



Vehicle Sales Authority  
of British Columbia

**Investigation File #19-02-077**

**Hearing File #19-05-004**

**Neutral Citation: 2019-BCRMD-017**

**In the matter of the *Motor Dealer Act*, R.S.B.C. 1996, c. 316 and  
the *Salesperson Licensing Regulation*, B.C. Reg. 202/2017**

**Re:**

**Justin Kyle Plosz**

Salesperson Applicant

**Registrar's Decision**

**Date and Place of Decision:** October 22, 2019, at Langley, British Columbia

**By way of written submissions**

## **I. Introduction**

[1] Justin Kyle Plosz applies for a salespersons licence. In reviewing his application, the staff of the Vehicle Sales Authority of British Columbia ("VSA") noted the following concerns (the "Concerns"):

- (a) Mr. Plosz's past criminal convictions,
- (b) Mr. Plosz's current (as of the date of applying for a licence) criminal charges to be heard in December 2019, and
- (c) Mr. Plosz's administrative review by the Alberta Motor Vehicle Industry Council (AMVIC), the Alberta agency regulating vehicle dealers and salespersons in that province.

[2] On August 7, 2019, the VSA licensing department served Mr. Plosz a Hearing Notice to review his application which included the Licensing Hearing Report of VSA Compliance Officer Ross Cote, dated April 10, 2019 (the "Licensing Hearing

Report"). The service was by way of email, which email address was provided by Mr. Plosz.

[3] The Hearing Notice advises Mr. Plosz of the VSA's recommendation to the Registrar that he be refused a salesperson licence due to the Concerns. The Hearing Notice also advises Mr. Plosz that he may provide written submissions by September 3, 2019, for the Registrar's consideration. The Hearing Notice advises Mr. Plosz of the Registrar's authority, including to refuse issuing a licence and issuing a ban on Mr. Plosz reapplying in the future. The Hearing Notice also advises Mr. Plosz of his ability to request an oral hearing if he so wished.

[4] It appears Mr. Plosz has not provided any further written submissions and has not requested an oral hearing.

[5] I find Justin Kyle Plosz was served the Hearing Notice and accompanying Licensing Hearing Report in accordance with section 30(b)(iii) of the *Motor Dealer Act* R.S.B.C. 1996, c. 316 ("MDA") and is deemed to have been served by August 10, 2019: section 30.1(b) of the MDA.

## **II. The Legal Principles**

[6] In *Re: Peter Fryer* (December 13, 2013, Registrar, File 13-11-005), affirmed by *Fryer v. Motor Vehicle Sales Authority of British Columbia*, 2015 BCSC 279 (BC Supreme Court), I set out in some detail the various legal principles applied when reviewing an applicant with a criminal record and past conduct of concern. To summarize:

- (a) The paramount concern is the protection of the public from potential risks of harm.
- (b) The desire of someone to be licensed in an industry is an important consideration but yields to the societal need of public protection.
- (c) The person's criminal record must be assessed in context looking at the person's history, any extenuating reasons for the misconduct, any steps to rehabilitate, any signs of remorse, family and community support, support of a prospective employer and a history of good conduct since the criminal convictions.
- (d) Assessing past conduct for suitability to be licensed is not bound by type, time or geography of that conduct. What matters is if the conduct is a concern to the public interest.
- (e) Important considerations are whether the applicant will act with honesty and integrity, act in accordance with the law, and will be governable.

[7] In upholding the Registrar's decision in *Re: Peter Fryer* the B.C. Supreme Court noted:

[23] The Registrar states that the requirement to examine a person's past conduct demonstrates an overarching concern with public safety. Past conduct is the statutory tool by which the Registrar can determine if applicants will be governable, act in accordance with the law and conduct themselves with honesty and integrity. Salespersons are in a position of trust with the buying public who rely on them to give clear and honest information about buying motor vehicles. The public also expects safety to be a priority if taking a test drive with a salesperson. Lastly, integrity is important because salespersons may be privy to customer's confidential personal information including home address and financial information.

- *Fryer v. Motor Vehicle Sales Authority of British Columbia*, 2015 BCSC 279
- Recently applied in *Re: Hassan Mahfouz* (October 11, 2019, File 19-07-001, Registrar) at paragraphs 6-7.

### **III. Discussion on the Conduct of Concern**

#### **(a) Criminal Record**

[8] In 2002, Mr. Plosz was charged and convicted with possession of property obtained by crime under \$5,000. In that same year, Mr. Plosz was charged and fined for failing to attend court as directed. In 2006, Mr. Plosz was charged and convicted for:

- (1) trafficking a controlled substance,
- (2) public mischief, and
- (3) failing to comply with a recognizance (an order).

#### **(b) Criminal Charges**

[9] In 2017, Mr. Plosz was charged with the following:

- (1) Possession of the proceeds of crime,
- (2) Fraud over \$5,000,
- (3) Trafficking in property over \$5,000, and
- (4) Use of a forged document.

[10] In 2018, he was charged with failing to attend court.

[11] In a written statement, Mr. Plosz notes that these charges stem from a vehicle transaction where it is alleged the vehicle being sold was a stolen vehicle. Mr. Plosz stated his new lawyer dealt with the 2018 charge of failing to attend court and had it withdrawn. Mr. Plosz was asked by Compliance Officer Ross Cote to have Mr. Plosz's lawyer provide a letter regarding the 2018 charge being withdrawn and Mr. Plosz's upcoming court dates. There is no such letter in evidence before me.

**(c) AMVIC administrative review**

[12] Compliance Officer Ross Cote conducted an interview of Mr. Plosz on February 19, 2019. During that interview Compliance Officer Ross Cote was told by Mr. Plosz that Mr. Plosz had been a salesperson in good standing with AMVIC, with no issues. Compliance Officer Ross Cote called AMVIC and was advised that Mr. Plosz had an administrative review of his salesperson licence application scheduled for February 26, 2019. A subsequent call to AMVIC on March 6, 2019, determined Mr. Plosz attended the administrative review and his salesperson licence application in Alberta was denied.

[13] In a note to Hong Wong, Manager of Licensing at the Authority, (copy in the Licensing Report) Compliance Officer Ross Cote raises a concern that Mr. Plosz failed to advise that he was scheduled for an administrative review with AMVIC.

**(d) General discussion on the Concerns**

[14] First, I recognize the criminal convictions occurred 15 years (2002) and 13 years (2006) ago, respectively. However, these must be taken into context with pending criminal charges of a similar nature, which are unproven charges. I note the failing to comply with a recognizance in 2006 and failing to attend court in 2002 raises concerns of Mr. Plosz's governability – willingness to obey lawful orders of his regulator. Nothing in the evidence indicates Mr. Plosz accepts responsibility for this past conduct or any indication of remorse or insight. When asked to provide a statement of his criminal convictions, Mr. Plosz wrote only of his pending charges.

[15] The 2017 charges have similarities to the 2002 convictions – being in possession of and trafficking in property which were the proceeds of crime. This could indicate a continued pattern of criminal activity if the 2017 charges are proven. Mr. Plosz says the 2018 charge of failing to attend court were withdrawn, yet they remain on his criminal record. Mr. Plosz was asked for his lawyer to provide a letter about the withdrawn 2018 charges, but there is no such letter in evidence.

[16] I also recognize that Mr. Plosz has stated he was licensed with AMVIC from 2011 to 2017. Mr. Plosz did say, paraphrasing, that he never had an issue with AMVIC. However, AMVIC found it necessary to refuse him a salesperson licence in 2019. Again, Mr. Plosz did not advise the VSA of AMVIC's scheduled administrative review of his salesperson application which was occurring 7 days after his interview with Compliance Officer Ross Cote. The fact that Mr. Plosz attended that administrative review indicates he knowingly failed to advise the VSA of this review.

[17] This failure to advise the VSA of his pending AMVIC review shows a willingness by Mr. Plosz to withhold important information from a regulator. As I noted recently in *Re: Hassan Mahfouz*, a regulator needs timely, forthright and fulsome information from those it regulates in order to carry out the regulator's mandate of protecting the public interest. A willingness to withhold information is concerning and affects my consideration of whether Mr. Plosz will act with honesty and with integrity and be governable.

- See *Registrar, Motor Vehicle Dealers Act v Vernon*, 2016 ONSC 304 (Ontario Superior Court of Justice, Divisional Court).

[18] The 2017 charges stem from a vehicle transaction which is directly related to this industry. If proven, they are similar in nature to Mr. Plosz's 2002 criminal convictions. If proven, this would suggest a continued pattern of criminal activity. If proven, those 2017 charges would be very concerning to the public if the VSA grants a licence allowing Mr. Plosz to work in the industry.

[19] Given all the above, I would refuse to grant Mr. Plosz a salesperson licence at this time. His past criminal convictions, his being refused a salesperson licence in Alberta, and his failing to advise the Authority of his then forthcoming administrative review by AMVIC indicates he cannot be trusted to act with honesty and integrity, and this also raises a concern about his governability. These reasons would suffice to refuse him a salesperson licence at this time: *Registrar, Motor Vehicle Dealers Act v Vernon*. It is unnecessary for me to consider his outstanding criminal charges to arrive at this decision.

### **(e) Future Applications from Justin Kyle Plosz**

[20] I may prohibit a person from applying for a salesperson or any other licence or registration under the *Motor Dealer Act* either indefinitely or for a time.

- *Pugliese v. Clark*, 2008 BCCA 130 (BC Court of Appeal) at paragraphs 30 – 32

- Confirmed in *Best Import Auto Ltd. v Motor Dealer Council of British Columbia*, 2018 BCSC 834 (BC Supreme Court) at paragraphs 60-61
- Applied in *Re: Hassan Mahfouz* (October 11, 2019, File 19-07-001, Registrar)

[21] Mr. Plosz's failure to advise the VSA of his administrative review in Alberta is most recent and concerning. Mr. Plosz has not cooperated with the VSA's requests for information of the AMVIC administrative review. The VSA needs to know the details of AMVIC's decision so it can do its own review. This requires Mr. Plosz's cooperation. This is recent behaviour of hiding information from a regulator or proposed regulator. There needs to be some history of good behaviour on the part of Mr. Plosz. That history must show he can be trusted to be forthright and honest with his regulator, can be trusted to deal with the public and not be a concern to the public interest within the motor vehicle sales industry.

[22] At this point, I find refusing to receive an application for registration or a licence from Justin Kyle Plosz for a period of three years, subject to the 2017 criminal charges having been addressed, is appropriate. In considering the amount of time, I have considered the decisions in: *Re: Peter Fryer*; *Re: Hassan Mahfouz* and *Re: Anwar Badshah* (April 1, 2014, File 09-71010, Registrar).

[23] I find Mr. Plosz's past conduct less concerning than that of Peter Fryer and Hassan Mahfouz. Mr. Plosz's conduct is more like Anwar Badshah who was convicted of fraud, had been recently disciplined by a regulator and who withheld information on his salesperson renewal application to the VSA. Mr. Badshah had his salesperson licence cancelled and was prohibited from applying for a licence or registration for three years.

[24] The Registrar will not accept an application for licensing or registration under the *Motor Dealer Act* from Justin Kyle Plosz for a period of three years from the date of this decision – October 22, 2022 – subject to the 2017 criminal charges having been addressed.

[25] Whether or not Mr. Plosz would be granted a licence or registration at any future time will be dependent on the facts that exist at the time of any future application. Among other things, Mr. Plosz will have to show a history of good conduct, of being truthful and forthright in providing information, that he will act with honesty and integrity, that he will be governable and will abide by the law.

#### **IV. Decision Summary**

[26] Justin Kyle Plosz is denied a salesperson licence.

[27] The Registrar will not consider an application for registration or for licensing under the *Motor Dealer Act* from Justin Kyle Plosz for a period of three years from the date of this decision – October 22, 2022.

[28] Whether Mr. Plosz will be granted any future licence or registration will depend on the facts that exist at the time of any future application.

#### **V. Review of Decision**

[29] If there is disagreement with this decision, it can be reviewed by requesting the Registrar conduct a reconsideration of this decision. A request for reconsideration must be made in writing within 30 days of receiving these reasons and must:

- (a) identify the grounds or reasons for requesting a reconsideration, and
- (b) be accompanied with new evidence, as defined by the *Motor Dealer Act*, to support why the decision should be canceled or varied.

- See sections 26.11 and 26.12 of the *Motor Dealer Act*.

[30] A request for a reconsideration may be directed to my assistant Preet Jassal at [preet@mvsabc.com](mailto:preet@mvsabc.com).

[31] This decision may also be reviewed by petitioning the B.C. Supreme Court for judicial review pursuant to the *Judicial Review Procedure Act*. Such a petition must be filed with that court within 60 days of the date of this decision: section 7.1(t) of the *Motor Dealer Act*.

“original is signed”

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Ian Christman, J.D.  
Registrar of Motor Dealers