

IN THE MATTER OF AN APPEAL BY
BRANDON NGUYEN
OF THE DECISION BY
THE ALBERTA MOTOR VEHICLE INDUSTRY COUNCIL (“AMVIC”)
DATED FEBRUARY 8, 2023
TO REFUSE THE REGISTRATION OF THE APPELLANT
AS AN AUTOMOTIVE SALESPERSON UNDER THE
CONSUMER PROTECTION ACT, RSA 2000, C-26.3
AND THE *AUTOMOTIVE BUSINESS REGULATION*, REG. 192/99, AS AMENDED

REASONS FOR DECISION OF THE APPEAL COMMITTEE

Committee Chair: Erol Yersel
Members: Diane Kolibar
Shaun Henderson

Mylène Tiessen (Peacock Linder Halt & Mack LLP) counsel for the Appeal Committee

Appearances: Brandon Nguyen, Appellant
Bath-Shéba van den Berg (Loberg Ector LLP) counsel for the Appellant

Yoneke A [REDACTED], AMVIC Manager of Licensing
Paula Hale (Shores Jardine LLP) counsel for AMVIC

Appeal Hearing: June 27, 2023 - by videoconference (commencing at approximately 10:00 a.m. and adjourned for decision at approximately 2:30 p.m.)

SUMMARY OF DECISION

The AMVIC Salesperson Appeal Committee (the “Appeal Committee”) confirms the decision of the Registrar to refuse to issue the Appellant a salesperson registration at this time and, accordingly, Mr. Nguyen’s appeal is dismissed.

INTRODUCTION

This is an appeal of the February 8, 2023, decision of the Director of Fair Trading (as delegated) (the “Registrar”) refusing Brandon Nguyen’s application submitted January 4, 2023, for registration as an automotive salesperson pursuant to sections 104 and 127 of the *Consumer Protection Act* (the “CPA”) and specifically, sections 127(b)(iii) and 127(c).

COMPOSITION OF THE APPEAL COMMITTEE

No concerns or objections were raised by either of the parties in advance of or during the appeal hearing regarding the members of the panel.

LEGISLATIVE AUTHORITY

The CPA governs the registration of salespeople in Alberta. The Director of Fair Trading has delegated its authority relative to the automotive industry in Alberta to AMVIC, including automotive salesperson registrations. Section 16 of the *Automotive Business Regulation* (the “ABR”) requires that salespeople be registered before acting on behalf of a business operator.

Section 127 of the CPA gives the Registrar authority to refuse to issue a licence for any of the reasons enumerated in that section. While section 127 specifically refers to a business licence, section 18 of the ABR provides that section 127 applies, with the necessary changes, to the registration of salespersons.

Section 22 of the ABR permits a person, whose application for registration has been refused, to appeal that decision in accordance with the process established by the Registrar. That process is set out in the AMVIC Salesperson Appeal Committee Policy (the “Appeal Policy”).

Pursuant to section 3.2(2)(n) of the Appeal Policy, the Appeal Committee is required to determine if the Registrar’s Decision is consistent with the provisions of the CPA, the ABR, and the Bylaws and policies of AMVIC.

Sections 104, 127(b)(iii) and 127(c) of the CPA provide as follows:

104(1) No person may engage in a designated business unless the person holds a licence under this Act that authorizes the person to engage in that business.

(2) If required to do so by the applicable regulation, a person who engages in a designated business at more than one location must hold a separate licence issued under this Act for each location that authorizes the person to engage in that business.

127 The Director may refuse to issue or renew a licence, may cancel or suspend a licence and may impose terms and conditions on a licence for the following reasons:

(b) the applicant or licensee or any of its officers or employees

(iii) furnishes false information or misrepresents any fact or circumstance to an inspector or to the Director.

(c) in the opinion of the Director, it is in the public interest to do so.

BACKGROUND

On January 4, 2023, AMVIC received a salesperson registration application on behalf of Mr. Nguyen. An administrative review with respect to that application was requested by the AMVIC Manager of Licensing on the basis that the “Applicant’s [REDACTED] causes [sic] AMVIC concern for the financial safety of consumers and the applicant’s employer/coworkers.” By letter dated January 31, 2023, Mr. Nguyen was given notice that an administrative review was scheduled for February 7, 2023. The administrative review was on February 7, 2023, via teleconference. Mr. Nguyen attended the administrative review. Following that review, the Registrar issued a decision dated February 8, 2023 (the “Registrar’s Decision”), refusing Mr. Nguyen’s application under sections 127(b)(iii) and 127(c) of the CPA for the following reasons:

1. It was in the public interest not to issue him a registration;
2. He failed to disclose [REDACTED] or the fact he is [REDACTED], and his failure to provide accurate disclosure did not meet the standard set out in the code of conduct expected of a licensee or registrant;
3. Current and pending charges, in the opinion of the Registrar, are even more important to consider than stayed, dismissed or withdrawn charges as they are more recent and no decision has been made by the court with respect to their validity. The Registrar cited the Alberta Queen’s Bench decision of *Ahmad v Alberta Motor Vehicle Industry Council*, 2010 ABQB 293 (“*Ahmad*”);
4. The seriousness, recency and nature of Mr. Nguyen’s [REDACTED] cause the Registrar concern and, in the opinion of the Registrar, are a concern to the public, AMVIC and the automotive industry; and
5. By failing to answer certain eligibility questions accurately, Mr. Nguyen has not demonstrated to the Registrar that he is capable of meeting the code of conduct requirements and integrity of a salesperson at this time.

In addition, the Registrar was not persuaded that conditions on Mr. Nguyen’s registration could adequately protect the public.

Mr. Nguyen appealed the Registrar’s Decision on March 9, 2023.

EVIDENCE AND MATERIALS BEFORE THE APPEAL COMMITTEE

The Appeal Committee was provided with the following documents:

1. Materials assembled by AMVIC including:

- TAB 1 January 31, 2023 - Letter from the Registrar to Mr. Nguyen regarding notice of proposed administrative action
- February 8, 2023 – Registrar’s Decision
- March 9, 2023 – Notice of Appeal submitted by Loberg Ector LLP on behalf of Mr. Nguyen
- March 13, 2023 - Letter from the Registrar to the Appellant regarding the Notice of Appeal
- TAB 2 April 13, 2023 - Letter from AMVIC to the Appellant confirming appeal date and particulars
- April 13, 2023 - AMVIC letter to Appeal Committee Chair
- April 13, 2023 - AMVIC letters to Appeal Committee Members
- TAB 3 January 30, 2023 - Application Report - Licensing
- TAB 4 Portions of the CPA
- TAB 5 Portions of the ABR
- TAB 6 The Appeal Policy

2. The following additional documents were also provided in advance of the appeal hearing:
- (a) Reply Submission of AMVIC (undated)
- (b) Affidavit of Brandon Nguyen sworn June 22, 2023 (the “Nguyen Affidavit”)

Counsel for AMVIC confirmed receipt of the Nguyen Affidavit and had no objection to its admission on this appeal.

The Appeal Committee heard from the following witnesses:

- (a) Yoneke A [REDACTED] AMVIC Manager of Licensing; and
- (b) Mr. Nguyen.

The parties were given an opportunity to make opening and closing statements.

ADDITIONAL AUTHORITIES REFERRED TO BY THE PARTIES IN THEIR WRITTEN AND ORAL SUBMISSIONS

On Behalf of Mr. Nguyen

- *Canada Evidence Act*, RSC 1985, c C-5, ss. 7 and 13
- *Interpretation Act*, RSA 2000, c I-8
- *Alberta Rules of Court*, Alta Reg 124/2010
- *Administrative Procedures and Jurisdiction Act*, RSA 2000, c A-3
- *Alberta Public Agencies Governance Act*, SA 2009, c A-31.5
- *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c 11, section 11(d)
- *Controlled Drugs and Substances Act*, SC 1996, c. 19
- *R v Meadows*
- *R v Jarvis*, 2002 SCC 73
- *Metropolitan Stores (MTS) Ltd. v Manitoba Food & Commercial Workers, Local 832*, [1987] 1 SCR 110
- *RJR-MacDonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311
- *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65
- *Roncarelli v Duplessis*, [1959] SCR 121

On Behalf of AMVIC

- *Moffat v Edmonton (City) Police Service*, 2012 ABCA 183
- *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61

GROUNDINGS OF APPEAL

In his notice of appeal Mr. Nguyen stated that the grounds for his appeal were:

1. The Registrar erred in law and mixed fact in law in his decision to refuse his application for public interest reasons; and

2. The Registrar erred in law and mixed fact and law in his decision to refuse his application pursuant to section 127(b)(iii) of the CPA.

In his March 9, 2023, written submissions, Mr. Nguyen provided the following with respect to each of these grounds:

Ground #1:

The decision to refuse Mr. Nguyen's application for registration for public interest reasons:

- (a) Violated Mr. Nguyen's *Charter* rights, specifically s. 11(d);
- (b) "Public interest" is not defined in the CPA;
- (c) Harm must be demonstrated with respect to questions of public interest (citing the SCC decision of *RJR-MacDonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311, at para 68);
- (d) The Registrar did not provide clear reasons or consider all relevant factors for his decision;
- (e) The Registrar relied on both sections 127(c) and 127(b)(iii) of the CPA for refusing Mr. Nguyen's application;
- (f) The Registrar overlooked the evidence and engaged in prejudicial and speculative assertions in absence of evidence of the likelihood of Mr. Nguyen being [REDACTED] and [REDACTED];
- (g) The Registrar's refusal to grant a registration with conditions shows that the Registrar made his own findings of fact that were unproven, contested and had not yet been adjudicated;
- (h) The Registrar failed to recognize the [REDACTED] facing Mr. Nguyen are complex and difficult to prove;
- (i) The Registrar denied Mr. Nguyen's rights to natural justice and procedural fairness by making erroneous assumptions about his guilt or innocence;
- (j) The Registrar fettered or abused his administrative discretion by failing to give any or adequate consideration to highly relevant factors and giving weight to irrelevant considerations; exercising his discretion unreasonably and exercising his discretion in the absence of necessary evidence or on the basis of insufficient evidence; and
- (k) The Registrar had no evidence before him to demonstrate that Mr. Nguyen is a harm to the public.

Ground #2

With respect to the decision to refuse Mr. Nguyen's application based on section 127(b)(iii) of the CPA:

- (a) Mr. Nguyen did disclose that he was subject to [REDACTED] at the administrative review;
- (b) Mr. Nguyen presented himself with honesty and candour throughout the administrative review;
- (c) Mr. Nguyen explained that it was not his intention to falsify his application or mislead the Registrar;
- (d) Mr. Nguyen did not have an opportunity to retain or consult counsel in advance of the administrative review;
- (e) Mr. Nguyen was given only one week to prepare for the administrative review;
- (f) Mr. Nguyen does not have a criminal record;
- (g) Mr. Nguyen is not a danger to the public;
- (h) Mr. Nguyen's right to a fair administrative review was not preserved;
- (i) Mr. Nguyen is innocent until proven guilty and it is an error of law and fact to assume that he will be [REDACTED] and [REDACTED];
- (j) The Registrar inappropriately relied on the decision of *Ahmad v Alberta Vehicle Industry Council*, 2010 ABQB 293;
- (k) Mr. Nguyen misread and did not fully understand the question on the application regarding court ordered conditions and at the administrative review Mr. Nguyen did not deny his [REDACTED];
- (l) The language of the question concerning court ordered conditions speaks more to a person that has a criminal record than to a person that had been charged with criminal offences;
- (m) Mr. Nguyen's employer, although aware of his [REDACTED], is prepared to give Mr. Nguyen a chance to prove himself and why can AMVIC not do the same by either granting Mr. Nguyen's application or by granting his application with conditions?

ORAL PRESENTATION TO THE APPEAL COMMITTEE

AMVIC Submissions

Counsel for AMVIC opened by reviewing the legislative authority applicable to the Registrar's Decision and this appeal. Counsel advised that in AMVIC's view the standard of review applicable to this appeal is as set out in section 3.2 2.n) of the Appeal Policy and that this standard requires the appeal committee to give the Registrar's Decision a great deal of deference. This committee may confirm, vary or quash the Registrar's Decision.

Counsel for AMVIC says that AMVIC's position on this appeal is very simple. At this time, Mr. Nguyen should not be registered as a salesperson. The Registrar's Decision was made for two reasons, and either was sufficient to deny Mr. Nguyen a registration. First, he has very serious and current [REDACTED]. These [REDACTED] alone are sufficient to cause AMVIC concern. Second, Mr. Nguyen was not truthful when he completed his salesperson registration application. The concern is that it is not in the public interest to grant him a registration.

Ms. A [REDACTED] was AMVIC's sole witness. She is the AMVIC Manager of Licensing and has held that position for approximately five years. She has been with AMVIC for over nine years and throughout this time worked in licensing. She initially started in the position of Licensing Supervisor.

Ms. A [REDACTED] reviewed the salesperson registration process. Through the AMVIC website the applicant accesses the portal and completes the application. As part of the application, eligibility questions are asked including questions regarding the applicant's criminal history. The process also requires the payment of an application fee and successful completion of an on-line course (a score of 80% is required). The course covers different areas of the automotive industry including the rules of the industry and the role and responsibilities of a salesperson. It consists of 35 to 40 multiple choice questions and takes 3.5 hours or more to complete. Each applicant is given 30 days to complete and pass the course. Once the application is completed, signed and submitted it is assigned to a licensing advisor.

The applicant is also required to complete a criminal record check. It is completed by a third party (Sterling Backcheck) or through the police. Once the criminal record check is received by licensing, the application and criminal record are reviewed by the assigned licensing advisor. The answers to the eligibility questions are compared to the criminal record. If there are any concerns identified by the licensing advisor, they are brought to Ms. A [REDACTED] or the team lead. As part of the review, an open-source check (Google) is also conducted with respect to other regulatory bodies. If the applicant does not have a criminal record or other concerns, the application is directed to the licensing advisor to issue a registration.

Ms. A [REDACTED] confirmed that having a criminal record does not preclude registration. An applicant's criminal record is reviewed and assessed on three criteria – the seriousness, how recent and the number of convictions/charges, if applicable. Is the applicant willing to abide by the rules

of the general public? Would a member of the public feel comfortable purchasing a vehicle from the applicant given their criminal record? Has a sufficient time passed since the charges/convictions? Anything beyond a *Traffic Safety Act* violation (e.g. a speeding ticket) is considered serious - criminal charges are considered serious.

If there are concerns arising from her review/the team lead's review, the application is flagged and an application report and request for review are prepared and submitted to the Registrar. The Registrar determines whether an administrative review is required (basically an interview). The Registrar makes no determination with respect to the application until the review is completed. Ms. A [REDACTED] does not make the decision or provide any recommendations. Her role at the administrative review is to ask questions of the applicant to seek clarification. The Registrar may also ask questions as part of the administrative review. Following the review, the Registrar issues a decision.

There are approximately 7800 AMVIC licensed businesses in Alberta and approximately 10,800 registered salespersons. AMVIC receives anywhere from 275 to 400 salesperson applications per month.

The Application Report in this case was reviewed (Appeal Book, starting at page 30). It was completed by the Licensing Team Lead. In answering the eligibility questions, Mr. Nguyen incorrectly answered two questions. Firstly, he answered "no" with respect to the question regarding [REDACTED]; and, secondly, he answered "no" with respect to [REDACTED].

Ms. A [REDACTED] also referenced the "Declaration Questions" of the application (Appeal Book, page 36) which requires the applicant to, among others, acknowledge that they understood each question in the application and that they have answered every question truthfully. These questions provide the applicant with the opportunity to review their answers and make any necessary changes.

Ms. A [REDACTED] attended the February 8, 2023, administrative review. Ms. A [REDACTED] recalled that during the review when Mr. Nguyen was questioned by the Registrar regarding his [REDACTED] he acknowledged and confirmed the [REDACTED] and that he was [REDACTED] as outlined in the Registrar's Decision (Appeal book, starting at page 8). To the best of her recollection, the facts set out in the Registrar's Decision are accurate.

Ms. A [REDACTED] Questioned by Counsel for the Appellant

Ms. A [REDACTED] confirmed that she is not a criminal defence lawyer, a criminal law expert, or an expert in controlled substances.

Ms. A [REDACTED] confirmed that during the administrative review notes were taken by her and by the Registrar. There is no official transcript of the review. She acknowledged that her notes may not reflect what was said during the administrative review with 100% accuracy.

AMVIC does grant salesperson registrations to those with past criminal convictions. Of the 10,800 or so salesperson registration applications, she could not say what number of them had criminal convictions. The Registrar may, following an administrative review, grant a registration that includes conditions. That is within the Registrar's discretion and are determined on a case-by-case basis. The nature of those conditions might include, *inter alia*, a letter from the registrant's employer.

Counsel reviewed the Licensing Report (Appeal Book, p. 30) and specifically with respect to the reason an administrative review was requested. She challenged the reference to "financial safety". Ms. A [REDACTED] referenced that one of Mr. Nguyen's [REDACTED] was a [REDACTED]. Ms. A [REDACTED] acknowledged that Mr. Nguyen is innocent until proven guilty and, accordingly, was the reason the [REDACTED] were referred to as [REDACTED].

With respect to the eligibility questions (Appeal Book at p. 35) Ms. A [REDACTED] acknowledged that the only question that asked specifically about the applicant's financial situation was the following question: "Have you ever been the subject of bankruptcy, receivership proceedings, a consumer proposal, an application for bankruptcy or insolvency or had your wages garnished?"

Ms. A [REDACTED] also acknowledged the nowhere in the Registrar's Decision is there mention of financial safety generally or as a basis to deny Mr. Nguyen registration specifically.

When asked if the factors of seriousness, frequency and recency only applied to criminal convictions, Ms. A [REDACTED] disagreed.

Counsel put to Ms. A [REDACTED] that Mr. Nguyen did not understand the questions in the questionnaire. Ms. A [REDACTED] responded that Mr. Nguyen could have contacted AMVIC if that was the case.

Counsel pointed out that Mr. Nguyen did not have counsel at the administrative review. Ms. A [REDACTED] acknowledged that the letter to Mr. Nguyen regarding the administrative review (Appeal Book, p. 3) did not indicate that he could bring a lawyer or someone else with him to the review. Ms. A [REDACTED] responded that if Mr. Nguyen had wanted to have someone attend the review with him, he could have and if he was unsure if counsel could attend, he could have asked for clarification.

Counsel challenged Ms. A [REDACTED] use of the phrase "[REDACTED]" in reference to [REDACTED] and Ms. A [REDACTED] confirmed that the eligibility questions do not use the word "potential". Counsel stated that the word "[REDACTED]" may not, to the ordinary person have the same meaning as "[REDACTED]". Ms. A [REDACTED] responded that Mr. Nguyen would have, as part of his application, been required to obtain a criminal record check from Sterling Back Check who would [REDACTED] referred Mr. Nguyen to the local police to obtain the necessary criminal record check.

Ms. A [REDACTED] acknowledged that aside from the present [REDACTED], Mr. Nguyen did not have a [REDACTED]. Counsel asserted that as a result, Mr. Nguyen was completely unfamiliar with the [REDACTED].

Counsel then put to Ms. A [REDACTED] that it might be helpful to use plain language in the eligibility questions and noted that, in her view, the questions follow a certain sequencing in the [REDACTED]. Ms. A [REDACTED] responded that the questionnaire is the same questionnaire for every applicant, it is not tailored for each individual applicant. Ms. A [REDACTED] commented that Mr. Nguyen did not answer the question regarding [REDACTED] correctly – he actually did have [REDACTED]. In response, counsel stated that Mr. Nguyen did not have [REDACTED], he had [REDACTED] and, accordingly, had answered that question correctly.

Ms. A [REDACTED] confirmed that AMVIC values honesty, that the industry is one of integrity and that AMVIC expects that of its registrants.

Ms. A [REDACTED] agreed that any [REDACTED] contained in the questionnaire are not defined in the questionnaire.

Re-Direct by AMVIC Counsel

Ms. A [REDACTED] is aware of individuals having pending charges and being granted a salesperson registration.

Ms. A [REDACTED] confirmed that “[REDACTED]” is not, in her view, a [REDACTED] definition.

Submissions by Mr. Nguyen

Counsel for Mr. Nguyen referenced sections 7 and 13 of the *Canada Evidence Act* and related court decisions.

Counsel submitted that the Registrar erred in law and mixed fact and law when he denied Mr. Nguyen a salesperson registration on the basis that it was in the public interest to do so and based on allegations of falsification of information when he completed the salesperson application questionnaire.

The standard of review applicable is correctness. The CPA is silent on the applicable standard of review and, according to the SCC decision of *Vavilov* is, therefore, correctness.

Counsel for Mr. Nguyen reviewed the Nguyen Affidavit in detail. In the course of making these submissions counsel emphasized that at the time of completing his application, Mr. Nguyen was [REDACTED].

Counsel for Mr. Nguyen submitted that because Mr. Nguyen attended the administrative review without counsel and did not have the opportunity to consult with counsel in advance that he was

prejudiced. Had counsel attended with Mr. Nguyen the outcome of the administrative review may have been different. Mr. Nguyen's submission must be understood in the context of their being an absence of a written record in connection with the administrative review.

Mr. Nguyen is not a threat to the public. There is no evidence that Mr. Nguyen is a threat or evidence that he will cause harm to the public [REDACTED], which have not been proven. Arguably, counsel submitted, it is in the public interest to grant Mr. Nguyen a salesperson registration. He is well loved in the community, as evidenced by the reference letters attached to his affidavit. If, in the view of the Appeal Committee, a registration with conditions is better, Mr. Nguyen's counsel submits that would be fair.

Following that review, and in the course of making further submissions, the Chair inquired regarding the opportunity for AMVIC and the Appeal Committee to ask questions of Mr. Nguyen. Counsel advised that she would not be permitting Mr. Nguyen to answer questions from AMVIC or their counsel or questions from the Appeal Committee. In response, AMVIC counsel submitted that the only evidence from Mr. Nguyen is his affidavit and in the absence of an opportunity to test that evidence through questioning, his affidavit should be given no weight by the Appeal Committee. In response, counsel for Mr. Nguyen requested and was granted a brief adjournment to confer with her client. Following that adjournment, counsel advised that Mr. Nguyen would answer questions posed by counsel for AMVIC and by the Appeal Committee.

Mr. Nguyen Questioned by Counsel for AMVIC

Mr. Nguyen was questioned regarding the circumstances [REDACTED] He explained that he was heading out to see a friend and just as he was leaving his house, the [REDACTED]

At the time [REDACTED] When he was [REDACTED]

With respect to the content of his affidavit, generally, Mr. Nguyen advised that it was drafted with his input, his words, but was organized by his lawyer.

Mr. Nguyen's recollection differs from that of the Registrar in respect of point #4 of the Registrar's Decision. Mr. Nguyen did not understand the question in the questionnaire regarding [REDACTED] [REDACTED] When he met with his [REDACTED] he assumed that he had [REDACTED] and that

he was [REDACTED] Counsel put to Mr. Nguyen that he understood that he was [REDACTED] Mr. Nguyen disagreed.

Mr. Nguyen Questioned by the Appeal Committee

Mr. Nguyen advised that the [REDACTED] referenced in the Registrar's Decision did not proceed and this his lawyer is in the process of [REDACTED].

Mr. Nguyen confirmed that he had to go to the Police to obtain the required criminal record check and [REDACTED].

Mr. Nguyen Questioned by His Counsel

Mr. Nguyen confirmed that he received the [REDACTED] He did not, at that time, understand [REDACTED] When he spoke to his counsel it was at that point that he understood that he potentially could be [REDACTED] He has no prior criminal record.

Closing Submissions

Closing Submissions on behalf of AMVIC

AMVIC is not taking the position that Mr. Nguyen has been convicted of anything nor is the purpose for denying him a salesperson registration intended to punish Mr. Nguyen. Salespersons are, like other professions, regulated. To be granted a salesperson registration is a privilege not a right.

In terms of matters of procedural fairness, the Appellant has made some suggestion that there is not a proper record regarding the Registrar's Decision. The deliberative notes of the Registrar would not form part of the record. The Registrar's Decision sets out his views and his reasoning. There is nothing to be inferred from the absence of a transcript. The administrative review was a first level administrative hearing. This issue was the subject of judicial consideration in *Ahmad v Alberta Motor Vehicle Industry Counsel*, 2010 ABQB 293.

With respect to standard of review, *Vavilov* did not make substantive changes with respect to the standard of review applicable to an internal appeal. The default standard is reasonableness and is a deferential standard. The Appeal Committee does not have to determine the applicable standard of review as it is clearly set out in the Appeal Policy. The Registrar's Decision is owed deference given his relevant expertise. This panel is not required to agree with the Registrar's Decision. It need only determine whether the Registrar's Decision falls within one of the reasonable outcomes given the evidence before him.

There are two recent appeals of the AMVIC Appeals Committee, consisting of different committee members hearing this matter – T. Castle (June 6, 2023) and R. Gerry (June 26, 2023), where salesperson registrations were declined in the face of [REDACTED] It is

noted on a review of those decisions that in the case of R. Gerry, she had [REDACTED], received a [REDACTED].

Mr. Nguyen is facing a [REDACTED]. The fact that a [REDACTED] respect [REDACTED] is an indication of their seriousness.

The automotive industry is regulated because consumers are vulnerable in a variety of ways and for different reasons. The purchase of a vehicle is a significant financial transaction – easily the second largest financial transaction a family makes. For many people having a reliable motor vehicle is a necessity. For these reasons the legislature has determined that the automotive industry must be regulated.

Approximately 10,800 individuals are registered salespersons. The industry relies on its participants to know and understand the law and to abide by the law, including, when it is not in the salesperson’s best interest to do so. The industry requires its members to act with honesty and integrity. AMVIC is the designated gatekeeper. Entry to the industry is not a high bar. The presumption is that its members are honest and have integrity. The public must have confidence in a regulated industry and the system for it to function properly. AMVIC is the regulator and regulates in the public interest.

Mr. Nguyen applied for a salesperson registration. The presumption is that he completed the application honestly. The required checks were completed which raised “red flags” causing the Licensing Department to have a legitimate concern given the number and recentness of Mr. Nguyen’s [REDACTED]. Counsel submitted that she would be very surprised that someone could be [REDACTED] and be granted entry into a profession.

Counsel submitted that the cases referenced by counsel for Mr. Nguyen pertaining to public interest and harm are not applicable here as they pertain to constitutional matters and injunctions. This panel is required to carry out the objectives of the legislation.

It is absolutely correct that there are registrants who have a criminal record and who have received a conditional registration. There is no blanket policy that precludes someone with a criminal record from ever participating in the industry. There is no bar to Mr. Nguyen preventing him from reapplying for registration [REDACTED] regardless of how they are [REDACTED].

The Registrar was exercising his statutory discretion. He looks at every case on its merits. Making a decision that someone disagrees with is not fettering of that discretion.

With respect to the *Ahmad* decision, AMVIC does not take the position that the facts of that case are the same as those presented here. AMVIC acknowledges that the standard of review on judicial review has changed by virtue of the *Vavilov* decision but the standard of review applicable to this appeal is unchanged by *Vavilov*. That standard is set out in the Appeal Policy. What is important

in the case of *Ahmad* is that AMVIC can and should look broadly at the history of the applicant – anything that raises a concern in connection with the presumed integrity of an applicant. In this case, Mr. Nguyen’s [REDACTED] are relevant. The other relevant consideration was his failure to disclose his [REDACTED]. The questions in the application are crystal clear. Mr. Nguyen has not provided a plausible explanation for why he did not understand the questions. He is intelligent. He scored over 97% on salesperson course. There were no language barriers. It is not credible that a person of Mr. Nguyen’s intelligence who has been [REDACTED] and somehow does not understand that he does [REDACTED]. Mr. Nguyen did not mention [REDACTED] because he did not think they would [REDACTED] and only when confronted with them by the Registrar did he acknowledge them.

Mr. Nguyen’s failure to disclose was not just a reason to decline his application for registration but is a prosecutable offence in and of itself. Even if it is accepted that he did not, at the time of his application, understand that he [REDACTED], Mr. Nguyen took no steps to advise AMVIC when he did find out to correct his misrepresentation to the Registrar. At best, Mr. Nguyen was grossly negligent, making him an unsuitable and unreliable participant in the industry. On a balance of probabilities, counsel submitted, Mr. Nguyen knew about [REDACTED] but did not think he would get caught.

This panel has the authority to confirm, vary or quash the Registrar’s Decision. If the Appeal Committee is considering granting Mr. Nguyen a salesperson registration, AMVIC asks that it consider doing so with conditions including that:

1. Any renewal of his registration be completed on time.
2. He advise his employer in writing of [REDACTED] and should his employer change at any time, he is to disclose [REDACTED] that employer and the employer is to confirm said disclosure to AMVIC within a specified timeframe.
3. He respond to any communications from AMVIC in a timely manner and that he keep his contact information entirely up to date.

Closing Submissions on Behalf of the Appellant

Mr. Nguyen’s salesperson registration was refused on the grounds that it was not in the public interest to grant him a license and on the basis that he falsely answered the questions in his application regarding [REDACTED]. The sequencing of the questions suggested that the questions ask with respect to [REDACTED] to someone who had been [REDACTED]. With respect to the [REDACTED] Mr. Nguyen testified that the [REDACTED]. He answered that question truthfully and accurately.

Mr. Nguyen was prejudiced at the administrative review given that he did not have a lawyer present at the review and he did not obtain legal advice in advance. Mr. Nguyen’s misunderstandings

were made clear to the Registrar that the [REDACTED] and not [REDACTED]. The Registrar was incorrect when he determined that Mr. Nguyen had failed to [REDACTED].

The allegation that Mr. Nguyen was dishonest in his response regarding [REDACTED] is unfortunate. Mr. Nguyen honestly believed he did [REDACTED]. Mr. Nguyen is not a criminal law expert. Counsel submitted that the use of “[REDACTED]” versus “[REDACTED]” illustrates the confusion. Mr. Nguyen understood that [REDACTED]. Only once he contacted [REDACTED]. Mr. Nguyen apologized for his error. It is unfair to punish him for not knowing better. If Mr. Nguyen is a dishonest person that should have been evident throughout. He answered the questions of AMVIC counsel and the Appeal Committee. He did not act dishonestly. His behaviour during the appeal is a true reflection of his character. He has no prior criminal record.

With respect to standard of review, the applicable legislation does not specifically state that the reasonableness standard applies. Although this is not a court, this appeal is part of an administrative law process. In the absence of the reasonableness standard being specifically stated in the legislation, *Vavilov* says that the standard is correctness. If, however, the Appeal Committee determines that reasonableness is the applicable standard then as the court stated in *Ahmad*, Mr. Nguyen’s entire history, [REDACTED], should be considered.

The Registrar fettered his discretion by refusing to grant Mr. Nguyen a salesperson registration on the basis of public interest considerations as there was an absence of any evidence of harm as required by the applicable Supreme Court of Canada decisions. Counsel referred the panel to the 1959 SCC decision of *Roncarelli v Duplessis*.

Counsel submits that Mr. Nguyen should be granted a salesperson registration and is open to being granted one on a conditional basis.

Reply Submissions on Behalf of AMVIC

Counsel emphatically submitted that there were no parallels between the facts of this matter and the circumstances in *Roncarelli v Duplessis*.

At the conclusion of the submissions of the parties, counsel for AMVIC and counsel for Mr. Nguyen confirmed that they had each been given sufficient opportunity to present their case.

ISSUE TO BE DETERMINED ON THIS APPEAL

As previously stated, the issue before this Appeal Committee is whether, pursuant to section 3.2 2(n) of the Appeal Policy, the Registrar’s Decision to refuse to grant a salesperson registration to Mr. Nguyen was consistent with the provisions of the CPA, the ABR, and the Bylaws and policies of AMVIC (collectively the “Governing Authorities”).

STANDARD OF REVIEW

The issue of the standard of review to be applied by the Appeal Committee was raised on this appeal. Mr. Nguyen submits that the standard of review is corrections. He further submits that the reasonableness standard does not apply as the CPA does not direct that that is the standard. The Appeal Committee was referred to the decision of *Vavilov*.

AMVIC submits that the standard is as set out in section 3.2 2(n) of the Appeal Policy and that the standard of review to be applied by an appellate administrative tribunal is not the standard set out in *Vavilov*. Counsel referred the Appeal Committee to the Alberta Court of Appeal decision of *Moffat*. AMVIC also submits that the Registrar is owed deference by virtue of his expertise.

We agree that section 3.2 2(n) of the Appeal Policy sets out the applicable standard.

CHARTER ISSUES

Mr. Nguyen argues that the Registrar's Decision violated his *Charter* rights on the basis that, pursuant to section 11(d) he has the right to be presumed innocent until proven guilty.

The *Administrative Procedures and Jurisdiction Act* provides, at section 11, that a decision maker has no jurisdiction to determine a question of constitutional law unless a regulation made under section 16 of that act has conferred jurisdiction on that decision maker to do so. The Appeal Committee is not a tribunal listed under the applicable regulation and, accordingly, has no jurisdiction to determine questions of constitutional law. However, the Appeal Committee acknowledges that Mr. Nguyen is innocent of [REDACTED]

THE DECISION

AMVIC is required to make decisions in the public interest. Pursuant to section 127(c) of the CPA and section 18 of the ABR, the Registrar may refuse to issue a salesperson registration if, in his opinion, it is in the public interest to do so. Counsel for Mr. Nguyen argued that proof of harm is required in order to make such a determination. However, none of the Governing Authorities require that such a decision requires proof of harm and the authorities submitted by counsel for Mr. Nguyen in support of that proposition pertained to very different legal proceedings and, accordingly, had no application here.

Mr. Nguyen is [REDACTED]. The [REDACTED] if Mr. Nguyen is [REDACTED], not an assessment of Mr. Nguyen's [REDACTED]. The number, recency and seriousness [REDACTED] provide a sufficient basis to support a refusal to grant a salesperson registration on the basis that it is in the public interest to do so.

With respect to Mr. Nguyen's failure to disclose [REDACTED] Mr. Nguyen submits that at the time of completing his registration application he did not

believe [REDACTED]

He was aware, by [REDACTED]

46. I honestly believed [REDACTED]
[REDACTED] at the time of my Application.

47. I did not know and do not believe [REDACTED]
[REDACTED]

We note that the affidavit speaks specifically [REDACTED]

We also note that reference to [REDACTED]

[REDACTED]. We are also troubled by Mr. Nguyen's evidence that he did not understand the question in the questionnaire regarding [REDACTED] yet he made no inquiries and declared that he fully understood each question in the application and answered every question truthfully. On the one hand, Mr. Nguyen successfully obtained a university degree, obtained a score of 97% on the AMVIC course and there is no evidence of any language barriers experienced by Mr. Nguyen, all of which put his submission that he did not understand the question in doubt. On the other hand, if Mr. Nguyen did not understand what on its face is a straightforward question, his declaration that he fully understood each question was not honest. Furthermore, how will he be able to navigate more complicated legal documents as part of a vehicle sales transaction and answer customer questions about such transactions if he is confused by a straightforward eligibility question? For these additional reasons it would not be in the public interest to issue Mr. Nguyen a salesperson registration.

Mr. Nguyen also challenges the Registrar's Decision on the basis that he did not have an opportunity to consult counsel and he attended the administrative review without counsel. Firstly, Mr. Nguyen was not precluded from consulting counsel. Secondly, he was not precluded from having counsel attend the Administrative Review. Thirdly, there is nothing in the Registrar's Decision nor was there any evidence before us that Mr. Nguyen requested that the administrative review be adjourned to provide him with additional time to prepare or the opportunity to consult counsel had he wished to do so. Fourthly, counsel for Mr. Nguyen provided no authority that there is an absolute right to legal counsel in administrative proceedings and we are aware of no such authority.

Mr. Nguyen also challenges the Registrar's Decision on the basis of an absence of a transcript from those proceedings. As is noted in *Ahmad*, there is no general requirement for an administrative tribunal to make a transcript or tape recording. Furthermore, the basis upon which we have determined that the Registrar's Decision be confirmed is on the evidence and material before us.

Based on our careful review of the evidence and materials before us we are of the unanimous view that Mr. Nguyen's application for salesperson registration be refused, and we confirm the Registrar's Decision.

The Appeal Committee notes that the outcome of this appeal does not preclude Mr. Nguyen from reapplying for a salesperson registration in the future. The Appeal Committee, however, cannot comment on when Mr. Nguyen should reapply or what the outcome of such an application would be.

Dated this 8th day of August 2023.

"original signed by"

Erol Yersel
Chair – AMVIC Salesperson Appeal Committee