

September 18, 2020

Administrative Review – 20-04-003
Served via Email: arman@forensic.ca

Administrative Penalty

1478509 ALBERTA LTD.
operating as CALGARY AUTO GALLERY
c/o REGISTERED OFFICE
929 42 AVENUE SE
CALGARY, AB T2G 1Z1

Attention: Safwan Hniedi

Dear Sir:

**Re: 1478509 Alberta Ltd. operating as Calgary Auto Gallery
Automotive business licence B1030486**

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. Sections 158.1 and 158.2 of the CPA dealing with Administrative Penalties have been included in the section of this letter that sets out the legislation applicable to this matter.

Facts

The evidence before me in relation to this matter consists of the material contained in an Application Report prepared by the AMVIC industry standards department (the "Application Report") and attached as Schedule "A". Legal counsel for 1478509 Alberta Ltd. operating as Calgary Auto Gallery (the "Supplier") provided written representations on Aug. 19, 2020, attached as Schedule "B", in response to the Proposed Administrative Penalty that was provided in accordance with Section 158.2. The written representations were not provided by the timeframe set out in the proposed Administrative Penalty however, out of fairness to the Supplier they will be taken into consideration. Based on all the evidence, I find the facts in this matter to be as follows.

Licence Status

1478509 Alberta Ltd. operating as Calgary Auto Gallery holds an Automotive Business licence and carries on business as an automotive sales business in the Province of Alberta.

Direct communications with the Supplier and its Representatives

1. On March 14, 2016, a routine AMVIC industry standards inspection was completed at the business location of the Supplier. The findings of the inspection were discussed with the Supplier and a

Findings Letter dated March 17, 2016 was completed and sent to the business. The Findings Letter outlined the following concerns:

- a) One salesperson who was no longer working for the Supplier was still listed as a designated agent with the Supplier in AMVIC's online database. Failure to remove the expired salesperson who is no longer an employee as a designated agent in AMVIC's database is contrary to Section 21 of the Automotive Business Regulation ("ABR").
 - b) Online advertisements (Kijiji) and the company website did not include the AMVIC-licensed logo or equivalent wording.
 - c) Online vehicle advertisements were missing the full cost of credit disclosure contrary to Sections 4 and 6 of the Cost of Credit Disclosure Regulation ("COC").
 - d) Two advertisements on vehicles for sale did not include the stock number contrary to Section 11(2)(m) of the ABR.
 - e) Two consumer transactions reviewed against advertisements on the website did not reflect the all-in pricing requirements contrary to Section 11(2)(l) of the ABR.
 - f) There were various issues with the completion of and disclosure of the Mechanical Fitness Assessment ("MFA") in the deal jackets breaching Section 15(1) of the Vehicle Inspection Regulation ("VIR").
 - g) There were various issues with the bills of sale that were reviewed in the deal jackets and one bill of sale was missing. It was noted in the Findings Letter that the Supplier needs to fully complete the bill of sale and maintain their business records.
2. On Jan. 5, 2017, a follow-up AMVIC industry standards inspection was completed on the Supplier. The findings of the inspection were discussed with the Supplier and a Findings Letter dated Jan. 11, 2017 was completed and sent to the business. The follow-up inspection found:
- a) One salesperson who was no longer working for the Supplier was still listed as a designated agent with the Supplier in AMVIC's online database. Failure to remove the expired salesperson who is no longer an employee as a designated agent in AMVIC's database is contrary to Section 21 of the ABR.
 - b) Online advertisements on the Supplier's Facebook page did not include the AMVIC-licensed logo or equivalent wording.
 - c) Online vehicle advertisements were missing the full cost of credit disclosure contrary to Sections 4 and 6 of the COC.
 - d) One advertisement was found to be listed on the Supplier's website however had already been sold.
 - e) There were various issues with the completion of and disclosure of the MFA in the deal jackets breaching Section 15(1) of the VIR.
 - f) Three out of four consumer transactions reviewed against advertisements on the website did not reflect the all-in pricing requirements contrary to Section 11(2)(l) of the ABR.
 - g) There were various issues with the bills of sale that were reviewed in the deal jackets. It was noted in the Findings Letter that the Supplier needs to fully complete the bill of sale and maintain their business records.

3. On Jan. 16, 2017, the Supplier was given a \$1,000 Administrative Penalty for non-compliant advertising issues:
 - a) Advertisements on vehicles for sale did not include the stock number contrary to Section 11(2)(m) of the ABR.
 - b) Advertisements containing odometer readings of vehicles were being rounded off which were not always accurate contrary to Section 11(2)(d) of the ABR.
4. On Nov. 4, 2019 the Supplier entered into an Undertaking with the Director as a result of an AMVIC investigation for the following issues:
 - a) Engaged in the designated activity of leasing while not licensed to do so contrary to Section 104(1) of the CPA.
 - b) Advertisements on vehicles for sale did not include the stock number contrary to Section 11(2)(m) of the ABR.
 - c) Consumer transaction documents did not accurately reflect the true nature of the consumer transaction contrary to Section 132(1) of the CPA.
5. As part of the Undertaking the Supplier agreed and undertook to:
 - a) Assist AMVIC with an inspection by Jan. 31, 2020.
 - b) Pay investigation costs of \$1,750.
 - c) Ensure they maintain accurate business records and documents as per legislative requirements.
 - d) Ensure their advertising conforms to advertising requirements as set out in the ABR.
 - e) Cease engaging in automotive leasing unless licensed under the CPA to engage in the business activity.
6. As agreed to by the Supplier in the Undertaking entered into on Nov. 4, 2019, AMVIC scheduled a further inspection. The Industry Standards inspection was originally scheduled for Feb. 10, 2020 however the Supplier cancelled as a result of a break and enter and theft to his business. The Supplier asserted that a box containing bills of sale, receipts, and bank statements that he had prepared for the AMVIC inspection was stolen. The Supplier was requested to produce a copy of the police report pertaining to the break and enter and theft, however did not comply with this request.
7. On March 10, 2020, a third AMVIC industry standards inspection was completed on the Supplier. The findings of the inspection were not discussed with the Supplier. A Findings Letter dated March 22, 2020 was emailed to the business on March 25, 2020. The inspection found:
 - a) Two salespeople who no longer work for the Supplier were still listed as designated agents with the Supplier in AMVIC's online database. Failure to remove expired salespeople who are no longer employees as designated agents in AMVIC's database is contrary to Section 21 of the ABR.
 - b) Advertisements on vehicles for sale at the Supplier's business did not include or display stock numbers contrary to Section 11(2)(m) of the ABR.
 - c) In-house financing is being offered without a finance agreement in place. One deal was found to offer financing however did not contain required information as required by the COC.

- d) There were various issues with the completion of and disclosure of the MFA in the deal jackets breaching Section 15(1) of the VIR.
 - e) There were various issues with the bills of sale that were reviewed in the deal jackets. Some issues noted in the Findings Letter include, the AMVIC business number was not indicated, the salesperson registration number was not indicated, the consumer's government issued identification number was not indicated, the balance due was not listed, and the address of the consumer was missing contrary to Section 31.2(1) of the ABR.
 - f) Failing to provide vehicle history disclosures contrary to Section 31.1 of the ABR.
 - g) The Supplier was requested during the inspection to locate and forward documentation on a 2009 Toyota Tundra (stock #84755). The Supplier was again given instructions to produce the documents verbally on March 19, 2020. The inspector sent a follow up by email on March 19, 2020 requesting the same. The Supplier was required to provide the following documents by March 20, 2020 by 4:30 p.m. and failed to do so contrary to Section 132(2) of the CPA:
 - i. All bills of sale for vehicles sold after Jan. 1, 2020.
 - ii. Documents pertaining to a 2009 Toyota Tundra (stock #84755) as requested during inspection on March 10, 2020.
 - iii. Police Report for the February 2020 break and enter in which documents were alleged to have been stolen from the Supplier's business.
8. The Supplier entered into an Undertaking with the Director on Nov. 4, 2019 and as part of the said Undertaking agreed to assist in a follow up inspection, however did not provide all the documents as requested by the AMVIC inspector. The Supplier also undertook to ensure their advertising complies with the legislation, however there was advertising breaches found during the 2020 inspection. The Supplier has breached the agreed upon Undertaking contrary to Section 163(d) of the CPA.
9. There were several issues found during one or more inspections. The legislative breaches that were found in the third inspection which had been addressed in previous inspections include:
- a) The Supplier failing to notify the Director when their salespeople are no longer authorized to act on their behalf contrary to Section 21 of the ABR.
 - b) Advertisements of vehicles for sale not including the stock number contrary to Section 11(2)(m) of the ABR.
 - c) Various issues with the completion of and disclosure of the MFAs in the deal jackets breaching Section 15(1) of the VIR.
 - d) The Supplier is not complying with the bill of sale legislation, despite the education provided by the inspector during the previous inspections regarding the importance of accurate information and completion of the bill of sale.
10. On Aug.19, 2020 at 6:01 p.m. AMVIC received written representations from the Supplier's legal counsel (attached as Schedule "B"). The representations included a three page letter, a decision from the Employment Standards Tribunal, the Supplier's bill of sale and a recent advertisement.

Applicable Legislation

Automotive Business Regulation

Records

Section 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.

Advertising

Section 11

- (1) Every business operator must ensure that the business operator's advertising indicates in a conspicuous manner
 - (b) in the case of print and television advertising, that the business operator holds an automotive business licence under the Act.
- (2) A business operator must ensure that every advertisement for an automotive business that promotes the use or purchase of goods or services
 - (d) uses descriptions and makes promises only in accordance with actual conditions, situations and circumstances,
 - (l) includes in the advertised price for any vehicle the total cost of the vehicle, including, but not limited to, all fees and charges such as the cost of accessories, optional equipment physically attached to the vehicle, transportation charges and any applicable taxes or administration fees, but not including GST or costs and charges associated with financing, and
 - (m) includes the stock number of the specific vehicle that is advertised as being available for sale at the time the advertisement is placed.

General codes of conduct

Section 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.

Registration

Section 16

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

Salesperson ceases to be authorized

Section 21

- (1) When an automotive sales business operator, automotive leasing business operator or automotive consignment business operator ceases to authorize a

salesperson to act on its behalf, the business operator must send to the Director written notification of

- (a) the name of the salesperson, and
- (b) the date that the salesperson ceases to be authorized to act on its behalf.

(2) The business operator must notify the Director either before the salesperson ceases to be authorized or within 15 days after the salesperson ceases to be authorized.

Vehicle history information

Section 31.1(1)

A business operator engaged in automotive sales must disclose the following information in accordance with subsection (2), on the basis of information the business operator knew or ought to have known:

- (a) whether the vehicle has been bought back by the manufacturer under the Canadian Motor Vehicle Arbitration Plan;
- (b) whether the vehicle has sustained damage caused by fire;
- (c) whether the vehicle has sustained damage caused by immersion in liquid to at least the level of the interior floorboards;
- (d) whether the vehicle has been used as a police car or an emergency vehicle;
- (e) whether the vehicle has been used as a taxi cab or a limousine;
- (f) whether the vehicle has been previously owned by a rental vehicle business or used as a rental vehicle on a daily or other short-term basis;
- (g) whether the vehicle has, at any time, been assigned a status in one of the following categories under the *Vehicle Inspection Regulation* (AR 211/2006) or an equivalent status under the laws of another jurisdiction:
 - (i) salvage motor vehicle;
 - (ii) non-repairable motor vehicle;
 - (iii) unsafe motor vehicle;
- (h) whether the vehicle has been damaged in an incident or collision where the total cost of repairs fixing the damage exceeded \$3000 and, if the repairs were carried out by the business operator, the total cost of the repairs;
 - (i) whether the vehicle was registered in any jurisdiction other than Alberta immediately before it was acquired by the business operator and, if so,
 - (i) the name of the jurisdiction in which the vehicle was previously registered,
 - (ii) whether the vehicle was required to be inspected prior to registration in Alberta, and
 - (iii) whether the vehicle passed or failed any required inspections.

(2) The business operator must disclose the information required under subsection (1) in a clear and legible manner

- (a) in any online advertisement for the vehicle,
- (b) on any sales tag affixed to the vehicle, and
- (c) in writing to the consumer before purchase.

Bill of sale**Section 31.2**

(1) A business operator engaged in automotive sales must use a bill of sale that includes the following:

- (a) the name and address of the consumer;
- (b) the number of the government-issued identification that the business operator uses to confirm the identity of the consumer;
- (c) the name, business address and licence number of the business operator;
- (d) if a salesperson is acting on behalf of the business operator, the name and registration number of the salesperson;
- (e) the make, model and model year of the vehicle;
- (f) the colour and body type of the vehicle;
- (g) the vehicle identification number of the vehicle;
- (h) the date that the bill of sale is entered into;
- (i) the date that the vehicle is to be delivered to the consumer;
- (j) an itemized list of all applicable fees and charges the consumer is to pay, including, without limitation:
 - (i) charges for transportation of the vehicle;
 - (ii) fees for inspections;
 - (iii) fees for licensing;
 - (iv) charges for warranties;
 - (v) taxes or levies, including GST;
- (k) the timing for payment by the consumer of the fees and charges under clause (j);
- (l) an itemized list of the costs of all extra equipment and options sold to the consumer in connection with the vehicle or installed on the vehicle at the time of sale;
- (m) the total cost of the vehicle, which must include the fees, charges and costs listed under clauses (j) and (l);
- (n) the down payment or deposit paid by the consumer, if any, and the balance remaining to be paid;
- (o) if the consumer is trading in another vehicle to the business operator in connection with the purchase of the vehicle,

(2) the business operator must ensure that all restrictions, limitations, and conditions imposed on the consumer under the bill of sale are stated in a clear and comprehensible manner.

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.

Expiry of mechanical fitness assessment

Section 16

A dealer's mechanical fitness assessment provided under section 15(1) for a used motor vehicle expires 120 days after the date on which it was issued.

Cost of Credit Disclosure Regulation

Advertisements

Section 4

Where an advertisement contains information that under section 6, 7(2), 12(1) or 18 requires disclosure of the APR or other information in the advertisement,

- (a) the APR must be as prominent, in relation to looking at it, listening to it, or both, as the case may be, as any of the information that required the APR to be disclosed, and
- (b) any other information required to be disclosed must be conspicuous.

Advertisements**Section 6**

- (1) This section applies only to advertisements that offer credit and state the interest rate or amount of any payment.
- (2) The information required to be disclosed for the purposes of section 76(1) of the Act is
 - (a) the APR, and
 - (b) the term.
- (3) In addition to the information required under subsection (2),
 - (a) an advertisement for a credit sale of a specifically identified product must disclose the cash price, and
 - (b) an advertisement for a credit sale in connection with which any non-interest finance charge would be payable must disclose
 - (i) the cash price, and
 - (ii) the total cost of credit,except that an advertisement on radio, television or a billboard or other media with similar time or space limitations is not required to disclose the total cost of credit.
- (4) Where any of the information required to be disclosed by subsections (2) and (3) would not be the same for all credit agreements to which the advertisement relates, the information must be for a representative transaction and must be disclosed as such.

Consumer Protection Act**Act prevails****Section 2**

- (1) Any waiver or release by a person of the person's rights, benefits or protections under this Act or the regulations is void.

Duty to maintain records**Section 132**

- (1) Every licensee and former licensee must create and maintain
 - (a) complete and accurate financial record of its operation 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 at a time specified by the inspector.

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.

Non-compliance with orders, etc.

Section 163 Any person who

- (d) fails to comply with an undertaking under this Act contravenes this Act and is guilty of an offence.

Analysis – Did the Supplier fail to comply with the provisions of the CPA, ABR, and VIR?

A routine AMVIC industry standards inspection was completed on March 14, 2016. The inspection findings were discussed with the Supplier and the Findings Letter was sent to the business. The inspector concluded that a follow-up inspection was required due to the legislative breaches found during the inspection.

A second inspection was completed on Jan. 5, 2017. As with the initial inspection, the inspection findings were discussed with the Supplier and the Findings Letter was sent to the business. The inspection found legislative breaches consistent with those that had been previously identified in the initial inspection.

On Jan. 16, 2017, a \$1,000 Administrative Penalty was assessed against the Supplier for non-compliant advertising issues.

On Nov. 4, 2019, the Supplier voluntarily entered into an Undertaking with the Director as a result of an AMVIC investigation regarding issues involving the Supplier engaging in leasing activity while not licensed to do so, vehicles being advertised for sale with no stock numbers and consumer transaction documents not accurately depicting or reflecting the true nature of the transaction.

As part of the agreed upon Undertaking, a follow-up inspection was to be scheduled by Jan. 31, 2020. An AMVIC Industry Standards inspection was originally scheduled for Feb. 10, 2020, however the Supplier cancelled as a result of a break and enter and theft at his business. The Supplier asserted that a box which contained bills of sale, receipts and bank statements that he had prepared for inspection was stolen. The Supplier was requested to produce a copy of the police report pertaining to the break and enter and theft, however he did not comply with this request.

On March 10, 2020, a third inspection was completed. The findings were not discussed with the Supplier, however the Findings Letter dated March 22, 2020 was emailed to the Supplier. The third inspection found multiple legislative breaches, some of which were consistent with those that had been previously identified in earlier inspections. The legislative breaches that are currently under consideration are as a result of the March 10, 2020 inspection. The Findings Letter and supporting documents are attached within Schedule "A". The allegations regarding inconsistent signatures on MFAs will not be considered in determining this Administrative Penalty.

During the March 10, 2020 inspection the Supplier was requested to provide documentation regarding a 2009 Toyota Tundra (stock #84755), bills of sale for vehicles sold after Jan.1, 2020, and the police report regarding the alleged break and enter resulting in the theft of his records. The Supplier was again instructed to provide the documents by the AMVIC inspector verbally by telephone and by email on March 19, 2020. The Supplier was given until 4:30 p.m. on March 20, 2020 to provide the documents. The Supplier failed to provide the documents requested by the AMVIC inspector.

A. Failure to provide records

The Supplier is required to provide AMVIC their records when requested as per Section 132(2) of the CPA. It is not unreasonable for AMVIC to request evidence in the form of a police report to validate the Supplier's claim that a theft had occurred and he was therefore unable to comply with AMVIC's request. The onus is on the Supplier to provide evidence as why he did not comply with the request for records and therefore breached the legislation. To date AMVIC has not received a police report regarding the break and enter and theft of the Supplier's records. The Director can only make findings of fact based on the evidence provided. Therefore, without proof of the break and enter and theft, the Director cannot validate the Supplier's reason for failing to provide the records when requested. Failing to maintain and provide records to an AMVIC inspector when requested is a contravention of Section 132(2) of the CPA.

B. Failure to comply with Undertaking

The Supplier voluntarily entered into an Undertaking with the Director on Nov. 4, 2019. As part of the Undertaking, the Supplier agreed to assist in a follow-up inspection and ensure all advertisements are compliant with the legislation. No details were provided as to how many vehicles were for sale at the Supplier's business, however during the third inspection, the inspector identified that some vehicles had advertisements affixed to them that did not include the stock numbers contrary to Section 11(2)(m) of the ABR. Advertisements missing stock numbers was previously identified during the first inspection. This was also addressed in the Administrative Penalty assessed in 2017 and in the Undertaking entered into in 2019.

The Supplier failed to provide requested documents and failed to provide the police report demonstrating that his business was in fact subject to a break and enter that resulted in the theft of his records. Further, the Supplier did not have stock numbers on all the advertising affixed to the vehicles at his business as required by Section 11(2)(m) of the ABR. As a result, the Supplier has failed to comply with the Undertaking and has contravened Section 163(d) of the CPA.

C. Failure to notify AMVIC

In accordance with Section 21 of the ABR, the Supplier must notify the Director within 15 days after a salesperson ceases to be authorized to act on its behalf. Despite being a relatively small business in the automotive industry and employing a small number of salespeople at any given time, in all three inspections it was identified that the Supplier failed to notify AMVIC when salespeople were no longer employed as designated agents contrary to the ABR.

AMVIC conducted three Industry Standards inspections over a four year period between 2016 and 2020. All three Findings Letters indicate the Supplier is not compliant with Section 21 of the ABR. The Findings Letters provided the Supplier the link to the AMVIC online portal to update his designated agents with AMVIC. The Supplier had multiple opportunities to clarify and bring his business into compliance. To remedy his unfamiliarity, the Supplier had ample opportunity to simply ask the industry standards officer or contact the licensing department for assistance. The Director does not accept the Supplier's unfamiliarity with the legislation or the AMVIC online portal as a satisfactory excuse to continue to engage in a non-compliant business practice.

D. Non-compliant bill of sale

In each of the inspections conducted by the AMVIC Industry Standards department, the Supplier was educated on the compliance issues the inspector found when reviewing the bill of sale. Although the first two inspections were completed prior to the legislative change, the inspector found deficiencies in the Supplier's bill of sale and educated the Supplier regarding the importance of properly completing the bill of sale, and ensuring all information is accurate.

On Oct. 31, 2018, new legislation was put into effect with regards to bill of sale requirements. Between Sept. 25, 2018 and Nov. 6, 2018, AMVIC sent out a number of industry bulletins, updated the AMVIC website with information regarding the new legislation, sent multiple bulletins to inform the industry and the public regarding the changes, updated social media regularly, sent out a special edition of the IMPACT

newsletter to the industry regarding the legislative changes and all AMVIC employees had an email signature attached to staff emails regarding the legislative changes. These are just a few of the initiatives that AMVIC took to ensure all licensees were advised of the legislative changes that were coming into effect on Oct. 31, 2018 regarding the bill of sale.

At the time of the third inspection, the new ABR legislation had been in effect for 16 months. The inspector noted in the third Findings Letter a number of legislative breaches regarding the bill of sale requirements as per Section 31.2(1) of the ABR. In total, seven bills of sale that were reviewed had compliance concerns; some with multiple issues including but not limited to missing the AMVIC business licence number, missing the AMVIC salesperson registration number, missing the consumer's government issued identification number, not listing the balance due, failing to disclose the deposit given and missing the address of the consumer.

Further, the Supplier is utilizing a bill of sale that is non-compliant with the legislation as identified in the March 22, 2020 Findings Letter and previously identified during the first inspection. The Supplier has not removed a reference on their bill of sale that the consumer agrees to accept the vehicle with all or any defects along with underlying conditions that allows the consumer to sign off including but not limited to the following: No Mechanical Inspection, Inspected by Buyers Mechanic and Inspected by Buyer. Section 2 of the CPA clearly states that any waiver or release by a person of the person's rights, benefits or protections under the Act or regulations is void. Additionally, the MFA is required to be provided prior to entering into a contract to sell a used vehicle as per Section 15 of the VIR. If the vehicle does not comply with the Vehicle Equipment Regulation, the MFA must state this and must still be provided to the consumer prior to entering into the contract to sell the vehicle. The bill of sale provided on Aug. 19, 2020 appears to no longer contain the previously indicated references however, the Supplier did not provide the back side of the bill of sale.

The written representations provided to AMVIC on Aug. 19, 2020 (attached as Schedule "B") included a bill of sale and a recent advertisement of the Supplier. The bill of sale indicates that used vehicles have no warranty unless otherwise stated on the form, however the Supplier's advertisement indicates *"ALL CARS COME INSPECTED AND WITH 6 MONTHS UNLIMITED POWER TRAIN WARRANTY"*. These contradictory statements create circumstances where consumers are misled in regards to the warranty provided on the vehicle purchased. Furthermore, if the Supplier is referring to the MFA when indicating *"ALL CARS COME INSPECTED..."* this would be incorrect as the MFA is not an inspection. If the Supplier is completing inspections on all vehicles as advertised, the Supplier is expected to provide that inspection to AMVIC when records are requested as the legislation is very clear that a business operator must maintain all records and documents created or received while carrying on the business activities authorized by the licence. Additionally, the bill of sale indicates *"CONDITIONS ON BACK FORM PART OF THIS CONTRACT"* however the back side of the form was not provided. If the bill of sale contract continues on the back side of the form, the Supplier must also provide that documentation to AMVIC when documents are requested. If there is no back side of the form the statement should be removed as it is not accurate.

E. Documentation completion and disclosure

All three Findings Letters discuss the legislative requirements regarding MFA compliance pursuant to Sections 15(1) and 16 of the VIR. An MFA is a key document given to a consumer before entering into a

contract to purchase a vehicle. There is an onus on the Supplier to provide correct and accurate information to the consumer to allow the consumer to make an informed purchasing decision. During the third inspection, the deal jackets of 10 used vehicles sold were reviewed. Of the 10 used vehicle sales, three MFAs were missing the vehicle type contrary to MFA legislative requirements. Although this error is somewhat minor in nature in relation to the disclosure of the mechanical condition of the vehicle to the consumer prior to the sale of the motor vehicle, it is still required under Section 15 of the VIR. It was also noted that one MFA has the date crossed out and a new date written in. The original date is not legible. An MFA is valid for 120 days and if an MFA expires a new MFA must be completed. The date of completion should not be crossed out and a new date added. As required by Section 12(o) of the ABR, the Supplier is expected to comply with any legislation regarding the sale of vehicles, therefore the Supplier has contravened Section 15(1)(a) of the VIR and Section 12(o) of the ABR.

The Supplier is required to create and maintain records that are complete and accurate which demonstrate they are complying with the legislation as per Section 9 of the ABR and Section 132(1) of the CPA. In the Nov. 4, 2019 agreed upon Undertaking, the AMVIC investigation concluded that the consumer transaction documents did not accurately depict or reflect the true nature of the consumer transaction. In all three inspection Findings Letters, the Supplier has shown a pattern of repetitive errors in their paperwork, advertisements and administrative functions whilst conducting business in the automotive industry.

In the Aug. 19, 2020 written representations, the Supplier's legal counsel indicated *"it is difficult in this day and age with the pandemic"* to implement better oversight to maintain accurate records. While the Director understands the current COVID-19 pandemic has created unprecedented times, this is not an acceptable reason or excuse to fail to maintain accurate records. The Supplier has been provided multiple opportunities since the first AMVIC Industry Standards inspection in 2016 to bring his business practices into compliance and maintain accurate records in accordance with the legislation. The Supplier is expected to comply with the legislation as a member of a regulated industry.

F. Other factors considered

The Supplier has been in business since September 2012. AMVIC completed two previous inspections with the Supplier, assessed an Administrative Penalty in 2017, and entered into an Undertaking in 2019. The Supplier ought to have a basic knowledge or understanding of the legislation that governs the automotive industry and ought to ensure that they stay informed of all changes made in legislation.

The AMVIC Industry Standards department has been conducting inspections and providing education to the industry about the legislative requirements expected to be met by automotive businesses. Through the initial two inspections the Supplier had been given the opportunity to implement changes to ensure business practices were brought into compliance with the legislation. Based on the Finding Letters from the inspections, the Supplier continues to be non-compliant in various areas of the legislation.

There exists an onus on the Supplier to do their due diligence and ensure they are complying with the legislation that governs the regulated industry they have chosen to be a member of. 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 a 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."

The Director considered the two previous AMVIC Industry Standards inspections completed which provided the Supplier education and opportunities to bring his business practices into compliance, the Undertaking and the \$1,000 Administrative Penalty. These actions have all taken place in the past four years. The Supplier breached the Undertaking he recently entered into and has breached multiple sections of the legislation. In the written representations received on Aug. 19, 2020, a decision from the Employment Standards Tribunal was included. The Supplier's legal counsel suggested an Administrative Penalty of \$2,000 would be appropriate based on the Employment Standards Tribunal decision, in which an appeal panel upheld a \$1,000 Administrative Penalty that had been imposed due to failure to maintain records. The Employment Standards Tribunal decision does not provide enough details for this case to be considered relevant to this circumstance. The case provided does not speak to any factors considered when the \$1,000 Administrative Penalty was determined.

The Supplier requested 60 days to pay the Administrative Penalty assessed *"due to the current economic conditions of his business and the Alberta economy in general."* AMVIC considered the current economic climate and as requested will grant the Supplier 60 days from the date of this Administrative Penalty to provide payment as per the guidelines below.

Action

In accordance with Section 158.1(a) of the CPA and based on the above facts, I am requiring that 1478509 Alberta Ltd. operating as Calgary Auto Gallery pay an Administrative Penalty of **\$5,000**. This is based on my opinion that 1478509 Alberta Ltd. operating as Calgary Auto Gallery contravened Sections 11(2)(m), 12(o), 21, 31.1, and 31.2(1) of the ABR, Section 15(1) of the VIR, and Sections 132(2) and 163(d) of the CPA.

Taking into consideration all the representations made by the Supplier and the representations made by AMVIC's Industry Standards department, the amount of the Administrative Penalty is **\$5,000**.

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;
4. The degree of willfulness or negligence in the contravention or failure to comply;
5. The maximum penalty under Section 158.1(3) of the CPA of \$100,000 and;
6. The deterrent effect of the penalty.

The amount of the Administrative Penalty is \$5,000.

Pursuant to Section 3 of the Administrative Penalties (*Consumer Protection Act*) Regulation, you are required to submit payment within **sixty (60) 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.

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 **thirty (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"

Alberta Motor Vehicle Industry Council (AMVIC)
Gerald Gervais, Registrar
Director of Fair Trading (as Delegated)

GG/kl

Enclos.

cc: Evelyn L-J., Manager of Industry Standards, AMVIC