

IN THE MATTER OF AN APPEAL BY

STEPHANO POTESTIO

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 AUGUST 23, 2022

REASONS FOR DECISION

Committee Chair: David Quest

Members: Charlotte Bennett
Shaun Henderson

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

Appearances: Stephano Potestio, Appellant

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

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

Appeal Heard: November 23, 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 Stephano Potestio 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

Background

13. Mr. Potestio was first granted a salesperson registration on December 11, 2015. He was registered for approximately two years.

14. Mr. Potestio applied for his next salesperson registration on June 30, 2022. Mr. Potestio proposed to work for a dealership. In his application Mr. Potestio stated that he had [REDACTED] or [REDACTED]. Mr. Potestio further stated he did not have any criminal convictions, and that he was not on probation, subject to a conditional sentence order, or any other court ordered conditions.

15. Routine [REDACTED] completed [REDACTED] that Mr. Potestio [REDACTED]. As a result, his application was referred to the Registrar. The Registrar conducted an administrative review via teleconference call on August 16, 2022 with Mr. Potestio in attendance.

16. On August 23, 2022, the Registrar issued a decision refusing Mr. Potestio an automotive salesperson registration (the "Decision"). The Decision noted that Mr. Potestio has [REDACTED] with different [REDACTED] but the same [REDACTED].

17. The Decision notes that Mr. Potestio was subject to [REDACTED] and that he must have blanked when answering "no" to the eligibility question on the application. The decision notes that Mr. Potestio advised that he did not intentionally leave out the [REDACTED] for [REDACTED] as he thought they were related to the same matter and believed what he had provided was sufficient.

18. The Decision was as follows:

It is my decision, as Director of Fair Trading (as delegated), to NOT grant the application of Mr. Stephano POTESIO 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. Stephano Potestio a salesperson registration at this time.
2. Although Mr. Potestio indicated it was not his intention to falsify his application or mislead the Director, he failed to disclose his [REDACTED] and did not disclose all of his [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. Potestio has two [REDACTED] If [REDACTED], Mr. Potestio could face a [REDACTED] which he acknowledged and cannot be ignored.

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, [REDACTED] are even more important to consider as they are more [REDACTED] regarding their validity.

4. As a regulatory body, AMVIC must ensure the protection of consumers but also the protection of the industry itself. Mr. Potestio's candor was appreciated during the administrative review, however in the opinion of the Director the [REDACTED] [REDACTED] causes the Director concern. The Director is not satisfied that issuing Mr. Potestio a salesperson registration would adequately protect the public and the industry.

19. On September 18, 2022 Mr. Potestio provided a Notice of Appeal to AMVIC on the following grounds:

- It was never his intention to falsify his application or mislead the Director. He believed the [REDACTED] which he had not disclosed was being dealt with together with the [REDACTED] he had disclosed. Further, the [REDACTED] [REDACTED] and therefore he did not fail to provide accurate information on the application.
- He has shown candor, honesty, transparency, and willingness to discuss his [REDACTED] throughout the administrative review.
- An external and independent [REDACTED] had already been conducted when the events first came to light, [REDACTED] [REDACTED]. Therefore, Mr. Potestio is confident that if a [REDACTED] necessary to deal with the situation, the [REDACTED].
- Mr. Potestio is looking to move on from these [REDACTED] and seeks to earn a proper and honest living. He urged consideration of the effect a refusal of his application would have on his ability to earn a living and to support his household.

20. Mr. Potestio was self-represented.

Evidence of AMVIC

21. 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 submitted that there were few, if any, facts in dispute. The only live issue on appeal was the effect of the two [REDACTED] [REDACTED] Mr. Potestio.
 - AMVIC's primary concern with the salesperson registration application is Mr. Potestio's [REDACTED] and the fact that the [REDACTED] AMVIC's position is that the [REDACTED] make Mr. Potestio unsuitable for registration as a salesperson at this time, as it is not in the public interest to register an individual with [REDACTED]
22. 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 for four years. She has worked for AMVIC for nine years in licensing and registration. She is in charge of all applications submitted to AMVIC.
 - At any given time there are approximately 10,400 registered salespeople in Alberta, and approximately 7,600 registered businesses. AMVIC receives between 250-400 salesperson applications per month.
 - Salesperson registration applicants are required to complete the application online. In the salesperson registration application process, AMVIC asks eligibility questions including 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] [REDACTED] searches 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, AMVIC does not get the details of the record, just an indication that there is some type of record. If the 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 PIC, and the applicant must send it to AMVIC.
 - Ms. A [REDACTED] then reviews the application report and determines whether to refer it to the Registrar. The Registrar will make the decision about whether to set the matter down for a review.
 - Having a criminal record does not automatically disqualify an applicant from registration as a salesperson. 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. Potestio applied for a salesperson registration in 2022. Upon receipt of the Application, background checks of Mr. Potestio were conducted by AMVIC.
- The results [REDACTED] Mr. Potestio [REDACTED]. Due to these [REDACTED] and the fact that only [REDACTED] was disclosed in Mr. Potestio's application, AMVIC prepared an application report for the Registrar. The Registrar consequently held an administrative review with Mr. Potestio. Ms. A [REDACTED] attended the review.
- At the review, Mr. Potestio was forthcoming and provided an explanation about why he had not disclosed [REDACTED]. He explained it was not his intention to mislead the Registrar, as it wasn't clear to him that the [REDACTED].
- Ms. A [REDACTED] advised that the concern about non-disclosure of one [REDACTED] was resolved at the review. The outstanding concern for the licensing department was the fact that [REDACTED]. In her view, [REDACTED] caused concern for licensing of Mr. Potestio as they were [REDACTED] and [REDACTED], and [REDACTED].
- Based on a [REDACTED] conducted on November 23, 2022, [REDACTED] for Mr. Potestio's [REDACTED].
- Ms. A [REDACTED] is not aware of Mr. Potestio having any further [REDACTED] him after 2019.

23. In response to questions from Mr. Potestio, Ms. A [REDACTED] testified:

- [REDACTED] refers to the fact that [REDACTED]. While she understands that there may be delays in the [REDACTED] that is out of her control. She is not the [REDACTED]. Her focus is on the fact that there are ongoing [REDACTED].
- AMVIC accepts Mr. Potestio's explanation that he was not subject to any [REDACTED]. The non-disclosure of the [REDACTED] was not the basis of AMVIC's position on appeal.

Evidence of the Appellant

24. Mr. Potestio provided the following evidence at the Appeal:

- His previous registration was for approximately two years. He worked for a [REDACTED] company, so he was a registered salesperson in order to sell vehicles after they were seized.

- He understands that the Appeal Committee has concerns about his [REDACTED]. However, neither the [REDACTED] into [REDACTED].
- He believes he can be a contributing member of AMVIC and the dealership which he intends to be employed at. He hopes to provide for his family while he awaits the opportunity to [REDACTED].

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

- Mr. Potestio understands the Appeal Committee could grant him a conditional license. If a conditional license is available, he would be agreeable to that.
- In Canada, people are innocent until proven guilty. [REDACTED]
- His brother-in-law assisted him in writing his written submissions that accompanied his appeal.
- The [REDACTED] to when he worked for a [REDACTED] company. The company's human resources department deemed that they could not find any [REDACTED] what the [REDACTED] so the company retained a [REDACTED]
- Mr. Potestio's brother-in-law worked at a dealership for two years. When the brother-in-law passed away, it was his dying wish to work with Mr. Potestio selling cars. Since Mr. Potestio was not with the [REDACTED] company anymore and needed a career, he decided to pursue his brother-in-law's dying wish.
- When he found out he was being [REDACTED] The [REDACTED]

26. No witnesses were called by Mr. Potestio. No supporting documentation was provided by Mr. Potestio.

Summary of Arguments

AMVIC's Closing Submissions

27. Counsel for AMVIC argued that the Registrar's Decision should be confirmed as it was both reasonable and correct. The purpose of the CPA is to protect consumers.
28. There are two components to the refusal under the CPA.
29. First, licensing and registration serves a gatekeeping function. The licensing and registration process is the first and possibly only assessment of the applicant and his suitability to enter the industry. In order for the applicant to meet the threshold for entry

into the industry he must show a basic knowledge of the industry by taking a test, and must also undertake a suitability assessment which determines whether the applicant poses a threat to consumers. The industry is regulated for a reason; purchasing a vehicle is a significant financial interaction which therefore poses a risk to consumers. 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. There is informational asymmetry between the consumer and the applicant, which involves a level of vulnerability on the part of the consumer.

30. Second, section 127 of the *CPA* is meant to uphold the integrity of the profession and industry. The public must be confident that the system ensures a certain level of honesty, integrity, and safety. While the threshold is not so high as to require the applicant prove he has extraordinarily good character, AMVIC must consider whether there would be any reason for the public to question the applicant. Counsel for AMVIC posed the question of whether the Appeal Committee would feel comfortable sending a family member to partake in a transaction of the magnitude involved in vehicle sales, knowing that the salesperson was [REDACTED]
31. Counsel for AMVIC argued that parts of Mr. Potestio's [REDACTED] cause concern for AMVIC. Mr. Potestio has two [REDACTED]. While the [REDACTED] 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. While Mr. Potestio's [REDACTED] do not suggest he would partake in any fraudulent transactions, the [REDACTED] are [REDACTED]. As a result, AMVIC finds that the [REDACTED] undermine his suitability for registration.
32. Counsel for AMVIC argues that the Registrar correctly relied on the case of *Ahmad v Alberta Motor Vehicle Industry Council*, 2010 ABQB 293 [*Ahmad*]. As part of its mandate to consider all factors relevant to the public interest, AMVIC is obligated to factor the [REDACTED] into their decision though it need not [REDACTED] (*Ahmad*). As a regulator, AMVIC should consider not only whether there are [REDACTED] but also the totality of circumstances and if there is anything which gives rise to concern.
33. Counsel for AMVIC pointed out that Mr. Potestio is not forever precluded from applying for a salesperson registration, and it may be more appropriate for him to re-apply if the [REDACTED] in his favour.
34. Counsel for AMVIC concluded that Mr. Potestio 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. Potestio would be required to report on the outcome of [REDACTED] within 2 business days;
 - Mr. Potestio would be required to promptly disclose to AMVIC any [REDACTED]

- Mr. Potestio would be required to undertake renewals in a timely fashion and keep AMVIC up to date; and
- Mr. Potestio would be required to keep current his contact information, personal information, and employment information with AMVIC.

Mr. Potestio's Closing Submissions

35. Mr. Potestio thanked the Appeal Committee for their time, and hoped that he could get a conditional license to sell vehicles. He is willing to abide by conditions.

Findings of the Appeal Committee

36. Upon hearing the evidence and arguments put forward by Mr. Potestio and AMVIC, the Appeal Committee dismisses the appeal and upholds the Decision of the Registrar to refuse the application of Mr. Potestio for an automotive salesperson registration under sections 104 and 127(c) of the *Consumer Protection Act*.

37. Under section 3.2(2)(m) of the Appeal Policy, the task of the Appeal Committee is to determine if the Decision is consistent with the provisions of the *CPA*, the *ABR*, and the Bylaws and policies of AMVIC. Based on Mr. Potestio's [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

38. The following evidence was before the Appeal Committee regarding Mr. Potestio's [REDACTED]

- Mr. Potestio currently has [REDACTED]

39. The Appeal Committee notes that in the Decision, the Registrar relied in part on Mr. Potestio's failure to disclose his [REDACTED] on his application under section 127(b)(iii) of the *CPA* in deciding to refuse him registration. The Appeal Committee further notes that the Registrar focused its argument on appeal on section 127(c) of the *CPA*. The Registrar argued that the existence of [REDACTED] and the fact that the [REDACTED] is the primary concern of AMVIC in this appeal rather than what Mr. Potestio said or did not say in his application. The Appeal Committee accepts that the Registrar did not base the Decision on section 127(b)(vii) of the *CPA* as Mr. Potestio has not been [REDACTED].

40. The Registrar found that Mr. Potestio's [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. Potestio's [REDACTED] are [REDACTED] to reasonably cause concern to the public and to AMVIC as a regulator.

41. Section 127(c) of the CPA grants the Registrar authority to refuse to issue a licence where it would not be in the public interest to do so.
42. In the Appeal Committee's view, this section permits the Registrar, and the Appeal Committee on appeal, to consider the entire context of the applicant's [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.
43. The Appeal Committee acknowledges that Mr. Potestio has not been [REDACTED]. However, the Appeal Committee finds that these [REDACTED] and reasonably cause concern to AMVIC as a regulator. 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.*
44. The Appeal Committee was provided with information by Mr. Potestio regarding the [REDACTED]. The Appeal Committee was advised that Mr. Potestio is subject to [REDACTED]. The Appeal Committee was further advised that [REDACTED]. However, the information received from Mr. Potestio regarding the [REDACTED] is insufficient to persuade the Appeal Committee that he should be granted an automotive salesperson registration.
45. The Appeal Committee acknowledges that the [REDACTED] do not relate to fraudulent activity or personal information. However, while there may not necessarily be a direct nexus between [REDACTED] selling vehicles, the Appeal Committee is cognizant of AMVIC's gatekeeping function and inability to micromanage 10,400 registrants. To a certain degree there are assumptions and an expectation of good faith in registrants to uphold rules of the industry. If there is a question as to whether an [REDACTED] then it calls into question whether AMVIC can safely assume its own rules are complied with. Further, from a consumer perspective, the [REDACTED] such that it suggests a consumer would view interactions with Mr. Potestio within the automotive industry with concern, even if [REDACTED].
46. Given the [REDACTED] the Appeal Committee finds that the Registrar's Decision, that it is in the public interest not to grant Mr. Potestio a salesperson registration at this time, was reasonable.
47. The Appeal Committee further finds that it would not be appropriate to grant Mr. Potestio a license on conditions while [REDACTED]. The Appeal Committee has limited information about [REDACTED], and if Mr. Potestio were [REDACTED], then it would be a black mark on the industry for the public to know that he was operating in

the industry in the interim. The Appeal Committee finds that a conditional registration in these circumstances would not adequately protect the public.

Conclusion

- 48. This Appeal Committee is satisfied that the hearing given to Mr. Potestio 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. Potestio a salesperson registration is appropriate in all the circumstances.
- 49. Given the [REDACTED] of Mr. Potestio's [REDACTED], the Appeal Committee finds that the Registrar's Decision, that it is in the public interest not to grant Mr. Potestio a salesperson registration at this time, is reasonable.
- 50. 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.
- 51. In the Appeal Committee's view, Mr. Potestio's [REDACTED] need to [REDACTED]. It is expected for any automotive salesperson to demonstrate honesty and integrity, and Mr. Potestio's stated intention to do so should be commended and encouraged. However, his [REDACTED] also need to be considered. Given Mr. Potestio's [REDACTED] of the automotive sales industry, the Appeal Committee is not persuaded, at this time, that registration on conditions could adequately protect the public. The Appeal Committee notes that Mr. Potestio may have the ability to apply for salesperson registration in the future once his [REDACTED] are [REDACTED].

Issued and Dated:

"original signed by"

David Quest
Chair – AMVIC Salesperson Appeal Committee

Date