

IN THE MATTER OF AN APPEAL BY

KENNETH PARKS

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 MARCH 22, 2022

**REASONS FOR DECISION**

Committee Chair: David Quest

Members: Adam Mohl  
Michael Samson

Kirsty Vogelesang,  
legal counsel (Emery Jamieson LLP) for the Committee

Appearances: Kenneth Parks, Appellant

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

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

Appeal Heard: June 15, 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 Kenneth Parks 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. Parks applied for a salesperson registration on March 7, 2022. In his application Mr. Parks stated that he had a [REDACTED] of [REDACTED] and [REDACTED]. Routine background checks completed confirmed that Mr. Parks had a [REDACTED]. As a result, his application was referred to the Registrar. The Registrar conducted an administrative review via teleconference call on March 22, 2022 with Mr. Parks in attendance.

14. On March 22, 2022, the Registrar issued a decision refusing Mr. Parks an automotive salesperson registration (the "Decision"). The Decision noted that Mr. Parks has [REDACTED] for: [REDACTED]. The decision noted that Mr. Parks was ordered to [REDACTED] and still [REDACTED] approximately [REDACTED] at the time.

15. The Decision was as follows:

It is my decision, as Director of Fair Trading (as delegated), to NOT grant the application of Mr. Kenneth PARKS 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. Kenneth Parks a salesperson registration at this time.
2. Mr. Parks has a recent [REDACTED] in which he was [REDACTED] and ordered [REDACTED] with [REDACTED] still [REDACTED]. The [REDACTED] all related directly to the automotive industry. The public perception to allow an individual to operate in a regulated industry with recent [REDACTED] that were directly related to the automotive industry would be detrimental. Under section 127(b)(vii) of the CPA the Director may refuse to issue a salesperson registration if an applicant is convicted of an offence or is server a sentence imposed under a conviction.

*[Legislative citations omitted]*

3. As a regulatory body, AMVIC must ensure the protection of consumers but also the protection of the industry itself. The seriousness and nature of Mr. Parks' [REDACTED]



██████████ in the opinion of the Director, is a concern to the public, AMVIC as a regulator, and the automotive industry. The duty of the Director is to ensure that registered salespeople can be relied on to consistently follow the law and the standards of the profession. In the opinion of the Director, Mr. Parks has not demonstrated ██████████ for a sustained period of time and has not demonstrated he is capable of meeting the code of conduct requirements and integrity as a salesperson. The Director is not persuaded, at this time that conditions could adequately protect the public.

16. On March 23, 2022 Mr. Parks provided a Notice of Appeal to AMVIC, stating as his reasons for appeal that:
- He made a mistake and understands the consequences.
  - He cares about providing good customer service.
  - He is on the right path and wants the opportunity to develop a career he is proud of that will allow him to provide for himself and his family. Under the guidance of his mentors, he can achieve his goals.

#### 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:
- There are no material facts in dispute. Mr. Parks applied for registration and was denied because he was ██████████ under the ██████████ relating to ██████████ AMVIC's primary concern with the application is the Appellant's ██████████ and the fact that the ██████████ relate directly to the automotive industry. The Registrar declined Mr. Parks' registration following an administrative review. The Decision was proper and was made in the public interest.
18. AMVIC called oral evidence from AMVIC's Manager of Licensing, Ms. Yoneke A ██████████ Ms. A ██████████ provided the following information:
- She has been in the Manager of Licensing role for approximately three years. She was previously the Licensing Supervisor and has worked for AMVIC since 2014. 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 for personal information and 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 Justice Online information Network System ("JOINS") searches of applicants for salesperson registration. AMVIC will also search salesperson registration history and online open source information for each applicant.

- The applicant provides AMVIC a copy of the PIC. If the results are clear, then AMVIC proceeds with processing the application.
- Having a criminal record does not automatically preclude an applicant from being registered as a salesperson. If an applicant has a criminal history, AMVIC will consider three factors: the seriousness, frequency and recency of that criminal history. If there are concerns, an application report is prepared and forwarded to the Registrar for an administrative review.
- Mr. Parks applied for a salesperson registration. Upon receipt of the Application, background checks of Mr. Parks were conducted by AMVIC.
- The results of the background checks for Mr. Parks confirmed that he was [REDACTED] on [REDACTED] of [REDACTED] and [REDACTED]. The first three [REDACTED] were of particular concern as they stemmed from a [REDACTED] and from using a [REDACTED]. Due to the recency and serious nature of the [REDACTED] AMVIC's licensing department prepared an application report for the Registrar. The Registrar consequently held an administrative review with Mr. Parks.
- A [REDACTED] was prepared by counsel for AMVIC and was entered as Exhibit 1 during the hearing.

#### Evidence of the Appellant

19. Mr. Parks provided the following evidence at the Appeal:

- Mr. Parks continues to work at the business that he applied to be a salesperson at. He currently works in the service department. He has a new perspective of the complexity of the business and the risks associated with personal information, financial information, and the damage that can be caused by mistakes.
- Mr. Parks was previously in the trucking industry for thirteen years.
- Over the last few years Mr. Parks put himself in a situation which changed his life.
- The potential income from service is a fraction of that from sales, and it has been a huge hit for him.
- Mr. Parks is new to the professional industry and is still learning how to communicate and talk to people. The automotive industry and staff at his current employment have taught him a lot.
- Since coming into the industry, Mr. Parks has actively been involved with charity galas to raise money for charities.
- Mr. Parks still has a large portion of the [REDACTED]. Since being [REDACTED] it has been [REDACTED] holding a job and finding a legitimate company that wants to see him grow. He looks at himself as an investment, and if someone is going to hire him, they invest in him.



- Mr. Parks will never get the time back he lost from these [REDACTED] He understands he did wrong. He has grown and has learned.

20. In response to questions from legal counsel for AMVIC and the Appeal Committee, Mr. Parks provided the following evidence:

- He confirmed that the [REDACTED] entered as Exhibit 1 was accurate.
- Mr. Parks confirmed that the [REDACTED] stemmed from the [REDACTED] He did not do the [REDACTED] but he was aware of it.
- The [REDACTED] and [REDACTED] all related to the same [REDACTED] and investigation notwithstanding the different [REDACTED] dates listed in the [REDACTED] The [REDACTED] which were [REDACTED] did not involve Mr. Parks.
- Mr. Parks came from the east coast and found it hard to meet people. He met the wrong people and got involved in things that destroyed his life. He is trying to come back from that.
- Mr. Park has been working as a service advisor since March 26, 2022.
- After the [REDACTED] Mr. Parks' work history involved driving trucks for various companies. He had [REDACTED] issues, and was [REDACTED] six or seven times.
- Mr. Parks was involved in [REDACTED] for six or seven months.
- Mr. Parks has paid approximately one quarter of the [REDACTED]

21. No witnesses were called.

## **Summary of Arguments**

### AMVIC's Closing Submissions

22. Counsel for AMVIC argued that the Registrar's Decision should be confirmed.
23. The purpose of the *CPA* is to protect consumers in situations where consumers are vulnerable due to an asymmetry of information and knowledge between the salesperson and the consumer. The *CPA* is therefore intended to provide some assurance that vehicle transactions are fair and consumers will not be taken advantage of. Section 6 of the *CPA* provides a list of unfair practices, and the driving principle behind each is to not take advantage of, mislead, or misrepresent to consumers, and to maintain the integrity of the industry.
24. It is expected that registered salespersons will abide by the laws and rules of the automotive industry, even when not in the salespersons' best interest, 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. While criminal laws are mandatory regardless of what



the CPA says, the requirements for honesty, integrity, and reliability reflect 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. Parks' [REDACTED] history therefore cause concern for AMVIC. Mr. Parks has [REDACTED] in recent history which are directly related to the automotive industry. As such, the overarching test with regards to integrity of the industry is whether a member of the public would view the [REDACTED] with concern.
26. Counsel for AMVIC pointed out that Mr. Parks is not forever precluded from applying for a salesperson registration, and it may be more appropriate for him to re-apply in the future if he can show a consistent period where he does not have interactions with the law.
27. Counsel for AMVIC concluded that Mr. Parks 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. Parks would be required to maintain and renew his registration promptly.
  - Mr. Parks would be required to promptly respond to AMVIC.
  - Mr. Parks would be required to immediately report any [REDACTED] against him.
  - Mr. Parks would be required to fully disclose his [REDACTED] to his employer by providing a copy of the [REDACTED] marked as Exhibit 1, along with written acknowledgment from his employer that disclosure was made. This will apply even if Mr. Parks changes employers.

#### Mr. Parks' Closing Submissions

28. Mr. Parks argued that he knew what he had done, he knew that what he had done was wrong, and he accepted the [REDACTED]
29. Mr. Parks stated that he is currently [REDACTED] years old and has a lot of life ahead of him.
30. Mr. Parks argued that the automotive industry is better for him than trucking.

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

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

#### Records

33. The following evidence was before the Appeal Committee regarding Mr. Parks' [REDACTED]
- In [REDACTED] Mr. Parks was [REDACTED] of [REDACTED] and [REDACTED]. The [REDACTED] are from the same events which occurred in [REDACTED]
  - Mr. Parks had [REDACTED] and [REDACTED] from [REDACTED] related to [REDACTED] and [REDACTED]
34. 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."
35. 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."
36. 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 [REDACTED] and [REDACTED] 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.
37. The Registrar found that Mr. Parks' recent [REDACTED] raised concerns for the protection of consumers, the industry, and the public perception of the industry due to their seriousness, recency, and the fact that they directly related to the automotive industry. The Appeal Committee notes that Mr. Parks was forthright in disclosing his [REDACTED]. However, the Appeal Committee agrees that Mr. Parks' [REDACTED] are serious and recent enough to reasonably cause concern to the public and to AMVIC as a regulator. The Appeal Committee finds that Mr. Parks' [REDACTED] raises serious concerns that granting his salesperson registration at this time would result in damage to the reputation of the automotive industry and the public's perception and would result in a risk to the public interest.
38. 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. Parks, and he has not finished [REDACTED] the [REDACTED].



39. The Appeal Committee acknowledges the letter of support from Mr. Parks' employer regarding his character. However, subjective character witnesses do not necessarily reflect the interest of the public.
40. Given the seriousness and recency of the [REDACTED] and the fact that they are directly related to the automotive industry, the Appeal Committee finds that the Registrar's Decision, that it is in the public interest not to grant Mr. Parks a salesperson registration at this time, was reasonable.

#### Conclusion

41. Given the seriousness, recency, and nature of Mr. Parks' [REDACTED], the Appeal Committee finds that the Registrar's Decision, that it is in the public interest not to grant Mr. Parks a salesperson registration at this time, is reasonable.
42. 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.
43. In the Appeal Committee's view, Mr. Parks must demonstrate employment stability and a longer period of time where he has avoided interactions with the law, before it would be appropriate to consider granting him registration as an automotive salesperson. The Appeal Committee notes that Mr. Parks 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 [REDACTED]
44. Given Mr. Parks' 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.
45. This Appeal Committee is satisfied that the hearing given to Mr. Parks 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. Parks a reinstatement of his salesperson registration is appropriate in all the circumstances.

Issued and Dated:

"original signed by"

\_\_\_\_\_  
David Quest  
Chair – AMVIC Salesperson Appeal Committee

\_\_\_\_\_  
July 5, 2022

Date