

January 19, 2021

Administrative Review – 20-10-001
Served Personally

Administrative Penalty

1366675 ALBERTA LTD.
o/a GREEN-LINE AUTO CLEARANCE
12336 66 STREET
EDMONTON, ALBERTA
T5B 1K3

Attention: Mr. Stanley Igiwa, Mr. Matthew Igiwa, Mr. Nasu Igiwa

Dear Sir(s):

**Re: 1366675 Alberta Ltd. operating as Green-line Auto Clearance
AMVIC Business Licence B2030202**

As the Director of Fair Trading (as delegated), I wrote to you pursuant to Section 158.2 of the *Consumer Protection Act* ("CPA") and provided you written notice of a Proposed Administrative Penalty and provided you the opportunity to respond. This letter constitutes the Administrative Penalty being issued under Section 158.1(1) of the CPA.

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 and the material previously disclosed to 1366675 Alberta Ltd. operating as Green-line Auto Clearance, which is attached as Schedule "A"; as well as the information exchanged during the administrative review held via teleconference call on Oct. 28, 2020. I have also taken into consideration the written representations that were provided to AMVIC on Oct. 24, 2020 which is attached as Schedule "B" and the written representations received on Dec. 18, 2020, attached as Schedule "C", in response to the Proposed Administrative Penalty.

Licencee Status

1366675 Alberta Ltd. operating as Green-line Auto Clearance holds an AMVIC business licence and carries on business as used sales in the Province of Alberta.

1366675 Alberta Ltd. has three trade names associated to the legal entity: Peace Motor, Easy Motors, and Green-Line Auto Clearance. Since becoming licensed 1366675 Alberta Ltd. has held AMVIC business licences associated with all three trade names. 1366675 Alberta Ltd. operated as Peace Motor from October 2008 until December 2014. In 2014, 1366675 Alberta Ltd. added the trade name Easy Motors and operated under that trade name. In 2018, 1366675 Alberta Ltd. added the trade name it currently

operates as, Green-Line Auto Clearance. Stanley Igiwa has been a director of 1366675 Alberta Ltd. since its incorporation in 2007.

History

In 2014, AMVIC had four separate consumer complaints regarding 1366675 Alberta Ltd. operating as Peace Motor, which included several breaches of the *Fair Trading Act* (now *Consumer Protection Act*) and its related regulations and the Vehicle Inspection Regulation ("VIR"). As a result of these matters 1366675 Alberta Ltd. operating as Peace Motor entered into an Undertaking in September 2014 (see Schedule A; exhibit P). In the Undertaking the Supplier acknowledged they had breached multiple sections which included but is not limited to unfair practices, duty to maintain records and issues regarding the completion of Mechanical Fitness Assessments ("MFAs"). 1366675 Alberta Ltd. operating as Peace Motor agreed to buy back four vehicles and pay AMVIC \$1,000, a portion of the investigation costs.

In July 2016, AMVIC assessed an Administrative Penalty of \$10,000 against 1366675 Alberta Ltd. operating as Easy Motors. The Administrative Penalty found the Supplier breached multiple sections of applicable legislation regarding unfair practices, duty to maintain business records and providing consumers improperly completed MFAs. The Supplier appealed the decision of the Director of Fair Trading (as delegated) and on March 27, 2017 a consent agreement was entered into reducing the Administrative Penalty to \$5,000 (see Schedule A; exhibit P).

In July 2018, AMVIC assessed an Administrative Penalty of \$7,000 against 1366675 Alberta Ltd. operating as Easy Motors. The Administrative Penalty found the Supplier breached Section 132 of the CPA (see Schedule A; exhibit P).

In September 2018, 1366675 Alberta Ltd. operating as Green-Line Auto Clearance (the "Supplier") was served a Director's Order as they had been operating without the required licence from AMVIC to which they became compliant (see Schedule A; exhibit P).

Summary of Investigation

Case File 20-09-005

1. On Sept. 1, 2020, AMVIC received a complaint from a consumer ("JH") regarding the purchase of a 2009 Kia Sorento (the "Sorento"). The complaint was in regards to the mechanical condition of the Sorento and the lack of disclosure of the mechanical condition of the Sorento to JH. The subsequent investigation identified other breaches of the legislation pertaining to not providing records, an incomplete MFA, bill of sale ("BOS") issues and breaching an Undertaking.
2. JH purchased the Sorento on Aug. 28, 2020 from the Supplier for a purchase price of \$6,000. The BOS reflected that the price of the Sorento was discounted \$2,500 due to the repairs required to fix the passenger door lock (see Schedule A; exhibit A).

3. JH was provided an MFA that had been completed on Aug. 20, 2020 which indicated the Sorento had been assessed in accordance with the *Traffic Safety Act* and Vehicle Equipment Regulation and all parts were compliant with the exception of "*Door Latches & Hinges*" (see Schedule A; exhibit B). JH was advised by the Supplier that the vehicle was in perfect running condition. Within days of purchase, JH noted several issues with the vehicle in regards to the lights, the check engine light coming on, the rear hatch not opening and electrical issues. When JH filed a complaint she provided AMVIC with a list of deficient items that she believes should have been marked as non-compliant on the MFA.
4. On Sept. 2, 2020, AMVIC received a supplier response and documents relevant to the sale of the Sorento from the Supplier.
5. The AMVIC investigator put forth the history and condition of the Sorento prior to being sold to JH. On Feb. 5, 2018 the Sorento was repossessed and towed to another automotive dealer ("GAO"). The AMVIC investigator spoke with the previous registered owner regarding the condition of the vehicle at the time of the seizure. At the time of seizure, the vehicle was described as filthy and the passenger side door handle had been ripped out of its housing. The bailiff who seized the vehicle completed a report on the condition of the vehicle which was marked as fair (below average) and noted several issues (see Schedule A; exhibit G).
6. Upon receipt of the Sorento on Feb. 17, 2018, GAO completed a more in-depth assessment and observed many issues that required repair and that would have been considered non-compliant on an MFA (see Schedule A; exhibit I). GAO deemed the Sorento not worth repairing and sold it at auction.
7. The auction completed a seven page report on the condition of the vehicle and noted several outstanding issues (see Schedule A; exhibit J). The Supplier purchased the vehicle from the auction on April 17, 2018 for \$3,811.50. The Sorento was in the Supplier's possession for approximately 28 months. A total of approximately 50 kilometres were put on the Sorento from when the Supplier took possession to when the vehicle was sold over two years later.
8. On Sept. 7, 2020, only 10 days after JH purchased the Sorento, the battery was replaced at a cost of \$200. The business that replaced the battery advised JH that the existing battery had "*reached the end of its life*" and its state of health was at 18 per cent (see Schedule A; exhibit O).
9. On Sept. 10, 2020, the AMVIC investigator along with another AMVIC investigator, who is a licensed automotive technician, attended JH's residence and examined the Sorento. A number of deficiencies were identified with respect to the condition of the vehicle (see Schedule A; exhibit L).
10. When the AMVIC investigator spoke with the Supplier on Sept. 15, 2020 and during the administrative review on Oct. 28, 2020, the Supplier maintained that the Sorento was in perfect condition, everything was functional and stands by the MFA that was completed. The Supplier was requested to provide previous expired MFAs and receipts for any service, repairs and labour

completed on the Sorento. The only document the Supplier provided was a receipt for the cost of a third party technician to complete the MFA (see Schedule A; exhibit N).

11. The AMVIC investigation noted issues with respect to the completion of the MFA, the BOS and the Supplier being in breach of the Undertaking entered into in 2015.
12. On Oct. 24, 2020, the Supplier provided AMVIC with written representations in advance of the scheduled administrative review (see Schedule B). The Supplier advised that when JH called to report that the Sorento had an electrical malfunction the sales manager advised her to bring in the Sorento and they would have a look to see what the problem was, however JH never brought the Sorento in.
13. The Supplier asserted that everything was working on the Sorento prior to the sale and they relied on the professional judgement of the certified technician who completed the MFA.
14. The Supplier advised during the administrative review that they were now willing to provide JH with a refund or pay for the repairs to the Sorento if she wished to keep it. This resolution had not been offered at any other time after the sale or during the AMVIC complaint process.
15. During the administrative review, the AMVIC investigator indicated that he recently spoke to JH and was advised arrangements had been made to have the master switch and windshield wipers repaired in addition to some other deficiencies as the issues with the Sorento continue.
16. On Dec. 18, 2020, the Supplier provided written representations in response to the Proposed Administrative Penalty (see Schedule "C"). Included with the representations are previous MFAs completed on the Sorento while it was in the Supplier's possession.

Legislation

Automotive Business Regulation ("ABR")

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.

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

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,
 - (i) information about the vehicle being traded in, and
 - (ii) the value of the trade-in allowance incorporated into the cost of purchase of the vehicle;
- (p) the balance of any outstanding loan that is incorporated into the cost of purchase of the vehicle;
- (q) if, in connection with the purchase of the vehicle, the business operator enters into a credit agreement with the consumer or arranges a credit agreement for the consumer, the disclosure statement required under Part 9 of the Act;
- (r) an itemized list of any items or inducements the business operator agrees to provide with the vehicle at no extra charge;
- (s) the odometer reading of the vehicle at the time the bill of sale is entered into, if the vehicle has an odometer and the odometer reading is available to the business operator;

- (t) the maximum odometer reading of the vehicle at the time of delivery to the consumer if the vehicle has an odometer and
 - (i) the odometer reading is not available to the business operator at the time the bill of sale is entered into, or
 - (ii) the vehicle is a new, specifically identified vehicle;
 - (u) any mechanical fitness assessment that has been issued under the *Vehicle Inspection Regulation* (AR 211/2006);
 - (v) any disclosure statement or documentation respecting a vehicle's previous use, history or condition, including disclosure statements or documentation required under the laws of another jurisdiction;
 - (w) a declaration that the business operator has disclosed to the consumer the information required under section 31.1.
- (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

Sales 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.

Consumer Protection Act

Interpretation of documents

Section 4

If a consumer and a supplier enter into a consumer transaction, or an individual enters into a contract with a licensee and the licensee agrees to supply something to the individual in the normal course of the licensee's business, and

- (a) all or any part of the transaction or contract is evidenced by a document provided by the supplier or licensee, and
 - (b) a provision of the document is ambiguous,
- the provision must be interpreted against the supplier or licensee, as the case may be.

Unfair practices

Section 6

- (4) Without limiting subsections (2) and (3), the following are unfair practices if they are directed at one or more consumers or potential consumers:
- (a) a supplier's doing or saying anything that might reasonably deceive or mislead a consumer;

Duty to maintain records

Section 132

- (1) Every licensee and former licensee must create and maintain
- (a) complete and accurate financial records of its operations in Alberta for at least 3 years after the records are made, and
 - (b) other records and documents described in the regulations for the period specified in the regulations.
- (2) Every licensee and former licensee must make the records referred to in subsection (1) available for inspection by an inspector at a place in Alberta and 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.

Vicarious liability**Section 166**

For the purposes of this Act, an act or omission by an employee or agent of a person is deemed also to be an act or omission of the person if the act or omission occurred

- (a) in the course of the employee's employment with the person, or
- (b) in the course of the agent's exercising the powers or performing the duties on behalf of the person under their agency relationship.

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

The material which formed the Application Report was the result of a consumer complaint received by AMVIC regarding the mechanical condition of the Sorento and the lack of disclosure of the mechanical condition of the Sorento to the consumer. The ensuing investigation identified other breaches of the legislation pertaining to not providing records to the regulator, an incomplete MFA, BOS issues, and breaching an Undertaking. After reviewing all the information before me, the breaches that are currently under consideration are based on AMVIC case file 20-09-005 (the "case file").

A. Failure to provide records (CPA Section 132(2))

The Supplier is required to maintain their business records and provide them to AMVIC when requested as per Section 132(2) of the CPA. The Supplier had possession of the Sorento for 28 months prior to JH purchasing the vehicle. It is not unreasonable for AMVIC to request evidence in the form of expired MFAs, which are only valid for 120 days, or records detailing service, repairs and labour regarding the Sorento. After the investigator verbally requested the documents from the Supplier without any response, he formally requested the documents from Stanley Igiwa in an email on Sept. 16, 2020. The

request outlined the legislative requirements and a reasonable time frame for the Supplier to produce the records to the investigator. Mr. Igiwa provided a receipt for the MFA, however replied back to the investigator *"Expired MFA is not valid to AMVIC or my business"*.

During the administrative review, the Supplier indicated he had the expired MFAs and was willing to produce them now if requested, but asserted he did not think it was important. Mr. Igiwa became argumentative with the Director with respect to the evidentiary value of the expired MFAs and advised he had no further invoices with respect to repairs, service or labour completed on the Sorento. The Supplier has been subject to previous administrative enforcement actions due to failing to maintain or provide records as evidenced in the Undertaking voluntarily entered into in 2015 and the administrative penalties assessed in 2017 and 2018. The Director can only make findings of fact based on the evidence provided. The Supplier does not make the decision as to what documents are valid to AMVIC. AMVIC has completed three administrative enforcement actions regarding maintaining and providing business records to AMVIC when requested yet the Supplier again failed to comply with a request for records from the regulator.

Failing to provide records when requested by an AMVIC employee appointed as an inspector under the CPA is a contravention of Section 132(2) of the CPA. The Supplier failed to provide the expired MFAs when requested by the AMVIC investigator, who is appointed as an inspector under the CPA, and therefore has contravened Section 132(2) of the CPA.

In the Supplier's Dec. 18, 2020 written representations, Mr. Igiwa took responsibility for not providing the expired MFAs when requested and included them with his representations. While the Director appreciates the Supplier has now provided the requested records, the Supplier still contravened Section 132(2) of the CPA when the records were not provided to the AMVIC investigator when previously requested.

B. Mislead and Deceive (CPA Section 6(4)(a))

On Feb. 5, 2018, the Sorento was repossessed and towed to an automotive dealer, GAO. The AMVIC investigator spoke to the previous registered owner regarding the condition of the vehicle at the time of the seizure. The previous registered owner described the vehicle as filthy and stated the passenger side door handle had been ripped out of its housing. The bailiff who seized the vehicle completed a report dated Feb. 5, 2018 which lists the condition of the vehicle as fair (below average) and noted a number of issues at the time. After GAO gained possession of the Sorento, on Feb. 17, 2018 a more in-depth assessment was completed and a number of deficiencies were noted that would have been indicated as non-compliant on an MFA. GAO chose to take the vehicle to auction rather than repairing it. Issues noted in the GAO assessment were:

- Wiper motor assembly and passenger arm – spines stripped – non-compliant
- Rear view mirror assembly missing – non-compliant
- Centre console lid loose and will not close – cosmetic
- Sliding roof switch sticking and will not operate roof motor intermittently - recommend
- Side mirror switch will not move side mirrors left or down. Included with master window switch – non-compliant

- Dome light assembly light working intermittently, switch faulty – recommend
- Centre dash ashtray/cigarette lighter will not close – cosmetic
- Rotors warped – non-compliant
- Passenger rear window motor and master window switch (window will not roll up and down) – non-compliant
- Door hand fell in door, stuck under window, window track out of place – non-compliant
- Right front door outer handle assembly fell off in door – non-compliant
- Front struts worn out – non-compliant
- Wheel alignment – pulling right

The auction completed a seven page report on the condition of the vehicle and noted several issues. The Supplier purchased the vehicle from the auction on April 17, 2018 for \$3,811.50. The Sorento was in the Supplier's possession for approximately 28 months before JH purchased it on Aug. 28, 2020. The Supplier had an MFA completed by a third party technician on Aug. 20, 2020 in which the vehicle was deemed to be compliant in all aspects other than "*Door Latches & Hinges*". JH paid \$6,000 for the Sorento, the Supplier derived an economic benefit of approximately \$2,188.50. The BOS reflects that the price JH paid was discounted by \$2,500 due to the passenger door lock needing to be repaired.

JH was advised that the vehicle was in perfect running order. Within days of purchase, JH noted several issues with the vehicle in regards to the lights, the check engine light coming on, the rear hatch not opening and other electrical issues. On Sept. 1, 2018, JH filed a complaint with AMVIC and provided a list of 17 deficient items. On Sept. 10, 2020, the AMVIC investigator along with another investigator who is a licenced automotive technician attended JH's residence and examined the Sorento. The AMVIC investigator examined the vehicle but did not complete an in-depth inspection. A number of deficiencies were identified with respect to the condition of the vehicle.

There were a number of issues that GAO had identified during their inspection in 2018 that the AMVIC investigator noted in 2020 when he examined the Sorento which include:

- the passenger windshield wiper blade did not move and appeared disconnected from the wiper motor transmission assembly,
- door handle on the front passenger door was pulled out of the door,
- issues with the side windows functioning,
- centre console lid partially detached from the console,
- noise in the front suspension (possible strut or sway bar), and
- steering felt off centre and may require a wheel alignment.

During the course of the investigation and during the administrative review, the Supplier maintains that the Sorento was in perfect condition, everything was functional and stands by the MFA that was completed. In an email to the investigator the Supplier stated "*this particular vehicle comes in perfect condition except the passenger door side handle that was clue [sic] by me with crazy clue [sic] so no other invoices*". The Supplier indicated everything was working on the Sorento prior to the sale and they relied on the professional judgement of the certified technician hired to complete the MFA.

JH had the battery replaced on the Sorento 10 days after the date of purchase, at a cost of \$200. The business told JH that the battery had a state of health of 18 per cent and was at the end of its life. JH recently advised AMVIC that they have made arrangements to have the master switch and windshield wipers repaired along with other required repairs.

While it is the Supplier's choice who they hire to complete MFAs on the vehicles they are selling, the Supplier is vicariously liable for the actions of any agent who is performing the duties on behalf of the Supplier under their agency relationship. The Director has relied on the material facts in determining if the Supplier misled the consumer. In the Director's opinion the Sorento should not have been found to be compliant in a number of areas where required repairs were noted by GAO in 2018 that the AMVIC investigator noted still required repair in 2020. The Supplier's representations were that no service or repairs were completed on the Sorento in the 28 months the Supplier had possession of the vehicle. This supports the findings of the 2020 examination completed by the AMVIC investigator that indicate similar issues that were noted in the 2018 inspection by GAO. Therefore if the Sorento had a number of non-compliant items in 2018, those items would have still been non-compliant in 2020 and should not have been assessed as compliant on the MFA completed on the Sorento on Aug. 20, 2020.

The Supplier inherited the liability of the MFA being completed in accordance with the standards of the *Traffic Safety Act* and Vehicle Equipment Regulation. It is the Director's opinion that the MFA completed on the Sorento was not an accurate depiction of the condition of the Sorento. Based on the evidence, on a balance of probabilities, the Director finds the inaccurate MFA and comment made to JH that the Sorento was in "*perfect condition*" were misleading and therefore the Supplier has contravened Section 6(4)(a) of the CPA.

As per Section 166 of the CPA, the Supplier is vicariously liable for the actions and representations made to consumers. 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 relay correct and accurate information to the consumer to allow the consumer to make an informed purchasing decision. During the administrative review, a discussion was held with respect to the licenced technician who performed the MFA. The Director does not regulate the workmanship of the licenced technician, however the Supplier is vicariously liable and responsible for the validity of the MFA.

C. Improperly completed MFA (ABR Section 12(o), VIR Section 15(1)(a))

In reviewing the documents, it has been determined that the MFA was not completed in full as required by Section 15(1)(a) of the VIR. Section 15(1)(a) of the VIR states that an MFA must contain a statement identifying the type of motor vehicle as a truck, motorcycle, bus, van, light truck, automobile or other type of motor vehicle. The MFA provided to JH does not indicate the type of motor vehicle as required and therefore the Supplier has contravened Section 15(1)(a) of the VIR. Although this breach is minor in nature, the Supplier has signed an Undertaking indicating they would undertake to ensure that MFAs would be completed in full. Further, in 2016 AMVIC assessed an Administrative Penalty which also addressed legislation breaches regarding the proper completion of MFAs. AMVIC has completed two administrative enforcement actions regarding the proper completion of the MFA yet the Supplier still is not ensuring compliance of Section 15 of the VIR.

The Supplier indicated in his Dec. 18, 2020 written representations he will ensure MFAs are completed correctly moving forward (see Schedule "C"). The expired MFAs that were provided do contain a statement identifying the type of motor vehicle as required by Section 15(1)(a) of the VIR however, that does not change the fact that the MFA that was provided in the transaction did not meet the legislative requirement.

Section 12(o) of the ABR states that every business operator must comply with any legislation that may apply to the selling, leasing, consigning, repairing, installing, recycling or dismantling of vehicles. The Supplier has therefore breached Section 12(o) of the ABR.

D. Failure to comply with an Undertaking (CPA Section 163(d))

The Supplier voluntarily entered into an Undertaking with the Director on Sept. 15, 2015. As part of the Undertaking, the Supplier acknowledged that the MFA must be completed in full. As noted above, the MFA provided to JH was not completed in full as the type of vehicle was not noted as required by the VIR.

In addition, the Supplier agreed to review its record keeping and ensure that all key documents are retained in accordance with Section 132 of the *Fair Trading Act* (now *Consumer Protection Act*) and Section 9 of the ABR. As indicated above, the Supplier failed to provide AMVIC with expired MFAs that had been completed on the Sorento over the course of the 28 months it has been in the Supplier's possession.

The Supplier has failed to comply with the Undertaking voluntarily entered into on Sept. 15, 2015 and has therefore breached Section 163(d) of the CPA twice, once for failing to ensure MFAs are completed in full and once for failing to provide records when requested by AMVIC.

E. BOS Issues (ABR Section 31.2(1)(u))

During the administrative review, the AMVIC investigator put forward that the Supplier failed to include that a MFA had been issued as per the VIR on the BOS issued to JH. In reviewing the BOS provided, the BOS did not include mention that a MFA has been issued under the VIR as contravening Section 31.2(1)(u) of the ABR.

The Director noted a few areas in the BOS were not completed. The BOS did not indicate whether the odometer was in kilometres or miles and the field indicating whether the vehicle is new, used or a demo is not filled in. Further, there are a number of declarations at the bottom of the BOS with blank boxes beside them, presumably to be initialed by the consumer acknowledging the declarations were completed. The consumer signed the very bottom, however the individual blank boxes beside each declaration were not initialed by the consumer. It is unclear if the signature at the bottom applies to all the individual boxes above.

These BOS issues mentioned above create ambiguity when reviewing the document which could be interpreted against the Supplier in circumstance where AMVIC receives a consumer complaint and the facts are in dispute. It is vital that the BOS and other documents created in a transaction are clear, unambiguous and an accurate reflection of the transaction that occurred. This not only creates transparency so the consumer better understands the transaction they are entering into, it also safeguards the Supplier. Section 4 of the CPA states that during a consumer transaction, if all or any part of the transaction or contract is evidenced by a document provided by the Supplier and a provision of the document is ambiguous, the provision must be interpreted against the Supplier.

On Oct. 31, 2018, new legislation was put into effect with regards to BOS 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 BOS.

F. Other Concerns

The Director noted during the administrative review, the auction sales contract of April 17, 2018 contained a seven page condition report in which it is indicated that the roof of the Sorento had hail damage. The Director asked the Supplier if this information had been disclosed to JH at any point in the sales transaction. The Supplier indicated this information was not disclosed to the consumer. This information is not contained in the BOS or MFA that was provided to JH. The Supplier was dismissive toward the report from auction and stated it could not be relied upon. The Director respectfully disagrees with this statement. In the Dec. 18, 2020 written representations the Supplier puts forth that only one of the four sources regarding the condition of the Sorento indicate it had hail damage and stated he did not see any hail damage and therefore did not mention it (see Schedule "C").

The Supplier is not being receptive and responsive to their consumers or the regulator in making changes to their business practices which is resulting in consumer complaints and further violations of the legislation. It is the Director's opinion that the Supplier does not take the legislative requirements seriously or respect the authority of AMVIC as a regulator. During the administrative review, the Supplier became argumentative with the Director and spoke over him several times.

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 the CPA.

The Supplier has been subject to the following administrative actions:

- 2015 – Voluntary Undertaking; buy back 4 vehicles, pay portion of investigations costs \$1,000.
- 2016 – Administrative Penalty of \$10,000; appealed and reduced to \$5,000 via consent decision.

- 2018 – Administrative Penalty of \$7,000.
- 2018 – Director's Order issued for operating without the proper AMVIC licence.

The Supplier ought to have a basic knowledge or understanding of the legislation that governs the automotive industry, and is responsible to stay informed of all changes made to the legislation that governs the industry in which they are a member of.

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* there is an onus and responsibility on a Supplier operating within regulated industry to have at least a basic understanding of the regulatory regime. 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

When determining an appropriate enforcement action, the Director will consider several factors before making a decision to ensure the level of enforcement is appropriate to the contravention. In this matter the aggravating factors include but are not limited to the financial harm to the consumer due to being misled regarding the condition of the Sorento, the incomplete MFA, failure to provide records to the regulator when requested and failure to comply with a previously entered Undertaking.

This Administrative Penalty is taking into account the breaches of the legislation found during the investigation regarding the case file, the economic benefit derived from the sale of the motor vehicle, the factors listed in the paragraph above, as well as the Supplier's previous enforcement history with AMVIC including an Undertaking, two Administrative Penalties and a Director's Order. In the opinion of the Director, the Supplier does not seem to be able to comply with the rather straight forward requirements of the legislation governing the automotive industry. 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.

Action

In accordance with Section 158.1(a) of the CPA and based on the above facts, I am requiring that 1366675 Alberta Ltd. operating as Green-line Auto Clearance pay an Administrative Penalty of **\$7,500**. This is based on my opinion that 1366675 Alberta Ltd. operating as Green-line Auto Clearance contravened Sections 12(o) and 31.2(1) of the ABR, Section 15(1)(a) of the VIR and Sections 6(4)(a), 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 investigations department, the amount of the Administrative Penalty is **\$7,500**.

The Administrative Penalty 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 previous history of enforcement;
2. The degree of willfulness or negligence in the contravention or failure to comply;
3. The impact on the consumer who was adversely affected by the contravention;
4. The potential harm to the public of the types of conduct outlined;
5. The seriousness of the contraventions or failure to comply;
6. The maximum penalty under Section 158.1(3) of the CPA of \$100,000 and;
7. The deterrent effect of the penalty.

The amount of the Administrative Penalty is \$7,500.

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.

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
Encl.

cc: [REDACTED], Senior Manager of Investigations, AMVIC