

March 11, 2022

Administrative Review – 22-01-010

Served via Email:

### **Administrative Penalty**

OLYMPIC MOTORS (AB) I CORPORATION  
o/a SUBARU CALGARY  
100 MERIDIAN ROAD NE  
CALGARY, AB  
T2A 2N9

**Attention: Glen Thomas**

Dear Glen Thomas:

**Re: Olympic Motors (AB) I Corporation o/a Subaru Calgary  
– Provincial Automotive Business Licence No. B1043298**

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 Alberta Motor Vehicle Industry Council (“AMVIC”) investigations department application report (the “Application Report”) prepared by the investigator and the senior manager of investigations. A copy of the Application Report is attached as Schedule “A” to this letter. I have taken into consideration the information exchanged during an administrative review held via teleconference call on Feb. 1, 2022.

### ***Licencee Status***

Olympic Motors (AB) I Corporation o/a Subaru Calgary (the “Supplier”) holds an AMVIC business licence and carries on the business activities of new sales, used sales, wholesale, garage, service station, leasing and agent or broker in the Province of Alberta.

### ***History***

The Supplier has been in business for numerous years and employs approximately 10 salespeople at any given time. The Supplier’s average monthly volume of sales last year was 134 vehicles.

As a result of an administrative review held on June 16, 2020, the Director agreed to enter into an Undertaking with the Supplier on Aug. 20, 2020. The Supplier voluntarily agreed to enter into the Undertaking on June 20, 2020. Some of the conditions outlined in the Undertaking specifically stated:

*"The Supplier acknowledges and admits that it failed to comply with the provisions of the CPA and ABR, and undertakes to the Director that the Supplier will make every effort to ensure that it does not engage in acts or practices similar to those described above.*

*The Supplier will undertake to ensure their BOS and the completion of their BOS conforms to the legislative requirements of Section 31.2 of the ABR.*

*The Supplier will undertake to create and maintain complete and accurate business records and to make the records available to AMVIC when requested pursuant to Section 132 of the CPA and Section 9 of the ABR."*

### **Summary of Investigation**

#### Case File 21-09-271

1. In September 2021, AMVIC received a complaint alleging that a consumer had been misled about the mileage of a vehicle that was purchased. The consumer ("MA") entered into an offer with the Supplier to purchase a 2016 Sante Fe Sport (the "Sante Fe") on Sept. 11, 2021. The offer to purchase lists the mileage of the vehicle at 96,802 kilometres ("kms"). A bill of sale ("BOS") dated Sept. 15, 2021 lists the mileage of the Sante Fe at 103,755 kms.
2. According to MA, the Sante Fe was advertised online by a third party provider with a mileage of approximately 96,000 kms.
3. When MA brought the mileage discrepancy of approximately 7,000 kms to the attention of the Supplier, she was offered compensation of \$0.15 per km which she declined and subsequently filed a complaint with AMVIC.
4. During the course of the investigation, the investigator inquired with the Supplier whether the compensation offer was still available to MA. The Supplier felt that MA was using the AMVIC process to get more money, rescinded their original offer and offered \$0.10 per km.
5. The Mechanical Fitness Assessment ("MFA") that was completed on the Sante Fe is not signed by the buyer or the salesperson involved in the consumer transaction. There is no legislative requirement for the MFA to be signed by the buyer or the salesperson, however there is no evidence to support whether MA was given or shown an MFA prior to the sale of the Sante Fe. MA states an MFA was never presented or discussed with her other than her being told one had been completed. When MA picked up the Sante Fe on Sept. 15, 2021 she was not provided a copy of the MFA despite requesting one. The mileage listed for the Sante Fe on the MFA is 103,707 kms which is different than the offer to purchase and BOS.

6. The MFA that was completed on the Sante Fe has not been completed fully and accurately as per Section 15 of the VIR. The previous province of registration was omitted. The certified journeyman technician who completed the MFA dated it as "9/7/21". This is ambiguous as it is unclear whether it was issued on July 9, 2021 or Sept. 7, 2021.
7. The Supplier was subject to an AMVIC inspection as part of the agreed upon Undertaking of Aug. 20, 2020. An AMVIC inspector completed a telephone inspection on March 5, 2021 and submitted a written report to the Supplier on March 20, 2021, approximately seven months after the Supplier signed the Undertaking. In the inspection report it states, *"The bill of sale needs to have additional accessories, costs and fees itemized to show a clear breakdown as disclosure to the client including bank fees charged to the client. All reviewed Bill of Sales [sic] did not disclose the salesperson registration number, the consumers government issued identification, or the ABR Section 31.1 disclosure."*
8. The AMVIC investigator submitted similar fact evidence in relation to a recent unrelated AMVIC complaint (case file no. 21-07-026) involving the Supplier in which they were given a written warning for failing to complete and maintain accurate records. In an email dated Oct. 19, 2021 to the Supplier, the AMVIC investigator states, *"In reviewing the complaint it was noted that the kilometers on the bill of sale were not recorded at the time of the sale but had been obviously inputted into the system when the dealership acquired the vehicle. In accordance with ABR (Automotive Business Regulation) Section 31.2(1)(s) the odometer reading must be recorded at the time the bill of sale is entered into."* The email also states *"It was also noted during this investigation that the MFA was missing essential information such as the dealer name, AMVIC license number, address and previous Province of Registration as required by section 15(1)(c) of the VIR (Vehicle Inspection Regulations)."*
9. During the administrative review clarification was provided by the Director that it is not a violation of legislation if the AMVIC licence number is omitted on the MFA however it is a good practice to include it.
10. The Supplier acknowledged the oversight of the km discrepancy and could not provide an explanation as to why or account for the difference in the paperwork. The Supplier's inventory manager was let go and no longer works for the Supplier.
11. The Supplier has implemented a new process involving maintaining a log to ensure vehicle mileages are accurate on a go forward basis.
12. The Supplier advised they inquired with their third party provider to obtain the original advertisement of the Sante Fe to supply to the AMVIC investigator however it was not available.
13. The Supplier indicated the reduced compensation offer was not intended to be malicious toward the consumer but the communication between parties had deteriorated. The Supplier believes the initial offer of \$0.15 per km was reasonable and asserted that the figure is a common one used when consumers are required to pay for km overages on leased vehicles. The Supplier did not present any evidence to support this claim. The Supplier indicated it is unfortunate a mutual resolution was not reached with MA.

14. The Supplier accepted responsibility for the issues identified with respect to the MFA. The Supplier stated they have reprimanded their employees involved for the oversight. During the administrative review, the AMVIC investigator pointed out that the Supplier is using an MFA form that is outdated and directed the Supplier to AMVIC's website where the new form can be found and printed off for their use. The Supplier committed to immediately implementing the use of the correct form and having all consumer sales finalized through their general sales manager to ensure greater accuracy.
15. The Supplier indicated they have already taken steps to improve their BOS, their paperwork in general to conform to the legislative requirements and were cooperative with the AMVIC investigator.
16. On Feb. 4, 2022, a Proposed Administrative Penalty was provided to the Supplier which outlined a further opportunity to make written representations. The Supplier did not make any further representations in response to the Proposed Administrative Penalty.

## **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.

### **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**

### **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.

## **Consumer Protection Act**

### **Unfair practices**

#### **Section 6**

**(1)** In this section, “material fact” means any information that would reasonably be expected to affect the decision of a consumer to enter into a consumer transaction.

**(1.1)** It is an offence for a supplier to engage in an unfair practice.

**(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.

#### **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.

#### **Administrative Penalties**

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

##### **Section 158.1**

**(1)** If the Director is of the opinion that a person

- (a) has contravened a provision of this Act or the regulations, or
- (b) has failed to comply with a term or condition of a licence issued under this Act or the regulations,

the Director may, by notice in writing given to the person, require the person to pay to the Crown an administrative penalty in the amount set out in the notice.

**(2)** Where a contravention or a failure to comply continues for more than one day, the amount set out in the notice of administrative penalty under subsection (1) may include a daily amount for each day or part of a day on which the contravention or non-compliance occurs or continues.

**(3)** The amount of an administrative penalty, including any daily amounts referred to in subsection (2), must not exceed \$100 000.

**(4)** Subject to subsection (5), a notice of administrative penalty shall not be given more than 3 years after the day on which the contravention or non-compliance occurred.

**(5)** Where the contravention or non-compliance occurred in the course of a consumer transaction or an attempt to enter into a consumer transaction, a notice of administrative penalty may be given within 3 years after the day on which the consumer first knew or ought to have known of the contravention or non-compliance but not more than 8 years after the day on which the contravention or non-compliance occurred.

#### **Right to make representations**

##### **Section 158.2**

Before imposing an administrative penalty in an amount of \$500 or more, the Director shall

- (a) advise the person, in writing, of the Director's intent to impose the administrative penalty and the reasons for it, and

(b) provide the person with an opportunity to make representations to the Director.

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

The material which formed the Application Report was the result of one consumer complaint received by AMVIC regarding a consumer allegedly being misled regarding the mileage of the vehicle purchased, AMVIC case file no. 21-09-271. The subsequent investigation identified other breaches of the legislation pertaining to a deficiency with respect to the MFA, breaching an Undertaking and a failure to create and maintain accurate records.

#### **A. Mislead and Deceive (CPA Section 6(4)(a))**

On a balance of probabilities, the Director found that the Supplier, although unintentionally, misled MA regarding the mileage of the Sante Fe. Although the original online advertisement was unattainable, MA asserts the advertisement listed the Sante Fe as having approximately 96,000 kms. The material evidence supported a km discrepancy of almost 7,000 kms between the offer to purchase, the MFA and BOS. The Supplier acknowledges the km discrepancy and tried unsuccessfully to resolve the issue with MA. By having misleading information recorded in the Supplier's paperwork and advertisement, the Supplier did contravene Section 6(4)(a) of the CPA.

#### **B. Non-compliant BOS (ABR Section 31.2)**

The Director did not find evidence to support that the Supplier breached BOS legislation pertaining to AMVIC case file no. 21-09-271. Evidence was put forward in Schedule "A" by the AMVIC investigator pertaining to an inspection that was completed on the Supplier as per an agreed Undertaking as well as an unrelated investigation in which the Supplier was issued a written warning for minor breaches of legislation. As these matters were previously addressed with the Supplier at the given time, it would not be procedurally fair for the Director to now hold the Supplier accountable for these BOS issues. The BOS relating to case file no. 21-09-271 did not have compliance issues and therefore the Supplier did not breach Section 31.2 of the ABR.

#### **D. MFA Compliance Issues (VIR Sections 15(1) and ABR Section 12(o) – General Code of Conduct)**

The MFA that was completed on the Sante Fe has not been completed fully and accurately as per Section 15 of the VIR. The previous province of registration was omitted therefore the Supplier has breached the legislation.

The Supplier is currently using an outdated MFA form which was brought to their attention by the AMVIC investigator. The Director is further concerned with the completion of the form itself. The certified journeyman technician who completed the MFA dated it as 9/7/21. This is ambiguous as it is unclear whether it was issued on July 9, 2021 or Sept. 7, 2021. The mileage listed for the Sante Fe on the MFA is 103,707 kms which is different than the offer to purchase.



The MFA is not signed by the buyer or the salesperson involved in the consumer transaction. There is no legislative requirement for the MFA to be signed by the buyer or the salesperson, however there is no evidence to support whether MA was given or shown the MFA prior to the sale of the Sante Fe to meet the legislative requirement. MA states an MFA was never presented or discussed with her other than her being told one had been completed and the Supplier is unable to furnish evidence to support one was given. Having a consumer sign and date the MFA is the best way to document that a consumer was shown the MFA prior to entering into a transaction. By failing to give MA an MFA before entering into a contract to sell her a motor vehicle, the Supplier has breached Section 15(1) of the VIR and Section 12(o) of the ABR.

C. Breach of Undertaking (CPA Section 163) / Duty to Maintain Records (CPA Section 132 and ABR Section 9)

As a result of an administrative review held on June 16, 2020, the Director agreed to enter into an Undertaking with the Supplier on Aug. 20, 2020. The Supplier voluntarily agreed to the Undertaking on June 20, 2020. Some of the conditions outlined in the Undertaking specifically stated,

*"The Supplier acknowledges and admits that it failed to comply with the provisions of the CPA and ABR, and undertakes to the Director that the Supplier will make every effort to ensure that it does not engage in acts or practices similar to those described above.*

*The Supplier will undertake to ensure their BOS and the completion of their BOS conforms to the legislative requirements of Section 31.2 of the ABR.*

*The Supplier will undertake to create and maintain complete and accurate business records and to make the records available to AMVIC when requested pursuant to Section 132 of the CPA and Section 9 of the ABR."*

By failing to create and maintain accurate business records not limited to the mileage discrepancy in the Supplier's paperwork and issues noted with the MFA, the Supplier has breached their agreed upon Undertaking of Aug. 20, 2020 and contravened Sections 132 and 163 of the CPA and Section 9 of the ABR.

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 of a licence as outlined in the CPA. When determining an appropriate enforcement measure, the Director will consider several factors before making his decision to ensure what level of enforcement is appropriate to the contravention.

The Supplier was subject to a previous administrative action on August 20, 2020 in which the Supplier entered into an Undertaking with the Director and agreed to make every effort to ensure that it did not engage in acts or practices similar to the ones described. This previous administrative action also resulted from a consumer complaint where the Supplier contravened the same or similar sections of the legislation.

The Director cannot consider entering into another Undertaking with the Supplier as the Supplier has breached the Undertaking voluntarily entered into less than two years ago by continuing to use business practices that contravene similar sections of the CPA. The Director also considered imposing conditions on the Supplier's business licence however the Director is not persuaded that this enforcement action would be sufficient.

At the administrative review, the Supplier took responsibility for the legislative breaches and stated a willingness to work with the regulator and improve upon their business practices. The Supplier's inventory manager is no longer employed by the Supplier. The Supplier has implemented a new log system to ensure greater accuracy with respect to vehicle mileages and has improved upon its BOS completion including having consumer transactions to be reviewed by the general sales manager. On average, the Supplier sells approximately 134 motor vehicles on a monthly basis. Although the Supplier is not inclined to have to pay an Administrative Penalty, they asked the Director to consider the steps and action they have taken to improve upon to rectify their shortcomings. The Director considered the representations from the Supplier regarding their position on an appropriate Administrative Penalty. 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.

The aggravating factors in this matter include the recent continued non-compliance despite the education previously provided to the Supplier, recent administrative enforcement action and the Supplier's inability to comply with the rather straightforward requirements of the legislation.

The mitigating factors in the matter include the compensation offer to the consumer in resolving the km discrepancy, the actions the Supplier has already taken to improve upon their processes including the log system, terminating their inventory manager and their willingness to work with the regulator.

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

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

This Administrative Penalty is taking into account the number and seriousness of the breaches of the legislation found during the investigation, the Supplier's recent history with AMVIC, which cannot be ignored, as well as the cost of investigating the Supplier's activities.

### **Action**

In accordance with Section 158.1(a) of the CPA and based on the above facts, I am requiring that Olympic Motors (AB) I Corporation operating as Subaru Calgary pay an Administrative Penalty of **\$2,000.**

This is based on my opinion that Olympic Motors (AB) I Corporation operating as Subaru Calgary contravened Sections 12(o) and 9 of the ABR, Section 15(1) of the VIR, and Sections 6(4)(a), 132 and 163 of the CPA.

Taking into consideration all the representations made by the Supplier and the representations made by AMVIC's investigation department, the amount of the Administrative Penalty is **\$2,000**.

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 seriousness of the contraventions or failure to comply;
2. The previous history of enforcement and non-compliance;
3. The mitigating factor of the efforts made by the Supplier to achieve regulatory compliance in the future;
4. The maximum penalty under Section 158.1(3) of the CPA of \$100,000 and;
5. The deterrent effect of the penalty.

**The amount of the Administrative Penalty is \$2,000.**

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

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

If payment has not been received in this time period, the Notice may be filed in the Court of Queen's Bench and enforced as a judgement of that Court pursuant to Section 158.4 of the CPA and further disciplinary action will be considered.

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