

April 12, 2022

Administrative Review – 21-10-005
Served Personally

Administrative Penalty

305556 ALBERTA LTD.
o/a PRAIRIE AUTO SALES
P.O. BOX 1929
FORT MACLEOD, AB
T0L 0Z0

Attention: Scott Jessen

Dear Scott Jessen:

**Re: 305556 Alberta Ltd. operating as Prairie Auto Sales
– Provincial Automotive Business Licence No. B171728**

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 Jan. 6, 2022. 305556 Alberta Ltd. operating as Prairie Auto Sales provided written representations via email dated March 24, 2022 (attached as Schedule "C"), in response to the Proposed Administrative Penalty, which I have also taken into consideration.

Licencee Status

305556 Alberta Ltd. operating as Prairie Auto Sales (the "Supplier") holds an AMVIC business licence and carries on the business activity of used sales in the Province of Alberta.

Enforcement History

- A. On Dec. 19, 2008, AMVIC received a complaint from a consumer regarding a truck he had purchased from the Supplier which he believed to be an unsafe vehicle. The investigator spoke with the Supplier on numerous occasions and tried to rectify the issue through alternative dispute resolution however, the Supplier negated to remedy the issue. AMVIC charged the Supplier under Section

- 65(1)(h) of the *Traffic Safety Act* ("TSA"). The Supplier was convicted of contravening Section 65(1)(h) of the TSA and received a fine of \$1,000 and ordered to pay restitution to the complainant in the amount of \$975.07.
- B. On July 12, 2016, AMVIC received a complaint from a consumer regarding a 2004 Nissan Murano LE, which had been sold to the consumer "as is" without a Mechanical Fitness Assessment ("MFA"). The bill of sale ("BOS") clearly indicates that the vehicle was sold "as is" and with no inspection, no warranty and that the mileage was unknown. Section 2(1) of the CPA does not allow a consumer to waive their rights and therefore a business cannot sell vehicles "as is". Further, an MFA must be provided to a consumer in all used sales transactions. Businesses who conduct themselves in such a manner are contravening Section 65(1)(h) for the TSA and Section 15(1) of the Vehicle Inspection Regulation ("VIR"). As a result of this complaint and the investigation conducted, the Supplier was charged with breaching Section 65(1)(h) of the TSA. The Supplier plead guilty and was given a \$200 fine for selling a vehicle without an MFA.
- C. On June 27, 2017, AMVIC received a complaint against the Supplier regarding a 2007 Nissan Murano. The consumer purchased the vehicle on June 2, 2017 and was not provided with an MFA before purchasing the 2007 Nissan Murano. The consumer called the Supplier twice before receiving the MFA in the mail ten days after the purchase date. The MFA that the consumer received in the mail did not have their signatures on it, and the date of completion had been altered. The original date on the MFA was June 18, 2015, which had been crossed off and replaced with January 5, 2017. Given the purchase date, the original MFA date of June 18, 2015 and the MFA with the date changed to January 15, 2017 were both older than 120 days and therefore expired. Upon visiting the Supplier the investigator spoke to Mr. Scott Jessen, who advised the investigator that Lee Jessen (father of Scott Jessen and salesperson for the Supplier) takes full responsibility for altering the date on the MFA. The Supplier rectified the vehicles mechanical issues and accepted full responsibility for their actions. The investigator charged the Supplier under Section 65(1)(h) of the TSA. As a result of this investigation, the Supplier plead guilty and was issued a \$200 fine.
- D. On July 18, 2018 an Administrative Penalty of \$5,000 was assessed against the Supplier. This Administrative Penalty was the result of a consumer complaint received by AMVIC in which the Supplier provided a consumer with an expired MFA and provided AMVIC with an altered MFA when documents were requested regarding the consumer complaint. The Administrative Penalty found the Supplier contravened Sections 15 and 16 of the VIR and Section 12(o) of the Automotive Business Regulation ("ABR"). The Supplier appealed the Administrative Penalty and Service Alberta appointed an Appeal Board to hear the appeal. The decision of the Appeal Board states "*The Appellant does not dispute the facts. The Appellant believes the amount of the administrative penalty imposed is excessive.*" The Appeal Board found the Supplier contravened Sections 15 and 16 of the VIR and Section 12(o) of the ABR as indicated in the Administrative Penalty and varied the amount of the Administrative Penalty to \$1,000.
- E. On Oct. 16, 2019 an administrative review was held with the Supplier as a result of a consumer complaint received by AMVIC. The outcome of the administrative review was communicated to the Supplier via correspondence dated Oct. 25, 2019. This correspondence advised the Supplier that AMVIC would be imposing conditions on the Supplier's business licence. The Oct. 25, 2019 correspondence stated "*I am imposing a large number of conditions on 305556 Alberta Ltd.*"

operating as Prairie Auto Sales in effort to educate the Supplier and rectify the deficiencies immediately. Failure to do so, will result in further administrative action taken by the Director". The Oct. 25, 2019 correspondence also includes the relevant legislation in relation to the conditions being imposed. On Nov. 19, 2019, Mr. Scott Jessen, on behalf of the Supplier signed the conditional letter accepting and agreeing to abide by the conditions. The Supplier agreed to abide by the following conditions:

- (1) As the Supplier, you will keep the peace and remain to be in full compliance with all laws and regulations including but not limited to the CPA and the ABR.*
- (2) Any complaint received by AMVIC regarding 305556 Alberta Ltd. operating as Prairie Auto Sales may result in the administrative review of this conditional business licence. Furthermore, if a consumer complaint is received, you will respond to an investigator or consumer services officer's email request for documentation regarding the complaint as per the guidelines in the email request.*
- (3) Mr. Scott Jessen will successfully retake the AMVIC Salesperson Registration Course by November 22, 2019. Upon completion no administrative action will be taken against Mr. Jessen's salesperson registration S1008886.*
- (4) The Supplier will ensure all salespeople employed by Prairie Auto Sales have their AMVIC salesperson registration and these registrations will be renewed prior to their expiry date.*
- (5) The Supplier will ensure your AMVIC business licence does not expire by renewing prior to the expiry date.*
- (6) The Supplier will ensure the business's levy reporting and payments are made on time.*
- (7) The Supplier will ensure that your business provides consumers full disclosure at the time of the sales transaction as defined in Section 6 of the CPA and abide by all regulations.*
- (8) As the Supplier, 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. The AMVIC inspection will take place by May 15, 2020.*
- (9) The Supplier will follow all advertising legislation as laid out in Section 11 of the ABR.*
- (10) The Supplier will ensure that all Mechanical Fitness Assessments ("MFA") are completed in full and by a licenced technician as per Section 15 and 16 of the Vehicle Inspection Regulation ("VIR").*
- (11) The Supplier will ensure that their bills of sale conforms to the legislation as per Section 31.2 of the ABR.*

Educational Inspections

- F. AMVIC sent Scott Jessen, the sole Director of the Supplier a findings letter on May 13, 2017. This letter provided a summary of the inspection that was completed by Nina M. an industry standards officer ("ISO") on April 28, 2017. In the findings letter the ISO reviewed six used deals and identified that out of the six used deals, four of them had issues with the MFAs. Two deals had MFAs that were signed by the consumer after the BOS date. The other two MFAs were missing crucial information: odometer reading, consumer's signature, the date it was signed by the consumer, and the salesperson information.
- G. A findings letter dated June 27, 2018 was provided to the Supplier. This letter provided a summary of the inspection that was completed by Nina M. an ISO. In the findings letter the ISO reviewed 10

used deal jackets and identified one did not have an MFA, one MFA had been signed after the BOS date, one MFA was missing the date the customer signed and the salesperson information. The findings letter also states that three of the 10 bills of sale had inaccurate kilometres listed as the numbers were rounded, seven of the 10 bills of sale were missing the stock numbers, one BOS was missing a purchase date and one BOS did not note if it was a new, used or demo vehicle. The ISO made note in the findings letter that indicates *"Scott Jessen will review the proper process with his father."*

- H. A findings letter dated Nov. 16, 2020 was provided to the Supplier. This letter provided a summary of the inspection that was completed by Shawna N. an ISO. In the findings letter the ISO reviewed 13 used deal jackets and identified none of the bills of sale included the number of the government issued identification, two did not have an MFA, three had expired MFAs and one did not disclose the type of vehicle. The findings letter also stated there are a number of deficiencies with completion of the Supplier's BOS including not having a clear breakdown of accessories, costs, and fees; one BOS did not breakdown GST; one BOS did not include the mileage of the trade-in vehicle; five bills of sale did not include the salesperson registration number; one BOS did not note the delivery date; one BOS failed to disclose if the vehicle was new or used; and two bills of sale failed to disclose the vehicle's colour.

Summary of Complaint

Case File 21-03-240

1. In March 2021, AMVIC received a complaint alleging a consumer had entered into two transactions with the Supplier in which they were sold vehicles and had been misled about the vehicle's history or condition. On Feb. 5, 2021 the consumer ("SG") purchased a 2005 GMC Sierra (the "GMC") from the Supplier. SG resides in British Columbia and entered into this transaction without travelling to Alberta. SG's partner ("AG") flew to Calgary and met the Supplier at the airport to pick up the GMC.
2. According to SG, during the drive back to British Columbia issues with the condition of the GMC were immediately apparent to AG. When AG attempted to plug in a code reader to the GMC it was discovered the wire leading to the diagnostic port had been cut. Once the wiring had been reconnected it was determined that the Vehicle Identification Number ("VIN") had been erased. When AG removed the instrument cluster it was determined to not be the original instrument cluster. It was determined the instrument cluster had been previously rebuilt by a business ("KI"). AG contacted KI regarding the GMC and was advised the instrument cluster had been rebuilt in 2013 and the VIN sticker on the instrument cluster should match the VIN on the GMC. However, this was not the case as the instrument cluster had no VIN.
3. SG contacted the Supplier and eventually came to an agreement where the Supplier would allow her to trade in the GMC for the amount she paid and SG would purchase a 2012 Chevrolet Silverado (the "Chevrolet") for an additional cost of \$10,000.
4. On March 5, 2021, SG and AG drove the GMC back to the Supplier's business in Fort Macleod to conclude the transaction to purchase the Chevrolet and return the GMC.

5. Upon their return to British Columbia, SG took the Chevrolet to an automotive business as it needed to pass a safety inspection in order to be registered in British Columbia. The business provided SG an estimate of repairs, dated March 11, 2021 totaling \$4,489.47. SG called the Supplier regarding the condition of the Chevrolet and the required repairs to make it roadworthy to pass the safety inspection in British Columbia. The Supplier indicated they would pay for the repairs but only if they are completed by their own licensed technician in Alberta and therefore SG would have to drive the vehicle back to Alberta. SG did not agree to this. The Supplier then offered to cover the cost of parts if SG wanted the Chevrolet repaired in British Columbia. According to SG, this arrangement required her to sign an agreement where she would not ask for anything further or speak about her experience to anyone. SG did not agree to this offer and felt the Supplier should either pay the full price of the repairs in British Columbia or completely reverse the deal.
6. On April 13, 2021, SG paid an automotive business in British Columbia \$4,196.07 for repairs and to remove two stacked lift kits in order for the Chevrolet to pass the safety inspection.

Summary of Investigation

7. On June, 16, 2021, a consumer services officer ("CSO") emailed the Supplier advising that AMVIC received a complaint from SG. This email provided a summary of the complaint and enclosed a letter requesting the Supplier provide AMVIC with a Supplier response and the records regarding the complaint by June 25, 2021. When no response was received, the CSO emailed the Supplier on June 29, 2021 extending the deadline to July 2, 2021. The Supplier did not respond to the email requests from the CSO.
8. When AMVIC did not receive a response to the CSO's requests the complaint was forwarded to the investigations department. On July 14, 2021, the investigator emailed the Supplier following up on the CSO's request for a Supplier's response and records regarding the complaint. On July 15, 2021, AMVIC received a Supplier's response.
9. When the investigator requested the records regarding the GMC transaction the Supplier informed the investigator the file had been shredded and they had no records for the GMC.
10. In addition to the documents SG provided with her complaint, the investigator was able to collect a number of records from other sources regarding the GMC including:
 - BOS from the auction to the Supplier dated 2020/10/06;
 - wholesale BOS from the Supplier to another automotive business, dated June 1, 2021;
 - BOS from the auction to another buyer, dated 2021/05/03; and
 - information from KI regarding the instrument cluster rebuild in 2013, email dated Sept. 13, 2021.
11. SG alleged that she did not receive an MFA for the GMC. Given the Supplier asserted they have no documents regarding the GMC, the investigator spoke with the licensed technician the Supplier indicated had completed the MFA for the GMC. The licensed technician was not employed by an AMVIC licensed business and could not produce any record of completing an MFA for the GMC as his computer had crashed.

12. The BOS from the auction to the Supplier dated 2020/10/06 lists the odometer reading at 219,039 kilometres. The Supplier sold the GMC to SG with an odometer reading of 157,393 kilometres on Feb. 5, 2021. During the time the GMC was in the Supplier's possession the odometer reading rolled back 61,646 kilometres.
13. When asked about the odometer discrepancy by the investigator, the Supplier advised they had replaced the stepper motor and instrument cluster with parts from a truck that had been exported to the United States over 10 years earlier and had no documentation regarding the replacement of the parts on the GMC. The Supplier also advised that AG was told the stepper motor and instrument cluster were replaced when he picked the GMC up at the Calgary airport.
14. After SG traded in the GMC for the Chevrolet, the Supplier advertised the GMC listing it as a *"LOW KM" B.C. Truck* stating the truck had 158,225 kilometres.
15. In regards to the Chevrolet, SG paid for the repairs required to pass the inspection including the removal of two stacked lift kits. The Supplier asserted it is not their responsibility to ensure a vehicle can pass the safety requirements in another province. The investigator indicated that he reached out to an employee of Alberta Transportation who advised that stacked lift kits will not pass the Alberta Transportation Safety Inspection. However, there is no documentation of this information before the Director.
16. The investigator did not request the entire deal jacket for the Chevrolet from the Supplier, only the BOS and the MFA.

Supplier's Representations

17. The Supplier has been in the automotive industry since 1982 and on average, prior to the COVID-19 supply chain issues, sold approximately 20 vehicles per month.
18. When AMVIC's CSO reached out to the Supplier regarding the consumer complaint received, the Supplier indicated they did not respond as they did not receive the emails from AMVIC requesting the Supplier response and documents. The email address the requests were sent to was confirmed to be the Supplier's email address during the administrative review.
19. The Supplier stated the reason why they do not have any records regarding the GMC was the result of an employee contracting COVID-19. The Supplier stated on the advice from Alberta Health Services they threw away everything that was in the employee's office, including at least one filing drawer of business records. The GMC deal jacket was only one of many files that were destroyed.
20. During the administrative review, the Supplier confirmed they did not tell SG of the stepper motor or instrument cluster replacement at the time of transaction. However, they did tell AG when they met him at the Calgary airport with the GMC. They also stated they did not disclose the information on any documents before entering into the transaction and did not write it on the BOS on the request of AG.

21. When asked about the odometer reading on the GMC, the Supplier advised it would be a factual statement to say the number of kilometres on the GMC was unknown. The Supplier advised the stepper motor and instrument cluster did not work when they purchased the GMC and the number of kilometres on the GMC could be even higher than the odometer reading when they purchased the truck from the auction.
22. According to the Supplier, SG was provided an MFA which is evidenced by the statement on the BOS for the GMC which SG initialed. The Supplier was having their MFA's completed by a licensed technician ("RK"), however RK did not work for an AMVIC-licensed business and does not have any records of the MFAs completed for the Supplier as his computer crashed. When asked if they could produce any other records such as electronic records, email correspondence to the consumer or payroll records the Supplier indicated they keep no electronic records and while they keep payroll records for the payment of MFAs completed by RK, the Supplier stated RK would advise them how many MFAs he had completed in a given time and they would pay him but there are no records specifying payment for the completion of MFAs on specific vehicles.
23. The Supplier advised during the administrative review that RK no longer completes their MFAs. They now have an AMVIC licensed business with a licensed technician on staff who completes the MFAs for their vehicles.
24. The Supplier does not know who replaced the stepper motor and instrument cluster in the GMC and has no records regarding this repair. The Supplier is only licensed with AMVIC for used sales. Their business licence does not include any designated business activity to complete repairs.
25. The Supplier advised during the administrative review that they purchased the Chevrolet on Aug. 19, 2020 from a wholesale business in Calgary for \$33,600. The Supplier sold the Chevrolet to SG for \$37,778 making a profit of approximately \$4,200 on the sale of the Chevrolet.
26. With respect to the repairs required to the Chevrolet, it was the Supplier's position that they did not want to be taken advantage of by SG and wanted their licensed technician to inspect and repair the Chevrolet. In their Supplier response they advised they would have had RK complete any required repairs on the Chevrolet. RK is not employed by an AMVIC licensed repair business, nor is the Supplier licensed to engage in any designated activities that would allow them to complete automotive repairs. During the administrative review, the Supplier stated they would have taken the Chevrolet to an AMVIC licensed business for the repairs.
27. The Supplier indicated at the conclusion of the administrative review that they have been working hard to bring their business practices into compliance. Mr. Scott Jessen further indicated completing the Salesperson Registration Course, as required by the conditions placed on the Supplier business licence, was extremely beneficial in helping him understand the legislation. The Supplier asked the Director to recognize the work they have done to bring their business into compliance and to allow them the opportunity to continue to better themselves as a member of the automotive industry.
28. The Supplier provided written representations, dated March 24, 2022, in response to the Proposed Administrative Penalty (see Schedule "C").

Legislation

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.

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

- (a) not make any representations, statements or claims that are not true or are likely to mislead a consumer,
- (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.

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**

(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.

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 a consumer complaint received by AMVIC, case file 21-03-240.

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

On a balance of probabilities, the Director finds that the Supplier misled SG regarding the odometer reading on the GMC and the mechanical condition of the Chevrolet.

The GMC was sold to SG with a documented odometer reading of 157,393 kilometres. Based on the information provided by the auction, when the Supplier purchased the GMC it had an odometer reading of 219,093 kilometres. While the GMC was in the Supplier's possession the odometer rolled back 61,646 kilometres. Knowing the odometer reading was not an accurate representation of the number of kilometres on the GMC the Supplier did not disclose to SG that the GMC had an unknown number of kilometres on the odometer. During the administrative review, the Supplier stated they advised AG the stepper motor and instrument cluster had been replaced when they met however, this was after SG had entered into the transaction with the Supplier and AG had flown from British Columbia to Alberta to take possession of the GMC. There is no evidence to support the Supplier's statement that they disclosed the odometer discrepancy on the GMC or that the true actual mileage on the GMC is unknown.

When SG entered into a transaction with the Supplier to purchase the Chevrolet the required MFA was provided to SG. The MFA indicates that every applicable component of the truck was compliant with the Vehicle Equipment Regulation and there are no notes listed by the technician who completed the MFA. Only six days after the purchase of the Chevrolet, SG received an estimate for repairs required on the Chevrolet at an estimated cost of \$4,489.47. The estimate specifically lists repairs required to the brake pads, struts, ball joints and torsion bar, all of which were marked as compliant on the MFA. It is unlikely all of these major components on the Chevrolet were compliant at the time of the completion of the MFA, which lists an odometer reading of 220,529 kilometres but were non-compliant after SG owned the Chevrolet for only six days. When SG finally paid for the repairs in April 2021 the Chevrolet's odometer was recorded as 221,792 kilometres. SG drove the vehicle just over 1,000 kilometres from the time of purchase to the time the repairs were completed, which includes the mileage accumulated on the drive from Fort McLeod to their home in British Columbia after SG purchased the Chevrolet.

The Director finds it particularly concerning that after taking the GMC back from SG, the Supplier not only advertised the GMC again without disclosing that the odometer reading is unknown, they highlighted the low odometer reading as a selling feature.

The Supplier stated in their written representations (see Schedule "C") that they sold the GMC wholesale to another automotive business ("BWA") with the exact same declarations as they provided to SG. In reviewing the BOS to BWA, there were no declarations on the BOS however, the odometer reading was left blank. The BOS to SG clearly listed an odometer reading with no declaration that it was not an accurate odometer reading.

In the Supplier's written representations (see Schedule "C"), they assert SG was fully aware of the odometer discrepancy and attached a signed British Columbia insurance transfer tax form (the "Tax Form") as their evidence of this assertion. The Tax Form does state the odometer was "replaced/broken". The Director notes that the Tax Form is not dated, however it lists SG as the seller and the Supplier as the purchaser. It is therefore reasonable to assume the Tax Form was completed for the trade-in of the GMC when SG purchased the Chevrolet. This was not only after SG purchased the

GMC but also after SG and AG had discovered the condition of the GMC on their own, reached out to the Supplier with their concerns and the Supplier had agreed to allow SG to trade the GMC in for the Chevrolet. Otherwise, the Supplier would not have been listed as the purchaser. Therefore, the Tax Form does not demonstrate that SG was aware that the odometer was not accurate prior to entering into the transaction to purchase the GMC.

The Supplier's words and actions reasonably misled the consumer during the course of both transactions and therefore, the Supplier did contravene Section 6(4)(a) of the CPA.

B. Non-compliant BOS (ABR Section 31.2)

On Oct. 31, 2018, amended 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 amended 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.

The BOS for the GMC is missing the number of the government issued identification the Supplier used to confirm the identity of the consumer, contravening Section 31.2(1)(b) of the ABR. The delivery date on the BOS for the GMC is not legible. The Supplier has filled in the month and the year, however the day the vehicle is to be delivered is unclear. This could be due to a poor photocopy however, the Supplier did not maintain a copy of the BOS for the GMC and there is no evidence if the proper delivery day was filled in, therefore the Supplier has contravened Section 31.2(1)(i) of the ABR.

The BOS for the GMC also failed to include an itemized list of the applicable fees and charges the consumer was required to pay. The BOS states "*inc*" on the lines for the "*admin/doc fee*" and the AMVIC levy and does not disclose to the consumer the amount of those fees and levies. Although the Supplier may be trying to adhere to the Section 11(2)(l) of the ABR, which relates to all-in pricing, the Supplier must ensure they are completing the BOS in accordance with Section 31.2(1)(j) while also ensuring they are adhering to other sections of the legislation.

The BOS for the Chevrolet is missing the number of the government issued identification the Supplier used to confirm the identity of the consumer contravening Section 31.2(1)(b) of the ABR. The BOS for the Chevrolet was also missing the colour of the vehicle as required by Section 31.2(1)(f) of the ABR.

During the administrative review the Supplier stated they have been putting in the effort to ensure they are completing the BOS in a compliant manner. However, when the Director indicated neither BOS included the number of the government issued identification the Supplier used to confirm the identity of the consumer, the Supplier stated they did not know this was a requirement and were never informed of this by AMVIC. Although, there is an onus on the Supplier to ensure their business practices comply with the applicable legislation, AMVIC brought the compliance concerns found on the BOS for the GMC and the BOS for the Chevrolet to the Supplier's attention during the industry standards inspection completed in 2020. The findings letter dated, Nov. 16, 2020 provided to the Supplier as a

result of the industry standards inspection, documents these deficiencies. Further, prior to the industry standards inspection in 2020, AMVIC's conditional business licence correspondence dated Oct. 25, 2019 included Section 31.2 of the ABR in its entirety and the Supplier signed the conditional letter agreeing to ensure they would be in compliance with this section of the legislation.

Based on the evidence before me, on a balance of probabilities, the Director finds the Supplier contravened Sections 31.2(1)(b), 31.2(1)(f), 31.2(1)(i) and 31.2(1)(j) of the ABR.

C. Failure to provide MFA (VIR Section 15(1) and ABR Section 12(o))

In the transaction for the GMC, SG alleges that she was not provided with an MFA. She states in her complaint that she signed the MFA acknowledgement on the BOS because the Supplier advised her they would provide her with an MFA via email. The Supplier disputes this fact based on SG's initials on the BOS acknowledging receipt of the MFA.

When the investigator requested the MFA completed for the GMC the Supplier was unable to produce one. The investigator then sought out the technician, RK, who the Supplier indicated completes their MFAs. RK could not produce any records to indicate he completed an MFA on the GMC, stating his computer had crashed.

During the administrative review, the Supplier was asked if there were any documents regarding the completion of the MFA that could be retrievable, such as an email to SG enclosing the MFA. Given SG did not fly to Calgary to pick up the GMC but is the consumer who entered into the transaction and signed the BOS it would be within reason that the Supplier could produce an email record sent to SG which enclosed the MFA, had they provided one. The Supplier indicated they do not keep any electronic records. The Director further inquired if the Supplier could provide any financial records that could provide evidence that they paid RK for an MFA to be completed on the GMC. The Supplier indicated they did not list any vehicle specific information when paying RK for the completion of MFAs.

As the Supplier cannot produce any evidence an MFA was completed on the GMC, on a balance of probabilities, the Director finds the Supplier did not provide SG with an MFA prior to entering into the agreement to sell the GMC and has therefore contravened Section 15(1) of the VIR. By contravening Section 15(1) of the VIR in the course of a sales transaction, the Supplier has contravened Section 12(o) of the ABR.

D. Failure to Maintain Records (CPA Section 132(1) and ABR Section 9)

Section 132(1) of the CPA and Section 9 of the ABR set out the requirement for all business operators to create and maintain complete and accurate records. This includes both financial records and all records created or received while carrying on the business activities they are authorized to engage in.

The Supplier was unable to produce any records of the transaction for the GMC as they advised the deal jacket had been disposed of as it had been in the office of an employee who contracted COVID-19. The Supplier stated that Alberta Health Services instructed them to dispose of all items in the employee's desk, however the Supplier has not provided any evidence of this instruction from Alberta Health Services. The Director is understanding of the conditions that the COVID-19 pandemic has created for

businesses operating during this time however, even when circumstances change, business practices must remain in compliance.

A recent Service Alberta Appeal Board rendered a decision (attached as Scheduled "B") regarding the importance of record keeping as a member of a regulated industry. Paragraph 152 of the Service Alberta Appeal Board decision states:

The Board finds that there is a need for general deterrence as well, such that other members of the industry understand that failure to keep proper records is an extremely serious contravention of the act, and a business practise that puts the public at risk. The sanction must be sufficient to communicate this seriousness to the industry at large.

On a balance of probabilities, although there may have been extenuating circumstances, the Director finds that the Supplier failed to maintain their records and have contravened Section 132(1) of the CPA and Section 9 of the ABR.

E. Failure to Provide Records (CPA Section 132(2))

When AMVIC first received the consumer complaint from SG, the CSO, who is appointed as an inspector under the CPA, emailed the Supplier on June 16, 2021 requesting the Supplier complete the Supplier response and provide the documents regarding the transaction with SG. The CSO provided the Supplier a deadline of June 25, 2021 to respond. The Supplier did not respond. The CSO then emailed the Supplier on June 29, 2021 providing an extended deadline of July 2, 2021 to respond and provide the requested Supplier response and documents in relation to SG's consumer complaint. When the Supplier did not respond to either request from the CSO by the deadlines indicated the consumer complaint was forwarded to the investigations department.

When the investigator emailed the Supplier on July 14, 2021 requesting the Supplier complete the Supplier response and provide the documents regarding the transaction with SG the Supplier responded the same day indicating they had not received any correspondence regarding the complaint with SG. The investigator received a Supplier's response from the Supplier on July 15, 2021 regarding the complaint.

During the administrative review, the email address used by the CSO was confirmed to be the correct email address to contact the Supplier. The same email address was used by the investigator to contact the Supplier in which a response was received. This is also the email provided by the Supplier to AMVIC as their contact email address. The Supplier stated during the administrative review they did not receive the emails from the CSO and would have responded as requested by the CSO initially.

The quick response to the investigator's email on July 14, 2021 shows the Supplier's willingness to respond to the investigator's request. In the Director's opinion the Supplier did not intentionally fail to respond to the CSO's requests for records, however based on the evidence before me the Supplier did not respond to the CSO's requests relating to the consumer complaint. On a balance of probabilities, the Director finds that the Supplier failed to provide records when requested contravening Section 132(2) of the CPA.

F. Other Considerations

The Supplier purchased the GMC at a cost of \$22,118.25 and sold the GMC to SG for \$27,500 for a profit of \$5,381.75. In the transaction for the Chevrolet, SG was charged \$37,778 with a trade-in allowance for the GMC of \$27,778 however, the GST is not clearly incorporated into the cost which further exemplifies the Supplier's failure to properly complete their BOS. If the Director incorporated the \$500 GST into the cost, it would reduce the trade in value to \$27,278. The Supplier then sold the GMC to BWA for \$17,000. In the Supplier's written representations, dated March 24, 2022 (see Schedule "C") they indicated they lost \$4,518.25 on the GMC overall. The Director cannot ascertain the overall net loss or gain after the two transactions with SG as the acquisition cost of the Chevrolet is not documented in the evidence before the Director.

Based on the documents relating to the two transactions with SG that are before the Director, the Supplier failed to comply with five of the 11 conditions they had acknowledged and agreed to abide by. The Supplier failed to abide by the following conditions:

- (1) As the Supplier, you will keep the peace and remain to be in full compliance with all laws and regulations including but not limited to the CPA and the ABR.*
- (2) Any complaint received by AMVIC regarding 305556 Alberta Ltd. operating as Prairie Auto Sales may result in the administrative review of this conditional business licence. Furthermore, if a consumer complaint is received, you will respond to an investigator or consumer services officer's email request for documentation regarding the complaint as per the guidelines in the email request.*
- (7) The Supplier will ensure that your business provides consumers full disclosure at the time of the sales transaction as defined in Section 6 of the CPA and abide by all regulations.*
- (10) The Supplier will ensure that all Mechanical Fitness Assessments ("MFA") are completed in full and by a licenced technician as per Section 15 and 16 of the Vehicle Inspection Regulation ("VIR").*
- (11) The Supplier will ensure that their bills of sale conforms to the legislation as per Section 31.2 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 has been subject to the following enforcement actions:

- 2008 – plead guilty of breaching Section 65(1)(h) of the TSA resulting in a \$1,000 fine and restitution payment to the complainant.
- 2016 – plead guilty of breaching Section 65(1)(h) of the TSA resulting in a \$200 fine.
- 2017 – plead guilty of breaching Section 65(1)(h) of the TSA resulting in a \$200 fine.
- 2018 – assessed an Administrative Penalty for breaching Sections 15 and 16 of the VIR and Section 12(o) of the ABR.
- 2019 – conditions imposed on the Supplier's business licence.

Since 2008, the Supplier has been subject to multiple enforcement actions, all of which involve similar compliance issues regarding MFAs.

The Director also considered other enforcement actions such as entering into an Undertaking and the cancellation of the Supplier's business licence. In considering whether entering into a voluntary Undertaking with the Supplier would be appropriate, the Director is not satisfied that the Supplier has ceased the contraventions as per Section 152(1)(b) of the CPA. Further, the Director does not feel an Undertaking would adequately protect consumers due to the Supplier's failure to abide by the conditions placed on their business licence. In considering the cancellation or suspension of the Supplier's business licence, as recommended by the AMVIC investigator, the Director does not feel removing the Supplier from the automotive industry is warranted based on the evidence presented in relation to this investigation.

The Supplier has been provided education in the form of industry standards inspections and has been subject to multiple enforcement actions however, they continue engaging in non-compliant business practices. The amount of the Administrative Penalty cannot be viewed as a cost of doing business but as a deterrent for continuing to engage in non-compliant business practices.

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.

In reviewing all the evidence and determining the contraventions of the legislation, in the opinion of the Director, the Supplier's business practices do not appear to align with the spirit and intent of the legislation. Failing to provide complete disclosure of vehicle history and condition, failure to disclose the cost of all fees and levies, and failing to provide an MFA prior to entering into a transaction leverages the Supplier's knowledge and does not foster a level playing field between the consumer and the Supplier which eliminates the consumer's ability to make an informed purchasing decision. It further concerns the Director that after the transactions with SG the Supplier advertised the GMC without disclosure of the unknown odometer reading and highlighted the low kilometres on the odometer as a selling feature.

The aggravating factors in this matter include the degree of willfulness or negligence in the contraventions and resulting impact adversely affecting the consumer including but not limited to failing: to disclose the inaccurate odometer of the GMC which was known to the Supplier as the odometer rolled by over 60,000 kilometres while in their possession; failure to abide by multiple agreed upon conditions of their business licence; and failure to bring their business practices into compliance with the rather straightforward requirements of the legislation after multiple enforcement actions and attempts to educate the Supplier.

The mitigating factors in this matter include the Supplier contracting an AMVIC licensed business to complete the MFAs on their vehicles and the extenuating circumstances caused by COVID-19.

This Administrative Penalty is taking into account the number and seriousness of the contraventions of the legislation found during the investigation as well as the cost of investigating the Supplier's activities; the cost incurred by SG to make the Chevrolet roadworthy; the aggravating and mitigating factors listed above; the COVID-19 pandemic's financial impact on the Supplier as a small rural business; and the continued non-compliant business practices despite education and enforcement.

Action

In accordance with Section 158.1(a) of the CPA and based on the above facts, I am requiring that 305556 Alberta Ltd. operating as Prairie Auto Sales pay an Administrative Penalty. This is based on my opinion that 305556 Alberta Ltd. operating as Prairie Auto Sales contravened Sections 6(4)(a) and 132 of the CPA, Sections 9, 12(o), and 31.2(1) of the ABR, and Section 15(1) of the VIR.

Taking into consideration all the representations made by the Supplier and the representations made by AMVIC's investigations department, the amount of the Administrative Penalty is **\$10,500**. The Proposed Administrative Penalty was reduced by the Director based on the written representations from the Supplier dated March 24, 2022 and taking into consideration the negative impact of COVID-19 on the Supplier's economic activity.

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 impact on the person adversely affected by the contravention or failure to comply;
3. The previous history of enforcement and non-compliance;
4. The degree of willfulness or negligence in the contravention or failure to comply;
5. The negative impact of COVID-19 on the scope of the economic activity of the Supplier;
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 \$10,500.

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)
Katie Lockton
Director of Fair Trading (as Delegated)

KL
Encl.

cc: [REDACTED] Senior Manager of Investigations, AMVIC