

# Court of King's Bench of Alberta

Citation: YTK Management v Director of Fair Trades, 2024 ABKB 310

Date: 20240528  
Docket: 2301-09441  
Registry: Calgary

Between:

**YTK Management and Consulting Ltd., and John Bachynski**

Applicants

- and -

**The Director of Fair Trading, as delegated to the Alberta Motor  
Vehicle Industry Council, and Alberta Consumer Services Appeal Board**

Respondents

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## Reasons for Judgment of the Honourable Justice Eleanor J Funk

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### I. Overview

[1] The Appellants, YTK and Bachynski, operated an automotive wholesale business, licenced under *AMVIC* (the Alberta Motor Vehicle Industry Council). Under the terms of its licence, the Appellants were permitted to carry on business selling, consigning, and exchanging vehicles with other automotive businesses, along with other permitted activities.

[2] In February 2022, an *AMVIC* inspector commenced an investigation, under the *Consumer Protection Act*, in relation to the Appellant business and potential breaches of the *Act*. As part of this investigation, the inspector, relying on s 132(2) of the *Act*, requested the Appellants provide certain business records.

[3] In response, the Appellants delivered some, but not all of the requested materials. The inspector indicated the response did not meet her request for records and, again, requested the

production of records, again citing s 132(2) as authority for this request. The Appellants refused to produce the requested documents.

[4] In December 2022, the Director of Fair Trading issued a Director's Order, under s 157 of the *Act*, in which the Director ruled the Appellants had failed to comply with s 132(2) of the *Act* and ordered production of the records.

[5] In January 2023, the Appellants appealed the Director's Order to the Alberta Consumer Services Appeal Board. One of the grounds alleged was that s 132(2) of the *Act* did not authorize *AMVIC* to compel production of records as part of an ongoing investigation.

[6] In advance of the hearing before the Board, the Appellants sought to qualify a witness as an expert for the purpose of giving evidence about *AMVIC*'s practices and procedures. The Board refused to qualify this proposed witness.

[7] In June, the Board released its Order in which it held *AMVIC* was engaged in an "administrative investigation". The Board affirmed the Director's Order, holding the Appellants were obligated, under s 132(2), to cooperate with this investigation.

[8] The Appellants now appeal the Board's decision to this Court. The primary issues for me to determine in this appeal are:

1. Whether the Board erred in its interpretation of s 132(2) of the *Act*; and
2. Whether the Board erred in refusing to qualify the Appellants' proposed expert.

[9] For the reasons that follow, the appeal is allowed.

## II. Statutory Framework

[10] The *Consumer Protection Act* acknowledges, in its Preamble, that businesses that comply with legal rules should not be disadvantaged by competing against those that do not. The *Act* goes on to provide means by which businesses may be inspected and investigated, to ensure compliance with these legal rules.

[11] Section 104 provides that no person may engage in a designated business unless the person holds a licence under the *Act* that authorizes the person to engage in that business.

[12] Section 132(1) states that every holder (and former holder) of a licence must create and maintain complete and accurate financial records for at least 3 years and other records and documents described in the regulations.

[13] Subsection (2) requires licence holders (and former licence holders) to make records available for inspection by an inspector at a place in Alberta and at a time specified by the inspector. (emphasis added)

[14] Section 161 states that anyone who does not comply with ss 104 and 132, and other sections, is guilty of an offence.

[15] Section 164 provides that any person convicted of an offence is liable to fines and/or imprisonment.

[16] Part 14 of the *Act* deals with remedies and enforcement.

[17] Section 144 states that an inspector who enters any place must, on request, identify him/herself as an inspector and explain the purpose of the visit.

[18] Section 145 states that an inspector may enter the business premises of a regulated person to conduct an inspection to determine if there is compliance with the *Act* and its regulations. Subsection (3)(b) provides that an inspector may, in the course of an inspection, request a person who is working at the business to provide any books, records or other documents to determine if there is compliance with the *Act*. Subsection (6) provides that licensees and persons working in business premises must cooperate with an inspector acting under the authority of this section.

[19] For the purpose of enabling an inspector to conduct an inspection, section 146 allows the Director to apply to this Court for an order requiring the production of documents for an inspector's examination and to otherwise cooperate with an inspection.

[20] Subsection (2) allows this Court to grant such an Order if satisfied on evidence under oath by the Director that there are reasonable grounds to believe the inspection is reasonable, the licensee or other person has not cooperated, or likely will not cooperate with the inspection, and the order is appropriate in the circumstances.

[21] Section 147 provides that where an inspector has reasonable grounds to believe that a person has committed an offence under the *Act* or regulations, the inspector may request permission to enter the business, after explaining their wish to enter for the purpose of carrying out an investigation.

[22] If granted access to enter the business *and* granted permission to examine books and records, subsection (2) allows inspectors to inspect, examine and make copies of or temporarily remove books, records or other documents that are relevant to determining if an offence has been committed under the *Act* or regulations.

[23] For the purpose of determining whether an offence has been committed, s 148 allows the Director to apply to this Court for an order requiring the person to produce the books, records and other documents and otherwise to cooperate with the investigation.

[24] Subsection (2) provides this Court may grant such an order if satisfied under oath by the Director that there are reasonable grounds to believe that an offence has been committed and the order is appropriate in the circumstances.

[25] Section 157 allows the Director to issue orders where, in the opinion of the Director, a person is contravening or has contravened the *Act* or regulations. These Director's Orders may direct a person to stop engaging in anything described in the order and take any measures specified in the order to ensure compliance with the *Act* or regulations. Subsection (3) provides that a person who is the subject of such an Order may appeal it under s 179.

[26] Upon receipt of an appeal, the Minister must refer the appeal to an Appeal Board appointed under the *Regulations*. An Appeal Board may confirm, vary, or quash the decision, order or administrative penalty under appeal. Pursuant to s 179(8), an Appeal is a "new trial of the issues that resulted in the decision, order or administrative penalty being appealed."

[27] An Appeal Board has broad discretion regarding how the appeal is to be heard. Section 13 of the *Appeal Board Regulation, A/R 195 / 1999*, provides that the Appeal Board is not bound by the rules of evidence and evidence may be given before it in a manner that it considers appropriate.

[28] A decision of the Appeal Board may be appealed to this Court, pursuant to s 181 of the *Act*. In an appeal under this section, this Court may make any order that an appeal board may make under s 179(6).

### III. Standard of Review

[29] The parties agree that s 181 of the *Act* grants a statutory right of appeal to this Court, without any privative clause. Accordingly, the presumption of a reasonableness standard of review is rebutted. Instead, the appellate standards of review apply: *Canada (Minister of Citizenship and Immigration v Vavilov*, 2019 SCC 65.

[30] Questions of law (including questions of statutory interpretation) are reviewed on a standard of correctness: *Housen v Nikolaisen*, 2022 SCC 33 at para 8. Questions of fact or questions of mixed fact and law, where there is no extricable legal question or principle, are reviewed for palpable and overriding error: *Housen*, at paras 10,19, 26-37.

[31] The parties disagree on the appropriate standard of review in relation to the Board's interpretation of s 132(2) and its application to investigations. The Appellants' position is this is a matter of statutory interpretation, to which the standard of correctness applies. The Respondents take the position this is a question of mixed law and fact, to which the standard of palpable and overriding error applies.

[32] In *Sunray Manufacturing Inc v Alberta*, 2024 ABKB 130, Justice Harris, at paragraphs 48-50, reviewed several post-*Vavilov* decisions in which jurisdictional questions have been considered in situations where there is a statutory right of appeal. Notably, for the purposes of this appeal, in *Al-Ghandi v College of Physicians and Surgeons*, 2020 ABCA 71, the Court held the standards of review on a statutory appeal from an administrative tribunal are the same as those on other appeals; conclusions on issues of law are reviewed for correctness... that includes questions of statutory interpretation, including interpretation of the tribunal's "home statute". (emphasis added)

[33] Against these authorities, I am unable to accept the Respondents' position that interpretation of the *Act* is a matter of mixed law and fact, subject to a deferential standard of review. Instead, whether or not the Board correctly interpreted s 132(2) of the *Act* in upholding the Director's Order is a question of law, reviewable on the correctness standard.

[34] The parties agree that the appropriate standard of review in relation to the Board's decision to not qualify the Appellants' proposed expert is palpable and overriding error. I agree.

### IV. Did the Board err in its interpretation of s 132(2) of the CPA?

[35] The Appellants argue the Board erred in its interpretation of s 132(2) of the *Act* by allowing AMVIC investigators to rely on this section to compel the production of records in the course of an investigation.

[36] The Respondents argue the Board made no error. The AMVIC investigator was conducting an inspection, as opposed to an investigation. Accordingly, the inspector was able to rely on s 132(2) of the *Act* to request the production of records. When the Appellants refused to comply with that request, the Director was authorized to issue a Director's Order to compel production.

#### A. Relevant Law

[37] There is no dispute that the *Act* draws a distinction between "inspections" and "investigations". Each are treated differently under the *Act*, with different powers conferred to inspectors and different obligations on licensees to cooperate with inspectors.

[38] Section 132(2) of the *Act* places a duty on licence holders to make business records available to an inspector for the purpose of an inspection, at any time specified by the inspector. This section includes no authority for inspectors to remove books from business premises and no corresponding authority to compel production.

[39] Sections 144-146 of the *Act* deal with the procedures, including powers of enforcement, when inspectors wish to enter a business to carry out inspections to ensure compliance with the *Act*. Notably, under these sections, inspectors are permitted to enter businesses, at a reasonable time, and request the production of books and records. Inspectors may make copies and temporarily remove books and records to determine if there is compliance with the *Act*. Also under these sections, a licenced person, or person working at the business, must cooperate with the inspector.

[40] By contrast, ss 147-148 deal with procedures, including powers of enforcement, when inspectors are conducting investigations. Under these sections, before entering business premises, inspectors must first have reasonable grounds to believe an offence has been committed *and* request permission to enter the business. That is, when conducting investigations, inspectors no longer have unfettered authority to enter business premises.

[41] If an inspector is granted access to a business premise, the inspector *may* examine the books and records of the business, *if granted permission* to do so. Inspectors may make copies of, and remove, books or records only if first granted permission to do so. In other words, when conducting investigations, inspectors cannot compel production of business records and persons under investigation are not obligated to cooperate with inspectors. If a person does not cooperate, the Director may apply to this Court for an order compelling cooperation.

[42] Acknowledging the heightened penalties, and other consequences, that can flow from being convicted of an offence, the *Act* creates greater procedural safeguards when inspectors are conducting investigations as opposed to carrying out inspections.

### **B. The appeal of the Director’s Order and the Board’s decision**

[43] At the hearing of the appeal of the Director’s Order, the Board received evidence from only the inspector who initially contacted the Appellants and demanded production of its business records.

[44] After receiving this evidence, the Board held the inspector was carrying out an investigation in relation to a possible breach of s 104 of the *Act* (carrying on business without a licence). The Board termed this an “administrative investigation concerning possible violations of the *Act*.”

[45] The Board acknowledged the *Act* gives *AMVIC* statutory authority to conduct inspections and investigations, under ss 144-148. It correctly stated that the *Act* gives *AMVIC* broad authority to enforce the legislation and imposes explicit duties on licensees to respond and produce documents at the request of *AMVIC*.

[46] The Board concluded the Appellants were obligated, under the *Act*, to cooperate with *AMVIC* and to provide to *AMVIC* the requested records. In coming to this conclusion, the Board relied on the “mandatory and unequivocal” language found in s 132(2).

[47] With these findings, the Board confirmed the Director’s Order.

**C. Did the Board err in interpreting s 132(2) of the CPA as authority to compel production of records in the course of an investigation?**

[48] As previously stated, the issue of whether the Board erred in its interpretation of the scope of s 132(2) is a question of law, reviewable on the correctness standard. The answer to this question is found in the principles of statutory interpretation.

[49] The words of an Act are to be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the legislation, its object, and intent: *La Presse inc v Quebec*, 2023 SCC 22 at para 22.

[50] The *Consumer Protection Act* clearly delineates inspections as distinct from investigations.

[51] As noted, inspections can be carried out at any time; investigations must be premised on reasonable grounds to believe an offence has been committed. When carrying out inspections, inspectors are permitted to enter business premises; when conducting investigations, they must first seek, and be granted, permission to enter.

[52] During inspections, inspectors may request production of business records, and may make copies of or temporarily remove books and records from the business. During investigations, inspectors may examine, make copies, or remove books and records only after receiving permission to do so.

[53] Licence holders must cooperate during inspections; there is no corresponding duty to cooperate with investigations.

[54] The Board correctly noted the *Act* provides *AMVIC* with broad authority to enforce the legislation. After referencing ss 144-148 in its decision, the Board did not refer to the *Act*'s distinction between inspections and investigations, nor to the different powers of enforcement available under each.

[55] The Board additionally correctly noted the *Act* contains explicit obligations on licence holders to keep and produce business records and to cooperate with inspections. The Board did not refer to the provisions of the *Act* that impose no such obligation to cooperate with investigations.

[56] The Board found, on the evidence before it, that *AMVIC* was conducting an investigation. With this finding, sections 147-148 of the *Act* were triggered. Under these sections, *AMVIC* did not have authority, at large, to request the Appellants' business records; the Appellants had no obligation to cooperate with *AMVIC*'s investigation. The Board's characterization of *AMVIC* conducting an "administrative investigation" is not found in the *Act* and does not alter the legislative scheme in relation to the conduct of investigations.

[57] When I consider the scheme, intent, and object of the legislation, as reviewed here, I find the Board erred in concluding the Appellants were obligated to cooperate with the *AMVIC* investigation and erred in finding s 132(2) provided authority for that conclusion.

[58] While my decision on the first issue is dispositive of the appeal, I will go on to consider the second issue.

**V. Did the Board err in refusing to qualify the Appellants' proposed expert?**

[59] The Appellants argue the Board erred in refusing to qualify its proposed expert to give evidence in relation to *AMVIC*'s practices and procedures.

**A. Relevant Law**

[60] The parties agree the governing principles in relation to the admissibility of expert evidence are found in *R v Mohan*, 1994 SCC 80. The threshold requirements for the admissibility of expert evidence are:

1. Relevance;
2. Necessity to assist the trier of fact;
3. Absence of an exclusionary rule; and
4. Provided by a properly qualified expert.

**B. The proposed expert evidence and the Board's decision**

[61] The Appellants sought to introduce expert evidence from Ralph Stotschek whose proposed expertise was in the area of "AMVIC practices and procedures in inspections and investigations under the *CPA*".

[62] After reviewing Mr. Stotschek's *CV*, the Board refused to qualify him as an expert, finding there was insufficient evidence of his expertise and that his anticipated evidence would amount to an opinion on the ultimate issue.

[63] After citing the *Mohan* factors, the Board concluded it was not convinced that Mr. Stotschek was an expert respecting *AMVIC* practices and procedures, nor that his evidence was necessary for the Board to reach a satisfactory conclusion.

**C. Did the Board err in refusing to qualify Mr. Stotschek as an expert in AMVIC policies and procedures?**

[64] Great deference is given to the decisions of trial judges to admit expert evidence, as they have the advantage of hearing the evidence and appreciating the dynamics of the particular case before them. Absent an error in principle, appellate courts will be reluctant to interfere with the trial court's decision regarding admissibility: *R v Bilodeau*, 2024 ABCA 149 at para 77, citing *R v DD*, 2000 SCC 43 at para 12.

[65] Mr. Stotschek had worked as a manager of investigation under the *CPA*. The Appellants argued he was capable of providing expert evidence on the standard practices associated with conducting inspections and investigations under the *Act*. The relevance of this evidence, as argued by the Appellants, was that it would assist the Board in understanding the relative roles and responsibilities of *AMVIC* inspectors when conducting inspections as opposed to investigations.

[66] In this appeal, the Appellants argued the refusal by the Board to receive this evidence deprived them an opportunity to respond to the inspector's evidence, and in particular whether she acted in a manner consistent with standard practice.

[67] Mindful of the deference that is owed the Board's determination of whether the proposed evidence was necessary to assist the Board, and in the circumstances of this case, I find the Board made no error regarding the admissibility of this evidence.

[68] When considering necessity, the question is whether the expert will provide information outside of ordinary experience and knowledge of the trier of fact. Such evidence must assist triers of fact by providing special knowledge that an ordinary person would not know. If the decision maker can come to its own conclusions without the help of an expert, then the expert evidence is unnecessary: *Bilodeau*, at para 81; *DD* at para 21; *Mohan* at paras 26,28.

[69] The Board concluded Mr. Stotschek's evidence was not necessary to assist them in reaching a satisfactory conclusion. When I consider the Appellants' argument primarily focused on a proper interpretation of *AMVIC*'s powers under the *Act*, as opposed to whether *AMVIC* followed standard practices, I find the Board made no error in its decision to not admit Mr. Stotschek's evidence.

## **VI. Conclusion**

[70] The Board held *AMVIC* was conducting an investigation into the Appellants' business practices. With this finding, the scope of *AMVIC*'s powers to enforce the legislation were found in ss 147-148 of the *Act*.

[71] Under these sections, *AMVIC* did not have authority to compel the production of documents and the Appellants were under no obligation to cooperate with *AMVIC*. The Director's recourse, in the face of the Appellants' refusal to cooperate, was to seek an Order from this Court to compel cooperation.

[72] Section 132(2) of the *Act* did not authorize *AMVIC* to request the Appellants' business records during its investigation, nor did it compel the Appellants' cooperation in this regard. The Board erred in holding otherwise.

[73] For these reasons, the appeal is allowed; the Director's Order is quashed.

[74] If the parties are unable to agree on costs in relation to this appeal, they may make written submissions to me within 30 days of receipt of these Reasons. Such submissions shall not exceed five (5) typed pages, excluding authorities.

Heard on the 22<sup>nd</sup> day of May, 2024.

**Dated** at the City of Calgary, Alberta this 28<sup>th</sup> day of May, 2024.

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**Eleanor J Funk**  
**J.C.K.B.A.**

### **Appearances:**

Kevin R.E. Pedersen  
for the Applicants

Tracy L. Zimmer  
for the Respondents