

IN THE MATTER OF AN APPEAL BY ALPHA KUSTOMS INC. AND KURTIS LENEY
PURSUANT TO SECTION 179(1) OF THE *CONSUMER PROTECTION ACT* RSA 2000 c.
C-26.3

AND

IN THE MATTER OF THE DECISION BY THE ALBERTA MOTOR VEHICLE INDUSTRY
COUNCIL TO NOT GRANT THE AUTOMOTIVE BUSINESS LICENCE APPLICATION
FOR ALPHA KUSTOMS INC. AND KURTIS LENEY UNDER SECTIONS 127(b)(iii),
127(c) AND 104 OF THE *CONSUMER PROTECTION ACT* ON SEPTEMBER 3, 2020

Decision of the Appeal Board

APPEAL BOARD: Louise Redmond (Chair), Joanne Pawluk, Chelsey Hammett

HEARING: Virtual Hearing via Zoom on April 21, 2021

PARTIES: Paula Hale (for the Director of Fair Trading)
Kurtis Leney (Self- represented)

Preliminary Matters:

1. Due to the COVID-19 Pandemic, and in order to proceed with this appeal in a timely manner while at the same time ensuring the health and safety of the parties, the witnesses, and the Appeal Board during the third wave of the COVID-19 Pandemic, and at a time when there was an Alberta Health Services mandatory work from home order in place, and having the consent of the parties, this Appeal Hearing was conducted virtually by the Zoom video platform on April 21, 2021.
2. A Notice of Hearing was issued to the parties on March 24, 2021.
3. A Pre-Hearing Meeting was conducted via Zoom on April 7, 2021 attended by the Appeal Board Chair and the parties in order to discuss preliminary matters such as the method of providing documents the parties intended to rely on at the Appeal Hearing. A memorandum of the Pre-Hearing meeting was provided to the parties on April 10, 2021.
4. At the start of the April 21, 2021 appeal hearing the parties confirmed the following:
 - (a) The Zoom virtual hearing room was satisfactory;
 - (b) The Appeal Board had jurisdiction to hear the appeal;

- (c) No issue was taken with the composition of the Appeal Board; and
 - (d) The proceedings would not be recorded.
5. The parties were each requested to alert the Chair during the hearing if they encountered any technical difficulties in hearing or seeing the proceedings. Neither party indicated at any point in the hearing that they were having any technical difficulties.
 6. All witnesses were affirmed prior to giving evidence.

Introduction

7. Alpha Kustoms Inc. by way of its principal Kurtis Leney (the “Appellant”) appeals the September 3, 2020 decision of the Director of Fair Trading (the “Director”) as delegated to the Alberta Motor Vehicle Industry Council (“AMVIC”) to not grant the Appellant’s application to licence Alpha Kustoms Inc. as a business (the “Director’s Decision”). The Director’s Decision was made pursuant to Sections 127(b)(iii) and 127(c) of the *Consumer Protection Act* RSA 2000, c. C-26.3 (the “CPA”).
8. Mr. Leney currently operates an automotive detailing business. The licence application at issue in these proceedings was for the business activity of Mobile and Specialty Service Repairs for his company Alpha Kustoms Inc.
9. In her opening submissions, Counsel for the Director argued that the Appellant was unsuitable for licensure at this time because he is:
 - (a) facing serious criminal charges; and
 - (b) he failed to be forthcoming about those charges during the licence application process.
10. The Director’s Decision also described a concern regarding the Appellant’s financial ability to operate a business. However, counsel for the Director advised at the outset of the hearing that this was a tertiary issue and that the primary issues are as set out in paragraph 9 above. It was AMVIC’s position at the Appeal Hearing that Mr. Leney’s licence application should not be declined solely on the basis of the financial viability of his business.
11. Pursuant to s. 179(8) of the CPA, this appeal is a new trial of the issues that resulted in the Director’s Decision. Pursuant to s. 179(6) of the CPA the Appeal Board may confirm, vary or quash the Director’s Decision.

The Legislation

12. The relevant legislation provisions from the *CPA* are as follows:

Application for licence

126(1) A person who wishes to be licensed or to have a licence renewed under this Act must submit to the Director

- (a) an application on a form established by the Director,
- (b) any additional information that is requested by the Director, including a criminal record check or authorization to obtain a criminal record check,
- (c) the fee established under the regulations, and
- (d) if the regulations require a security or payment into an assurance fund approved by the Director to be submitted in respect of the class of licence applied for, a security or proof of payment into the assurance fund that meets the requirements of the regulations.

(2) The application and other information submitted under subsection (1) must, on the request of the Director, be verified by affidavit or in another manner that is satisfactory to the Director.

(3) A person who makes a false statement of fact or misrepresents any fact or circumstance in any application or document submitted to the Director under this Act commits an offence.

Refusal, suspension, cancellation, terms

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.

Exhibits

13. The following documents were entered as Exhibits at the Appeal Hearing:

Exhibit # Description

- | | |
|---|---|
| 1 | Alpha Kustoms Inc. Application Report - Licensing |
| 2 | Summary of Charges |

Evidence presented by the Director

14. The Director called one witness - Yoneke Alexander who is the Manager of Licensing for AMVIC and has held that position for the last 2 years. She previously held the position of licensing supervisor at AMVIC for 5 years. Ms. Alexander will be referred to throughout this decision as the Manager of Licensing.

General Licensing Procedure

15. The Manager of Licensing testified as to the process of licensing applications in general by AMVIC. AMVIC business licensing applications are accessible on the AMVIC portal. There is a six step online process. One of the sections that a licensee completes online is the Eligibility Section which contains eight questions. The first question is as follows and from AMVIC's perspective this question is critical to the application process:

Have you ever been convicted and/or found guilty of an offence under any law in force in Canada or elsewhere and/or are there any charges pending and/or outstanding warrants. Make sure to include all conditional discharges, absolute discharges and/or stayed charges.

If you have answered 'Yes', please provide details outlining each charge/conviction.

AMVIC does a very thorough background check on all applicants.

If you have received a record suspension, formerly known as a pardon, from the Parole Board of Canada you are not required to provide information regarding those convictions.

16. Throughout this decision the above question will be referred to as the "Online Question on Convictions/Charges".
17. The completed online application is received by the AMVIC licensing department. A number of searches are then performed including a Canadian Police Information Centre search (also known as a CPIC search) to determine if the applicant has a criminal record and a Justice Online Information

Network (“JOIN”) search, the information from which includes whether the applicant has any outstanding criminal charges.

18. The search results are compared to the applicant’s responses on their licensing application. In terms of any discrepancies between an applicant’s online responses and the CPIC and JOIN search results, AMVIC is assessing the honesty and integrity of the applicant. The Manager of Licensing testified that this is important because consumers in the motor vehicle industry are vulnerable.
19. A criminal record, or outstanding criminal charges, do not automatically result in a licensing disqualification. Criminal convictions and outstanding charges are assessed by AMVIC using the criteria of severity, number and recency.
20. AMVIC staff will bring any concerns arising from the searches to the attention of the Manager of Licensing. She then determines whether an application report should be submitted to the Director. Upon receipt of an application report it is then up to the Director whether to conduct an administrative review, which normally involves a face to face meeting with the licence applicant. If an administrative review is held, then upon completion of that review the Director determines whether to issue the licence or not.

Licensing Application Process for Kurtis Leney/Alpha Kustoms Inc.

21. The Manager of Licensing explained that the first and second pages of Exhibit 1 is the report prepared by the AMVIC Team Lead of Licensing and contains the recommendation of the Team Lead for a face to face review of Mr. Leney. There is a space for the Manager of Licensing to sign off on this.
22. The sixth page of the Exhibit 1 Licensing Report is a summary of the Eligibility questions and answers from Mr. Leney’s online licensing application. The Manager of Licensing explained that for internal administrative purposes these questions reflect a summarization of the online version of the questions.
23. The first Eligibility Question is summarized as: “a. been convicted of an offence under any law?”. The Manager of Licensing explained that this was a summary of the Online Question on Convictions/Charges.

24. Exhibit 1 reflects that Mr. Leney's answer to the Online Question on Convictions/Charges was "yes" with his description being "Had drivers license issues for driving to [sic] much with my learners". This description would correspond to the direction in the Online Question on Convictions/Charges to provide the details of each charge/conviction.
25. The word "yes" is circled in handwriting on Exhibit 1 because it did not correlate with the JOIN search that AMVIC performed on Mr. Leney, which revealed that Mr. Leney had an additional five outstanding charges including two charges of assault with a weapon.
26. Counsel for the Director sought to enter a one-page document called "Summary of Charges" as Exhibit 2. This is a summary of the JOIN search conducted by AMVIC. Mr. Leney initially objected to this Exhibit being entered on the basis that he felt that the charges listed were not accurate because he felt that some of them were going to be withdrawn. The Manager of Licensing was able to perform a JOIN search during the hearing and testified that none of the charges had been withdrawn. Mr. Leney ultimately confirmed at the hearing that the information on the Summary of Charges sheet was accurate as of the hearing date. The document was entered as Exhibit "2".
27. Exhibit 2 states the following:

Summary of Charges

Charges arising from March 20, 2020

- s. 267(A) CC x 2 – Assault with a weapon (Baton)
- s. 266 CC – Assault
- s. 88(1) CC – Carry a weapon (Baton) for the purpose of committing an offence.
- s. 90(1) CC – Conceal a weapon (Baton) while not being authorized to carry a concealed weapon.

Awaiting Trial on all charges – set for August 5, 2021

Traffic Ticket from November 6, 2019

94(2) TSA – driving while unauthorized.

Trial set for court on August 26, 2021.

28. As part of her review of the Team Lead's recommendation for a face to face review with Mr. Leney, the Manager of Licensing reviewed the JOIN search, which also revealed that Mr. Leney was subject to an Undertaking with conditions regarding the assault charges.
29. The assault charges raised a concern for the Manager of Licensing because: (a) assault with a weapon was a serious charge; and (b) there were five charges that arose from an alleged March 20, 2020 incident, such that the charges were recent. She felt that even if there was ultimately no jail time attached to these charges, from a licensing perspective charges of this nature might require the passage of sufficient time with no further confrontations with the law before it would be appropriate to issue a licence.
30. The Manager of Licensing testified that she would not have had the same magnitude of concern in terms of Mr. Leney's outstanding charges if the only charge that the JOIN search had revealed was the driving while unauthorized charge under the *Traffic Safety Act*. This was because Mr. Leney had declared that charge on his online application, and because it is a charge of a less serious nature.
31. The Manager of Licensing was concerned that Mr. Leney had not answered the question about his charges honestly. This was a red flag for her.
32. The Manager of Licensing agreed with the recommendation of the Team Lead of Licensing and signed off on the recommendation on the second page of Exhibit 1 for a face to face review of the applicant Mr. Leney. That recommendation then went to the Director.
33. There are some handwritten corrections to the information on the first page of Exhibit 1 that were made by the Director. For example, the typewritten reference to Mr. Leney's "recent conviction" is indicated by the Director to be "no conviction but o/s unresolved charges before the Court".

September 2, 2020 Administrative Review (the "Administrative Review")

34. The Director accepted the Manager of Licensing's recommendation for a face to face review of Mr. Leney and therefore held an Administrative Review of Mr. Leney's application on September 2, 2020. Because of the COVID-19 Pandemic this was not a face to face meeting but rather the meeting was conducted via telephone call between the Director, Mr. Leney and the Manager of Licensing.

35. The Manager of Licensing testified that at the Administrative Review the Director asked Mr. Leney if he had a criminal record. Mr. Leney answered no, except for driving too many times with his learner's licence. He then asked Mr. Leney if he had any matters before the Courts. Mr. Leney responded no, except for his learner's licence issue. Mr. Leney did not disclose the assault charges. Upon further questioning from the Director Mr. Leney then acknowledged the assault charges. The Manager of Licensing testified at this appeal hearing that at the Administrative Review Mr. Leney acknowledged to the Director that the charges were serious and could possibly result in jail time if he was convicted. Mr. Leney described to the Director the circumstances of the alleged March 20, 2020 incident and as well discussed that he was subject to conditions related to charges.
36. The Manager of Licensing testified that during the administrative review the Director had to probe Mr. Leney a number of times to get a straightforward answer.
37. Upon questioning at this appeal hearing by Mr. Leney the Manager of Licensing testified that Mr. Leney told the Director that he was confused by the Online Question on Convictions/Charges. The Manager of Licensing testified that this question is a lengthy question and that this online question could therefore have been confusing for Mr. Leney.

Evidence of Kurtis Leney

38. Mr. Leney denied that he had been dishonest. He testified that he is not good at filling out paperwork and that when he filled out the application he was not sure of the answers to some of the questions. He testified that he spoke to someone at AMVIC and was told to leave answers blank if he did not understand the question and that leaving an answer blank would lead to him having a conversation with the Director, during which things could be clarified.
39. Mr. Leney testified that in terms of answering the Online Question on Convictions/Charges he did not understand what the question meant about charges pending. He testified that since he had not been convicted of any of the charges from the March 20, 2020 incident he did not need to list them. In response to a question from the Appeal Board that in terms of the Administrative Review the Director had asked him whether he had any matters before the Courts, Mr. Leney's initial response was that he has

difficulty filling out forms. He then testified that if this was an oral question he did not understand it. He also testified that he felt rushed during the Administrative Review and was having family problems at this time, although he did not provide any details of that at this appeal hearing.

40. Mr. Leney feels that he was open and honest with the Director but that the Administrative Review phone call with the Director was rushed to the extent that he felt he was being mistreated. He testified that he has ADHD and that when he feels rushed he can have difficulty hearing things and has to ask for things to be repeated.
41. Mr. Leney testified that the Administrative Review was wrongly focused because the Director did not spend time discussing Mr. Leney's competencies to run a business. He feels that the mandate for AMVIC is to ensure that customer needs are taken care of. Mr. Leney feels confident that he can do that and that the Administrative Review should have focused on his business experience and competencies.
42. Mr. Leney spent a good portion of his testimony describing to the Appeal Board his abilities and experience as a business owner. A number of his family members operate businesses and he has learned a great deal from them. He testified that his automotive detailing business is a successful one such that he has a secure business foundation to build on. His evidence was that he knows how to do paperwork. He has an accountant and is in the process of retaining an experienced bookkeeper. He presently engages a full-time employee and three part-time employees. He is able to secure all of the necessary equipment to permit him to operate a successful business. He testified that he provides excellent customer service and meets and exceeds customer expectations. He has plans in place for advertising and marketing. He has good shop space arranged and has set up space for his customers to relax and enjoy complimentary refreshments. He has received recognition through a local award.
43. Mr. Leney also testified about the circumstances of the alleged March 20, 2020 incident. He had an on-going dispute with a family and the family had previously threatened him. During a walk with his partner he was attacked by this family. He had been carrying a baton on this walk because the area he lives in has bears and coyotes. An adult was injured from coming at Mr. Leney. Mr. Leney understands that there have been discussions with the Crown in terms of options going forward with these charges and that not all

of them may proceed to trial. At this point he does not think the outcome will involve any jail time.

Closing Submissions of the Parties

The Director's Submissions

44. Counsel for the Director indicated that AMVIC acknowledges that Mr. Leney is innocent until proven guilty but that he is facing serious criminal charges that include the assault of another person. AMVIC's position is that the presence of these charges raise public safety concerns and are sufficient to deny Mr. Leney a licence and that Mr. Leney can re-apply for a licence depending on the outcome of the criminal charges. It was submitted that public confidence and public perception require that Mr. Leney's licence application be denied. The public would be surprised if any regulator would grant a person who is facing serious criminal charges the privilege of participating in this industry and that AMVIC should not be inviting people with these types of concerns into the industry, as this harms the integrity of the automotive industry. It was submitted that the general public would see little difference between a person being convicted of a serious offence as opposed to being charged with a serious offence.
45. Counsel for the Director also argued that AMVIC must be able to rely on licensees to be honest and to act with integrity. There are thousands of AMVIC licensees such that it is impossible for AMVIC to pro-actively regulate every licensee. Instead AMVIC has a goal of inspecting a licensee's business every 5 years and otherwise works on a complaint basis. The result is that consumers are vulnerable in this industry and need to be protected. Misrepresentation by a licence applicant presents a concern. Counsel pointed out that section 6 of the *Consumer Protection Act* and section 12 of the *Automotive Business Regulation A.R. 192/99* (the "ABR") codify the need to protect the public from misrepresentation and from fraud.
46. Counsel for the Director also argued that one of the objects of the legislation is also to protect the integrity of the automotive industry as a whole. With respect to Mr. Leney's online response to whether he had any convictions or charges pending, he was given the benefit of the doubt by virtue of AMVIC holding the Administrative Review when they discovered a discrepancy between his answer to the Online Question on Convictions Charges and the information from the JOIN search. It was submitted that if Mr. Leney did not know if he needed to disclose all of his charges or matters before the Courts

the choice that would have best demonstrated his integrity and honesty at the Administrative Review would have been to fully disclose at the outset of the Director's question about matters before the Courts. Instead, Mr. Leney was only forthcoming at the Administrative Review when the fact of the charges arising from the March 20, 2020 incident was put directly to him. Moreover, if Mr. Leney did not understand the difference between charges and convictions, the Director's question as to whether he had any matters before the Courts should have solicited a more forthcoming response.

The Appellant's Submissions

47. Mr. Leney submitted that the purpose of both AMVIC and the *CPA* is to ensure that businesses are properly serving the public and that customers of the automotive industry are properly taken care of by people who are properly running their business and providing satisfactory work. He has the foundation for an excellent business.
48. Mr. Leney also submitted that he should not be treated as though he has already been convicted of the assault charges. He feels optimistic that the charges will be resolved in a way that will be favourable to him.

DECISION

49. Section 127(b)(iii) of the *Consumer Protection Act* provides that the Director can refuse to issue a licence to an applicant when the applicant furnishes false information or misrepresents any fact or circumstance to an inspector or to the Director. Section 127(c) permits the Director to refuse to issue a licence to an applicant when, in the opinion of the Director, it is in the public interest to do so.
50. The Appeal Board will address section 127(b)(iii) first.
51. The Appeal Board finds that Mr. Leney's licence application can be denied under s. 127(b)(iii) in terms of his failure to tell the Director about outstanding charges when he was first asked by the Director at the Administrative Review whether he had any matters before the Courts.
52. The Appeal Board has difficulty understanding the relevance of Mr. Leney's evidence that he was told by someone at AMVIC to leave on-line application answers blank if he did not understand the question. Mr. Leney did not leave the Online Question on Convictions/Charges blank. He answered "Yes" to

that question but went on to describe only the driving matter. The evidence that the Appeal Board accepts regarding a driving matter is as found in Exhibit 2, which is that Mr. Leney had a charge under the *Traffic Safety Act* that had arisen from an incident approximately 8 months prior to his licensing application.

53. In terms of Mr. Leney's ability to fill out paperwork, the Appeal Board notes some contradiction in his evidence. He testified that in his business context he knows how to do paperwork, but testified that in the licensing application context that he is not good at filling out paperwork. Giving Mr. Leney the benefit of the doubt that he found the Online Question on Convictions/Charges confusing, the issue becomes not whether he left this answer blank (he did not), but how fulsome he was in responding to the question put to him by the Director at the Administrative Review as to whether he had any matters before the Courts.
54. As indicated above, when asked by the Appeal Board at the hearing about his response to the Director's question of whether he had any matters before the Courts Mr. Leney's evidence was that if he was asked the question at the Administrative Review he did not understand it.
55. In terms of whether Mr. Leney was asked the question of whether he had any matters before the Courts, the Director of Licensing was certain in her evidence that Mr. Leney was asked this question and the Appeal Board accepts her evidence.
56. In terms of understanding the Director's question about matters before the Courts, the wording of the question seems to be straightforward.
57. Mr. Leney's evidence was that he believed he was meeting with the Director to clarify matters from the online application. His evidence was that he had been confused by the Online Question on Convictions/Charges when he responded to it and did not know what he was supposed to include in his answer. To the extent that Mr. Leney required clarification as to what he needed to disclose, he therefore understood that the Administrative Review presented him with the opportunity for that. When Mr. Leney was asked by the Director about matters before the Courts, the charges that arose from that March 20, 2020 incident almost certainly had to have been on his mind, given the date that incident occurred and the nature of this incident, at least as described to the Appeal Board. There is no evidence that Mr. Leney took

the opportunity to ask the Director for clarification as to what was meant by his question about “matters before the Courts” before he gave his answer. The impression left is that when Mr. Leney answered this question from the Director he simply was not forthcoming about the assault charges until it became clear to him that he had to be.

58. In terms of Mr. Leney’s evidence that he has ADHD that makes it difficult to hear things when he is rushed and that he has to ask for things to be repeated, the Appeal Board notes that he gave no evidence that he did not actually hear the question from the Director, or that he asked that the Director repeat the question about matters before the Courts.
59. The Appeal Board finds that Mr. Leney’s failure to disclose his outstanding assault charges until specifically asked about them by the Director at the Administrative Review amounted to a misrepresentation of the fact of his outstanding assault charges.
60. Addressing s. 127(c) of the *Consumer Protection Act* next, the Appeal Board also finds that Mr. Leney’s licence can also be denied under this public interest legislative provision.
61. Both the *CPA* and the *Automotive Business Regulation (“ABR”)* inform as to what is in the public interest. By virtue of the wording of section 6 of the *CPA* and section 12 of the *ABR* those legislative provisions are aimed at the protection of consumers who might be vulnerable to unfair practices. Specific to the facts of this case, sections 6(4)(a) and (b) of the *CPA* seek to protect consumers from those who might mislead them. Section 12(a) of the *ABR* does the same. Accordingly, AMVIC is justified in applying and assessing standards of being forthcoming and honest at the licensing stage because it is in the public interest that this be done so that those who may be seen to not meet certain standards of conduct are not granted a business licence. Accurate disclosure of information is part of the conduct required of a licensee. Failure to accurately disclose important information at the licensing stage raises a concern in terms of post-licensing conduct and the public interest in protecting vulnerable consumers.
62. The public interest also includes the public having trust and confidence in the automotive industry and those who are licensed to operate in this industry. This speaks not only to Mr. Leney’s outstanding assault charges but also to inaccurate disclosure at the Administrative Review. Public trust and

confidence in the automotive industry can be undermined when a business licence is granted in these circumstances.

63. In addressing the fact of Mr. Leney's outstanding assault related charges, the Appeal Board agrees that he is innocent until proven guilty. The Appeal Board also agrees that charges of assault with a weapon can be serious and can raise public interest concerns, including the protection of the public in a licensing context.
64. While the Appeal Board is not without concern regarding the public interest and licensing in the face of Mr. Leney's assault charges, the Appeal Board does note that there can be varying degrees and circumstances of this offence. In Mr. Leney's case the five assault related charges stem from an alleged single incident. Mr. Leney's evidence about the surrounding circumstances of this alleged incident is that he had become involved in a circumstance where there was on-going antagonism with another family. There is no other recent history of charges (or convictions) of a serious nature and therefore no pattern of criminal convictions or charges.
65. Notwithstanding that assault charges can be serious, and notwithstanding that Mr. Leney's assault charges were recent to his licensing application, in this case, if the Appeal Board were addressing only the fact of Mr. Leney's outstanding assault related charges the Appeal Board may have considered whether some form of conditional licence might have been appropriate. However, the findings of the Appeal Board arising from Mr. Leney's failure to be forthcoming at the Administrative Review about his outstanding assault charges, in conjunction with the fact of those outstanding criminal charges, leads the Appeal Board to decide to confirm the September 3, 2020 decision of the Director to not grant the Automotive Business Licence application for Alpha Kustoms Inc.
66. The Appellant is not precluded from entering the automotive industry forever, and can make another licensing application to AMVIC in the future at the appropriate time.

DECISION DATED June 3, 2021

Signed by:



Louise Redmond, Appeal Board Chair



Joanne Pawluk, Appeal Board Member



Chelsey Hammett, Appeal Board Member