

IN THE MATTER OF AN APPEAL BY

TERRI LYNN CASTLE

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 FEBRUARY 15, 2023

**REASONS FOR DECISION**

Committee Chair: David Quest

Members: Kirby Soon  
Beverly Bell

Amrinder Mandair  
legal counsel (Emery Jamieson LLP) for the Committee

Appearances: Terri Lynn Castle, Appellant

Michele Johnson  
Appellant's Witness

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

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

Appeal Heard: May 3, 2023  
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 Terri Lynn Castle 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)(n) 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 Act, the Regulation, and the Bylaws and policies of AMVIC.

## Evidence before the Appeal Committee

### Background

13. Ms. Castle applied for salesperson registration on December 10, 2022. Ms. Castle proposed to work for a dealership. In her application Ms. Castle stated [REDACTED]

14. Routine background checks completed [REDACTED]

[REDACTED] Ms. Castle's [REDACTED]

[REDACTED] As a result, her application was referred to the Registrar. The Registrar conducted an administrative review via teleconference call on February 14, 2023 with Ms. Castle in attendance.

15. On February 15, 2023, the Registrar issued a decision refusing Ms. Castle an automotive salesperson registration (the "Decision").

16. The Decision notes that Ms. Castle indicated it was not her intention to falsify her application or mislead the Director. She explained that when she completed the application she completed it from memory, which is why she reached out to [REDACTED]

[REDACTED] Ms. Castle also expressed [REDACTED]

17. The Decision was as follows:

It is my decision, as Director of Fair Trading (as delegated), to NOT grant the application of Ms. Terri Lynn CASTLE for an automotive salesperson registration under Section 127(b)(iii), 127(b)(vii), Section 127(c) and Section 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 Ms. Terri Lynn Castle a salesperson registration at this time.

2. Although Ms. Castle indicated it was not her intention to falsify her application or mislead the Director, she failed to disclose [REDACTED]. If Ms. Castle could not recall [REDACTED] she could have provided an explanation to that fact rather than [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. Ms. Castle [REDACTED]. 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 serving a sentence imposed under a conviction.

*[Legislative Citations Omitted]*

4. As a regulatory body, AMVIC must ensure the protection of consumers but also the protection of the industry itself. The seriousness and nature of Ms. Castle's [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. By not answering rather straight forward eligibility questions, Ms. Castle has not demonstrated to the Director she is capable of meeting the code of conduct requirements and integrity as a salesperson at this time. The Director acknowledges Ms. Castle's efforts [REDACTED] and the fact that Ms. Castle has been gainfully employed [REDACTED] however a sufficient amount of time has not passed without [REDACTED] Ms. Castle's governability. The Director is not persuaded, at this time that conditions could adequately protect the public

18. On February 23, 2023 Ms. Castle provided a Notice of Appeal to AMVIC on the following grounds:
- It was not her intention to falsify or mislead on her application.
  - It was her understanding that the [background] check program would provide the information requested in the application.
  - She disclosed [REDACTED]
19. Ms. Castle was self-represented

## Evidence of AMVIC

20. At the outset of the appeal hearing, legal counsel for AMVIC reviewed the authority of the Appeal Committee and the relevant legislation as outlined above. Legal counsel for AMVIC also provided the following further opening comments:

- AMVIC's position is that the director's decision was reasonable and consistent with the legislation. Ms. Castle has [REDACTED] Ms. Castle failed to disclose [REDACTED]. Though Ms. Castle has discussed [REDACTED], there are concerns regarding her governability. The foundation of this regulated industry is the conduct between the registrants or individual business licensees and AMVIC.
- AMVIC's position is that the current convictions make Ms. Castle unsuitable for registration as a salesperson at this time, as there were concerns about public confidence in registering [REDACTED].

21. 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 five years. She has worked for AMVIC for nine years in licensing and registration.
- Salesperson registration applicants are required to complete the application online and input basic information and respond to eligibility questions including whether they had any matters before the courts, warrants, or a criminal record. Applicants answer a declaration stating they answered the questions to the best of their ability. If applicants are new to the industry, they must also complete a registration course and obtain a grade of at least 80%.
- Once an application fee is paid, applicants are required to provide AMVIC with a PIC. AMVIC also completes [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 whether 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.
- 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. Ms. A [REDACTED] looks for a pattern of governability. If Ms. A [REDACTED] finds anything of concern, she will forward the search results with the application and a Licensing Application Report to the Registrar for administrative review. The Registrar will make the decision about whether to set the matter down for a review.

- AMVIC will also conduct open-source checks on candidates using their name and date of birth. They also check with other regulators such as AMVIC equivalents in Ontario and British Columbia, and the Real Estate Council of Alberta. The purpose of these checks with other regulators is to assess governability. If an applicant had ever been banned from another regulatory body, it goes to governability. Governability requires honesty and integrity.
  - Ms. Castle applied for a salesperson registration. The application was brought to Ms. A [REDACTED] attention based on the responses to the eligibility questions and Ms. Castle's [REDACTED]. The results of the background checks and open source searches for Ms. Castle [REDACTED]. Due to the discrepancies in how Ms. Castle described her [REDACTED], AMVIC prepared an application report for the Registrar. The Registrar consequently held an administrative review with Ms. Castle. Ms. A [REDACTED] attended the review.
  - Ms. A [REDACTED] advised that at the administrative review, Ms. Castle was forthcoming [REDACTED]. Ms. Castle indicated that she was unable to recall [REDACTED]. Ms. Castle also confirmed that the [REDACTED].
  - Ms. A [REDACTED] advised that nevertheless, as Ms. Castle was not forthcoming about [REDACTED] she was concerned about Ms. Castle's governability. She stated a vehicle purchase is the second biggest purchase for most consumers, and they rely on salespeople. Minor details can be major for a consumer in terms of a mechanical fitness assessment, financing, and so on. Little details can turn into a lifechanging decision for an individual. Ms. A [REDACTED] stated that there is risk to a consumer if little details are omitted from a transaction. She saw the lack of attention Ms. Castle paid to [REDACTED] as an indicator of her governability.
  - Additionally, the outstanding concern for the licensing department was the [REDACTED] of Ms. Castles [REDACTED]. In Ms. A [REDACTED] view, the [REDACTED] for licensing of Ms. Castle given their nature.
22. The Appeal Committee did not ask any questions of Ms. A [REDACTED]. Ms. Castle was given the opportunity to cross examine Ms. A [REDACTED] to which Ms. A [REDACTED] testified:
- Ms. Castle did provide her PIC, [REDACTED] to the Registrar. However, this was provided after Ms. Castle had submitted her application and prior to Ms. Castle's Administrative review. Accordingly, the PIC did not form part of Ms. Castle's application.

#### Evidence of the Appellant

23. Ms. Castle provided the following evidence at the Appeal:
- She indicated that she understood why AMVIC needs to uphold standards and felt that she could conduct herself in accordance with those standards.

- Since her administrative hearing she has been [REDACTED]. Further, Ms. Castle indicated that she [REDACTED] and that she feels that she is a good candidate to serve her community.
- That in hindsight, she recognizes that she should have put a note in her application indicating that she did not fully recall [REDACTED]. It was not her intention to hide anything, she just did not recall [REDACTED] at the time she prepared her application.

24. Ms. Castle also called a witness, Michele Johnson. Ms. Johnson provided the following evidence:

- Michele Johnson identified herself as the [REDACTED] the business where Ms. Castle is employed.
- Ms. Johnson indicated that Ms. Castle's employment commenced prior to Ms. Castle's [REDACTED]. She also indicated that Ms. Castle was forthcoming about [REDACTED] that Ms. Castle has [REDACTED], that Ms. Castle was a great person inside and outside of work, that Ms. Castle spoke with Ms. Johnson at the time of preparing the application and she indicated to Ms. Castle that Ms. Castle's [REDACTED] and lastly, that Ms. Johnson and her [REDACTED] would work alongside Ms. Castle and ensure that Ms. Castle is following all of the regulations.

25. In response to questions from legal counsel for AMVIC, Ms. Castle provided the following evidence:

- She confirmed that her [REDACTED]
- She further explained [REDACTED] namely:
  - i. [REDACTED]
- Ms. Castle also discussed the [REDACTED]

26. Ms. Castle provided a reference letter dated February 8, 2023, from her employer [REDACTED] signed by Michele Johnson and this record formed part of the Appeal Book. On April 25, 2023, Ms. Castle provided additional documents via email. These documents



were a letter from Cole Johnson, the [REDACTED]

[REDACTED] and lastly an updated [REDACTED]

## Summary of Arguments

### AMVIC's Closing Submissions

27. Counsel for AMVIC argued that the Registrar's Decision was reasonable and correct. Accordingly, the Registrar's Decision should be confirmed, and Ms. Castle should be denied salesperson registration.
28. Counsel reiterated that the objective of AMVIC registration is consumer protection. A vehicle purchase is most consumers' second biggest purchase after a home, the consumer is vulnerable in this transaction, and accordingly, the government has recognised their duty to protect the consumer. Registration is a critical component of this protection as it is the time a salesperson is reviewed.
29. Ultimately, AMVIC's reasons for taking this position were that Ms. Castle's [REDACTED]  
[REDACTED]  
There is no dispute regarding the facts of this matter.
30. The purpose of section 125 of the *CPA* is to address convictions for serious criminal matters. In that regard, AMVIC considers the following aspects: the direct harm to consumers, and the integrity of the industry.
31. With respect to direct harm to consumers, AMVIC's position was that Ms. Castle was [REDACTED]  
[REDACTED] Ms. Castle is [REDACTED]  
[REDACTED] This raises questions as to whether Ms. Castle will follow the rules and regulations required of a registered salesperson.
32. With respect to integrity of the industry, AMVIC's concern was in regard to the public confidence in the industry. The *CPA* exists to regulate industries in order to protect vulnerable consumers. The *CPA* attempts to legislate honesty and integrity, though this is impossible to regulate. The first gatekeeper in this process is AMVIC. There is a baseline assumption of honesty, integrity, and governability unless something indicates otherwise. Counsel for AMVIC argued that Ms. Castle made [REDACTED]  
[REDACTED] and that raises questions for AMVIC with respect to Ms. Castle meeting those baseline assumptions. Counsel for AMVIC argued that integrity of the industry was at issue in this matter.
33. Accordingly, AMVIC's position was that at the time of the Appeal Hearing, Ms. Castle did not meet the threshold requirements for salesperson registration.
34. Counsel for AMVIC recognized the steps Ms. Castle had taken [REDACTED]  
[REDACTED] and pointed out that Ms. Castle is not forever

precluded from applying for a salesperson registration. Counsel for AMVIC declined to comment on any specific timeframe for when Ms. Castle should re-apply.

35. Counsel for AMVIC concluded that Ms. Castle has not established that she should be granted a salesperson registration at this time, and that conditional registration would not be appropriate. 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 with the following conditions should be imposed:
- Ms. Castle would be required to provide a letter of standing to AMVIC regarding [REDACTED]
  - Ms. Castle must report [REDACTED]
  - Ms. Castle would be required to obtain written acknowledgment from her employer that [REDACTED]
  - If she changes employers or is terminated from a licensed business during the period of conditional registration, Ms. Castle must advise AMVIC;
  - Ms. Castle would be required to undertake renewals in a timely fashion and keep AMVIC up to date on her information;
  - The annual renewal of her salesperson registration would require a [REDACTED] and [REDACTED]
  - That the conditional status of Ms. Castle's registration would conclude only upon [REDACTED]

#### Ms. Castle's Closing Submissions

36. Ms. Castle stated that at the time of her administrative hearing she [REDACTED] [REDACTED] Further, she has the support of her employer, family, and church.
37. Ms. Castle stated that believed she would perform well as a salesperson and if given the opportunity to obtain her registration she would be a good candidate to serve the community, represent AMVIC, and uphold their licensing regulations, the requirements of the *CPA*, and the requirements of the *ABR*.

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

38. Upon hearing the evidence and arguments put forward by Ms. Castle and AMVIC, the Appeal Committee dismisses the appeal and upholds the Decision of the Registrar to refuse the application of Ms. Castle for an automotive salesperson registration under sections 104, 127(b)(iii), 127(b)(vii), and 127(c) of the *CPA*.
39. Under section 3.2(2)(n) 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 Ms. Castle'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

40. The following evidence was before the Appeal Committee regarding Ms. Castle's [REDACTED]
- Ms. Castle was [REDACTED]
  - On [REDACTED]
  - Ms. Castle is [REDACTED]
  - In addition to these [REDACTED]
41. The Appeal Committee notes that in the Decision, the Registrar relied in part on Ms. Castle's failure to accurately disclose [REDACTED] her application under section 127(b)(iii) of the CPA in deciding to refuse her registration. In the Appeal Committee's view, Ms. Castle did not intentionally mean to mislead the registrar by insufficiently [REDACTED] her application. The Appeal Committee states that Ms. Castle believed [REDACTED] and accordingly, it was not her intent to be untruthful in the preparation of her application. The Appeal Committee indicated, based on the particular facts of the within appeal and not as a general principle, that this ground alone would not be sufficient to warrant a flat-out denial of Ms. Castle's registration.
42. The Appeal Committee further notes that the Registrar focused its argument on appeal on section 127(b)(vii) and 127(c) of the CPA. The Registrar argued that the existence of the [REDACTED], is the primary concern of AMVIC in this appeal rather than what Ms. Castle said or did not say in her application.
43. The Registrar found that Ms. Castle's [REDACTED] for the protection of consumers and the industry, as well as the public perception of the industry due to their [REDACTED]. The Appeal Committee notes that Ms. Castle was forthright in admitting [REDACTED] before the Registrar at her Administrative hearing, that she did not deny any of the information set out in the [REDACTED] related [REDACTED], and that at the time of submitting her application she did not entirely [REDACTED]
44. However, the Appeal Committee agrees that Ms. Castle's [REDACTED] to reasonably cause concern to the public and to AMVIC as a regulator. Additionally, Ms. Castle is [REDACTED] The Appeal Committee

finds that Ms. Castle's [REDACTED] her a salesperson registration at this time would result in damage to the reputation of the automotive industry, the public's perception of the industry, and would result in a risk to the public interest.

45. The Appeal Committee felt that Ms. Castle was sincere during her appeal, and that she has taken [REDACTED]. The Appeal Committee notes that, after a reasonable period of time has passed following [REDACTED] during which the applicant demonstrates good behaviour in accordance with the legislative intent to regulate honesty, integrity and reliability on the part of the applicant, the effect of [REDACTED] in the determination of whether a license should be granted may be lessened. However, such a period of time has not passed for Ms. Castle at the time of her appeal.
46. 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."
47. Section 125 of the CPA defines "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."
48. In the Appeal Committee's view, these sections also permit the Registrar, and the Appeal Committee on appeal, to consider the [REDACTED] 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.
49. The Appeal Committee acknowledges the letters of support from the CEO and controller of Ms. Castle's current employer regarding her character, commitment to her job, and how forthcoming she has been about [REDACTED].
50. Given the [REDACTED], the Appeal Committee finds that the Registrar's Decision, that it is in the public interest not to grant Ms. Castle a salesperson registration at this time, was reasonable.

### Conclusion

51. Given Ms. Castle's [REDACTED] 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.
52. 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.
53. In the Appeal Committee's view, Ms. Castle must demonstrate a period of time where she [REDACTED] before it would be appropriate to consider granting her registration as an automotive salesperson. The Appeal Committee notes that Ms. Castle may have the ability to apply

for salesperson registration in the future but that, before doing so, she should endeavour to demonstrate [REDACTED].

54. This Appeal Committee is satisfied that the hearing given to Ms. Castle 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 Ms. Castle a salesperson registration is appropriate in all the circumstances.

Issued and Dated:

"original signed by"

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David Quest  
Chair – AMVIC Salesperson Appeal Committee

June 6, 2023

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Date