



Investigations Policy

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Investigations

Investigations Policy

1. Table of contents

2.	Introduction	2
2.1	Policy statement	2
2.2	Purpose	2
2.3	Definitions.....	2
3.	Policy.....	3
3.1	Duties and responsibilities.....	3
3.1.1	Authority of the Registrar	3
3.1.2	Senior manager of investigations	3
3.1.3	Manager of investigations, north and south	4
3.1.4	Investigator	4
3.1.5	Investigations coordinator	5
3.2	Application of the policy	5
3.2.1	Conflict of interest	5
3.2.2	Investigations initiated.....	6
3.2.3	Quality standards	7
3.2.4	Closing procedures.....	8
3.2.5	Appeals.....	8
3.2.6	Enforcement.....	9
4.	Administration.....	11
4.1	Related documents and legislation.....	11
4.2	Amendment history	11
4.3	Scheduled review date.....	12

Investigations Policy

2. Introduction

2.1 Policy statement

The Alberta Motor Vehicle Industry Council (AMVIC) is responsible for conducting investigations of automotive businesses and salespeople to ensure continued compliance with the *Consumer Protection Act* (CPA), *Automotive Business Regulation* (ABR), *Designation of Trades and Business Regulation* (DTBR), *Internet Sales Contract Regulation* (ISCR), *Cost of Credit Disclosure Regulation* (COCDR), *Traffic Safety Act* (TSA), and designated sections of the *Criminal Code* (CC). For the purposes of this Investigations Policy, all acts and regulations mentioned in the policy statement will be collectively referred to as the “legislation”.

2.2 Purpose

The purpose of the Investigations Policy is to guide AMVIC’s efforts to promote compliance and enforce the legislation regulating automotive businesses in Alberta to ensure a fair automotive marketplace. It is intended to assist AMVIC in maintaining fair and consistent processes for conducting investigations which meet the requirements of the legislation, administrative fairness and natural justice.

An investigation may be initiated in ways that are outlined in Section 3.3.2. The purpose of an investigation is to:

- a. thoroughly gather and document reliable evidence in keeping with the requirements of procedural fairness and natural justice;
- b. determine, based on the evidence, whether there has been a failure to comply with statutory requirements or terms of licence or registration; and
- c. where there has been a failure to comply, recommend an appropriate enforcement action.

2.3 Definitions

In this policy:

- i. “administrative action” refers to the broad cross section of administrative tools available to AMVIC under the relevant legislation;
- ii. “automotive business” or “licensee” means a business conducting the activities of buying or selling vehicles whether as a retailer or wholesaler, including the selling of vehicles on consignment; leasing vehicles when the term of the lease is for more than 120 days; negotiating or conducting on a consumer’s behalf an agreement in which the consumer buys, sells or leases a vehicle; recycling or dismantling vehicles; or installing parts or equipment in repairing or servicing vehicles;
- iii. “CEO” means the chief executive officer of AMVIC;

Investigations Policy

- iv. “complainant” means the person who has submitted a complaint to AMVIC regarding their transaction with an automotive business or licensee;
- v. “manager” means manager of investigations, north or south;
- vi. “POA” means *Peace Officer Act*;
- vii. “Registrar” means the Director of Fair Trading (as delegated);
- viii. “salesperson” or “registrant” means a person who is authorized by an automotive sales licensee, automotive leasing licensee or automotive consignment licensee to solicit, negotiate or conclude on the licensee’s behalf an agreement to buy, sell, lease, exchange or consign a vehicle; and
- ix. “senior manager” means senior manager of investigations.

3. Policy

3.1 Duties and responsibilities

3.1.1 Authority of the Registrar

The authority to investigate and enforce the legislative requirements governing the automotive industry is granted to the Director of Fair Trading (as delegated) in the CPA. The position at AMVIC that is designated the Director of Fair Trading (as delegated) is the Registrar. The CPA gives the Registrar the authority to delegate any of the powers, duties or functions under the CPA or the regulations to any person and may authorize the person to further delegate the authority. Those acting with the Registrar’s delegated authority are under the same obligations as the Registrar when exercising that authority.

This policy does not bind the Registrar or otherwise hinder or limit the authority and discretion of the Registrar when making decisions regarding administrative action. The principles of natural justice allow the Registrar to consider the unique facts and context of each matter that comes before them when making a decision.

3.1.2 Senior manager of investigations

The senior manager has overall responsibility for the process of conducting investigations.

The role of the senior manager is to:

- a. provide advice to the managers and investigators regarding enquiries or complaints;
- b. ensure that enforcement actions throughout the province will be timely, fair and consistent;
- c. review and sign off on AMVIC investigative applications for administrative reviews;
- d. reopen investigation files should it be determined that further investigation is required;
- e. review complex charge files to ensure a complete investigation and supporting evidence to obtain a conviction;
- f. review and recommend enforcement alternatives with the managers or investigator; and

Investigations Policy

- g. ensure full compliance with the POA.

3.1.3 Manager of investigations, north and south

The manager has responsibility for overseeing the process of conducting investigations.

The role of the manager is to:

- a. determine in what instances an investigation will be undertaken;
- b. determine which investigator will be assigned to an investigation;
- c. oversee the process of conducting investigations by investigators and to assist them where required;
- d. in conjunction with the senior manager, consult with and review enforcement decisions of the investigators;
- e. assign files, designate work areas and monitor workloads; and
- f. review and close all completed investigative files.

3.1.4 Investigator

Investigators are responsible for conducting investigations while maintaining a fair and consistent process for investigations and complaints which meets the requirements of the legislation, administrative fairness and natural justice.

All AMVIC investigators are appointed peace officers as required by the Mandate and Roles Document. Peace officers are appointed by the Alberta Solicitor General under the provisions of the POA.

The peace officer appointment granted by the Director of Law Enforcement of the Public Security Division, Department of Justice and Solicitor General, for the Province of Alberta pursuant to Section 7 of the POA provides authority, responsibility and duties to AMVIC peace officers.

The authorities granted are subject to the following restrictions:

- a. authority to enforce the *Criminal Code* is restricted to Sections 129, 140(1), 330, 334(a), 334(b), 362(2)(a), 362(2)(b), 366, 367, 368 and 380, only as it relates to the specific legislation that the bodies mentioned above operate under as it relates to the Alberta Motor Vehicle Industry Council.
- b. authority to enforce the *Traffic Safety Act* is restricted to non-moving violations.

The POA and regulations (Alta. Reg. 312/2006 and 291/2006) require an employer of peace officers to have a policy in place respecting the standard of conduct expected of peace officers. The standard code of conduct is contained in the AMVIC Peace Officer Policy in its entirety.

The role of the investigator is to:

Investigations Policy

- a. maintain an Alberta Peace Officer appointment;
- b. encourage dispute resolution between consumers and suppliers where appropriate;
- c. diligently investigate the complaint from the viewpoint of the complainant and the respondent;
- d. impartially gather and document information;
- e. comply with the POA;
- f. adhere to AMVIC performance measures as listed in the business plan;
- g. work closely with other enforcement and regulatory agencies;
- h. conclude investigations in a timely fashion and recommend appropriate enforcement actions;
- i. consult with the industry standards and the licensing departments where required to obtain input on an investigation;
- j. ensure that the full range of enforcement options available under the CPA and CC, (from prosecution to administrative actions as listed in AMVIC's Administrative Actions Policy) are considered in each circumstance;
- k. consult with the manager or senior manager to determine the most appropriate course of action; and
- l. provide information about AMVIC to the automotive industry.

3.1.5 Investigations coordinator

The investigations coordinator provides administrative support to the senior manager and the investigations team. The position collaborates with team members to support the organizational goals and objectives within the defined legislation:

- a. perform assigned duties as delegated by the senior manager;
- b. prepare and maintain AMVIC investigation files, including initial setup;
- c. assist investigators with document preparation including application reports, affidavits, Director's Orders and other documentation;
- d. search databases available to AMVIC to assemble background information;
- e. maintain the exhibit locker and its inherent responsibilities; and
- f. assist the investigations team with all Criminal Intelligence Service Alberta (CISA) intelligence information.

3.2 Application of the policy

3.2.1 Conflict of interest

As an AMVIC investigator, it is important not to become involved in activities that might create or even appear to create a conflict of interest, as identified in the Employee Handbook. Investigators through their appointment as peace officers have authority that is to be used in a clear and unfettered manner.

All investigators will conduct themselves in a professional manner that promotes respect for the law, instills public confidence and reflects the high standards, character and demeanor which are inherent responsibilities of a peace officer with the entrusted function of an investigator. To maintain the

Investigations Policy

integrity in investigative duties in such a manner as to inspire confidence and respect for the position of public interest held by investigators, the following procedure will be followed when investigating complaints generated or originated by an AMVIC employee or relative:

- a. All complaints generated by an AMVIC employee or relative will follow the same complaints procedure as the general public with no departure from the normal process.
- b. All complaints generated by AMVIC employees or relatives from the south AMVIC office will be assigned to the manager of investigations north for assignment.
- c. All complaints generated by AMVIC employees or relatives from the north AMVIC office (head office) will be assigned to the manager of investigations south for assignment.
- d. The AMVIC employee who generated the complaint will neither access materials related to the ongoing investigation nor inquire about the status of that investigation. The investigator will not offer or otherwise share such details with the AMVIC employee who generates the complaint.
- e. By separating the investigations from north to south, south to north regions it will ensure fairness and impartiality.
- f. The senior manager should be immediately advised of any potential conflicts and be briefed on a regular basis on how the matter is being handled.

To minimize the perception of a conflict of interest when an AMVIC employee or spouse is attending a business for the purpose of purchasing or leasing a vehicle, the following procedure will be followed:

- a. Inform your immediate supervisor of your intention to purchase/lease a vehicle and the business(s) you will be attending.
- b. As an AMVIC employee, be a well-educated consumer and walk away from any deal that you do not feel comfortable with.
- c. If the business or the deal is not compliant, do not raise your concern with the business.
- d. File a complaint just like any other consumer would. There will be no departure from the normal process.
- e. The investigation will follow the above listed process.

3.2.2 Investigations initiated

An investigation may be initiated in any of the following ways:

- a. through a consumer or industry complaint received by consumer services or made directly to an investigator, the CEO or the senior manager;
- b. through a referral from the industry standards department, where an inspector observes a compliance issue which requires an investigation;
- c. through routine monitoring by AMVIC;

Investigations Policy

- d. through an anonymous tip to AMVIC;
- e. through a request from the licensing department;
- f. through a request from Service Alberta or an outside agency; or
- g. where the CEO or senior manager of investigations becomes aware of a systemic or wide-ranging compliance issue.

3.2.3 Quality standards

AMVIC investigations must meet the requirements of natural justice and administrative fairness.

Chain of legislative authority

Identify all key consumer protection legislation that is applicable to the investigation.

Duty of fairness

Diligently investigate the situation from the viewpoint of the complainant and the respondent.

Participation rights

The investigator will gather evidence relating to the allegations. This will include all of the following steps:

- a. contact the respondent and interview appropriate individuals;
- b. contact the complainant and interview appropriate individuals;
- c. take statements;
- d. obtain documentation and evidence;
- e. inspect records; and
- f. obtain orders and warrants, where appropriate.

Decisions and reasons

Decisions and reasons will be communicated clearly to the complainant and will include the following:

- the issue to be decided;
- the facts and evidence considered;
- the applicable law or policy;
- an explanation of how the law or policy was applied to the facts and rationale for the decision;
- the conclusion or decision reached;
- information to contact a manager with any questions or additional information about the decision and reasons for concluding the file.

Reasonable apprehension of bias

There must be impartiality and independence of the investigator including relationships to all parties in the matter, both internally and externally.

Investigations Policy

Legitimate expectation

Investigators are expected to be diligent in following a consistent, fair, timely and thorough investigation process.

Exercising discretionary power

Enforcement actions and the file conclusion will be reviewed to validate investigations are undertaken in good faith, proper purpose and with relevant consideration.

Reasonableness of decisions

A reasonable decision should indicate how the investigator considered and assessed the arguments and evidence to support the concluding decision.

3.2.4 Closing procedures

Notice of conclusion of file

Investigators will send a closing letter to the complainant and respondent explaining the reason(s) for the closure of the investigation file and advising whether enforcement action has been recommended either in the form of charges or an administrative review.

Requirements for closing letters

All closing letters will:

- be completed on AMVIC letterhead;
- be sent by mail or email to the complainant and respondent;
- include reasons for the conclusion of the investigation file. Refer to “Decisions and Reasons” in Section 3.2.3 on Quality standards for more information;
- include information to contact a manager if the complainant has questions or requires additional information about the decision and reasons for concluding the file.

3.2.5 Appeals

Appealing a concluded file

Levels of appeal

Once the investigation file is concluded by the investigator, the complainant has the opportunity to appeal the decision to the manager of investigations north or south. The manager of investigations north or south will review all of the evidence available and provide the complainant with a closing letter explaining the reason(s) for the conclusion of the investigation file.

If the complainant’s concerns cannot be resolved with the manager of investigations north or south, then the matter will be referred to the senior manager of investigations. The senior manager of investigations will review all of the evidence available and provide the complainant with a closing letter explaining the reason(s) for the conclusion of the investigation file.

Investigations Policy

If the complainant's concerns cannot be resolved with the senior manager of investigations, then the complainant will be referred to the Alberta Ombudsman.

Appeal Process

To request a review of a concluded file the complainant must take the following steps:

- Email or send a written, signed and dated request to the manager of investigations north or south or to the senior manager of investigations. Refer to Section 3.2.5 on "Levels of appeal" to determine which manager to appeal to;
- Include an email address and phone number where they can be contacted;
- Include the reasons and rationale for the request and any supporting documents. Simply restating the initial complaint will not be considered a reason;
- Send the request within 30 days of receiving the closing letter.

3.2.6 Enforcement

Goals when applying enforcement measures

The overall goals when applying an enforcement measure are to:

- a. encourage compliance of the non-compliant person or business;
- b. eliminate any financial gain or benefit due to the non-compliance;
- c. be responsive to and appropriate for the particular facts of the non-compliance;
- d. be proportionate to the nature of the non-compliance and any harm caused by the non-compliance;
- e. deter future non-compliance by the automotive business or salesperson; and
- f. provide some assurance of future compliance and the reduction of the risk of future harm.

Recommending an appropriate enforcement measure

When recommending an appropriate enforcement measure, AMVIC will consider the goals of enforcement and the individual circumstances of each case, including:

- a. the seriousness of the contravention including the harm or risk of harm resulting from the contravention;
- b. whether the contravention was repeated or systemic, or a one-time occurrence;
- c. whether there have been any similar compliance issues in the past including whether the licensee has received a findings letter for similar contraventions;
- d. the willingness of the licensee to make changes to address the contravention;
- e. whether there are any unresolved consumer complaints specific to the investigation;
- f. the steps the licensee voluntarily has taken to address the contravention; and
- g. what is in the public interest given all of the circumstances.

Investigations Policy

Investigators may issue a findings letter or a violation ticket. Before recommending any other enforcement action, they must first consult with their manager.

Consideration of relevant factors

The investigator will consider the following relevant factors when recommending an appropriate enforcement action, including:

- a. nature and seriousness of the offence;
- b. vulnerability of the consumer;
- c. history of noncompliance of licensee or registrant;
- d. perceived impact of the enforcement action; and
- e. cooperation of the licensee or registrant.

Progressive enforcement

One or more of the following enforcement actions can be recommended for regulatory breaches:

- **Findings letter**

A findings letter will be considered when there is a lack of previous enforcement history, unwillingness to provide voluntary restitution, insufficient supporting evidence or failure to change in business practices.

- **Administrative action**

Administrative action may be recommended when a breach has been committed, and an administrative remedy is more suitable due to the urgency of the matter, the broadness of the impact on the market place and the type of response from the licensee or registrant. The standard of proof for administrative action is not the same as a criminal conviction which has a higher burden of proof.

- **Prosecution**

Prosecution may be considered upon review of all the evidence and circumstances.

Severity of enforcement

There are circumstances when more severe enforcement actions should be considered, including when there is:

- a. prior history;
- b. a general trade practice instead of an isolated incident;
- c. a large amount of consumer loss (either singularly or cumulatively);
- d. the practice is deceptive by design;
- e. the enforcement action has a significant impact in the marketplace;

Investigations Policy

- f. there is a deterrent value to enforcement;
- g. lack of resolution of consumer's complaint by licensee;
- h. lack of response of the licensee to the complaint; or
- i. any other significant circumstances.

Consultation regarding enforcement action

An investigator must consult with the manager to determine the appropriate recommended course of action. Where prosecution is considered, the investigator will consult with the manager or the senior manager.

4. Administration

4.1 Related documents and legislation

Automotive Business Regulation

Consumer Protection Act

Cost of Credit Disclosure Regulation

Criminal Code

Designation of Trades and Business Regulations

Internet Sales Contract Regulation

Peace Officer Act

Peace Officer (Ministerial) Regulation

Traffic Safety Act

Vehicle Inspection Regulation

AMVIC Administrative Actions Policy

AMVIC Industry Standards Policy

AMVIC Licensing Policy

AMVIC Peace Officer Policy

4.2 Amendment history

Version	Date	Summary of update
1	Jan. 8, 2008	Original.
2	Nov. 22, 2011	Reviewed and approved.
3	March 12, 2014	Previous Investigation Policy replaced in its entirety. Reviewed and approved.

Investigations Policy

4	Sept. 23, 2015	Reviewed and approved.
5	Sept. 21, 2016	Reviewed by: <ul style="list-style-type: none"> - Manager of Peace Officer Program, Justice & Solicitor General – Conflict of Interest section – confirmed by email – August 17, 2016. - Approved by AMVIC Board of Directors.
5.1	Feb. 8, 2018	Administrative change: <i>Fair Trading Act</i> to <i>Consumer Protection Act</i> (motion 18-026)
6	June 23, 2020	Complete update of policy and move to new format.
7	June 22, 2021	Updates required to closing complaints and appeal in consultation with Ombudsman Office.
8	Nov. 29, 2022	Update to section 3.2.6 to align with wording in <i>Consumer Protection Act</i> . Reviewed and approved by AMVIC CEO, Malcolm Knox.

4.3 Scheduled review date

June 2024