

ALBERTA CONSUMER SERVICES APPEAL BOARD

IN THE MATTER OF AN APPEAL BY JOHN BACHYNSKI AND YTK MANAGEMENT AND CONSULTING LTD. PURSUANT TO SECTION 179(1) OF THE *CONSUMER PROTECTION ACT* RSA 2000 c. C-26.3 (“the CPA”)

AND

IN THE MATTER OF A DIRECTOR’S ORDER ISSUED BY THE ALBERTA MOTOR VEHICLE INDUSTRY COUNCIL (AMVIC) UNDER SECTION 157(1) OF THE CPA ON DECEMBER 2, 2022.

DECISION of the APPEAL BOARD

APPEAL BOARD

Michael Swanson, KC. (Chair)
Dierdre Mullen (Member)
Kent Pallister (Member)

PARTIES & LEGAL COUNSEL

- Ram Sankaran, legal counsel for YTK Management and Consulting Ltd. and John Bachynski (“the Appellants”)
- Paula Hale, legal counsel for the Director of Fair Trading (“the Director”), as delegated to the Alberta Motor Vehicle Industry Council (“AMVIC” or “the Respondent”)

DATE DECISION PRONOUNCED

June 18, 2023

NATURE OF APPEAL

1) On December 2, 2022, the Registrar of Alberta Motor Vehicle Industry Council (“AMVIC”), acting as the Director issued an Order (“Director’s Order”) pursuant to Section 157(1) of the CPA compelling the Appellants to provide copies of all business records of YTK Management and

Consulting Ltd. (“YTK”) for the period August 1, 2021 – April 1, 2022, to AMVIC not later than January 6, 2023.

2) On January 4, 2023, the Appellants filed notice of their appeal of the Director’s Order to this Appeal Board.

3) The grounds provided for the appeal are that AMVIC and its officers have:

- a. Breached the Appellants’ rights to procedural fairness by failing to provide information as to the investigation or reason why the Appellant’s business records are required;
- b. Violated the Appellants’ legal rights under the *Canadian Charter of Rights and Freedoms*;
- c. Ordered the Appellants to provide business records to which AMVIC is not entitled under the *Consumer Protection Act*;
- d. Such other grounds as the Appellants may argue at the Appeal of this matter once AMVIC has produced its full record.

4) The Appellants are seeking an Order allowing the appeal and declaring the Director’s Order of no force and effect.

5) The Respondent is seeking an Order that confirms the Director’s Order and compels production of the records requested by AMVIC.

6) The Appeal Board acknowledges receipt of Appeal Briefs and written submissions from both parties.

7) Section 179(6) of the CPA provides that the Appeal Board may confirm, vary or quash the decision that is being appealed.

DECISION

8) For reasons that follow, the Appeal Board confirms the Director’s Order compelling the Appellants to provide copies of business records to AMVIC for the period specified therein and it is hereby ordered that this shall be done not later than August 1, 2023.

JURISDICTION AND STANDARD OF REVIEW

9) By a Director’s Order issued pursuant to Section 157(1) of the CPA and dated December 2, 2022, AMVIC ruled that the Appellants had failed to provide business records for inspection by

an inspector in Alberta at a place specified by the inspector in contravention of Section 132(2) of the CPA. The Director's Order further directed that the Appellants must comply not later than January 6, 2023.

10) On January 4, 2023, the Appellants appealed this decision pursuant to Section 179(1) of the CPA. The Appellants provided a notice of appeal as required under Section 4 of the *Appeal Board Regulation Alta Reg/1999* ("the APR").

11) On January 24, 2023, this Appeal Board was appointed pursuant to Section 179(2) of the CPA.

12) On April 4, 2023, the Appeal Board provided a Notice of Virtual Hearing to the parties pursuant to Section 6 of the APR.

13) In accordance with Section 179(8) of the CPA this appeal is a new trial of the issue of whether the Director has authority under Section 132(2) of the CPA to compel business records from the Appellants. The Appeal Board must consider the totality of the evidence and decide whether the Director's Order was properly issued.

14) The Appeal Board may confirm, vary or quash the Director's Order in accordance with Section 179(6) of the CPA.

THE PROCEEDINGS

15) On February 3, 2023, a prehearing telephone conference was held to address any preliminary issues and procedural matters. Ram Sankaran appeared as legal counsel on behalf of the Appellants, Paula Hale appeared as legal counsel on behalf of the Respondent, and Michael Swanson KC. presided as Chair of the Appeal Board.

16) During the telephone conference, Mr. Sankaran disclosed that the Appellants had requested additional disclosure from the Respondent, and it was confirmed that the Respondent was opposed to the Appellants' request. Accordingly, the Appellants gave notice of their intention to make a prehearing application to determine the issue of additional disclosure. The parties agreed to address the matter by way of written submissions.

17) During the same prehearing telephone conference, it was also agreed that a virtual hearing on the merits of the appeal would be held on April 21, 2023.

18) On March 13, 2023, a decision of the Appeal Board regarding the prehearing application was pronounced wherein the Appellants' application for additional disclosure was denied.

19) On April 21, 2023, legal counsel for both parties confirmed that they were prepared to proceed with the appeal and further confirmed that they had no objection to the composition of the Appeal Board.

20) An appeal under Section 179(8) of the CPA is a “new trial” of the issues before the Appeal Board. Accordingly, the Director must prove each of the allegations against the Appellants. The onus and burden of proof are always on the Director.

21) The only witness called to testify on behalf of the Appellants was Ralph Stotschek. It was specified by the Appellants that Mr. Stotschek would be qualified to testify as an expert witness respecting “AMVIC practices and procedures in inspections and investigations under the CPA”. The resume of Ralph F Stotschek was marked as Exhibit 4. There was no indication that an expert report or written opinion would be tendered on behalf of the witness.

22) Upon hearing evidence regarding Mr. Stotschek’s qualifications and expertise, the Appeal Board declined to qualify the witness in the areas of expertise sought by the Appellants. The Appeal Board’s ruling was grounded firstly, on a concern that there was insufficient evidence of the witness’s expertise and secondly, that the anticipated evidence would amount to an opinion on the ultimate issue to be decided.

23) In reaching its decision, the Appeal Board was mindful of the test for the admissibility of expert evidence in *R. v Mohan* [1994] 2 SCR 9 which sets out the following threshold requirements for the admissibility of expert evidence:

- i. relevance;
- ii. necessity to assist the trier of fact;
- iii. absence of an exclusionary rule; and
- iv. provided by a properly qualified expert.

24) The Appeal Board was neither convinced that the witness was an expert respecting AMVIC practices and procedures nor that without the evidence of the witness it would be unable to reach a satisfactory conclusion.

25) Following disqualification of the witness, Mr. Sankaran advised the Appeal Board that the Appellants would not call any further evidence.

26) The only witness called to testify on behalf of the Director was Officer Heather Ewasiuk (“Officer Ewasiuk”) who was at the time an investigator with AMVIC.

27) Officer Ewasiuk testified that:

- i. the AMVIC licence (the “licence”) was issued to YTK January 14, 2021, authorizing wholesale activities only.
- ii. there had been a previous investigation file that showed that YTK and Yolanda Bachynski (the wife of John Bachynski) were funding third party individuals to purchase and register large volumes of motor vehicles (mostly trucks in high demand in the US market). The vehicles were subsequently transferred to YTK and/or Yolanda Bachynski and immediately exported to the US market. This activity was considered suspicious because neither YTK nor Yolanda Bachynski held any class of AMVIC licence at the time.
- iii. a review of vehicle registrations revealed that Lucas Salt and Charles Dunlop had a large volume of vehicles registered in their personal names which were subsequently transferred for export to the US market. Officer Ewasiuk concluded that the large volume of registrations, transfers and sales suggested that Lucas Salt and Charles Dunlop were not engaging in private sales but instead that they were acting as suppliers of vehicles to YTK.
- iv. she interviewed Lucas Salt and Charles Dunlop and was told that both were employed by and acting on behalf of YTK and therefore neither was in contravention of the CPA.
- v. on August 19, 2022, she sent an e-mail to the Appellants requesting specific business records that were created between August 1, 2021 and August 19, 2022.
- vi. her August 19 email could be construed as confirmation that AMVIC had undertaken an investigation into the business affairs of YTK.
- vii. her e-mail included a list of the specific business records requested:
 - a. Bills of Sale of motor vehicle purchases by YTK;
 - b. Bills of Sale of motor vehicle purchases by agents on behalf of YTK and any documents used by the agent before, during and after the purchase on behalf of YTK (ie. bank drafts, insurance cards, etc.);
 - c. Bills of Sale showing whom motor vehicles were sold or transferred to;
 - d. Copies of payments (ie. Drafts, EFTs) for vehicles purchased, sold and transferred to another party;
 - e. Copies of payments (ie. Drafts, EFTs) for vehicles purchased or transferred from another party;
 - f. All export documents for vehicles transported to any jurisdiction outside of Canada;
 - g. All bank statements including copies of cancelled cheques, EFTs, bank drafts and deposit slips;
 - h. Tax filings for 2021 and 2022;

- i. GST remittances for 2021 and 2022;
- j. Employee records of all employees of YTK including copies of their remuneration; and
- k. Contracts between YTK and its agents purchasing, selling and transferring vehicles on behalf of the business.

viii. her intention was “to analyze YTK’s business operations, capture records of the activities of registered and non-registered agents of YTK and to obtain a manageable amount of data to be analyzed in a timely fashion.”

ix. on September 19 she spoke to John Bachynski by telephone regarding the records request and absence of any response. During the telephone conversation when asked about the reason for the investigation, she informed him of potential violations of the CPA by individuals who had stated that they were acting on his behalf as well as possible violations by YTK.

x. on October 17, 2022, the Appellants, through legal counsel, sent specific financial records to Officer Ewasiuk by email which included “extracts of the banking records of YTK for the relevant period.”

xi. the e-mail sent on behalf of the Appellants emphasized that while the request included a wide variety of YTK’s business records there was no legal authority to request documents other than the documents provided.

xii. no other records that were requested have been submitted.

xiii. she again communicated by e-mail and shared AMVIC’s view that the October 17 response on behalf of YTK was inadequate as the documents provided “do not provide all the information we require for a proper investigation.”

xiv. on November 28, 2022, legal counsel for the Appellants responded to her e-mail reiterating why the scope of the records request was not permitted by law and expressly stating their concern that AMVIC’s investigation was “instigated at the behest of other automotive sales companies in Alberta, who are competitors of YTK, and concerned about their market share.”

xv. absent any further response from YTK, on December 2, 2022, AMVIC issued the Director’s Order pursuant to Section 157(1) of the CPA compelling production of the business records for the period August 1, 2021 – April 1, 2022, not later than January 6, 2023.

ISSUE(S)

28) The primary issue to be decided by this Appeal Board is whether AMVIC has legal authority under Section 132(2) of the CPA to compel production of business records from YTK?

EXHIBITS

29) The following Exhibits were entered at the Hearing:

- 1) Notice of Appeal (by the Chair)
- 2) Notice of Virtual Hearing (by the Chair)
- 3) AMVIC Exhibits (by Paula Hale)
- 4) Resume of Ralph F Stotschek (by Ram Sankaran)
- 5) Director's Order (by Paula Hale)

THE APPELLANTS SUBMIT THAT:

30) The grounds for the Appeal include allegations that AMVIC and its officers have:

- Breached the Appellants' rights to procedural fairness by failing to provide information as to the investigation or reason why the Appellants' business records are required;
- Violated the Appellant's legal rights under the *Canadian Charter of Rights and Freedoms*;
- Ordered the Appellants to provide business records to which AMVIC is not entitled under the *Consumer Protection Act*;
- Such other grounds as the Appellants may argue at the Appeal of this matter once AMVIC has produced its full record.

31) In accordance with Section 1(1)(l) of the ABR, YTK is the holder of an automotive wholesale license.

32) By virtue of its license, YTK is permitted to purchase vehicles from consumers, individuals or other businesses and "from members of the public for sale to other automotive businesses but not to consumers."

33) The activities authorized by a wholesale licence include:

- a. To sell, consign and exchange vehicles only with other automotive businesses and never to consumers;
- b. To export vehicles outside of Canada;
- c. To purchase vehicles from consumers only to sell to an automotive business.

34) The only documents which AMVIC is permitted to examine are documents specifically related to the activities authorized and/or prohibited by the license.

35) AMVIC has no legal authority to request documents other than the documents provided by the Appellants' legal counsel on October 17, 2022.

36) Accordingly, the Appellants submit that:

- a. Bills of Sales for motor vehicle purchases would not indicate whether YTK was selling vehicles to consumers;
- b. Copies of payments for vehicle would not indicate whether YTK was selling vehicles to consumers;
- c. Tax filings and GST remittances would not indicate whether YTK was selling vehicles to consumers;
- d. Employee records and contracts between YTK and its agents would not indicate whether YTK was selling vehicles to consumer

37) The scope of the records request is without statutory authority and AMVIC's investigation was "instigated at the behest of other automotive sales companies in Alberta, who are competitors of YTK, and concerned about their market share."

38) Even if it is determined that the Director's Order was made pursuant to statutory authority, most of the documents requested are not relevant to wholesale activities for which the licence was issued and for which AMVIC regulates YTK. The Appellants conclude that any order compelling production of these documents is unenforceable.

39) AMVIC's investigation was originally initiated to determine if YTK was acting in compliance with its AMVIC licence.

40) The documents are being sought by AMVIC to serve as evidence to further a criminal investigation unrelated to contraventions of the CPA and this amounts to a breach of *Charter* rights.

41) Evidence has been adduced by the Appellants proving bad faith on the part of AMVIC and proving that both the investigation and the Director's Order were initiated without proper consideration for the purposes of the CPA.

42) The Order, however, was specifically requested by Officer Ewasiuk to further the investigation of alleged violations of the Act.

43) On January 4, 2023, the Appellants filed notice of their appeal of the Director's Order with this Appeal Board.

THE RESPONDENT SUBMITS THAT:

44) Buying and selling motor vehicles in Alberta is a regulated industry.

45) The legislative framework in Alberta that sets out the roles and responsibilities of industry participants, including AMVIC, is the CPA together with the ABR.

46) Licence holders have both a statutory and a common law duty to co-operate with AMVIC.

47) The CPA provides AMVIC with broad authority to enforce the legislation and imposes explicit obligations on licensees to respond to and produce documents and records to AMVIC.

48) Section 132(1) and section 132(2) of the CPA provide the legal and statutory authority in terms of the obligation to "create and maintain complete and accurate financial records" and to produce the records and documents when required to do so by an inspector.

49) Section 9 of the ABR is the legal and statutory authority in terms of the obligation on the part of the business operator to "maintain all records and documents created or received while carrying on the activities authorized by the licence."

50) All AMVIC licensees must comply with the CPA and all other laws governing the sale of motor vehicles, as required by Section 12(o) of the ABR.

51) Once a business or other entity is subject to the supervision of a public interest regulator, a duty to cooperate arises.

52) The decision in *Cusack v. Law Society of Ontario* (2019 ONSC 5015 at para 28) serves to demonstrate the common law duty to both respond to and cooperate with AMVIC:

Part of self-governance is the ability to discipline its members where professional misconduct occurs. The ability to discipline can only occur where the professional body has the ability to investigate its members when confronted with a complaint. A full and complete investigation provides confidence to the general public that it can rely on a self-governing profession.

53) The records requested by AMVIC are records or documents described in the CPA as "financial records of its operations" or records and documents "created or received while carrying on the activities authorized by the licence".

54) There is no pre-condition or threshold (reasonable grounds to believe) to be met by AMVIC to compel the production of these records or documents from a licensee.

55) As the industry regulator, and in accordance with the CPA, AMVIC can compel records to ensure compliance with the Act and no further reason, analysis or notice is required.

56) Section 147 of the CPA provides for the voluntary production of books, records or documents from the licensee.

57) If the licensee does not consent, the Director can apply for a court order from the Court of King's Bench under Section 148. In this case the Court must be satisfied that there are "reasonable grounds to believe that an offence under this Act or the regulations has been committed" and that the Order is appropriate in the circumstances.

58) After collecting evidence under the authority of Sections 147 – 149, the investigator must determine if there is sufficient evidence to charge a person with an offence. If there is, the Investigator will lay an information and provide the file to the Crown Prosecutor for prosecution in the Alberta Court of Justice (formerly the Provincial Court of Alberta).

59) If there is insufficient evidence to support laying a charge, the investigator can either close the file or consider recommending an administrative sanction to the Director. Other remedies, including a property freeze order under Section 151 are also available.

60) Each of the 11 business records requested as either motor vehicle sales records or financial records are directly related to YTK's motor vehicle sales operations.

61) AMVIC enjoys a presumption of good faith and that there is no evidence to support the allegations of bad faith conduct by AMVIC.

62) There is no burden on AMVIC to prove good faith, even in the faced of a bad faith allegation.

63) Even if there was sufficient evidence to meet the very high threshold that applies in the case of bad faith "it is premature to raise this issue as the Appellants will have a full opportunity to respond to the case against them before an administrative penalty greater that \$500 can be issued."

64) There is no statutory obligation to notify a licensee of a complaint or investigation into a licensee's conduct unless an administrative penalty over \$500 is contemplated.

65) Once a licensee receives a notice that an administrative penalty is being sought, they can raise any perceived issue of unfairness.

66) The CPA includes procedural safeguards to ensure that the potential subject of an administrative penalty will know the case against them and have a chance to respond (see CPA s. 158.2).

67) AMVIC is simply undertaking an administrative investigation that may result in an administrative sanction under section 127(b)(i) of the CPA. AMVIC is not in the process of gathering evidence for a criminal prosecution.

68) AMVIC does not have statutory authority to prosecute an offence.

69) There is no penal consequence arising from an administrative investigation under the CPA and an administrative investigation is not criminal in nature.

70) If at some point any part of an AMVIC investigation is used for the prosecution of a criminal offence, the Appellants will be free to argue that the evidence should not be considered because it was compelled.

71) The Appellants argue that compelling business records is a breach of their *Charter* rights, however they fail to identify which *Charter* right or how it was breached.

72) This is an administrative proceeding only and does not trigger *Charter* protections.

73) YTK is a corporate entity only and that as such it does not have *Charter* rights. John Bachynski is named in the Order only because he is the designated representative of the YTK.

74) Contrary to the Appellant's submission, in accordance with section 182(a)(iv) of the CPA, the Appeal Board has clear statutory authority to compel the production of records by a licensee.

APPEAL BOARD'S DECISION

75) The Appellants are seeking an Order allowing the appeal and declaring the Director's Order of no force and effect.

76) The only witness called to testify on behalf of the Appellants was Ralph Stotschek. Mr. Stotschek was subsequently disqualified to testify as an expert witness. No further witnesses were called by the Appellants.

77) The Appeal Board finds that other than producing the resume of Mr. Stotschek, the Appellants have failed to adduce any material evidence at the Hearing.

78) John Bachinski was at all material times the sole director and shareholder of YTK. His wife Yolanda Bachynski as well as Lucas Salt and Charles Dunlop were also active on behalf of YTK. None of these individuals testified at the Hearing.

79) AMVIC was simply undertaking an administrative investigation concerning violations of the CPA that may (or may not) result in an administrative sanction.

80) Statutory authority to conduct inspections and investigations to determine compliance with the CPA and regulations is contained in Sections 144-148 of the CPA.

81) The CPA provides AMVIC with broad authority to enforce the legislation and imposes explicit obligations on licensees to respond to and produce documents and records at the request of AMVIC.

82) The CPA imposes an obligation on the Appellants to co-operate with AMVIC and to provide the requested records upon request.

83) AMVIC does not have authority to prosecute an offence. If, however, any part of the investigation is used for the prosecution of an offence, the Appellants are free to argue that the evidence should be excluded because it was compelled or otherwise improperly obtained.

84) There is no penal consequence resulting from an administrative investigation under the CPA and an administrative investigation is not criminal in nature nor does it trigger *Charter* protections.

85) The Appeal Board finds that there is nothing to suggest, nor any cogent reason to believe that AMVIC was gathering evidence for a criminal prosecution.

86) The only witness to testify at the Hearing was Officer Ewasiuk. She testified on behalf of the Respondent.

87) Officer Ewasiuk withstood a vigorous cross examination by Mr. Sankaran.

88) The Appeal Board finds that the evidence given by Officer Ewasiuk was entirely uncontested and that her evidence was consistent with written communications between herself and YTK.

89) The Appeal Board also finds that her evidence was straightforward, that she was candid about what transpired before the Director's Order was issued, and that her evidence did not contain any material contradictions.

90) Respecting the records that were requested, the Appeal Board finds that the language of Section 132(2) of the CPA is both mandatory and unequivocal. Every licensee "must create and maintain complete and accurate financial records..." and "must make the records available for inspection...".

91) The Appeal Board further finds that each of the records requested by Officer Ewasiuk are records or documents either as described in Section 132(1) and 132(2) of the CPA as "financial records of its operations" or as described in Section 9 of the ABR as records and documents "created or received while carrying on the activities authorized by the licence".

92) The Appeal Board also finds that under Section 132 of the CPA there is no pre-condition or threshold to be met by AMVIC to compel the production of these records or documents from a licensee.

93) The Appellants have argued throughout this appeal that the Director's case is inadequate and motivated by bad faith.

94) The Appeal Board finds that there is no evidence to demonstrate bad faith.

95) The Appellants also argue that compelling business records is a breach of *Charter* rights.

96) The Appellants, however, fail to identify which *Charter* right was breached nor explain how it was breached.

97) The Appeal Board finds that there is no evidence regarding a breach of *Charter* rights.

CONCLUSION AND ORDER

98) For the reasons given above, the Board orders that:

- a. The Appeal is dismissed, and the Director's Order is confirmed,
- b. The Appellants shall comply with the Director's Order not later than August 1, 2023,
- c. No decision is made as to costs.

ISSUED AND DATED at the City of Calgary in the Province of Alberta this 18 day of June 2023

"Michael Swanson"

Michael Swanson KC., Chair

"Dierdre Mullen"

Dierdre Mullen, Member

"Kent Pallister"

Kent Pallister, Member

RELEVANT REGULATIONS & STATUTES

ABR Definitions

1(1)(l) “wholesaler” means an automotive business that buys vehicles from, sells, or consigns Vehicles from, sells, or consigns vehicles to or exchanges vehicles with other automotive businesses Exclusively, and includes an automotive business that buys vehicles from members of the public For sale to other automotive businesses but not to consumers.

ABR Records

9 In addition to the requirement to create and maintain financial records in accordance with section 132(1) of the Act, every business operator and former business operator must maintain all records and documents created or received while carrying on the activities authorized by the licence for at least 3 years after the records were created or received.

ABR General codes of conduct

12 Every business operator must comply with section 6 of the Act and in addition must

(o) comply with any legislation that may apply to the selling, leasing, consigning, repairing, installing, recycling or dismantling of vehicles.

CPA Preamble

WHEREAS all consumers have the right to be safe from unfair business practices, the right to be properly informed about products and transactions, the right to reasonable access to redress when they have been harmed;

WHEREAS businesses thrive when a balanced marketplace is promoted and when consumers have confidence that they will be treated fairly and ethically by members of an industry;

Whereas businesses that comply with legal rules should not be disadvantaged by competing against those that do not; and

WHEREAS the Government of Alberta is committed to protecting consumers and businesses from unfair practices to support a prosperous and vibrant economy;

CPA Interpretation

1(1) (d) “Director” means the Director of Fair Trading appointed under section 173;

CPA Unfair practices

1.1 It is an offence for a supplier to engage in an unfair practice.

CPA 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
- (i) fails to comply with an order of the Director under section 129 or 157, unless, the case of an order under section 129 or 157, the order has been stayed,

CPA Duty to maintain records

132(1) Every licensee and former licensee must create and maintain

- (a) complete and accurate financial records of its operations in Alberta for at least 3 years after the records are made, and
- (b) other records and documents described in the regulations for the period specified in the regulations,

(2) Every licensee and former licensee must make the records referred to in subsection (1) available for inspection by an inspector at a place in Alberta and a time specified by the inspector.

CPA Order compelling assistance in inspections

146(1) For the purpose of enabling an inspector to conduct an inspection to determine if there is compliance with the Act and regulations, the Director may apply to the Court of King’s Bench for an order

- (d) authorizing the inspector, if charges are laid or a formally administrative process is commenced as a result of the inspection, to retain books, records documents or other things until the charges have been formally disposed of or the administrative process has been concluded.

(2) The Court of King's Bench may grant an order under subsection (1) if satisfied on Evidence under oath by the Director that there are reasonable grounds to believe that

- (a) an inspection is reasonable,
- (b) the regulated person or agent or employee of the regulated person has not co-operated or likely will not co-operate with the investigation, and
- (c) the order is appropriate in the circumstances.

CPA Investigation

147(1) An inspector who has reasonable grounds to believe that a person has committed an offence under this Act or the regulations may, after explaining to the person or to the person's agent that the inspector wishes to enter the person's business for the purposes of carrying out an investigation, request permission to enter the business premises.

(2) If a person permits an inspector to enter business premises for the purposes of an Investigation, the inspector may, with the permission of the person, inspect, examine and make copies of or temporarily remove books, records, documents or other things that are relevant to determine if an offence has been committed under this Act or the regulations

(3) When an inspector removes any books, records, documents or other things under Subsection (2), the inspector

- (a) must give a receipt for them to the person from whom they were taken,
- (b) may make copies of, take photographs of or otherwise record them,
- (c) must, within a reasonable time, return anything that has been copied to the person to whom the receipt was given, and
- (d) must return everything else that was removed to the person to whom the receipt was given within a reasonable time after the investigation and any prosecution resulting from the investigation is concluded.

CPA Order compelling assistance in investigations

148(1) For purposes of determining if an offence has been committed under this Act or the Regulations, the Director may apply to the Court of King's Bench for an order

- (a) compelling a person to allow an inspector to enter the person's business premises, private dwelling or other place occupied or controlled by the person;
- (a.1) requiring a person to produce for the inspector's examination the person's books, records, documents or other things relevant to the investigation;
- (b) authorizing the inspector to copy or remove the books, records, documents or other things on any terms that the Court considers appropriate;
- (c) requiring a person to co-operate with the investigation on any terms the Court

considers appropriate;

- (d) authorizing the inspector, if charges are laid or a formal administrative process is commenced as a result of the investigation, to retain books, records, documents or other things until the charges have been formally disposed of or the administrative process has been concluded.
- (2) The Court of King's Bench may grant an order under subsection (1) if satisfied on evidence under oath by the Director that there are reasonable grounds to believe that
- (a) an offence under this Act or the regulations has been committed, and
 - (b) the order is appropriate in the circumstances.
- (3) An application under this section may be made *ex parte* unless in the opinion of the Court Of Kings Bench it would be improper to do so
- (4) No force may be used in enforcing an order granted under this section unless a person identified in the order is specifically authorized to use force.
- (5) A copy of a document seized under an order granted under subsection (1) and certified by the person who conducted the investigation to be a true copy of the original document is admissible in evidence without the proof of the signature or appointment of the person who signed the certificate and in the absence of evidence to the contrary, the copy has the same probative force as the original.
- (6) An order under subsection (1) applies to a person under investigation and may also apply To third parties such as accountants or other persons who have possession or control of Books, records or documents relating to the activities of the person under investigation.
- (7) The following persons may apply to the Court of King's Bench for an order varying or cancelling an order under subsection (1):
- (a) a person to whom the order is directed;
 - (b) a person under investigation who is named in the order;
 - (c) a person other than one referred to in clauses (a) and (b) who is otherwise affected by the order.
- (8) On an application under subsection (7), the Court of King's Bench may vary or cancel an order on any terms or conditions the Court considers just, if the Court finds that
- (a) all or part of the order is not required for the protection of persons who are dealing with a person under investigation named in the order, or
 - (b) one or more affected persons are unduly prejudiced by the order.
- (9) In an application under this section, the Court of King's Bench shall give greater weight to

the protection of persons who are dealing with a person under investigation than to the carrying on of the activities of the person under investigation.

CPA Special circumstances

149(1) Despite any provision of this Act, an inspector may during an inspection or investigation under this Act seize or make copies of any books, records, documents or other things if the inspector has reasonable grounds to believe that

- (a) an offence under this Act or the regulations has been committed,
- (b) the books, records, documents or other things will provide evidence of the commission of the offence, and
- (c) the delay involved in obtaining an order under section 148 or a search warrant could result in the loss or destruction of evidence,

(2) An inspector, on seizing anything under this section,

- (a) must inform the person, if any, from whom the thing is seized of the reason for the seizure,
- (b) must give a receipt for the thing to the person, if any, having physical possession of it when it is seized, and
- (c) may make copies of, take photographs of or otherwise record them.

(3) An inspector who seizes anything pursuant to this section must deal with it in the same manner as if it were seized pursuant to a search warrant.

CPA Property freeze orders

151(1) In this section and sections 151.1 to 151.3,

(c) "property freeze order" means an order of the Director under subsection (2).

(2) The Director may issue a property freeze order in the following circumstances:

- (a) where the Director is about to cancel or suspend or has cancelled or suspended the licence of a licensee;
- (b) where
 - (i) criminal proceedings that, in the opinion of the Director, are connected with or arise out of matters under this Act, or
 - (ii) proceedings in respect of an alleged contravention of this Act or the regulations are about to be or have been initiated against any person;

- (c) where an investigated person has been paid money or been given security by a person in respect of a consumer transaction, or where an investigated person has been paid money by a debtor in respect of a debt, and
 - (i) the investigated person has absconded from Alberta, or
 - (ii) the Director has reasonable and probable grounds to believe that the investigated person
 - (A) is about to abscond from Alberta,
 - (B) has removed or has attempted to remove personal property from Alberta to avoid legal liabilities, or
 - (C) has sold or disposed of or has attempted to sell or dispose of real or personal property to avoid legal liabilities,
 - (D) is misusing any money paid or any assets delivered to the investigated person;
- (d) where the Director has reason to believe that the trust funds that are required to be held by a licensee or other person under the Act or the regulations are less than the amount for which the licensee or other person is accountable;
- (e) where the Director has reason to believe it advisable for the protection of consumers dealing with the investigated person.

CPA Director's order

157(1) If, in the opinion of the Director

- (a) a person is contravening or has contravened this Act or the regulations,
- (b) a regulated person is using any form, agreement, letter or other document that is misleading or contains a term that misrepresents this Act or the regulations, or
- (c) a print, broadcast or electronic publisher, including but not limited to a publisher of telephone directories and internet listings, is publishing or has published an advertisement that is misleading or contains a term that contravenes this Act or the regulations,
the Director may issue an order directed to the person or publisher,

(2) An order may direct the person or publisher

- (a) to stop engaging in anything that is described in the order,

subject to any terms or conditions set out in the order, and

(b) take any measures specified in the order, within the time specified in the order, to ensure that this Act and the regulations are complied with.

(3) A person or publisher who is subject to an order under this section may appeal under section 179.

CPA Enforcement of Director's order

158(2) The Director may not bring an application under this section

(a) until after the time for appealing the Director's order has passed without an appeal 's being made, or

(b) if an appeal has been made, the Director's order has been confirmed by the appeal board.

CPA Right to make representations

158.2 Before imposing an administrative penalty in an amount of \$500 or more, the Director shall

(a) advise the person, in writing, of the Director's intent to impose the the administrative penalty and the reasons for it, and

(b) provide the person with an opportunity to make representations to to the Director.

CPA Director and inspectors

173(1) The Minister may appoint an individual as the Director of Fair Trading

(2) The Director may appoint individuals as inspectors,

(3) The Director may exercise the powers and perform the duties of inspectors

CPA Appeal

179(1) A person

(d)to whom an order under section 129 or 157 is directed 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.

(6) An appeal board that hears an appeal pursuant to this section may confirm, vary or quash The decision , order or administrative penalty that is being appealed.

(8) An appeal under this section is a new trial of the issues that resulted in the decision, Order or administrative penalty being appealed.