

June 8, 2021

Administrative Reviews – 21-02-007  
21-02-008  
Served Personally

### Administrative Penalty

Carter Klepper Inc.  
4883 Chilies Industrial Link  
Red Deer, Alberta  
T4S 2A3

Carter Klepper Inc.  
2625 26 Street NE  
Calgary, Alberta  
T3K 1X3

Attention: Carter Klepper

**Re: Carter Klepper Inc.  
Automotive Business Licence B2023613**

**Carter Klepper Inc.  
Automotive Business Licence B2021650**

As the Director of Fair Trading (as delegated) (the "Director"), 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 industry standards department (the "Application Report") and attached as Schedule "A". The Supplier provided written representations on May 14, 2021, in response to the Proposed Administrative Penalty which is attached as Schedule "B". Based on all the evidence, I find the facts in this matter to be as follows:

### Licensee status

Carter Klepper Inc. (B2023613) and Carter Klepper Inc. (B2021650) (collectively the "Supplier") holds an automotive business licence and carries on business as a wholesale and retail sales business in the Province of Alberta.

### Direct communications with the Supplier and its representatives

1. The Supplier attended an administrative review on July 10, 2017, where the Supplier's previous wholesale business licence and salesperson registration was cancelled by the Director of Fair Trading (as delegated) because the Supplier had been engaging in automotive sales transactions with consumers contrary to Section 104 of the *Fair Trading Act* ("FTA").
2. On July 17, 2018, the Supplier was granted a salesperson registration and conditional business licence by the Director. The Supplier agreed to the following conditions which were set out by the Director on Aug. 14, 2018:
  - a) Any complaint received by AMVIC regarding Carter Klepper Inc. may result in the administrative review of these conditional business licences. Furthermore, if a complaint is received, you will respond to an AMVIC investigator or consumer services officer's email request for documentation regarding the complaint as per the guidelines in the email request.
  - b) As the Director, you will keep the peace and remain to be in full compliance with all laws and regulations including but not limited to the CPA of Alberta and the *Criminal Code of Canada* ("CCC"). You will inform AMVIC of any new court proceedings. New charges of any kind will result in the administrative review of this conditional business licence.
  - c) You will ensure that both AMVIC business licences do not expire by renewing prior to the expiry date.
  - d) You will configure and remit levies for your retail sales business on time for each quarter. Failure to do so may result in an administrative review.
  - e) You will make your business records available for an AMVIC industry standards inspection to ensure you are keeping the proper business records and that you are in compliance with the legislation that governs the automotive industry. An AMVIC inspection will be required after you have been in business for approximately six months.
  - f) You will obtain, maintain, and provide to AMVIC a surety bond or irrevocable letter of credit in the sum of \$50,000 prior to your wholesale business licence being issued.
  - g) You will meet all of AMVIC's licensing requirements including providing the operating address, operating name, proper municipal approval and all other requirements to ensure you are properly licensed for the designated activities you will hold an AMVIC business licence to conduct.
  - h) The conditional automotive business licences will remain conditional for a minimum of 12 months and will continue until such time as the Licensee makes an application to the Director of Fair Trading to withdraw the conditional status.



3. As a result of an AMVIC investigation an administrative review was held on Jan. 16, 2020 with the Supplier for the following issues:
  - a) Engaged in the designated activity of retail sales while not licensed to do so contrary to Section 104(1) of the CPA.
  - b) The Supplier was not providing consumers with vehicle history reports contrary to Section 31.1(1) and 31.3 of the Automotive Business Regulation ("ABR").
  - c) The Supplier was not providing Mechanical Fitness Assessments ("MFA") prior to entering into a sales transaction contrary to Section 15(1) of the Vehicle Inspection Regulation ("VIR").
4. Following the administrative review on Jan. 16, 2020, the Supplier entered into an Undertaking on Feb. 12, 2020 with the Director as part of the Undertaking the Supplier agreed and undertook to:
  - a) The Supplier acknowledges and a failure to comply with provisions of the CPA, ABR and VIR and undertakes to the Director that the Supplier will make every effort to ensure that the business does not engage in acts or practices similar to those described above.
  - b) The Supplier will ensure that their AMVIC business licences do not expire by renewing prior to the expiry date.
  - c) The Supplier will ensure all salespeople employed by Carter Klepper Inc. are properly registered with AMVIC and their registrations are renewed prior to the expiry date.
  - d) The Supplier will configure and remit levies for his retail sales businesses on time for each quarter. Failure to do so may result in an administrative review.
  - e) The Supplier will undertake to utilize a bill of sale ("BOS") that is compliant with Section 31.2(1) of the ABR.
  - f) The Supplier will undertake to ensure their representations, statements and paperwork reflect the prior history of the vehicle and that the history is clearly disclosed to the consumer as per Section 31.1(1) of the ABR. The Supplier will further undertake to ensure they maintain accurate business records and documents.
  - g) The Supplier will undertake to ensure that the MFA's are being completed by AMVIC-licensed business with trade certificates of the most current and up to date form as per the requirements of Section 15 of the VIR. The Supplier will further undertake to ensure that the buyer is given the MFA for a used motor vehicle prior to entering into a contract to sell a used motor vehicle.
  - h) The Supplier will make his business records available for an AMVIC industry standards inspection to ensure they are keeping the proper business records and that the Supplier is in compliance with the legislation that governs the automotive industry. An AMVIC inspection will be required on both business licences by Aug. 31, 2020.
  - i) If the Supplier chooses to sell vehicles to consumers from a location in Calgary, he will meet all of AMVIC's licensing requirements including obtaining proper municipal approval and providing the operating address, operating name and all other requirements to ensure the business is properly licensed for the designated activities held by an AMVIC business licence to conduct.
  - j) Pay investigation costs of \$500.

5. An AMVIC industry standards inspection was originally scheduled for Sept. 10, 2020. The Supplier was sent a courtesy inspection notice on Sept. 2, 2020, requesting all required documents be submitted to AMVIC by Sept. 7, 2020. However the Supplier failed to provide AMVIC the requested documents by Sept. 7, 2020. On Sept. 9, 2020, the Supplier forwarded various documentation but failed to provide supporting documents such as completed MFAs and vehicle history disclosure. On the date of the inspection, the Supplier still had not provided all the required documents and was notified that if AMVIC did not receive the required documents by Sept. 12, 2020, the documents would be deemed not in the file jacket or available for the purpose of the inspection. AMVIC did not receive all the requested documentation but was provided various documents by the Supplier on Sept. 13, 2020.
6. On Sept. 10, 2020, an AMVIC industry standards inspection was completed via telephone on the Supplier. The findings of the inspection were not discussed with the Supplier at the time but a findings letter was emailed to the Supplier on Oct. 15, 2020. The inspection found:
  - a) 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.
  - b) There were various issues with the completion of and disclosure of the MFA in the deal jackets breaching Section 15(1) of the VIR.
  - c) There were various issues with the BOS that were reviewed in the deal jackets contrary to Section 31.2(1) of the ABR. Some issues noted in the findings letter include:
    - i. the AMVIC business number was not indicated;
    - ii. the salesperson registration number was not indicated;
    - iii. the consumer's government issued identification number was not indicated
    - iv. the make, model and color of the vehicle were not identified;
    - v. the address of the consumer was missing;
    - vi. the appropriate taxes, levies and GST were not charged to the consumer on the transaction;
    - vii. the BOS was missing a statement indicating the consumer had received a vehicle history report as required by Section 31.1(1) of the ABR; and
    - viii. the BOS was missing a statement indicating the consumer had received an MFA as required by Section 15 of the VIR.
  - d) Failing to provide vehicle history disclosures contrary to Section 31.1(1) of the ABR.
7. The Supplier entered into an Undertaking with the Director on Feb. 12, 2020 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 they would use a compliant BOS and ensure the history of the vehicle is clearly disclosed to the consumer. Additionally, the Supplier agreed to ensure MFAs were completed by a licenced technician on the form and being provided to the consumer prior to entering into a sales transaction. The Supplier failed to comply with the Undertaking contrary to Section 163(d) of the CPA.



8. There were legislative breaches found during the September 2020 inspection, which have been identified to the Supplier in previous administrative reviews and they include:
  - a) The Supplier has failed to maintain accurate business records and provide such records to AMVIC industry standards when requested contrary to Section 132 of the CPA and Section 9 of the ABR.
  - b) The Supplier is not complying with the vehicle history and BOS legislation contrary to Section 31.1(1) and 31.2(1) of the ABR. Despite the education provided by AMVIC industry standards and the Director during a previous administrative review, where the Director educated the Supplier on the importance of providing accurate vehicle history information and completion of the BOS.
  - c) Various issues with the completion and disclosure of the MFAs breaching Section 15(1) of the VIR.
9. On May 14, 2021, the Supplier provided written representations in response to the Proposed Administrative Penalty dated April 22, 2021. In his representations, the Supplier acknowledged his shortcoming and indicated he has implemented new processes to help ensure his business practices are compliant moving forward (see Schedule "B").

#### Applicable legislation

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

##### **General codes of conduct**

##### **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.

##### **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

- (c) fails to contravenes this Act and is guilty of an offence.

contravenes this Act and is guilty of an offence.

**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

**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.

**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. on-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.

**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.

## **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.

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

Over the last four years, AMVIC has conducted four administrative reviews with the Supplier, imposed conditions on the business licence and entered into an Undertaking with the Supplier in February 2020. During the previous administrative reviews the Supplier has been educated on the importance of compliance within a regulated industry and 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 the changes made in legislation.

On July 10, 2017, the Supplier was subject to an administrative review, which resulted in his salesperson registration and business licence being cancelled by the Director for failing to comply with the FTA.

On July 17, 2018, the Supplier applied for a new salesperson registration and business licence, at which time he was subject to another administrative review. During the administrative review, the Director spoke with the Supplier and granted him a salesperson registration and placed conditions on his business licences to ensure compliance with the CPA, ABR, and VIR.

On Nov. 28, 2019, the Director received an application report from the senior manager of investigations requesting an administrative review be held with the Supplier. The Supplier voluntarily entered into an Undertaking on Feb. 12, 2020 with the Director regarding issues involving the Supplier failing to provide consumers with a vehicle history report and MFA prior to entering into a sales transaction, not using a compliant BOS and failing to maintain accurate records.

An AMVIC industry standards inspection was completed on Sept. 10, 2020, as part of the Undertaking the Supplier entered into on Feb. 12, 2020. The inspection findings were disclosed to the Supplier in a findings letter sent to the business via email on Oct. 15, 2020. The inspection found multiple legislative breaches, some of which were consistent with those that had been identified in previous administrative reviews. The legislative breaches that are currently under consideration are as a result of the Sept. 10, 2020 inspection. The findings letter and supporting documents are attached within Schedule "A". The findings from the Sept. 10, 2020 inspection indicate the Supplier is not complying with the CPA, ABR and VIR.

**A. Failure to provide vehicle history report**

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 bills of sale.

At the time of the administrative review on Jan. 16, 2020, the new ABR legislation had been in effect for 14 months. During the administrative review, the Supplier admitted that he was not aware of the changes made to the ABR in October 2018, specifically Sections 31.1(1) Vehicle History Information, 31.2(1) BOS and 31.3 Receipt of Information. He admitted he was guilty of not providing a written vehicle history report to the consumer contrary to Section 31.1(1) and 31.3 of the ABR but, he alleges that he verbally advises the consumer of the vehicle history, while acknowledging that he knows virtually nothing about the vehicle at the point of sale. The Supplier stated during the review that he was committed to working with AMVIC to ensure compliance.

On Feb 12, 2020, the Supplier undertook to ensure their representations, statements and paperwork reflect the prior history of the vehicle and that the history is clearly disclosed to the consumer as per Section 31.1(1) of the ABR. During the phone inspection on Sept. 10, 2020, the AMVIC inspector noted that the Supplier did provide vehicle history reports, however two of the deal jackets were missing vehicle history reports contrary to Section 31.1(1) of the ABR. Providing vehicle history reports protects the Supplier and the consumer as it shows consumers the vehicle is free from damage or discloses any existing damage, the vehicle use history, or if the vehicle has at any time been assigned a status outlined by Section 31.1(1)(g) of the ABR. It should be noted, that having the consumer sign the vehicle history report is a best practice as it evidences the consumer has received the information as required. This business practice should be adopted by the Supplier.

#### B. Non-compliant bill of sale

On Feb. 12, 2020, the Supplier undertook to utilize a BOS that is compliant with Section 31.2(1) of the ABR. However, the inspector noted in the findings letter a number of legislative breaches regarding the BOS requirements as per Section 31.2(1) of the ABR. In total 11 BOS were reviewed and each one had compliance concerns, some with multiple issues including but not limited to:

- i. Missing the consumer's government issued identification number.
- ii. Missing the address of the consumer.
- iii. Missing the make of the vehicle.
- iv. Model and year of the vehicle.
- v. The color and body type of the vehicle.
- vi. If an MFA has been issued under the VIR.
- vii. If vehicle history disclosure documentation was provided to the consumer as per Section 31.1(1) of the ABR.

Therefore, the Supplier has contravened Section 163(d) of the CPA and Section. 31.2(1) of the ABR.

#### C. Incomplete Mechanical Fitness Assessments

On Jan. 16, 2020 during the administrative review, the Supplier stated he always gives the consumer an MFA but does not always provide it to the consumer prior to entering into a sales transaction as required under Section 15(1) of the VIR. On Feb. 12, 2020, the Supplier undertook to ensure that the MFA's are being completed by an AMVIC-licensed business with trade certificates utilizing the form as per the requirements of Section 15(1) of the VIR. The Supplier will further undertake to ensure that the



buyer is given the MFA for a used motor vehicle prior to entering into a contract to sell a used motor vehicle.

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 inspection, the deal jackets of 11 used vehicles sold were reviewed. Of the 11 used vehicle sales jackets that were reviewed all of the MFAs that were provided were incomplete and non-compliant with the legislation. Some of the issues that were identified with the MFAs that were provided during the inspection included:

- i. Missing or incorrect business address;
- ii. Not completed by a technician;
- iii. No odometer reading;
- iv. Missing the statement that an MFA expires 120 days after the date it was issued; and
- v. Two deal jackets were missing an MFA completely.

As required by Section 12(o) of the ABR, the Supplier is expected to comply with any legislation regarding the sale of vehicles. The Supplier has breached Section 15(1) of the VIR and Section 12(o) of the ABR.

#### D. Failure to provide records

On Feb. 12, 2020, the Supplier undertook to ensure they would maintain accurate business records and documents as per Section 132 of the CPA and Section 9 of the ABR. On Sept. 2, 2020, the Supplier was sent a courtesy inspection notice, requesting that all required documentation be sent to AMVIC no later than Sept. 7, 2020. On Sept. 9, 2020, the Supplier forwarded various documentation but failed to provide supporting documents such as completed MFAs and vehicle history disclosure. On Sept. 10, 2020, the Supplier still had not provided all the required documents and was notified by AMVIC, that if the required documents were not received by AMVIC by Sept. 12, 2020, the documents would be deemed not in the file jacket or available for the purpose of the inspection. AMVIC did not receive all the requested documentation but was provided various documents by the Supplier on Sept. 13, 2020. In the inspection findings letter dated Oct. 15, 2020, it identified that the Supplier continues to show a pattern of repetitive errors in their paperwork and administrative functions whilst conducting business in the automotive industry. Although, the Supplier has improved his business practices, the Supplier continues to make errors and is still not compliant with the legislation. The Supplier has demonstrated that he is not maintaining proper records as the Supplier was unable to provide the AMVIC inspector with all of the required documentation by the specified time as per Section 132(1)(b) of the CPA. The Supplier did eventually provide the documentation, however, a number of the documents that the Supplier provided were incomplete and non-compliant. The Supplier has therefore contravened Section 132 of the CPA and Section 9 of the ABR.

#### D. Failure to comply with Undertaking

The Supplier voluntarily entered into an Undertaking with the Director on Feb. 12, 2020. As part of the Undertaking, the Supplier undertook to:

- i. Utilize a BOS that is compliant with Section 31.2(1) of the ABR;
- ii. To ensure their representations, statements and paperwork reflect the prior history of the vehicle and that the history is clearly disclosed to the consumer as per Section 31.1(1) of the ABR;
- iii. Ensure they maintain accurate business records and documents;
- iv. Ensure MFAs are being completed by AMVIC licensed business with trade certificates of the most current and up to date form as per the requirements of Section 15(1) of the VIR and the Supplier would ensure that the buyer is given the MFAs before entering into a sales transaction; and
- v. The Supplier would make his business records available for an AMVIC industry standards inspection.

The Supplier acknowledged that the Director may, upon breach of any term of the Undertaking institute such proceedings and take such action under the CPA as they may consider necessary.

As a result of the phone inspection conducted on Sept. 10, 2020, only seven months after undertaking to comply with the legislation that governs the automotive industry, the Supplier has failed to comply with the legislation and has breached terms in the Undertaking contravening Section 163(d) of the CPA. The Director views the Supplier's inability to become compliant with the legislation troublesome, given the degree of infringement and the continued efforts by the regulator to educate the Supplier with regards to the importance of compliance. In the opinion of the Director, the Supplier's business practices are a concern to AMVIC as a regulator and the automotive industry.

AMVIC has completed three previous administrative reviews with the Supplier, imposed conditions on the business licence and entered into an Undertaking with the Supplier in February 2020. During the previous administrative reviews the Supplier has been educated on the importance of compliance within a regulated industry and 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 the 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. Based on the findings letter from the phone inspection, the Supplier has not brought all their business practices into compliance.



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 Supplier provided written representations dated May 14, 2021 in response to the findings letter and the Proposed Administrative Penalty. Part of the Supplier's written representations included information the Supplier had provided the AMVIC inspector on Oct. 29, 2020, in response to the findings letter. These representations were not included in the Application Report but for the purpose of this Administrative Penalty were taken into consideration by the Director. In these representations, the Supplier went over the findings letter in great detail and acknowledged some of his errors and why he made the errors or was non-compliant. The Supplier provided further documentation that had been requested by the inspector but not submitted during the inspection. After further analysis of these additional documents, the Director notes that the Supplier is making an effort to become compliant but is still struggling to bring his business practices into compliance. In his representations dated May 14, 2021, the Supplier acknowledged his shortcomings again and expressed his willingness to work with the regulator to become complaint and provided detailed information about the new practices he has implemented to ensure his business practices are compliant moving forward.

### Action

In accordance with Section 158.1(a) of the CPA and based on the above facts, I am requiring that Carter Klepper Inc. (B2023613) and Carter Klepper Inc. (B2021650) pay an Administrative Penalty of **\$7,500**. This is based on my opinion that Carter Klepper Inc. (B2023613) and Carter Klepper Inc. (B2021650) contravened Sections 132, 163(d) of the CPA; Sections 9, 12(o), 31.1(1) and 31.2(1) of the ABR; and Section 15(1) VIR.

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 **\$7,500**.

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;
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 \$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)  
Malcolm Knox  
Director of Fair Trading (as Delegated)

/cz  
Enclos.

cc: Shawna N., Acting Manager of Industry Standards, AMVIC