



Administrative Actions Policy

Version 4
Sept. 15, 2022
Legal services

Administrative Actions Policy

1. Table of Contents

2. Introduction	2
2.1 Policy statement	2
2.2 Purpose	2
2.3 Definitions.....	3
3. Policy.....	3
3.1 Application of the policy	3
3.1.1 Written warnings	3
3.1.2 Licensing.....	4
3.1.3 Undertaking	5
3.1.4 Director's Orders.....	7
3.1.5 Injunctions.....	8
3.1.6 Property Freeze Order	9
3.1.7 Administrative Penalties	10
3.1.8 Appeals.....	12
3.1.9 Publication	13
4. Administration.....	14
4.1 Related documents and legislation.....	14
4.2 Procedures.....	14
4.3 Forms	14
4.4 Amendment history	14
4.5 Scheduled review date.....	14

Administrative Actions Policy

2. Introduction

2.1 Policy statement

Section 127 of the *Consumer Protection Act* (the Act) gives the Director the authority to use administrative actions when it is in the public interest to do so or to ensure compliance. In addition, AMVIC utilizes a variety of enforcement tools in response to contraventions of the Act and related regulations. This document serves as a framework for AMVIC to reference when assessing the type of administrative action to utilize.

Administrative actions may be taken in two main circumstances:

1. Where a person contravenes a provision of the Act or related regulations.
2. Where it is not in the public interest for a person to gain entry or remain in the industry due to matters outside of the automotive industry.

This policy is for general use and should not be considered exhaustive. The Registrar has unfettered discretion to make decisions regarding remedies, enforcement, and administrative actions under the Act.

2.2 Purpose

This document sets out the policy related to the administrative actions available with respect to licensing and contraventions of the Act and related regulations.

The following administrative actions are available to the Director of Fair Trading (as delegated):

- Written Warnings
- Licensing
 - Refusal
 - Terms and Conditions
 - Suspension
 - Cancellation
- Undertakings
- Director's Orders
- Injunctions
- Property Freeze Orders
- Administrative Penalties

Under most circumstances, an application report is provided to the Registrar with supporting rationale and evidence when recommending an administrative action be taken.

Prior to most administrative actions, AMVIC will provide written notice as required by the Act and provide the person an opportunity to make representations before administrative action is taken. In some cases, an administrative review hearing will be scheduled with the Registrar to allow the opportunity to provide oral representations regarding the matter. In some cases, the Person will only

Administrative Actions Policy

have the opportunity to submit written representations. Administrative review hearings are not open to the public.

When an administrative action is recommended and notice is given to the Person to provide representations, the outcome of the administrative review does not always result in an administrative action. An administrative action will only be taken when the Registrar considers it appropriate.

2.3 Definitions

In this policy:

- i. “Act” means the *Consumer Protection Act*;
- ii. “AMVIC” means the Alberta Motor Vehicle Industry Council;
- iii. “administrative action” refers to the broad cross section of administrative tools available to AMVIC under the relevant legislation;
- iv. “CEO” means the chief executive officer of AMVIC;
- v. “contravention” means an alleged breach of any section of the relevant Act to which an administrative enforcement action can be taken but is not limited to the sections that are identified as offences for the purpose of prosecution;
- vi. “Person” means a business or salesperson who holds an AMVIC licence or registration or any person who is required to be licensed under the Act.
- vii. “Registrar” means the Director of Fair Trading (as delegated);
- viii. “Regulator” means AMVIC.

3. Policy

3.1 Application of the policy

3.1.1 Written warnings

A written warning should be used when no other formal administrative action is considered appropriate in the circumstances. As an important part of AMVIC’s progressive enforcement model, a written warning is an educational tool used to promote and foster compliance. A written warning may be considered in the following circumstances:

- a. When the Person has no history of non-compliance;
- b. To prompt a Person to come into compliance when required. For example: if a Person is not meeting the basic requirements to be licensed under the Act such as they no longer have the surety required, they do not have municipal approval, they do not have a licensed technician on staff as required, or when a Person has allowed their licence to expire or they have not remitted their levies on time.
- c. When the information to proceed with other formal administrative action is insufficient.

Administrative Actions Policy

Although written warnings are not formal administrative actions, the Registrar may take previous written warnings into consideration when reviewing a Person's compliance history with AMVIC in considering a future administrative action.

3.1.2 Licensing

a. Background

Consumer Protection Act

Refusal, suspension, cancellation, terms

Section 127

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.

Administrative Actions Policy

Automotive Business Regulation

Adoption of provisions

Section 18

Sections 125, 127 and 128 of the Act apply, with the necessary changes, to the registration of salespersons.

b. Application

Section 127 of the Act and Section 18 of the Automotive Business Regulation provides AMVIC the authority to take administrative action on automotive business licences and salesperson registrations, respectively. Licensing administrative actions can be assessed for contraventions of the Act and associated regulations. Section 127 also empowers AMVIC to take administrative action in regards to a Person applying to gain entrance into the automotive industry in Alberta, when in the opinion of the Registrar, it is in the public interest to do so.

Licensing administrative actions include:

- Refusing an application for a licence or registration;
- Refusing to renew a licence or registration;
- Cancellation of a licence or registration;
- Suspension of a licence or registration;
- Imposing terms and conditions on a licence or registration.

When determining the appropriate administrative action the Registrar may take into account:

- a. The severity of the contravention(s) of the Act;
- b. If the contravention(s) caused direct harm to a consumer;
- c. If the Person has a history of contravening the Act;
- d. Previous administrative action(s) against the Person;
- e. If a Person has provided false or misleading information to AMVIC;
- f. If the Person has any pending criminal charges before the Court;
- g. If a Person has been convicted of an offence under any law as defined in Section 125 of the Act;
- h. Public interest.

This list is not exhaustive and the Registrar may also consider any other relevant information to determine what licensing administrative action is appropriate in the circumstance.

3.1.3 Undertaking

a. Background

Consumer Protection Act

Supplier's undertakings

Section 152

(1) When

- (a) the Director is of the opinion that a person has contravened this Act or the regulations, and

Administrative Actions Policy

(b) the Director is satisfied that the person has ceased the contravention,
the person may enter into an undertaking with the Director in the form and containing the provisions that the Director, on negotiation with that person, considers proper.

b. Application

AMVIC may consider the following factors when determining if an Undertaking is an appropriate enforcement option:

- a. Previous enforcement actions for similar contravention(s);
- b. Gravity and magnitude of the contravention(s);
- c. Extent of harm to others;
- d. Whether the contravention(s) was repeated or continuous;
- e. Whether the contravention(s) was deliberate;
- f. Any economic benefit derived as a result of the contravention(s);
- g. The Person's efforts to correct the contravention(s).

An Undertaking should only be offered if there is another enforcement or administrative action option available if the Person refuses to enter into the Undertaking. Additionally, in accordance with Section 152(1)(b), an Undertaking should only be offered if the Registrar is satisfied the Person has ceased the contravention.

Undertakings may also be used to secure restitution for individuals who suffered a loss arising from a contravention or to change business practices to garner compliance. An Undertaking should not be used for the same contravention within a three year period.

Entering into an Undertaking is voluntary and the elements of an Undertaking are generally negotiated by the Registrar. The Undertaking will be entered into by the Person and the Registrar. The Person must be informed that failure to comply with an Undertaking constitutes an offence as per section 163(d) of the Act.

Section 157.1(1) of the Act makes Undertakings public records and they will be posted on the AMVIC website. A Person should be advised of this when an Undertaking is being offered.

c. Cost Assessment

When an Undertaking is recommended, the recommendation may include a recommendation for the Person to pay the costs AMVIC incurred to investigate the Person's activities. Section 152(2)(d) of the Act provides the Registrar the authority to collect any costs of investigating a Person who has contravened the Act. The following costs should be considered when negotiating the assessed costs:

1. Staff hours, as shown in the AMVIC database, spent on an investigation are charged at the current hourly rate as approved by the Director. This includes investigative staff, administrative staff, legal department staff, travel time, meeting time, hearing time and any other time spent by staff.

Administrative Actions Policy

2. Costs of special or technical experts, witnesses, evidence testing, expert opinions, and external legal opinions.

Mitigating factors may play a role in the costs assessed and can be noted in the assessment with restitution to consumers as a key factor in any decision related to cost recovery. The Registrar can also consider the overall cooperation of the Person in their interactions with AMVIC. The Registrar may also consider any other relevant mitigating factors presented by either AMVIC or the Person.

The Registrar may reduce or waive the costs, or allow the Person extra time to pay in exceptional cases where the circumstances warrant this, taking into consideration the Person's ability to pay and the impact of the assessed costs on the continued viability of the Person.

3.1.4 Director's Orders

a. Background

Consumer Protection Act

Director's order

Section 157

(1) If, in the opinion of the Director

- (a) a person is contravening or has contravened this Act or the regulations,
- (b) a regulated person is using any form, agreement, letter or other document that is misleading or contains a term that misrepresents this Act or the regulations, or
- (c) a print, broadcast or electronic publisher, including but not limited to a publisher of telephone directories and Internet listings, is publishing or has published an advertisement that is misleading or contains a term that contravenes this Act or the regulations,

the Director may issue an order directed to the person or publisher.

b. Application

Director's Orders may be considered in the following circumstances:

- a. To attempt to stop a contravention of the Act or regulations from recurring or taking place in future.
- b. When a Person is not cooperating with the Regulator with respect to meeting requirements set out in the Act.
- c. As an interim step while a case for other administrative action is built or prosecution goes forward in order to prevent further risk or harm.
- d. When a Person is contravening or has contravened the Act and AMVIC deems a Director's Order an appropriate administrative action in the circumstance and consistent with progressive enforcement.

Example: As a conclusion to a file where a warning letter may not be sufficient. The person has repeated the contravention or there is reasonable belief that the business

Administrative Actions Policy

practice will not be corrected and the circumstances do not support a recommendation for prosecution (i.e. – problems with witnesses) or further administrative action.

A Director's Order cannot be used to order restitution or address past contraventions discovered in the course of previous investigations. They are limited to order compliance or correction of current behaviour on a go forward basis.

If directed to a licensed business or registered salesperson, a further statement must be added to the Director's Order portion indicating that failure to comply with the Director's Order will result in a review of the licence or registration status and may result in further administrative action.

A Person subject to a Director's Order has the right to appeal that Order. AMVIC will inform the Person, in writing, of their right to appeal the Director's Order at the time the Order is served.

Section 157.1(1) of the Act makes Director's Orders public records and they will be posted on the AMVIC website.

3.1.5 Injunctions

a. Background

Consumer Protection Act

Injunction

Section 156

(1) Where, on the application of the Director to the Court of Queen's Bench, it appears to the Court that a person has done, is doing or is about to do anything that constitutes or is directed toward a contravention of this Act or the regulations or that involves the misappropriation of funds held in trust under this Act, the Court may issue an injunction ordering any person named in the application

- (a) to refrain from doing that thing, or
- (b) to do anything that in the opinion of the Court may prevent the contravention of this Act or the regulations or the misappropriation of funds held in trust.

b. Application

An injunction may be applied for by the Registrar when a Person is doing or is about to do anything that constitutes or is directed toward a contravention of the Act or regulations.

The Registrar must apply to the Court of Queen's Bench. The Court may then issue an injunction or an interim injunction which would order a Person to:

- a. Refrain from doing that thing listed on the application, or
- b. To do anything in the opinion of the Court that may prevent the contravention of the Act or the regulations.

Where the court considers it appropriate, an interim injunction may be made ex parte.

Administrative Actions Policy

3.1.6 Property Freeze Order

a. Background

Consumer Protection Act

Property freeze orders

Section 151

(2) The Director may issue a property freeze order in the following circumstances:

- (a) where the Director is about to cancel or suspend or has cancelled or suspended the licence of a licensee;
- (b) where
 - (i) criminal proceedings that, in the opinion of the Director, are connected with or arise out of matters under this Act, or
 - (ii) proceedings in respect of an alleged contravention of this Act or the regulationsare about to be or have been initiated against any person;
- (c) where an investigated person has been paid money or been given security by a person in respect of a consumer transaction, or where an investigated person has been paid money by a debtor in respect of a debt, and
 - (i) the investigated person has absconded from Alberta, or
 - (ii) the Director has reasonable and probable grounds to believe that the investigated person
 - (A) is about to abscond from Alberta,
 - (B) has removed or has attempted to remove personal property from Alberta to avoid legal liabilities,
 - (C) has sold or disposed of or has attempted to sell or dispose of real or personal property to avoid legal liabilities, or
 - (D) is misusing any money paid or any assets delivered to the investigated person;
- (d) where the Director has reason to believe that the trust funds that are required to be held by a licensee or other person under this Act or the regulations are less than the amount for which the licensee or other person is accountable;

b. Application

Property Freeze Orders may be considered in the following circumstances:

- a. When a significant number of consumers are involved and AMVIC requires time to conduct an investigation;
- b. Where AMVIC has evidence the Person has not properly dealt with the liens on vehicles they have bought and sold;

Administrative Actions Policy

- c. Where AMVIC has evidence that the Person has not been following the requirements of consignment sales.

Property Freeze Orders should mainly be used to mitigate risk and protect consumers.

3.1.7 Administrative Penalties

a. Background

Consumer Protection Act

Notice of administrative penalty

Section 158.1

- (1) If the Director is of the opinion that a person
 - (a) has contravened a provision of this Act or the regulations, or
 - (b) has failed to comply with a term or condition of a licence issued under this Act or the regulations,the Director may, by notice in writing given to the person, require the person to pay to the Crown an administrative penalty in the amount set out in the notice.

b. Application

An Administrative Penalty may be imposed where it is the opinion of the Registrar that a Person has contravened a provision of the Act or related regulations or has failed to comply with a term or condition of a licence issued under the Act or regulations.

Administrative Penalties are monetary penalties assessed by the Registrar. They cannot be used in conjunction with prosecution of the same contravention but may be tied to other administrative actions, if appropriate. For example, the Registrar may choose to impose terms and conditions on a business licence to garner compliance moving forward and impose an Administrative Penalty based on the details of the matter, such as the economic benefit derived from the contravention(s).

The minimum Administrative Penalty is \$250 as indicated in Section 2(3) of the Administrative Penalties (Consumer Protection Act) Regulation. For violations of an ongoing nature, an Administrative Penalty may be issued for every day that contravention continues up to a maximum \$5,000 per day.

Administrative Penalties can be issued to offset any economic gain generated by a contravention of the Act or regulations and can be used as a deterrent for ongoing contraventions.

If directed to a licensee or registrant, a further statement must be added to the Administrative Penalty indicating that failure to pay the Administrative Penalty will result in a review of the licence or registration status.

When the Registrar is determining the amount of an Administrative Penalty, Section 2(2) of the Administrative Penalties (Consumer Protection Act) Regulation states the following may be considered:

Administrative Penalties (Consumer Protection Act) Regulation

Amount of administrative penalty

Administrative Actions Policy

Section 2

(2) In setting the amount of the administrative penalty for a contravention or failure to comply, the Director may consider the following factors:

- (a) the seriousness of the contravention or failure to comply;
- (b) the degree of wilfulness or negligence in the contravention or failure to comply;
- (c) the impact on any person adversely affected by the contravention or failure to comply;
- (d) whether or not the person who receives the notice of administrative penalty has a history of non-compliance;
- (e) whether or not there were any mitigating factors relating to the contravention or failure to comply;
- (f) whether or not the person who receives the notice of administrative penalty has derived any economic benefit from the contravention or failure to comply;
- (g) any other factors that, in the opinion of the Director, are relevant.

The Registrar may also consider other Administrative Penalties assessed in similar cases if they are applicable to the circumstance. This list is not exhaustive and the Registrar may also consider any other relevant information to determine what licensing administrative action is appropriate in the circumstance.

The payment of an Administrative Penalty assessed by the Registrar is to be paid in accordance with Section 3 of the Administrative Penalties (Consumer Protection Act) Regulation which states an Administrative Penalty shall be paid within thirty days, or the time period specified in the notice of Administrative Penalty, whichever is later.

The payment of Administrative Penalties shall be provided to AMVIC, however if payment is made in the form of a cheque or money order, it should be made payable to the Government of Alberta. AMVIC will facilitate the payment to the Government of Alberta in a timely manner. All money collected in payment of an Administrative Penalty is paid to the Government of Alberta.

Failure to pay an Administrative Penalty may result in the notice of Administrative Penalty being registered with the courts as a judgment, which can be reported publically and to credit reporting agencies.

Consumer Protection Act

Enforceability of notice of administrative penalty

Section 158.4

Subject to the right of appeal, where a person fails to pay an administrative penalty in accordance with the notice of administrative penalty and the regulations, the Minister may file a copy of the notice of administrative penalty with the clerk of the Court of Queen's Bench, and on being filed, the notice has the

Administrative Actions Policy

same force and effect and may be enforced as if it were a judgment of the Court.

3.1.8 Appeals

A Person subject to an administrative action by the Registrar may appeal the issuance of the administrative action under the provisions of Section 179 of the Act.

Consumer Protection Act

Appeal

Section 179

(1) A person

- (a) who is refused a licence or renewal of a licence,
- (b) whose licence is made subject to terms and conditions,
- (c) whose licence is cancelled or suspended under section 127,
- (d) to whom an order under section 129 or 157 is directed, or
- (e) to whom a notice of administrative penalty is given under section 158.1(1)

may appeal the decision, order or administrative penalty by serving the Minister with a notice of appeal within 30 days after being notified in writing of the decision or order or being given the notice of administrative penalty.

Where a licensing administrative action has been taken under Section 127 of the Act regarding a salesperson registration, the Person may appeal the decision in accordance with Section 22 of the Automotive Business Regulation and AMVIC's Salesperson Appeal Committee Policy.

Automotive Business Regulation

Appeal

Section 22

(1) 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.

(2) The Director may establish an appeal process for the purposes of subsection (1), including forming or designating an appeal body.

During the appeal process, AMVIC must provide disclosure of the information provided to the Registrar on which the Registrar based their decision. Disclosure will be provided within the parameters of the *Freedom of Information and Privacy Act* and any Memorandum of Understanding applicable.

Administrative Actions Policy

The Administrative Penalties (Consumer Protection Act) Regulation prescribes there is a fee to appeal an Administrative Penalty. The fee for an appeal of the issuance of an Administrative Penalty is the lesser of \$1,000 or half of the amount of the Administrative Penalty. It further states the appeal board to hear the appeal of Administrative Penalties will be composed of one to three members.

In accordance with Section 180(4) of the Act, the appeal of an Administrative Penalty under section 179 of the Act operates as a stay of the Administrative Penalty until the appeal board renders its decision or the appeal is withdrawn.

3.1.9 Publication

a. Background

Consumer Protection Act

Public record

Section 157.1

- (1) The Director must maintain a public record of undertakings, Director's orders, court orders and injunctions and any other prescribed document or information.
- (2) The Director may prescribe the form of the public record referred to in subsection (1) and which documents must or may be included.
- (3) The Director must maintain a public record of administrative penalties and may prescribe the form of the public record and the documents and information that must or may be included in it.

b. Application

If AMVIC is considering publishing a news release regarding any administrative action, the manager of communications and education will consult with the manager of the department who recommended the administrative action, the senior manager of investigations, the CEO, the manager of legal services, and the Director of Fair Trading (as delegated).

AMVIC will publish information respecting all administrative actions in accordance with the Act and AMVIC's Communications Policy.

Administrative Actions Policy

4. Administration

4.1 Related documents and legislation

Consumer Protection Act
Administrative Penalties (Consumer Protection Act) Regulation
Automotive Business Regulation
AMVIC Salesperson Appeal Committee Policy
Freedom of Information and Privacy Act
AMVIC Communications Policy

4.2 Procedures

4.3 Forms

4.4 Amendment history

Version	Date	Summary of update
1.	Jan. 28, 2014	Original approved
2.	May 12, 2015	Reviewed and approved by the Board
3.	April 23, 2019	Amendments to reflect changes in legislation, change in AMVIC structure to include Registrar, and conversion to new policy template
4.	Sept. 15, 2022	Amendments to reflect moving publication information to the AMVIC Communications Policy. Reviewed and approved by AMVIC CEO, Malcolm Knox.

4.5 Scheduled review date

September 2025