

IN THE MATTER OF AN APPEAL BY

SERGIO QUEZADA

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 JANUARY 4, 2023

**REASONS FOR DECISION**

Committee Chair: David Quest

Members: Bill Burnett  
Michael Kwasek

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

Appearances: Sergio Quezada, 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: March 15, 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 Sergio Quezada 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. Mr. Quezada applied for salesperson registration on November 10, 2022. Mr. Quezada proposed to work for a dealership. In his application Mr. Quezada stated that he had [REDACTED] but that he [REDACTED]. Mr. Quezada further stated he finished [REDACTED] on November 22, 2022.

14. Routine background checks completed revealed that Mr. Quezada had been [REDACTED] and that he was [REDACTED] as part of [REDACTED]. As a result, his application was referred to the Registrar. The Registrar conducted an administrative review via teleconference call on January 3, 2023 with Mr. Quezada in attendance.

15. On January 4, 2023, the Registrar issued a decision refusing Mr. Quezada an automotive salesperson registration (the "Decision").

16. The Decision notes that Mr. Quezada acknowledged [REDACTED]. The decision notes that Mr. Quezada advised that he did not intentionally mislead the Director about the [REDACTED] as he was not entirely sure what he had been [REDACTED] with and simply listed what he thought the [REDACTED] were rather than seek clarification.

17. The Decision was as follows:

It is my decision, as Director of Fair Trading (as delegated), to NOT grant the application of Mr. Sergio Quezada for an automotive salesperson registration under Sections 127(b)(iii), 127(b)(vii), 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. Sergio Quezada a salesperson registration at this time.
2. Although Mr. Sergio Quezada indicated it was not his intention to falsify his application or mislead the Director, he failed to provide accurate details regarding [REDACTED]. Sergio Quezada was unsure of [REDACTED] he should have stated this fact in the details rather than simply listing what he believed was correct. 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. Sergio Quesada has a [REDACTED] [REDACTED] . Mr. Sergio Quesada just recently [REDACTED] however is still [REDACTED] which cannot be ignored. As a regulatory body, AMVIC must ensure the protection of consumers but also the protection of the industry itself. The public perception to allow an individual to operate in a regulated industry with a [REDACTED] would be detrimental. Under Section 127(b)(vii) of the CPA the Director may refuse to issue a salesperson registration if an applicant is convicted of an offence or is serving a sentence imposed under a conviction.

[Legislative citations omitted]

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.

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 Mr. Sergio Quesada [REDACTED] causes the Director concern, and 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, Mr. Sergio Quesada has not demonstrated to the Director he is capable of meeting the code of conduct requirements and integrity as a salesperson at this time. The Director considered granting Mr. Sergio Quesada a conditional salesperson registration, however in the opinion of the Director there has been an insufficient amount of time for Mr. Sergio Quesada to demonstrate [REDACTED] The Director is not persuaded, at this time that conditions could adequately protect the public. Mr. Sergio Quesada needs to demonstrate a sufficient period of time with no [REDACTED] before considering reapplying for a salesperson registration.
18. On January 5, 2023 Mr. Quesada provided a Notice of Appeal to AMVIC on the following grounds:
- He was as open and honest as possible and didn't mean to lie on the application.
  - He only has [REDACTED] and it should not be a concern.
  - He just wants to do the work he has been training a month and a half for.

19. Mr. Quezada 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. Mr. Quezada had [REDACTED], and had difficulty disclosing information in that respect. These issues with Mr. Quezada suggested he did not have the governability or reliability to truthfully, promptly, and effectively interact with a regulator. The foundation of this regulated industry is the conduct between the individual business licensees or registrants and AMVIC.
- AMVIC's position is that the current [REDACTED] make Mr. Quezada unsuitable for registration as a salesperson at this time, as there were concerns about public confidence in registering an individual [REDACTED] of this nature.

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 Police Information Check ("PIC"). AMVIC also completes [REDACTED] 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.
- 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.

- Mr. Quezada applied for a salesperson registration. Upon receipt of the application, AMVIC conducted background checks and open source searches of Mr. Quezada. The results of the background checks and open source searches for Mr. Quezada revealed [REDACTED] and that [REDACTED]. Due to the discrepancies in how Mr. Quezada described [REDACTED] as well as the seriousness and recency of the [REDACTED] AMVIC prepared an application report for the Registrar. The Registrar consequently held an administrative review with Mr. Quezada. Ms. A [REDACTED] attended the review.
- At the administrative review, Mr. Quezada provided an explanation for the discrepancy in how he described [REDACTED]. He explained it was not his intention to mislead the Registrar, as it wasn't clear to him that the [REDACTED] separate. Mr. Quezada explained that he was not aware he was [REDACTED] as he had only recently found out and the date was constantly changing. He was first [REDACTED] but that changed. Ms. A [REDACTED] conceded that Mr. Quezada wasn't trying to hide or intentionally misrepresent his [REDACTED] and that he was forthcoming despite the discrepancies in his application.
- Ms. A [REDACTED] advised that nevertheless, as Mr. Quezada was unaware of the nature of [REDACTED] she was also concerned that he could [REDACTED] and felt that the [REDACTED]. She stated that when a consumer goes to a dealership, it is important for a salesperson to be upfront with them and not mislead them, either intentionally or unintentionally. 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 Mr. Quezada paid to his [REDACTED] as an indicator of his governability.
- Additionally, the outstanding concern for the licensing department was the fact that [REDACTED] were recent and serious. In Ms. A [REDACTED] view, the [REDACTED] caused concern for licensing of Mr. Quezada given their nature.

22. In response to questions from the Appeal Committee, Ms. A [REDACTED] testified:

- AMVIC does open source searches on every application for salesperson registration, not just the ones which are flagged.
- When an applicant applies with AMVIC and answers questions incorrectly, it may be an offence under section 126 of the CPA. Hence, when an applicant misrepresents a fact in their application, Ms. A [REDACTED] refers this to the Registrar to determine if an offence was committed. However, Ms. A [REDACTED] will consider each case on the facts, including if the error was in describing [REDACTED]

which an applicant may not have details on. She may call the applicant to clarify in such cases, and if she is not satisfied with the explanation, she may flag that for the Registrar. Ms. A [REDACTED] does not refer every misrepresentation to the Registrar. Where the applicant is new to the industry, and therefore such issues have not been addressed, it is more of a problem.

- Ms. A [REDACTED] stated that according to the background check, Mr. Quezada was [REDACTED]

#### Evidence of the Appellant

23. Mr. Quezada provided the following evidence at the Appeal:

- [REDACTED]  
[REDACTED] he therefore submitted his application to AMVIC on that basis. When he later spoke with [REDACTED]
- He had difficulty getting information from [REDACTED] and received no help when completing his application to AMVIC. He simply included the information which was originally available to him, and advised AMVIC that he would provide any further information he received, which an individual with AMVIC confirmed was okay.

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

- [REDACTED]
- [REDACTED]

25. No witnesses were called by Mr. Quezada.

26. No supporting documentation was provided by Mr. Quezada at the appeal hearing. However, at the end of the appeal hearing Mr. Quezada stated that he had a reference letter from the finance director of a local dealership which he wished to bring to the Appeal Committee's attention. Counsel for AMVIC stated that while the reference letter was not submitted with the application, she had no objection to the letter being provided to the Appeal Committee at this time. The Appeal Committee allowed Mr. Quezada to provide the letter within 10 days and that they would consider it without reconvening the appeal hearing.



## Summary of Arguments

### AMVIC's Closing Submissions

27. Counsel for AMVIC argued that the Registrar's Decision should be confirmed and Mr. Quezada should be denied salesperson registration.
28. There were two components to AMVIC's position.
29. First, Mr. Quezada's [REDACTED] 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.
30. With respect to direct harm to consumers, AMVIC's position was not that Mr. Quezada [REDACTED], [REDACTED] was a concern to AMVIC because the motor vehicle industry involves salespeople regularly dealing with consumers making the second largest purchase of their lives.
31. With respect to integrity of the industry, AMVIC's concern was in regard to the public confidence in the industry. Counsel for AMVIC argued that it is noteworthy that the name of the *CPA* changed from the *Fair Trading Act* to what is now more accurately called the *Consumer Protection Act*. 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 Mr. Quezada made poor decisions which led him to [REDACTED] and that raises questions for AMVIC with respect to Mr. Quezada meeting those baseline assumptions. Counsel for AMVIC posed the question of whether a member of the public would be surprised to learn that an individual [REDACTED] [REDACTED] at issue in this matter had been granted entry to this industry. Counsel for AMVIC argued that integrity of the industry was at issue in this matter.
32. Second, AMVIC was concerned with how Mr. Quezada disclosed information about [REDACTED] [REDACTED] While AMVIC conceded that there was no bad faith attempt by Mr. Quezada to mislead AMVIC, and AMVIC was willing to concede in Mr. Quezada's favor that it was difficult for him to get clear information [REDACTED] [REDACTED] Mr. Quezada's ability to move forward. It strikes her as concerning from a regulator's perspective that with an event of that nature, Mr. Quezada couldn't articulate basic correct information. AMVIC's baseline expectation was that Mr. Quezada would complete his application diligently and truthfully. AMVIC expects a complete and full response.
33. Counsel for AMVIC argued that the evidence suggested that Mr. Quezada was willing to break the law in pursuit of his own best interests. Regulated members are expected to act in the best interests of the public, not themselves.
34. Counsel for AMVIC pointed out that Mr. Quezada is not forever precluded from applying for a salesperson registration, and it may be more appropriate for him to re-apply after the

[REDACTED] after a period of time in which he had no [REDACTED] and once he had demonstrated [REDACTED] skills. Counsel for AMVIC declined to comment on any specific timeframe for when Mr. Quezada should re-apply.

35. Counsel for AMVIC concluded that Mr. Quezada 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. Quezada would be required to immediately report to AMVIC [REDACTED]
- Mr. Quezada would be required to obtain written acknowledgment from his employer [REDACTED]
- If he changes employers or is terminated from a licensed business during the period of conditional registration, Mr. Quezada must advise AMVIC; and
- Mr. Quezada would be required to undertake renewals in a timely fashion and keep AMVIC up to date on his information.

#### Mr. Quezada's Closing Submissions

36. Mr. Quezada stated that he understands that it is too early to re-apply for registration after [REDACTED]. He stated that he can get information [REDACTED] that he has not [REDACTED]. He argued that to do this all again in 1.5 months seems ridiculous.
37. Mr. Quezada stated that he has been wanting to do this for a long time. He wants to get out of construction and not slave away. He wants to get into sales.

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

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

- [REDACTED]
- [REDACTED]
- [REDACTED]

41. The Appeal Committee notes that in the Decision, the Registrar relied in part on Mr. Quezada's failure to accurately [REDACTED] 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 [REDACTED] and the fact that the [REDACTED] is the primary concern of AMVIC in this appeal rather than what Mr. Quezada said or did not say in his application.
42. The Registrar found that Mr. Quezada's [REDACTED] raised concerns for the protection of consumers, the industry, and the public perception of the industry due to their seriousness, recency, and the fact [REDACTED]. The Appeal Committee notes that Mr. Quezada was forthright in admitting his issues with [REDACTED]. However, the Appeal Committee agrees that Mr. Quezada's [REDACTED] serious and recent enough to reasonably cause concern to the public and to AMVIC as a regulator. Additionally, Mr. Quezada [REDACTED]. The Appeal Committee finds that Mr. Quezada's [REDACTED] raise serious concerns that granting his salesperson registration at this time would result in damage to the reputation of the automotive industry and the public's perception and would result in a risk to the public interest.
43. The Appeal Committee notes that, after a reasonable period of time has passed following [REDACTED] accordance with the legislative intent to regulate honesty, integrity and reliability on the part of the applicant, [REDACTED]. However, such a period of time has not passed for Mr. Quezada, and [REDACTED].
44. 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."
45. Section 125 of the CPA defines a "conviction" as "a conviction for an offence under any criminal or other law in force in Alberta or elsewhere that, in the [Registrar's] opinion, indicates that the person convicted is unsuitable to be licensed under this Act."
46. In the Appeal Committee's view, these sections also permit the Registrar, and the Appeal Committee on appeal, to consider the entire context [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.

47. The Appeal Committee acknowledges the letter of support from Mr. Quezada's friend, the finance director at a local dealership, regarding his character. However, subjective character witnesses do not necessarily reflect the interest of the public.
48. Given the seriousness and [REDACTED], the Appeal Committee finds that the Registrar's Decision, that it is in the public interest not to grant Mr. Quezada a salesperson registration at this time, was reasonable.

### Conclusion

49. Given the seriousness [REDACTED], the Appeal Committee finds that the Registrar's Decision, that it is in the public interest not to grant Mr. Quezada salesperson registration at this time, is reasonable.
50. Given Mr. Quezada'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.
51. 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.
52. In the Appeal Committee's view, Mr. Quezada must [REDACTED] before it would be appropriate to consider granting him registration as an automotive salesperson. The Appeal Committee notes that Mr. Quezada may have the ability to apply for salesperson registration in the future but that, before doing so, he should endeavour to demonstrate [REDACTED].
53. This Appeal Committee is satisfied that the hearing given to Mr. Quezada 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. Quezada a salesperson registration is appropriate in all the circumstances.

Issued and Dated:

"original signed by"

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

\_\_\_\_\_  
April 28, 2023  
Date