

**IN THE MATTER OF THE
CONSUMER PROTECTION ACT ("CPA")**

THIS **UNDERTAKING** is made pursuant to Section 152 of the *Consumer Protection Act* ("CPA").

BY: **2317723 ALBERTA LTD.**
operating as TOWN & COUNTRY MOTORS
at or near the city of Edmonton, in the Province of Alberta
(hereinafter called the "Supplier")

TO: **The DIRECTOR OF FAIR TRADING (as delegated)**
(hereinafter called the "Director")

WHEREAS:

- A. At the time of the complaint, the Supplier was licensed by the Alberta Motor Vehicle Industry Council ("AMVIC") to carry on the automotive business activity of retail sales in the Province of Alberta.
- B. An AMVIC investigation (case file 21-12-049) was initiated as a result of a consumer complaint received by AMVIC in December 2021, alleging they were misled and deceived by the Supplier's representations and advertising regarding the mechanical condition of a vehicle in which they relied upon when deciding to purchase a vehicle.
- C. An administrative review was held via teleconference call on May 17, 2022 at approximately 12:57 p.m. Participating in the administrative review was Mr. Nathan Bizeau, owner and director of the Supplier; [REDACTED], AMVIC investigator; [REDACTED] AMVIC manager of investigations north; and G. Gervais, Director of Fair Trading (as delegated).
- D. In November 2021, the consumer ("SC") responded to an online advertisement for a 2010 Land Rover LR2 (the "Land Rover"). The advertisement described the Land Rover as in *"excellent condition"*.
- E. When SC inquired via text message with the salesperson for the Supplier regarding whether any type of inspection was done on the Land Rover, she received a reply stating, *"Yes! We have a fully certified and AMVIC inspection form A third -party dealer. Only thing that failed was the tires"*.
- F. Given the COVID-19 pandemic, SC did not attend the Supplier or test drive the vehicle for health concern reasons despite the Supplier encouraging her to do so. On Nov. 4, 2021, SC purchased the Land Rover for \$6,400 inclusive of the GST as she believed it was in good condition. This belief stemmed from the Land Rover having been inspected and in excellent condition according to the advertisement and text messages with the Supplier. When SC took possession of the Land Rover on Nov. 4, 2021 the check engine light came on. SC was told that the warning light was for

emissions and nothing to do with performance of the vehicle. After driving the Land Rover for a short distance SC felt what she described as “swaying” and did not feel safe.

- G. On Nov. 30, 2021 after driving the Land Rover for 46 kilometres (“kms”) SC took the Land Rover to a third party repair facility (“GA”) and paid for a 40 point inspection. SC was told that the rear wheel bearing was worn and there were two codes causing the check engine light to illuminate (Fuel sensor B circuit and throttle actuator control motor) and the tires were worn. SC was told by this repair facility to take the Land Rover to a qualified Land Rover facility.
- H. SC tried to contact the Supplier immediately after GA advised her of the mechanical issues with the Land Rover, however was unable to contact the Supplier. When SC did speak with the Supplier on Dec. 6, 2021, she was told that the vehicle had been sold “As Is” and they were not willing to rectify her concerns.
- I. On Dec. 10, 2021, after driving the Land Rover for 97 kms, SC took the Land Rover to another repair facility (“SLA”) who agreed with the inspection completed at GA. SC paid \$790.45 to repair the left rear wheel bearing and hub assembly as well as for an additive that was added to the Land Rover’s coolant.
- J. On Jan. 4, 2022, after driving the Land Rover for 360 kms, SC took the Land Rover back to SLA and paid for an 85 point inspection. SLA outlined repair costs for a number of items. Repair items were estimated to cost up to \$7,460.09. The AMVIC investigator highlighted the main concerns for repairs which were recommended at a cost of \$439.98 which included:
 - Diagnostic inspection for check engine codes;
 - Replace tires; and
 - Front outer side marker bulbs to be replaced along with left licence plate bulb.

Given the mechanical issues, SC no longer wanted the Land Rover. The Supplier was willing to work with SC at a discounted shop rate to have the repairs completed however SC rejected their offer and continues to only use the Land Rover sparingly. As of March 21, 2022, SC had only put 733 kms on the Land Rover. SC was misled regarding the mechanical condition of the Land Rover and has been unable to receive any reasonable benefit from the Land Rover. The Supplier has contravened Sections 6(3)(a) and 6(4)(a) of the CPA.

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.

(3) It is an unfair practice for a supplier

(a) to enter into a consumer transaction if the supplier knows or ought to know that the consumer is unable to receive any reasonable benefit from the goods or services;

(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;

- K. The AMVIC investigation revealed issues with the Supplier's documentation not being compliant with legislation. The bill of sale ("BOS") for this transaction is missing the government issued identification that the Supplier used to confirm the identity of the consumer, the colour of the Land Rover and the BOS is dated Nov. 4, 2021 yet shows the actual delivery date of the Land Rover as Nov. 3, 2021 and SC only electronically signed the documents on Nov. 5, 2021 through an audit trail. The BOS does not comply with the requirements as set out in the Automotive Business Regulation ("ABR") therefore the Supplier has contravened Section 31.2 of the ABR.

Automotive Business Regulation

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.

- L. The investigation further revealed that there were two Mechanical Fitness Assessments ("MFAs"). The copy given to SC shows the battery, tread depth, tread section, sidewalls of the tires as blank and everything else is marked compliant or not applicable. The Supplier's copy shows these items as non-compliant. In completing this transaction, the Supplier failed to provide SC proper and accurate documents and failed to disclose the true condition of the Land Rover. In doing so, the Supplier breached Section 12(o) of the ABR, and Section 15 of the Vehicle Inspection Regulation ("VIR").

Automotive Business Regulation

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.

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.

- M. In one of the boxes listed on the Supplier's BOS it stated "*Unit sold as is*" which was initialed by SC when SC never test drove the vehicle and bought it sight unseen. A consumer cannot waive their rights as per Section 2 of the CPA.

Consumer Protection Act

Act prevails

Section 2

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

- N. The AMVIC investigation revealed that the salesperson ("JP") involved in this consumer transaction was unregistered at the time of the sale of the Land Rover and not authorized to act on behalf of the Supplier. A check of AMVIC's database revealed that JP only completed the Salesperson Registration Course on Dec. 9, 2021 and was not issued his salesperson registration until Dec. 13, 2021 over a month after SC purchased the Land Rover. The Supplier is vicariously liable to ensure all of their salespeople are registered and authorized to work for the Supplier as per Section 20.1 of the ABR and Section 166 of the CPA.

Automotive Business Regulation
Acting on behalf of business operator**Section 20.1**

No business operator may allow a salesperson to act on the business operator's behalf unless

- (a) the salesperson is registered for the class of licence held by the business operator, and
- (b) the business operator authorizes the salesperson to act on its behalf.

Consumer Protection Act**Vicarious liability****Section 166**

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

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

- O. The Land Rover had been advertised as in "*excellent condition*". The Supplier stated that this description can be subjective. Although unintentional, given the mechanical condition of the Land Rover, this could be interpreted as a false or misleading statement as per Section 11(2)(n) of the ABR.

Automotive Business Regulation**Advertising****Section 11**

- (2) A business operator must ensure that every advertisement for an automotive business that promotes the use or purchase of goods or services
 - (n) does not use false, misleading or deceptive statements, and

- P. During the administrative review, Mr. Bizeau indicated that their business also sells motor sport vehicles and the unregistered salesperson was an oversight on their part and they were not trying to be deceptive or circumvent the legislative requirements.
- Q. The Supplier asserted it was not their intent to mislead the consumer, they had encouraged SC to attend in person to test drive the Land Rover before making the purchase, however SC declined.
- R. The Supplier has no previous enforcement history and the investigator remarked the Supplier was cooperative during the investigation.
- S. The Supplier acknowledged the general conduct described in the AMVIC investigation and regrets engaging in the aforementioned activity.

NOW THEREFORE THIS UNDERTAKING WITNESSES THAT:

1. The Supplier acknowledges and admits that it failed to comply with the provisions of the CPA, ABR and VIR 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.
2. The Supplier will undertake not to do or say anything that might reasonably deceive or mislead a consumer during the course of a consumer transaction as per Section 6(4)(a) of the CPA.
3. The Supplier will undertake to ensure their advertising conforms to legislation as required in Section 11 of the ABR.
4. The Supplier will undertake to ensure their BOS is completed in compliance with Section 31.2 of the ABR.
5. The Supplier will undertake that all MFAs are completed in full and by a licensed technician and given to a consumer **before** entering into a contract to sell a motor vehicle as per Section 15 and 16 of the VIR. The Supplier will refrain from supplying different versions of MFAs to consumers.
6. The Supplier will undertake to ensure that all salespeople acting on their behalf are properly registered as per Section 20.1 of the ABR.
7. To ensure that the Supplier is in full compliance with the CPA and its related regulations, the Supplier agrees to assist AMVIC with an industry standards inspection which will take place before **Jan. 31, 2023**.
8. The Supplier will undertake to unwind the deal of the Land Rover and will reimburse SC the sum of **\$6,400** when the consumer returns the Land Rover back to the Supplier. The consumer will be responsible for any cost associated with returning the Land Rover to the Supplier. The deal is to be unwound within **thirty (30) days** from the date of signing this Undertaking and the Supplier will provide AMVIC with proof that same has been completed.
9. The Supplier shall pay the sum of **\$500** to the Alberta Motor Vehicle Industry Council, an amount that represents a portion of the costs AMVIC has incurred investigating the matters herein. Such payment is to be made to AMVIC within **thirty (30) days** from the date of signing this Undertaking.
10. This Undertaking will remain in force,

Unless:

- a. Terminated by the Director or varied with the consent of the Supplier;
- b. Varied by an Order of the Judge of the Court of Queen's Bench where the Judge is satisfied that the circumstances warrant varying the provisions of the Undertaking; or
- c. Terminated by an Order of the Judge of the Court of Queen's Bench where the Judge is satisfied that the act or practice that the Supplier has undertaken to refrain from

engaging in was not unfair; however, in any such case, the termination or variance does not invalidate anything done under this Undertaking prior to termination or variance.

11. The Supplier acknowledges 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.
12. The Supplier acknowledges this Undertaking is a public document and will be maintained in the public record by the Director of Fair Trading (as delegated) as required by Section 157.1 of the CPA.
13. The Supplier acknowledges that they were advised by AMVIC, and are aware that they are entitled to seek independent professional advice regarding the signing of this Undertaking, and the Supplier acknowledges they are entering into this Undertaking voluntarily.

IN WITNESS WHEREOF the Supplier, has on the 30 day of June, 2022.

2317723 ALBERTA LTD.
operating as TOWN & COUNTRY MOTORS

PER: "original signed"
Nathan BIZEAU

ACCEPTED by the Director of Fair Trading on the 5 day of July, 2022.

PER: "original signed"
Gerald Gervais, Registrar
Director of Fair Trading
(as delegated)