operator must be registered for automotive sales before acting on behalf of the business operator.
5. The Registrar’s jurisdiction with respect to automotive business licences and salesperson registrations is found at section 127 of the *CPA*:

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

- (a) the applicant or licensee does not or no longer meets the requirements of this Act and the regulations with respect to the class of licence applied for or held;
- (b) the applicant or licensee or any of its officers or employees:
 - (i) fails to comply with an order of the Director under section 129 or 157, unless, in the case of an order under section 129 or 157, the order has been stayed,
 - (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.

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), 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. 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.

Evidence before the Appeal Committee

13. Mr. Ritchie applied for a salesperson registration on May 27, 2021. In his application Mr. Ritchie stated that he had [REDACTED] for “[REDACTED] [sic]”. Mr. Ritchie further stated he did not have any criminal convictions, but that he was under [REDACTED]”. Routine background checks completed revealed that Mr. Ritchie did have a [REDACTED]. As a result, his application was referred to the Registrar. The Registrar conducted an administrative review via teleconference call on September 7, 2021 with Mr. Ritchie in attendance.

14. On September 7, 2021, the Registrar issued a decision refusing Mr. Ritchie an automotive salesperson registration (the “Decision”). The Decision noted that Mr. Ritchie has [REDACTED] and, most recently, [REDACTED] for [REDACTED]. The decision notes that Mr. Ritchie was on [REDACTED] at the time with [REDACTED] that he could not [REDACTED] could not be in any [REDACTED], and had to see a [REDACTED]. The decision notes that Mr. Ritchie advised that he does not have any [REDACTED] before the court and that was an error on his part when completing the application, though he does have an unresolved alleged [REDACTED] [REDACTED] which is set for [REDACTED].

15. The Decision was as follows:

It is my decision, as Director of Fair Trading (as delegated), to NOT grant the application of Mr. Michael Ritchie 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. Michael Ritchie a salesperson registration at this time.
2. Although it was not Mr. Ritchie's intention to falsify his application, he failed to disclose his [REDACTED] from [REDACTED]. 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.

[Legislative citations omitted]

3. Mr. Ritchie admitted to being involved in the sale of approximately 50 vehicles while being unregistered to do so. Although he was forthcoming and did not lie about it, this is concerning to the Director regarding his governability and ability to follow the law.
4. Mr. Ritchie has serious and recent [REDACTED] and is currently on [REDACTED].
5. Despite a negative AMVIC database check pertaining to any outstanding unresolved charges before the Court, Mr. Ritchie advises that he has [REDACTED] of [REDACTED] set for [REDACTED]. If [REDACTED], Mr. Ritchie could face a [REDACTED] which he acknowledged and cannot be ignored. The serious nature of this alleged [REDACTED] causes the Director concern. It is the opinion of the Director that Mr. Ritchie 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.

6. The Director is not persuaded, at this time, that conditions could adequately protect the public based on the evidence before me. Mr. Ritchie not only has an [REDACTED], he also has [REDACTED] and is currently on [REDACTED]. It is the opinion of the Director that Mr. Ritchie has not demonstrated a sustained period of rehabilitation.
16. On September 29, 2021 Mr. Ritchie provided a Notice of Appeal to AMVIC, stating as his reasons for appeal that the refusal was "unfair dismissal."

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 further opening comments:
 - AMVIC's primary concern with the application is the Appellant's [REDACTED] and the fact that he has [REDACTED]. A secondary issue is the fact that the Appellant was selling vehicles before he was registered to do so.
18. AMVIC called oral evidence from AMVIC's Manager of Licensing, Ms. Yoneke A [REDACTED] Ms. A [REDACTED] provided the following information:
 - She has been in the Manager of Licensing role since November of 2019. She was previously the Licensing Supervisor and has worked for AMVIC for eight years. She is familiar with AMVIC's salesperson registration and business licensing processes.

- Salesperson registration applicants are required to complete the application online. In the salesperson registration application process, AMVIC asks whether the applicant has a criminal history. Once an application fee is paid, applicants are required to provide AMVIC with a Police Information Check (“PIC”). AMVIC also completes [REDACTED] of applicants for salesperson registration. AMVIC will also search salesperson registration history and online open source information for each applicant.
- AMVIC partnered with a third party company to complete PICs however, if results received are not clear, AMVIC advises the applicant to get a PIC from their local police or RCMP detachment. The applicant gets a copy of the background check. If the results are clear, then AMVIC proceeds with processing the application.
- Having a criminal record does not automatically put an applicant in the queue for administrative review. If an applicant has a criminal history, AMVIC will consider three factors: the seriousness, frequency and recency of that history. If there are concerns, an application report is prepared and forwarded to the Registrar for administrative review.
- Mr. Ritchie applied for a salesperson registration in 2021. Upon receipt of the Application, background checks of Mr. Ritchie were conducted by AMVIC.
- The results of the background checks for Mr. Ritchie revealed that he has [REDACTED]
[REDACTED] The result also revealed that Mr. Ritchie had been [REDACTED] There have been no [REDACTED] breaches or criminal history [REDACTED] and Mr. Ritchie’s [REDACTED] expires at the end of [REDACTED] Due to these [REDACTED] AMVIC prepared an application report for the Registrar. The Registrar consequently held an administrative review with Mr. Ritchie.
- Mr. Ritchie had already been participating in selling vehicles, and this was a serious concern for AMVIC.

19. In response to questions from Mr. Ritchie, Ms. A [REDACTED] testified:

- Ms. A [REDACTED] was not part of the administrative review with the Registrar. However, in the application it was disclosed that Mr. Ritchie had matters before [REDACTED]
- It is not uncommon to give someone AMVIC registration with a criminal record. AMVIC can grant conditional registrations. There are three options available to AMVIC on an application for salesperson registration: refuse, conditional, or grant the registration outright. The Registrar has granted conditions in the past where the applicant had a criminal record.
- AMVIC has granted registrations to applicants with a criminal record involving [REDACTED]. In the past there have been applicants who were granted conditional registration by the Registrar. However, each individual and situation is different. For example, if a period of time has passed the Registrar may grant conditional registration, and those conditions can be different.

Evidence of the Appellant

20. Mr. Ritchie provided the following evidence at the Appeal:
- The manager at the automotive business that employed Mr. Ritchie provided a written statement in support of Mr. Ritchie.
 - On a personal level, Mr. Ritchie has changed his life around. He understands AMVIC has its own rules, which he is more than happy to comply with and follow. Mr. Ritchie is happy to re-do the salesperson registration course and if he had conditions, he would be more than willing to do that as well. Mr. Ritchie wants to get his foot in the door.
21. In response to questions from legal counsel for AMVIC and the Appeal Committee, Mr. Ritchie provided the following evidence:
- Mr. Ritchie is not currently working but he does have a job waiting for him if he gets his AMVIC. There is no point in him being employed if he is not able to work in sales. He has not worked for any other dealerships.
 - During the administrative review, he stated he had been selling cars. However, he was always shadowing an AMVIC registered salesperson during the sales. The sales are made by a registered salesperson and Mr. Ritchie's name did not appear on any paperwork. He has not received any commissions for these sales. He never showed any vehicles by himself.
 - He was told by his lawyer to not speak about his pending [REDACTED]. There is a [REDACTED] He has not [REDACTED] to the [REDACTED]
22. No witnesses were called. A letter from the manager of the automotive business willing to employ him was provided in support of Mr. Ritchie's appeal and was marked as Exhibit 2 during the appeal hearing.

Summary of Arguments

AMVIC's Closing Submissions

23. 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. There are two primary reasons for refusal under section 127 of the *CPA*. First, there is risk to consumers as consumers provide personal information to the registrant and it would be shocking for the average consumer to learn that they had provided their information to someone [REDACTED]. Second, section 127 of the *CPA* is meant to uphold the integrity of the profession and industry.
24. It is expected that registered salespersons 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. While criminal laws are mandatory regardless of what the *CPA* says,

the requirements for honesty, integrity, and reliability are a signpost that the industry relies on voluntary lawfulness of participants. Salesperson registration is important because it provides some security that members will follow AMVIC's rules and deal honestly with consumers.

25. Counsel for AMVIC argued that parts of Mr. Ritchie's [REDACTED] therefore cause concern for AMVIC. Mr. Ritchie has multiple [REDACTED] in recent history. While the [REDACTED] which are [REDACTED] have not been determined yet, they are [REDACTED]. As such, the overarching test with regards to integrity of the industry is whether a member of the public would view the [REDACTED] and [REDACTED] with concern.
26. Counsel for AMVIC pointed out that Mr. Ritchie is not forever precluded from applying for a salesperson registration, and it may be more appropriate for him to re-apply if the [REDACTED] are resolved in his favour. As part of its mandate to consider all factors relevant to the public interest, the Appeal Committee is obligated to factor the [REDACTED] into their decision though they need not presume the appellant will ultimately be [REDACTED] (*Ahmad v Alberta Motor Vehicle Industry Council*, 2010 ABQB 293).
27. Counsel for AMVIC concluded that Mr. Ritchie has not established that he should be granted a salesperson registration at this time. However, if the Appeal Committee were to find that the decision of the Registrar was inconsistent with AMVIC's governing legislation, a conditional salesperson registration would be appropriate. AMVIC suggested that, in such circumstances, the following conditions should be imposed:
 - Mr. Ritchie would be required to report on the outcome of the [REDACTED] within 3 business days;
 - Mr. Ritchie would be required to fully disclose his [REDACTED] to his employer, along with written acknowledgment from his employer that disclosure was made. This will apply even if Mr. Ritchie changes employers;
 - Mr. Ritchie would be required to undertake renewals in a timely fashion and keep AMVIC up to date.

Mr. Ritchie's Closing Submissions

28. Mr. Ritchie argued that he has handled the appeal and application process with integrity. He has been honest and open.
29. Mr. Ritchie stated that he has not been charged with fraud or taking any personal information. If Mr. Ritchie came into possession of personal information, there is no evidence to suggest that that he would do anything improper with the information.
30. Mr. Ritchie argued that the automotive business is aware of his [REDACTED] and they hired him anyway. They know him as a person and want to see him grow. His [REDACTED] is in the past and he wants to move forward and start a new career. Mr. Ritchie believes he would do well in the industry.

31. Mr. Ritchie is agreeable to a probationary license and is willing to abide by any conditions or restrictions on his salesperson registration.

Findings of the Appeal Committee

32. Upon hearing the evidence and arguments put forward by Mr. Ritchie and AMVIC, the Appeal Committee dismisses the appeal and upholds the Decision of the Registrar to refuse the application of Mr. Ritchie for an automotive salesperson registration under sections 104, 127(b)(iii), 127(b)(vii), and 127(c) of the *Consumer Protection Act*.
33. Under section 3.2(2)(m) of the Appeal Policy, the task the of 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 Mr. Ritchie's recent [REDACTED] and [REDACTED], 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

Criminal Records

34. The following evidence was before the Appeal Committee regarding Mr. Ritchie's [REDACTED]
- In 2019, Mr. Ritchie was [REDACTED]. His [REDACTED] was withdrawn. The events in question occurred on [REDACTED].
 - In 2020, Mr. Ritchie was [REDACTED]. Mr. Ritchie was also [REDACTED], but the [REDACTED] was withdrawn. Mr. Ritchie was [REDACTED]. The events in question occurred on [REDACTED].
 - Mr. Ritchie currently has outstanding [REDACTED]. [REDACTED] here is a preliminary [REDACTED]. There is one [REDACTED]. The events in question occurred on [REDACTED].
35. The Registrar found that Mr. Ritchie's recent [REDACTED] raised concerns for the protection of consumers, the industry, and the public perception of the industry due to their [REDACTED]. The Appeal Committee agrees that Mr. Ritchie's [REDACTED] and [REDACTED] are [REDACTED] enough to reasonably cause concern to the public and to AMVIC as a regulator. The Appeal Committee notes that, after a reasonable period of time has passed following a [REDACTED] which demonstrates good behaviour in accordance with the legislative intent to regulate honesty, integrity and reliability on the part of the applicant, the effect of a [REDACTED] may be lessened. However, such a period of time has not passed for Mr. Ritchie.

36. 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.”
37. 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.”
38. 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.
39. The Appeal Committee acknowledges that Mr. Ritchie has not been convicted of the [REDACTED] relating to [REDACTED]. However, the Appeal Committee finds that these [REDACTED] are serious and reasonably cause concern to AMVIC as a regulator. Further, Mr. Ritchie is also [REDACTED]. The Registrar has the discretion to determine what is in the public interest, in considering the particulars of each registration application. As noted at paragraph 27 of the *Ahmad* decision:

...the Legislature has delegated the responsibility to protect the public interest with respect to the issuance and review of Salesperson Registration and that this is necessarily a broad mandate that requires the A.M.V.I.C. to consider any and all factors that may be relevant to the public interest.

40. The Appeal Committee was provided with limited information by Mr. Ritchie regarding the [REDACTED]. The Appeal Committee was only advised that he there is a preliminary [REDACTED]. The limited information received from Mr. Ritchie regarding the [REDACTED] is insufficient to persuade the Appeal Committee that he should be granted an automotive salesperson registration or that a conditional registration could adequately protect the public.
41. The Appeal Committee acknowledges the letter of support from Mr. Ritchie’s former employer regarding his character. However, subjective character witnesses do not necessarily reflect the interest of the public. The Appeal Committee finds that Mr. Ritchie has not demonstrated a sustained period of [REDACTED] 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.
42. Given the [REDACTED] coupled with the history of [REDACTED], the Appeal Committee finds that the Registrar’s Decision, that it is in the public interest not to grant Mr. Ritchie a salesperson registration at this time, was reasonable.

Conclusion

43. This Appeal Committee is satisfied that the hearing given to Mr. Ritchie has been exhaustive and fair. We have reviewed all of the evidence before us. We are satisfied

that our decision to uphold the original Decision of the Registrar not to grant Mr. Ritchie a reinstatement of his salesperson registration is appropriate in all the circumstances.

44. Given the [REDACTED], and particularly the nature of [REDACTED] the Appeal Committee finds that the Registrar's Decision, that it is in the public interest not to grant Mr. Ritchie a salesperson registration at this time, is reasonable.
45. 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.
46. In the Appeal Committee's view, Mr. Ritchie must demonstrate a longer period of time where he has avoided [REDACTED] before it would be appropriate to consider granting him registration as an automotive salesperson. It is expected for any automotive salesperson to demonstrate honesty and integrity, and Mr. Ritchie's stated intention to do so should be commended and encouraged. However, his recent past conduct also needs to be considered. Given Mr. Ritchie's history and the nature of the automotive sales industry, the Appeal Committee is not persuaded, at this time, that registration conditions could adequately protect the public. The Appeal Committee notes that Mr. Ritchie may have the ability to apply for salesperson registration in the future but that, before doing so, he should endeavour to demonstrate a sustained period of rehabilitation.

Issued and Dated:

"original signed by"

David Quest
Chair – AMVIC Salesperson Appeal Committee

March 15, 2022
Date