

ALBERTA CONSUMER SERVICES APPEAL BOARD

**IN THE MATTER OF AN APPEAL BY
TRIPLE R AUTO LTD. operating as LEXUS OF ROYAL OAK
PURSUANT TO
SECTION 179(1) OF THE *CONSUMER PROTECTION ACT*, RSA 2000, c.26.3 (“the CPA”)**

and

**IN THE MATTER OF AN ADMINISTRATIVE PENALTY ISSUED BY
THE ALBERTA MOTOR VEHICLE INDUSTRY COUNCIL (“AMVIC”)
PURSUANT TO SECTION 158.1(1) OF THE CPA**

DECISION OF THE APPEAL BOARD on the PRELIMINARY ISSUE OF TIMELINESS

DECISION ISSUED

09 November 2023

APPEAL BOARD

Lorenz Berner (Chair)

Nazrina Umarji (Member)

Hamish Henderson (Member)

PARTIES’ REPRESENTATIVES

- Todd Richardson, GM/Dealer and Managing Partner on behalf of the Appellant Triple R Auto
 - Aman Costigan, legal counsel for the Respondent, the Director of Fair Trading (“the Director”), as delegated to AMVIC.
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BACKGROUND

1. The Appellant Triple R Auto seeks to appeal an administrative penalty issued on behalf of the Director of Fair Trading. The penalty was issued after AMVIC investigators determined that Triple R Auto sold a number of vehicles to consumers for amounts greater than the advertised price. Section 11(2)(l) of the *Automotive Business Regulation* (AR 192/99) – which is a regulation made under the authority of the CPA – stipulates that an automotive advertisement must include the total cost of the vehicle (excluding GST and costs associated with financing). Section 158.1(1) of the CPA provides that

the Director of Fair Trading may issue a notice of administrative penalty against a person who contravenes a regulation made under the *CPA*.

PRELIMINARY ISSUE

2. In June of this year, the Appellant served the Minister with material indicating its intention to appeal the administrative penalty, including a \$1,000 appeal filing fee. In accordance with section 179(2) of the *CPA* the Minister referred the matter to an Appeal Board.
3. As the Appeal Board canvassed the parties regarding potential appeal dates and procedural issues, counsel for AMVIC raised a preliminary jurisdictional issue. AMVIC contends that the Appeal Board is without jurisdiction to consider the merits of the appeal because the appeal was not initiated within the 30-day time limit prescribed by the *CPA*.
4. The Appeal Board agreed to receive evidence and submissions (in writing only) on this preliminary issue, ultimately with deadlines of October 6, 2023 for AMVIC, and October 13, 2023 for Triple R Auto.

EVIDENCE

5. The evidence in relation to the preliminary issue is not in dispute. Notice of the administrative penalty in question was served on Triple R Auto on May 9, 2023. The notice included clear guidance on the right to appeal, including that an appeal must be filed within 30 days and where such appeal must be delivered.
6. On June 7, 2023, the Appellant emailed a representative of AMVIC, questioning the \$1,000 appeal fee. An email answer – which reiterated the 30-day appeal deadline – was provided the following day (June 8, 2023).
7. Triple R Auto issued a cheque for the appeal fee on June 8, 2023. However, the documentary evidence makes clear that the cheque (along with any accompanying documents) was not *received* at the designated office for the Minister until June 13, 2023 – 35 days after the notice of administrative penalty was served on Triple R Auto. The Appellant acknowledged this timing in correspondence with the Appeal Board.

PARTIES' SUBMISSIONS

8. Counsel for AMVIC submits that the Appellant's failure to serve the Minister with a notice of appeal within 30 days after being given the notice of administrative penalty means that the Appeal Board is without jurisdiction and cannot hear the appeal.
9. She argues that in accordance with s.179(1) of the *CPA*, the notice of appeal *must* be served within 30 days, and neither the Minister nor the Appeal Board have authority to extend this deadline. Counsel provides case support for this position in the form of two decisions of the Alberta Court of

Appeal (*Kirchmeir v Edmonton (City) Police Service*, 2001 ABCA 301, and *Tamglass American Inc. v Richter*, 2005 ABCA 341), together with a decision of another Service Alberta Appeal Board (*In the matter of 1366675 Alberta Ltd. o/a Green-Line Auto* – issued on July 28, 2021).

10. As noted above, the Appellant Triple R Auto acknowledged that no appeal documentation was served on the Minister's office within 30 days of receipt of the notice of administrative penalty. Although the Appeal Board expressly invited written submissions from both parties on the legal implications of this fact, the Appellant did not provide further arguments.

DECISION

11. We agree with the Respondent AMVIC that the Appeal Board's hands are tied:

- no notice of appeal was served within 30 days of the date that the notice of administrative penalty was issued;
- the *CPA* expressly prescribes that appeals must be lodged *within 30 days* of notice of an administrative penalty;
- as an administrative tribunal, our powers and authority must be found in the statute(s) and regulations that govern the Appeal Board;
- the *CPA* and the *Appeal Board Regulation* provide the Appeal Board with no discretion to extend the time for appeal; and
- as a result, the Appeal Board is without jurisdiction to hear the Appellant's intended appeal on its merits.

ANALYSIS

12. Section 179(1) of the *CPA* states as follows:

179(1) A person

- (a) who is refused a licence or renewal of a licence,
- (b) whose licence is made subject to terms and conditions,
- (c) whose licence is cancelled or suspended under section 127,
- (d) to whom an order under section 129 or 157 is directed, or
- (e) to whom a notice of administrative penalty is given under section 158.1(1)

may appeal the decision, order or administrative penalty by serving the Minister with a notice of appeal within 30 days after being notified in writing of the decision or order or being given the notice of administrative penalty. (Emphasis added)

13. Although section 182 of the *CPA* lists several powers of Appeal Boards (such as summoning witnesses or reconsidering previous decisions of Appeal Boards), none of those powers give direct or indirect authority to extend time for filing appeals. So too, although the *Appeal Board Regulation* (AR 195/99) sets out additional powers of Appeal Boards, it does not include any discretionary power relating to timelines for appeal.
14. This Appeal Board has no power beyond what is given to it by its governing legislation. This is a well-established principle of administrative law, and its application in contexts such as this case is affirmed in the *Kirchmeir* and *Tamglass* decisions referred to by counsel for AMVIC and cited above.
15. The parties have not pointed us to (and the Appeal Board has not otherwise found) any provisions of the *CPA* or the *Appeal Board Regulation* that could be interpreted as giving power to an Appeal Board (or to the Minister) to extend the 30-day appeal period for appeals under s.179 of the *CPA*. The Appeal Board in *In the matter of 1366675 Alberta Ltd. o/a Green-Line Auto* (a decision of another Service Alberta Appeal Board issued on July 28, 2021) likewise determined that an Appeal Board under the *CPA* was without authority to extend time for appeals.

CONCLUSION

16. In the circumstances, the Appeal Board concludes that it has no discretion to extend the 30-day period for filing an appeal. As no appeal was filed in this matter within 30 days of the notice of administrative penalty, there is, in effect, no appeal for this Appeal Board to hear.
17. Since the Appellant's effort to lodge an appeal of the administrative penalty was out of time and could have no effect, acceptance by the Minister of the Appellant's \$1,000 Appeal filing fee is similarly without jurisdiction. As such, the Appeal Board considers it appropriate for the Minister to return the Appellant's attempted appeal filing fee.

DATED this 9th day of November 2023.

"original signed by"

Lorenz Berner, Appeal Board Chair

"original signed by"

Nazrina Umarji, Appeal Board Member

"original signed by"

Hamish Henderson, Appeal Board Member