

January 11, 2019

Served Personally  
Administrative Review – 18-10-002

### Administrative Penalty

1802580 ALBERTA LTD.  
O/A CALGARY TRUCK & AUTOMOTIVE SALES  
C/O AMIL BARI GADER  
[REDACTED] SE  
CALGARY, AB  
T2A 2B1

Attention: Amil Bari Gader

Dear Sir:

**Re: 1802580 Alberta Ltd. o/a Calgary Truck & Automotive Sales  
Provincial Automotive Business Licence No. B2020767**

As the Director of Fair Trading (as delegated), I am writing to you pursuant to Section 158.1(1) of the *Consumer Protection Act* ("CPA") to provide you with written notice of the Administrative Penalty issued under that section.

### Facts

The evidence before me in relation to this matter consists of the material contained in an Application Report prepared by the AMVIC investigations department (the "Application Report") and attached as Schedule "A", as well as the information exchanged during an administrative review held at the AMVIC Calgary office on November 7, 2018. A written representation was provided to AMVIC on January 3, 2019 from the Supplier which is attached as Schedule "B".

### *Licensee Status*

1802580 Alberta Ltd. operating as Calgary Truck and Automotive Sales (the "Supplier") holds an automotive business licence and carries on business as a wholesale business in the Province of Alberta.

### *History*

1802580 Alberta Ltd. o/a Calgary Truck and Automotive Sales operates out of Calgary, Alberta and holds a current AMVIC business licence authorized for wholesale activities.

In the past, 1802580 Alberta Ltd. o/a Calgary Truck and Automotive Sales has been subject to previous administrative actions for not complying with legislation. In March of 2014, the Supplier was granted a business licence, which was cancelled on September 5, 2014 for selling automotive vehicles to the general public without the proper AMVIC licence to do so.

The Supplier reapplied for a new AMVIC business licence and was granted a wholesale licence on November 23, 2016. 1802580 Alberta Ltd o/a Calgary Truck and Automotive Sales business licence was cancelled on July 10, 2017 for contravening Section 104(1) of the *Fair Trading Act* (now *Consumer Protection Act*) for engaging in advertising and selling motor vehicles to the general public.

The Supplier appealed the decision of the Director of Fair Trading (as delegated), it was the decision of the Appeal Panel to vary the Director's decision from a cancellation of 1802580 Alberta Ltd. o/a Calgary Truck and Automotive Sales business licence to a 120 day suspension. On January 2, 2018, the Supplier was issued a business licence B2020767 authorized for the designated activity of wholesale sales only.

#### Summary of Investigation

1. In January 2018, AMVIC received a complaint (case file 18-01-200) regarding automotive vehicles being sold from an unlicensed residence, which was owned by the Supplier. During the investigation of case file 18-01-200, the investigator, [REDACTED] ("the investigator"), uncovered that the Supplier had sold five vehicles to a third party automotive business ("DA"), while the business licence for 1802580 Alberta Ltd. o/a Calgary Truck and Automotive Sales was suspended therefore not licenced to conduct any automotive sales.
2. On July 19, 2017, the Supplier purchased a 2008 Acura MDX from the auction and sold it to DA through an transaction.
3. On August 30, 2017, 1802580 Alberta Ltd. o/a Calgary Truck and Automotive Sales purchased a 2008 GMC Acadia, 2009 Nissan Murano and a 2014 Nissan Altima from the auction and sold each of the vehicles to DA, in three separate transactions on September 4, 2017.
4. On September 13, 2017, the Supplier purchased a 2010 Audi Q5 from the auction and sold it to DA on September 18, 2018 through an transaction.
5. The investigator noted that none of the above mentioned vehicles were ever registered to 1802580 Alberta Ltd. o/a Calgary Truck and Automotive Sales.
6. On January 3, 2019, the Supplier provided AMVIC with its written representations to the Proposed Administrative Penalty (see Schedule "B"). The Supplier disagrees with the appropriateness of an administrative penalty and in the event an Administrative Penalty is warranted, with the quantum amount that was proposed.

## Legislation

### ***Consumer Protection Act***

#### **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.

### **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.

### **Right to make representations**

#### **Section 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 administrative penalty and the reasons for it, and
- (b) provide the person with an opportunity to make representations to the Director.

**Analysis – Did the Supplier fail to comply with the provisions of the *Consumer Protection Act*?**

The material which formed the Application Report was the result of a complaint (case file 18-01-200) received by AMVIC regarding automotive vehicles being sold from an unlicensed residence which was owned by the Supplier. The issue presented by the investigator that led to the administrative review of the Supplier was whether or not the Supplier breached a section of the CPA. The findings of the Applicant Report including the history of the Supplier with AMVIC and the information exchanged during the administrative review has been relied upon in relation to this Proposed Administrative Penalty.

The Supplier has been subject to administrative action in the past, which has resulted in the Supplier's business licence being cancelled in 2014. AMVIC gave the Supplier a second chance and granted him a licence in November of 2016 and in under one year the Supplier was found to have been breaching the legislation again by selling vehicles to the general public, while not licensed to do so, at which point, the Supplier's licence was cancelled by the Director in July 2017. During the time the Supplier's business licence was cancelled, he allowed a friend to use his account at the auction to buy vehicles. After the vehicles were purchased from the auction, the Supplier would sell the vehicle from his business to DA. The Supplier's account at the auctions indicate he purchased a number of vehicles. However, specifically, these five vehicles were purchased and sold to DA during the time the Suppliers business licence was cancelled. The Supplier indicated during the administrative review that he did not think it was wrong to allow his friend to use his account at the auction and he did not think he would get in trouble for issuing his friend a bill of sale for these vehicles. Further, the Supplier believes he has been doing things properly, with regards to his business practices; however, the Supplier continued to operate his wholesale business after being notified his AMVIC business licence had been cancelled. It was not until October 17, 2017, that the Supplier's appeal was heard by the Appeal Panel and the Director's decision was varied to a 120 day suspension. During this time, the Supplier continued to operate in the automotive industry without an AMVIC business licence to do so. The Supplier in his representations states, *"...how can a small business such as mine afford such a large fine for such a small business error?"* As stated above, the Supplier has been subject to having his business licence cancelled and suspended in the past for selling vehicles to consumers. It is the Director's opinion that business errors such as these are not considered small business errors because they put consumers at risk and are a direct contravention of the legislation. Through his past dealings with AMVIC Mr. Gader has been advised multiple times of the requirement to be properly AMVIC licenced when conducting any designated activity in the automotive industry. Therefore, based on the evidence before me it is evident that the Supplier has no regard for the legislation and has contravened Section 104(1) of the CPA.

AMVIC follows a progressive enforcement model when enforcing consumer protection laws. Administrative action may include a written warning, condition(s) added to the licence, charges under the legislation, Administrative Penalty, Director's Order, Undertaking, and suspension or cancellation as outlined in Section 127 of the CPA. When determining an appropriate enforcement measure, the Director will consider several factors before making his decision to ensure what level of enforcement is appropriate to the contravention. The aggravating factors include the seriousness of the contravention the Supplier's inability to comply with the rather straight forward requirements of the legislation and willful disregard for the rules. At the administrative review, the Supplier took responsibility and acknowledged that his business practices were non-compliant with the legislation between July and October of 2017. An Administrative Penalty must be sufficient in that the Supplier and other Suppliers do not view the amount of the penalty as a cost of doing business that is preferable to following the law.

There exists an onus on the Supplier to do their due diligence and ensure they are complying with the law. As stated in the Supreme Court of British Columbia in *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers, 2014 BCSC 903* addressed the issue of the onus and responsibility the Supplier has when operating within regulated industry. The court at paragraph 59 stated:

In my view, it is incumbent upon a party that operates within a regulated industry to develop at least a basic understanding of the regulatory regime, including its obligations under the regime, as well as the obligations, and the authority, of the regulator

This Administrative Penalty is only regarding the breach of the legislation found during the investigation regarding case file 18-01-200, however, the Supplier's history with AMVIC including previous administrative action, indicated that the Supplier continued to not comply with the legislation and the previous enforcement against the Supplier cannot be ignored. In reaching a Proposed Administrative Penalty, the Director also took into consideration the number and seriousness of the contraventions.

In the Supplier's January 3, 2019 written representation to the Proposed Administrative Penalty, Mr. Gader indicated he felt an administrative penalty of \$2,500 would be appropriate in this matter. Based on the Supplier's previous non-compliance and enforcement history it is the Director's opinion that an Administrative Penalty of \$2,500 would not appropriate in this case.

#### **Action**

In accordance with Section 158.1(a) of the CPA and based on the above facts, I am requiring that 1802580 Alberta Ltd. operating as Calgary Truck and Automotive Sales pay an Administrative Penalty of **\$10,000**. This is based on my opinion that 1802580 Alberta Ltd. o/a Calgary Truck and Automotive Sales contravened Section 104(1) of the CPA five times between July and October of 2017.

Taking into consideration all the representations made by the Supplier and the representations made by AMVIC's investigations department, the amount of the Administrative Penalty is **\$10,000**.

The amount takes into consideration the factors outlined in Section 2 of the Administrative Penalties (*Consumer Protection Act*) Regulation, AR 135/2013 and the principles referenced in *R v Cotton Felts Ltd., (1982), 2 C.C.C (3d) 287 (Ont. C.A.)* as being applicable to fines levied under regulatory legislation related to public welfare including consumer protection legislation. In particular the Director took into account:

1. The potential harm to the public of the types of conduct outlined;
2. The seriousness of the contraventions or failure to comply;
3. The previous history of enforcement and non-compliance identified by the investigator;
4. The degree of willfulness or negligence in the contravention or failure to comply;
5. Previous Administrative Penalties issued to business operators by AMVIC in similar circumstances; and
6. The maximum penalty under Section 158.1(3) of the CPA of \$100,000.
7. The deterrent effect of the penalty.

**The amount of the Administrative Penalty is \$10,000.**

Pursuant to Section 3 of the Administrative Penalties (*Consumer Protection 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 of the CPA and further disciplinary action will be considered.

**If the Supplier chooses, he can utilize a payment plan of:**

February 15, 2019 – \$1,000  
March 15, 2019 – \$1,000  
April 15, 2019 – \$1,000  
May 15, 2019 – \$1,000  
June 15, 2019 – \$1,000  
July 15, 2019 – \$1,000  
August 15, 2019 – \$1,000  
September 15, 2019 – \$1,000  
October 15, 2019 - \$1,000  
November 15, 2019 - \$1,000

If the Supplier chooses to utilize this payment plan, he must provide AMVIC postdated cheques for all payments within thirty (30) days of the date of service of this notice and those cheques must be made payable to the **Government of Alberta**.

Section 179 of the CPA 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 CPA, 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 (*Consumer Protection Act*) Regulation, the fee for appealing an Administrative Penalty is the lesser of \$1,000 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.

Yours truly,

"original signed by"

AMVIC  
Malcolm Knox  
Director of Fair Trading (as Delegated)

/cz  
Encl.

cc: [REDACTED] Senior Manager of Investigations, AMVIC