



ALBERTA MOTOR VEHICLE  
INDUSTRY COUNCIL

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October 11, 2016

Via email: [REDACTED]

**Administrative Penalty**

Administrative Review – 16-08-011

GARRY WAGSTAFF  
o/a CASTLE QUALITY UPHOLSTERY  
12321 81 STREET  
EDMONTON, AB T5B 2T4

**Attention: Garry H. Wagstaff**

Dear Mr. Wagstaff:

**Re: Garry (H) Wagstaff o/a Castle Quality Upholstery – Automotive Business Licence #B1000554**

As the Director of Fair Trading (as delegated), I am writing to you pursuant to section 158.1 of the *Fair Trading Act* (FTA). This letter will detail the action being taken under section 158.1.

There is no requirement within the legislation to convene an in-person administrative hearing as it relates to these matters. The Director of Fair Trading, (as delegated), has the obligation to provide notice of a proposed administrative penalty and allow the Supplier an opportunity to respond. These obligations have been met.

**BACKGROUND**

1. Garry (H) Wagstaff o/a Castle Quality Upholstery ("the Supplier") is licensed by AMVIC to carry on the automotive business of repairs: specialty service. The Supplier does not have an AMVIC licence for automotive retail sales.
2. Records maintained by AMVIC confirm the Supplier was originally licenced on or about July 26, 2000 to carry on Speciality Services as Garry (H) Wagstaff operating as Castle Quality Upholstery. The document was apparently prepared by Mr. Garry (H) Wagstaff ("GHW") and, amongst other things, confirms that the business only seeks a licence for "Repairs" and "Specialty Repair". Attached hereto as Schedule "A" is a copy of Garry (H) Wagstaff operating as Castle Quality Upholstery's January 25, 2000 licence application and a copy of his current AMVIC business licence.
3. Records maintained by AMVIC provide that a second business, licensed as Garry (H) Wagstaff operating as Castle Auto & Truck Sales, was originally licensed for used car sales on October 22, 2009. GHW is identified as an owner of this business but never registered for an automotive salesperson registration in relation to Castle Auto & Truck Sales. Attached hereto as Schedule "B" is a copy of Garry (H) Wagstaff operating as Castle Auto & Truck Sales October 22, 2009

licence and the employment information of the designated agent of the business at the time the AMVIC licence was issued, Donald Sheldon McLeod.

4. Records maintained by AMVIC provide that **GHW** has never submitted a salesperson application seeking registration as a salesperson for automotive sales in relation to Garry (H) Wagstaff operating as Castle Auto & Truck Sales or any other automotive business holding an automotive sales licence.
5. Records maintained by AMVIC provide that a second individual, identified as Garry Lee Ryan Wagstaff, son of GHW, ("**GLRW**") is now the sole registered salesperson at Castle Auto & Truck Sales. GLRW apparently submitted Garry Lee (Ryan) Wagstaff operating as Castle Auto & Truck Sales' application for Provincial Automotive Business Licence to AMVIC on or about January 29, 2014. Page 3, bullet (h) of that document confirms that **GLRW** is taking over this business from **GHW**. Attached hereto as Schedule "**C**" is a copy of this application for Provincial Automotive Business Licence.
6. The Application for a Provincial Automotive Business, signed by **GLRW**, contains a "Note to All Automotive Sales Businesses" which reads:

*"Salesperson" is defined as a person who is authorized by an automotive sale licensee, automotive leasing licensee, or automotive consignment licensee to solicit, negotiate or conclude an agreement to buy, sell, lease, exchange or consign a vehicle. (This does not include the sale of parts, accessories, or tires.)*

All individuals participating in sales are required to be registered. Every automotive sales licensee, automotive leasing licensee, and automotive consignment licensee must appoint their salespeople as designated agents.

*"Salesperson authorization"* is an AMVIC form. The business must complete a Salesperson Authorization form for every salesperson working for the business.

7. An administrative review was held with Gary (H) Wagstaff operating as Castle Quality Upholstery on May 4, 2016 at approximately 10:00 a.m. In attendance at the review was **GHW**, [REDACTED] – AMVIC Investigator, [REDACTED] – AMVIC Sr. Manager of Investigations, and J. Bachinski - Director of Fair Trading (as delegated). The administrative review was originally scheduled with Garry Lee (Ryan) Wagstaff operating as Castle Auto & Truck Sales as it appeared to both the consumer and AMVIC that the complaint was against Garry Lee (Ryan) Wagstaff operating as Castle Auto & Truck Sales. **GHW** voluntarily attended the administrative review in place of his son and advised AMVIC that the transaction at issue related to a vehicle that **GHW** had sold to the consumer. Attached hereto as Schedule "**D**" is a copy AMVIC's letter addressed to Garry Lee (Ryan) Wagstaff operating as Castle Auto & Truck Sales scheduling the administrative review.

#### **AMVIC Publications**

8. AMVIC publishes industry bulletins on its website. These bulletins, amongst other things, remind readers of their legal obligation to obtain and maintain the appropriate class of automotive business licence. Publications include:



- a. Consignment does not equal Agent Broker  
<http://www.amvic.org/consignmentagentbroker/>
- b. Largest penalty to date upheld  
<http://www.amvic.org/largest-penalty-to-date-upheld-3/>
- c. Manage your salespeople through AMVIC online  
<http://www.amvic.org/manage-salespeople-amvic-online/>
- d. Curber crackdown  
<http://www.amvic.org/curber-crackdown-3/>
- e. As of January 1, 2015, AMVIC will stop issuing conditional registrations  
<http://www.amvic.org/january-1-2015-amvic-will-stop-issuing-conditional-registrations/>
- f. Reminder: Check your expiry date  
<http://www.amvic.org/reminder-check-your-expiry-date/>

Attached hereto as Schedule "E" are copies of the above-noted bulletins.

- 9. AMVIC has also published industry bulletins in relation to the requirement to provide consumers with a Mechanical Fitness Assessment in the sale of a used motor vehicle. These include:
  - a. \$10,000 fine upheld for missing document  
<http://www.amvic.org/10000-fine-upheld-missing-document/>
  - b. Mechanical Fitness Assessment Q&A  
<http://www.amvic.org/mechanical-fitness-assessment-qa/>

Attached hereto as Schedule "F" are copies of the above-noted bulletins.

#### ***GHW and Unlicensed Retail Sales***

- 10. On or about December 9, 2015, a consumer (AP) filed a complaint with AMVIC regarding the purchase of a 2002 Jeep Liberty on December 4, 2015 from Garry Lee (Ryan) Wagstaff operating as Castle Auto & Truck Sales. Attached hereto as Schedule "G" is a copy of the consumer complaint summary.
- 11. On or about December 14, 2015, a Consumer Services Officer ("CSO") called **GLRW** with respect to this complaint and apparently spoke with **GHW**. AMVIC records of this conversation provide that **GHW** acknowledged selling this vehicle to the complainant and characterized the transaction as "*a private sale.*" **GHW** further represented that "*he has 20 vehicles parked at home that he has not registered or insured.*" Attached hereto as Schedule "H" is a copy of the subject AMVIC phone call record.

#### ***GHW's Motor Vehicle Advertisements***

- 12. The 2002 Jeep Liberty discussed in paragraph 10 above, was advertised on Kijiji as being sold by "*a dealer*" who could be reached at 780 [REDACTED]. Attached hereto as Schedule "I" is a copy of the subject Kijiji advertisement and its related order summary.
- 13. At the May 4, 2016 administrative review, **GHW** verbally advised that the telephone number published on the Kijiji advertisement is his personal telephone number.

14. Over the course of the May 4, 2016 administrative review, **GHW** stated that he advertises up to 20 vehicles at a time for sale on-line through Kijiji. He estimated the total value of those vehicles and parts which he privately advertised in the approximate sum of \$2,000,000.00.

#### ***Location of Vehicle Sales***

15. The 2002 Jeep Liberty was located at or near the lot associated to AMVIC licensee Garry Lee (Ryan) Wagstaff operating as Castle Auto & Truck Sales. The consumer advised AMVIC that he attended at the lot of Castle Auto & Truck Sales and was handed a business card from a salesperson.
16. At the May 4, 2016 administrative review, **GHW** advised that the 2002 Jeep Liberty was located at Castle Auto & Truck Sales because he was doing maintenance work at that lot.
17. **GHW** further stated that he, as well as his son, **GLRW**, met with the consumer at or near Castle Auto & Truck Sales in relation to the negotiation and sale of the 2002 Jeep Liberty. **GHW** acknowledged that he sold the 2002 Jeep Liberty to the consumer.
18. The consumer has advised AMVIC that he received a business card while negotiating the purchase of the 2002 Jeep Liberty. The business name on the card is "Castle Auto and Truck" and sets out that licensee's business address and telephone number. The same card does not name a salesperson but contains **GHW**'s email address. Attached as Schedule "J" is a copy of the business card. Attached as Schedule "K" is a copy of Garry Lee (Ryan) Wagstaff operating as Castle Auto & Truck Sales business details. Attached as Schedule "L" is Garry (H) Wagstaff operating as Castle Quality Upholstery's business details.
19. **GHW** stated that he has been in the automotive business for approximately 27 years.
20. **GHW** also stated that he uses a dealer plate, which he claimed to have had "*from the beginning of time*", in order to sell motor vehicles. AMVIC completed a search of Alberta Motor Vehicles System (MOVES) which shows that **GHW** currently has two dealer plates registered to him.
21. **GHW** variously characterized these transactions as "*a business deal between me and the consumer*" and a "*hobby*". **GHW** argued that no automotive sales licence is required because he doesn't sell "*volume*". He suggested that he sells vehicles from his residence and that it is sufficient to have an unidentified "*city licence*."

#### ***Addresses Identified on the Bill of Sale***

22. The Bill of Sale ("BOS") for the 2002 Jeep Liberty is dated December 4, 2015. The BOS shows the address of the seller as 4014-118 Avenue, Edmonton, AB, which is also the AMVIC licensed address for Garry Lee (Ryan) Wagstaff operating as Castle Auto & Truck Sales. (See Schedule C).
23. The phone number on the BOS is the same phone number set out in the Kijiji advertisement, the phone number known to be **GHW**'s personal telephone number (see Schedule I). Attached as Schedule "M" is the BOS.

#### ***Failure to Provide Mechanical Fitness Assessment***



24. The vehicle was sold for the total amount of \$2,100.00. Written comments on the BOS indicate the following special conditions *"as is, were is (sp), cash sale, customer knows of some repairs need front drive shaft, rear speed sensor, and windshield [sic]"*.
25. The consumer had indicated to the AMVIC Investigator that he was not provided with a mechanical fitness assessment ("MFA") at the time he negotiated for the purchase of the vehicle or at any time thereafter.
26. The consumer's representations were confirmed by **GHW** during his December 14, 2015 conversation with an AMVIC CSO. Notes from that discussion state that **GHW** *"was even going to provide Comp with an MFA but chose not too (sic) as this was a private sale"* (Refer to Schedule **H**).
27. AMVIC was provided with a MFA in response to the CSO's request for a Supplier's response regarding the complaint. It was provided via fax and the fax cover sheet stated the name Garry Wagstaff and the phone number now known to be **GHW**. The MFA is dated December 1, 2015. The MFA is not signed by the consumer, which is consistent with information given by the consumer that no MFA was provided to him prior to the sale of the vehicle.
28. An independent mechanical inspection completed three days after the consumer purchased the vehicle suggests it is unsafe to drive. The mechanical inspection indicated a number of repairs required, including a transmission concern, engine running very poorly, and engine code lights now active. Attached hereto as Schedule **"N"** is a copy of the Service Repair Inspection.
29. **GHW** has refused to purchase the vehicle back and is not prepared to mitigate the consumer complaint filed by the consumer (AP).
30. Subsequent to the events described above, **GHW** decided to post an image of himself on Facebook. That image shows **GHW** raising his middle finger. The title of the page is *"Auto Dealers With Complaints AMVIC Related"*. Attached hereto as Schedule **"O"** is a printout of the Facebook page (retrieved on May 19, 2016).

#### **APPLICABLE LEGISLATION**

##### ***Fair Trading Act, R.S.A. 2000, C. F-2***

##### **Licence required - designated businesses**

##### **Section 104**

- (1)** No person may engage in a designated business unless the person holds a licence under this Act that authorizes the person to engage in that business.

##### **Evidence – Carrying on business**

##### **169** Evidence that

- (a) a person entered into one transaction in a business or activity, or  
(b) a person set out in a letter, advertisement, card or other document issued by or under the authority of the person that the person is carrying on a business or activity

is proof, in the absence to the contrary, that the person was carrying on that business or activity.

### ***Automotive Business Regulation, AR 192/99***

#### **Definitions**

1(1)(b) “automotive business” means the business designated as the automotive business under the *Designation of Trades and Businesses Regulations*;<sup>1</sup>

1(1)(g) “licence” means a class of automotive business licence established by this Regulation

1(1)(j) “salesperson” means a person who is authorized by an automotive sales licensee, automotive leasing licensee or automotive consignment licensee to solicit, negotiate or conclude on the licensee’s behalf an agreement to buy, sell, lease, exchange or consign a vehicle.

1(1)(k) “vehicle” means

- (i) A motor vehicle as defined in the *Traffic Safety Act*<sup>2</sup>, but does not include a motor cycle or off-highway vehicle as defined by that Act, and
- (ii) A recreational vehicle intended to be towed that combines transportation and temporary living accommodations for the purpose of travel or camping.

#### **New classes of licence**

##### **Section 3**

(1) The following classes of automotive business licence are established:

- (a) automotive sales licence;
- (b) automotive leasing licence;
- (c) automotive consignment licence;
- (d) automotive repair licence.

(2) A person who holds an automotive sales licence is authorized to carry on a class or classes of the activity of buying or selling vehicles as specified by the Director, including, but not limited to, selling vehicles as

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<sup>1</sup>*Designation of Trades and Business Regulations, AR 178/99. S. 2(a)* In this section, “automotive business” means activities of (i) buying or selling vehicles, whether as a retailer or wholesaler, including the selling of vehicles on consignment (ii) leasing vehicles when the term of the lease is for more than 120 days, (iii) negotiating or conducting on a consumer’s behalf an agreement in which the consumer buys, sells or leases a vehicle, (iv) recycling or dismantling vehicles, (v) instating parts or equipment in, repairing or servicing vehicles.

<sup>2</sup> *Traffic Safety Act, RSO 2000, C. T-6, Interpretation, s. 1(1)(ww)*, “vehicle”, other than in Part 6, means a device in, or by which a person or thing may be transported or drawn on a highway and includes a combination of vehicles but does not include a mobility aid.



- (a) a retailer,
  - (b) a wholesaler, or
  - (c) an agent or broker,
- but not including selling vehicles on consignment
- (7)** A person who holds an automotive business licence is not authorized to carry on any class or classes of activities that are not specified on the licence.

### **Registration**

**Section 16(1)** A salesperson of an automotive sales business must be registered for automotive sales before acting on behalf of the business operator.

### **Application for Registration**

**17(1)** A person who wishes to be registered or to have a registration renewed under this Regulation must submit to the Director

- (a) An application on a form established by or acceptable to the Director,
- (b) Any additional information that is requested by the Director; and
- (c) Proof satisfactory to the Director that the applicant has met education requirements established by the Director.

**17(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.

### ***Vehicle Inspection Regulation***

#### **Sale of used motor vehicle**

##### **Section 15**

**(1)** Subject to subsection (2), a dealer in used motor vehicles shall, before entering into a contract to sell a motor vehicle, give to the buyer a used motor vehicle mechanical fitness assessment that contains the following:

- (a) a statement identifying the type of motor vehicle as a truck, motorcycle, bus, van, light truck, automobile or other type of motor vehicle;
- (b) a statement showing the make, model, year, vehicle identification number, odometer reading in kilometres or miles, licence plate number and province of registration of the vehicle;
- (c) the name and address of the dealer selling the vehicle and the name of the technician who issued the mechanical fitness assessment;
- (d) a statement that the mechanical fitness assessment expires 120 days after the date on which it was issued;
- (e) a statement certifying that at the time of sale the motor vehicle
  - (i) complies with the Vehicle Equipment Regulation (AR 122/2009), or

- (ii) does not comply with the Vehicle Equipment Regulation (AR 122/2009) and containing a description of the items of equipment that are missing or do not comply with the Vehicle Equipment Regulation (AR 122/2009);
- (f) the signature of the technician who conducted the mechanical fitness assessment;
- (g) the date the mechanical fitness assessment was issued.

**(1.1)** Despite section 1(1)(r), for the purposes of subsection (1), “technician” means a person who,

- (a) in the case of a mechanical fitness assessment of passenger vehicles and light trucks, holds a subsisting trade certificate in the designated trade of automotive service technician under the Apprenticeship and Industry Training Act, or

### ***Fair Trading Act***

#### **Administrative Penalties**

#### **Notice of administrative penalty**

##### **Section 158.1**

- (1)** If the Director is of the opinion that a person
  - (a) has contravened a provision of this Act or the regulations, or
  - (b) has failed to comply with a term or condition of a licence issued under this Act or the regulations,the Director may, by notice in writing given to the person, require the person to pay to the Crown an administrative penalty in the amount set out in the notice.
- (2)** Where a contravention or a failure to comply continues for more than one day, the amount set out in the notice of administrative penalty under subsection (1) may include a daily amount for each day or part of a day on which the contravention or non-compliance occurs or continues.
- (3)** The amount of an administrative penalty, including any daily amounts referred to in subsection (2), must not exceed \$100 000.
- (4)** Subject to subsection (5), a notice of administrative penalty shall not be given more than 3 years after the day on which the contravention or non-compliance occurred.
- (5)** Where the contravention or non-compliance occurred in the course of a consumer transaction or an attempt to enter into a consumer transaction, a notice of administrative penalty may be given within 3 years after the day on which the consumer first knew or ought to have known of the contravention or non-compliance but not more than 8 years after the day on which the contravention or non-compliance occurred.



## **FACTS FOUND**

AMVIC has released multiple bulletins to licensees and registrants. The bulletins remind the reader of the importance of obtaining and maintaining the appropriate class of automotive business licence and registration. AMVIC applications, including the application for Provincial Automotive Business Licence, also contain such reminders.

A 2002 Jeep Liberty was sold at or around the business premises of an automotive sales licensee, Garry Lee (Ryan) Wagstaff operating as Castle Auto & Truck Sales, which is licensed to carry on retail sales. The licensee sells used cars. A consumer was directed to this location through an online Kijiji advertisement published by **GHW**. By **GHW**'s own voluntary admission, this is one of many advertisements that have been placed by **GHW** advertising vehicles for sale by "dealer". The consumer was also handed a business card while in the process of negotiating the purchase of this vehicle. That business card contains information identifying the licensee "*Castle Auto and Truck*" as the selling dealer. AMVIC's records confirm that **GHW** previously operated this business and that it was subsequently taken over by **GLRW**. The Castle Auto & Truck Sales application for an Automotive Business Licence contains an acknowledgement that any salesperson for that automotive business must submit the necessary "salesperson authorization" to AMVIC and be properly registered and appointed as a designated agent to that automotive business. **GHW** has not submitted any such application form to AMVIC and is not a registered salesperson. As such, he is not authorized to act on behalf of Castle Auto & Truck Sales. **GHW** has indicated in his response that the specific Kijiji advertisement for the 2002 Jeep contained an error made by Kijiji rather than **GHW**. **GHW** has indicated that Kijiji made a mistake by listing **GHW** as a dealer. However, **GHW** has provided no evidence to support that claim. In addition, in the past year, there are other Kijiji advertisements placed by **GHW** that show **GHW** was posting advertisements as a dealer. Attached as Schedule "P" are Kijiji advertisements posted by **GHW** in the past year.

**GHW**'s personal information is printed on the business card and is also written on the BOS for this vehicle. Further, **GHW** has repeatedly voluntarily acknowledged selling this vehicle to the consumer. Based upon the foregoing, I accept that **GHW** advertised this vehicle for sale on Kijiji as a dealer and further that **GHW** held himself out to be a salesperson for Garry Lee (Ryan) Wagstaff operating as Castle Auto & Truck Sales when facilitating the sale of this vehicle to the consumer.

The evidence shows that at the time of the sale **GHW** was not a salesperson registered to any licensee, including Garry Lee (Ryan) Wagstaff operating as Castle Auto & Truck Sales. Further, at the time of the sale **GHW** did not hold an automotive salesperson registration. **GHW** has acknowledged that he is not registered as a salesperson to an automotive sales business and he is aware that he does not hold an automotive salesperson registration. He asserts that he mostly sells "antique" and "fixer upper" vehicles. I accept these representations and find them to be true.

I also accept the documentary evidence, acknowledged by **GHW**, confirming that at the time of sale the consumer was not provided a valid and subsisting MFA. AMVIC records confirm that **GHW** is the previous owner of Castle Auto & Truck Sales. **GHW** has been engaged in the automotive business for over two decades and is a current automotive repair licensee. **GHW** has access to AMVIC bulletins. **GHW** is, or ought to be, aware of automotive business licensing regime. The onus falls on **GHW** to be familiar and compliant with the law and regulations governing automotive businesses in the Province of Alberta.

Finally, I further accept GHW's voluntary statement that he regularly advertises vehicles through Kijiji and that he has many unregistered vehicles stored at his home and offered for sale. He makes use of a dealer plate in order to move this inventory.

The Supplier's response to the proposed administrative penalty was received on September 27, 2016. The position of the Supplier regarding this matter can be summarized as:

1. The sale is a "private sale" and GHW does not require a licence for this transaction.
2. Castle Quality Upholstery does not engage in automotive sales and therefore does not require a Provincial automotive business licence for the sale of motor vehicles.
3. GHW is not an employee of Castle Auto and Truck Sales and never presented himself as such. GHW uses his personal number in the advertisements and not his business number.
4. GHW states that the Kijiji advertisement listing GHW as a dealer was a mistake by Kijiji.
5. GHW admits that he met the consumer at or near Castle Auto & Truck Sales merely out of convenience to complete the sale.
6. The BOS lists GHW personal phone number and home address.
7. GHW is not an automotive dealer as defined under the VIR and therefore is not required to provide an MFA.
8. GHW did have a MFA completed prior to the sale on December 4, 2015, and that is was to be made available to the purchaser the next business day. However the purchaser insisted on closing the sale on December 4, 2015. GHW did identify on the BOS the vehicles mechanical deficiencies.
9. The liability for any differences between the MFA and the independent inspection completed by the consumer falls upon the mechanic who performed the MFA.
10. The reference to GHW Facebook page is irrelevant to the transaction at issue. GHW is within his legal rights to invite discussion regarding factually accurate complaints about AMVIC in a public forum.

#### **APPLICATION OF THE LAW TO THE FACTS**

The 2002 Jeep Liberty falls within the scope a "vehicle" as defined by the *Traffic Safety Act* (TSA) and the Automotive Business Regulation (ABR). The legislation and regulations do not exempt "antiques" and "fixer uppers" from the definition of "vehicle". As such, the 2002 Jeep Liberty falls within the scope of the definition of a "vehicle" irrespective of its condition at the time of sale. The requirement for an MFA to be provided to the consumer "before entering into a contract to sell a motor vehicle, give to the buyer a used motor vehicle mechanical fitness assessment" was placed into legislation to protect consumers when buying a used vehicle. This sale is a clear example of why that legislation was enacted, to help ensure consumers are better informed prior to making a purchase of a used vehicle.

The ABR refers to the Designation of Trades and Business Regulations for a definition of an "automotive business". The finite list set out therein includes "*buying or selling vehicles, whether as a retailer or wholesaler, including the selling of vehicles on consignment.*" The same regulation sets out three activities which are specifically excluded from "automotive business", namely: the selling of vehicles by manufacturers to dealers, cleaning or polishing the exterior or interior of a vehicle, or repairing chips or cracks in the windshield or any window of a vehicle that does not involve replacing the windshield or window." The legislation does not provide or allow an individual or business to sell vehicles as a "private sale" as suggested by the Supplier. At issue here is not just one retail sale of a vehicle but numerous vehicles each year. The Supplier admitted during the review that he has sold over 20 vehicles in the past year. The Supplier is clearly in the business of retail automotive sales. Additionally, the AMVIC



investigator provided evidence that the 2002 Jeep Liberty in question, as well as other numerous vehicles advertised for sale by GHW, were never personally registered to GHW, which would normally be the case in a private sale.

Section 3(2) of the ABR authorizes the holder of an automotive business licence to carry out the activities that are specified by that licence. Garry (H) Wagstaff operating as Castle Quality Upholstery holds an automotive licence for repairs: specialty services. Section 3(7) of the ABR specifically provides that a person is only permitted to carry on the business activity for which they are licensed for.

Garry (H) Wagstaff operating as Castle Quality Upholstery is not licensed for retail sales. **GHW** does not hold an AMVIC salesperson registration and therefore he is not a designated agent for a Supplier who holds an active AMVIC licence for the retail sale of automobiles. **GHW** must properly obtain an automotive business licence for retail sales and the appropriate salesperson registration should he wish to engage in automotive retail sales. By failing to do so, **GHW** has not complied with section 17(1) of the ABR and has accordingly contravened section 16(1) of the ABR. The Supplier acknowledged in his response that Castle Quality Upholstery is not licensed for the retail sale of motor vehicles.

The age of a vehicle and whether or not it is designated as an antique is not an exemption from the requirement to be licensed by AMVIC for the retail sale of automobiles. Similarly, the legislation does not exempt individuals who dabble in motor vehicle sales as a “hobby” and/or who sell low volume from the definition of “automotive business.” **GHW** claims that he sells fixer-upper vehicle as a “hobby” and has acknowledged that he posts multiple advertisements in relation to these sales. He has also acknowledged creating or otherwise providing his identifying information to consumers in order to sell these vehicles (e.g., the business card discussed above, the Bill of Sale for the 2002 Jeep Liberty and the Kijiji advertisement for this vehicle). I find that pursuant to section 169 of the FTA, this evidences that **GHW** is carrying on an automotive business.

I do not accept that **GHW** sells vehicles as a “hobby”. I note that **GHW**’s advertisements explicitly state that the vehicles are sold by a “dealer”. **GHW** portrays himself as a dealer in order to sell vehicles and **GHW** has an inventory of vehicles for sale. This conduct is consistent with that of an automotive sales licensee selling vehicles as a retailer.

Section 16 of the ABR requires a salesperson of an automotive business operator to be registered for automotive sales before acting on behalf of the business operator. **GHW** is not registered as a salesperson for automotive sales. The Kijiji advertisement for this vehicle states that it is published by a “dealer” and the associated dealer throughout this transaction has been Castle Auto & Truck Sales. For example, **GHW** sold the vehicle at or near the licensed business premises of Castle Auto & Truck Sales, the business card provided to the consumer in relation to the sale identifies Castle Auto & Truck Sales and sets out **GHW**’s email address, and the telephone number on the BOS is that of **GHW**. As such, I find that **GHW** acted as a salesperson for Castle Auto & Truck Sales when not registered to do so. Section 104(1) of the FTA requires a person to hold a licence under the Act before engaging in automotive business. **GHW**’s conduct, as outlined above, is inconsistent with section 104(1) of the FTA.

**GHW** has indicated through his actions that he is not prepared to abide by the legislation and regulations that govern the automotive industry. In the Supplier’s response to the proposed penalty he indicated he felt the Facebook photo posting is not relevant to the Supplier’s governability and he has a right to collect information. It is the position of the Regulator that by **GHW** posting a photo of himself raising his middle finger he is sending a very clear inappropriate message to the Regulator. This action

shows a lack of respect for the Regulator and an unwillingness of the Supplier to be governable and abide by the legislation. Notwithstanding, GHW can certainly gather facts regarding AMVIC.

### ACTION

In accordance with section 158.1(a) of the FTA and based on the above facts, I am requiring Garry (H) Wagstaff operating as Castle Quality Upholstery pay an administrative penalty. This is based on my decision Garry (H) Wagstaff operating as Castle Quality Upholstery contravened sections 104(1) of the FTA, section 3(1); 3(2) & 3(7) of the ABR.

Taking into consideration all of the representations made by legal counsel for the Supplier, and the representations made by [REDACTED] – AMVIC investigator and [REDACTED] – AMVIC Sr. Manager of Investigations, the administrative penalty amount is **\$10,000.00**. The amount takes into consideration the principles referenced in *R v Cotton Felts Ltd., (1982), 2 C.C.C (3d) 287 (Ont. C.A.)* and particularly the following:

1. Volume of vehicles Garry (H) Wagstaff is selling “privately” without the proper retail sales licence;
2. Scope of economic activity (automotive business is a major economic driver);
3. Actual and potential harm to the public and industry (consumers who were misled or could be, driving business away from competitors who are law abiding, etc.);
4. Maximum penalty of the statute pursuant to section 158.1(3) of the FTA is \$100,000;
5. Absence of intent of GHW to become compliant once notified and attempt to undermine and attack the Regulator through social media; and

The FTA is remedial consumer protection legislation. Various prescribed obligations flow from the licence entitlement. These include the responsibility of all automotive sales licensees to give a buyer of a used motor vehicle an MFA before entering into a contract for sale. The facts in the case show that **GHW** did not provide an MFA which he would have been required to had he been licensed for retail automotive sales. The accepted evidence shows that **GHW** did not provide the MFA to the consumer. **GHW** is familiar, or ought to be familiar, with the licensing and registration regime created through the FTA and its regulations. AMVIC records confirm that **GHW** is a previous owner of Castle Auto & Truck Sales. **GHW** has been engaged in the automotive business for over two decades and is a current automotive repair licensee. **GHW** has access to AMVIC bulletins. The onus falls on **GHW** to be familiar and compliant with the law and regulations governing automotive businesses in the Province of Alberta. This action also takes into consideration the following:

1. GHW is improperly using the business information of Castle Auto & Truck Sales to engage in unlicensed automotive sales.
2. GHW has shown no remorse for his conduct and has shown defiance with regard to being regulated through his Facebook posting.
3. GHW has stated that he advertises many vehicles for sale on Kijiji at any given time and that the value of his inventory is significant.
4. GHW refuses to mitigate the harm caused to the consumer as a result of his unlicensed automotive sale.
5. The Supplier’s conduct demonstrates a marked departure from the minimum standard required of all licensees.
6. Failure to pay the \$6.25 AMVIC levy on each vehicle sold retail.



**The amount of the administrative penalty is \$10,000.00**

Pursuant to section 3 of the *Administrative Penalties (Fair Trading Act) Regulation*, **you are required to submit payment within thirty (30) days of the date of service of this notice. Failure to pay the administrative penalty will result in a review of the licence status. Payment may be made payable to the "Government of Alberta" and sent to AMVIC at:**

Suite 303, 9945 – 50th Street  
Edmonton, AB T6A 0L4.

If payment has not been received in this time period, the Notice may be filed in the Court of Queen's Bench and enforced as a judgement of that Court pursuant to section 158.4 if the *Fair Trading Act*.

Section 179 of the FTA allows a person who has been served a notice of administrative penalty to appeal the penalty. To appeal the penalty, the person must serve the Minister of Service Alberta

Minister of Service Alberta  
103 Legislature Building  
10800 - 97 Avenue NW  
Edmonton, AB  
Canada T5K 2B6

with a notice of appeal within 30 days after receiving the notice of administrative penalty. The appeal notice must contain your name, your address for service, details of the decision being appealed and your reasons for appealing.

Pursuant to section 180(4) of the FTA, service of a notice of appeal operates to stay the administrative penalty until the appeal board renders its decision on the appeal or the appeal is withdrawn.

Under section 4 of the *Administrative Penalties (Fair Trading Act) Regulation*, the fee for appealing an administrative penalty is the lesser of \$1000 or half the amount of the penalty. As such, the fee for an appeal of this administrative penalty, should you choose to file one, would be \$1,000.00.

Yours truly,

"original signed by"

John Bachinski  
Director of Fair Trading (as Delegated)

JB/kl

Encls.

cc: [REDACTED], AMVIC, Sr. Manager of Investigations