

September 13, 2022

Administrative Review – 22-05-003  
**Served via Email:** [REDACTED]

### Administrative Penalty

1478509 ALBERTA LTD.  
operating as CALGARY AUTO GALLERY  
c/o REGISTERED OFFICE  
929 42 AVENUE SE  
CALGARY, AB  
T2G 1Z1

**Attention: Safwan Hniedi**

Dear Safwan Hniedi:

**Re: 1478509 Alberta Ltd. operating as Calgary Auto Gallery  
Automotive business licence B1030486**

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 also taken into consideration the written representations received from the legal counsel of 1478509 Alberta Ltd. operating as Calgary Auto Gallery (the “Supplier”), dated July 10, 2022 attached as Schedule “B” to this letter and the information exchanged during an administrative review held via teleconference call on July 19, 2022. The Supplier’s legal counsel provided written representations via email dated Sept. 11, 2022 (attached as Schedule “C”), in response to the Proposed Administrative Penalty, which I have also taken into consideration.

Participating in the administrative review held on July 19, 2022 were the sole director for the Supplier, Mr. S. Hniedi; Mr. A Chak, legal counsel for the Supplier; [REDACTED] AMVIC manager of investigations south; [REDACTED] AMVIC investigator and G. Gervais, Director of Fair Trading (as delegated).

### **Licence Status**

1478509 Alberta Ltd. operating as Calgary Auto Gallery (the “Supplier”) holds an automotive business licence and carries on business activities of used sales and wholesale in the Province of Alberta.

## History

1. In 2016 and 2017, routine AMVIC industry standards inspections were completed on the Supplier. The findings of the inspections were discussed with the Supplier and provided to the Supplier in writing. A number of concerns were found during both inspections including but not limited to:
  - a) Salespeople who no longer work for the Supplier still listed as designated agents with the Supplier in AMVIC's online database contrary to Section 21 of the Automotive Business Regulation ("ABR").
  - b) Various advertising issues that were contrary to Sections 4 and 6 of the Cost of Credit Disclosure Regulation ("COC") and Section 11(2)(m) of the ABR.
  - c) Consumer transactions that did not abide by the all-in pricing requirements contrary to Section 11(2)(l) of the ABR.
  - d) Various issues with the completion of and disclosure of the Mechanical Fitness Assessment ("MFA") in the deal jackets breaching Section 15(1) of the Vehicle Inspection Regulation ("VIR").
  - e) Various issues with the bills of sale that were reviewed in the deal jackets. It was noted in the findings letter that the Supplier needs to fully complete the bill of sale and maintain their business records.
2. On Jan. 16, 2017, the Supplier was given a \$1,000 Administrative Penalty for non-compliant advertising issues:
  - a) Advertisements on vehicles for sale did not include the stock number contrary to Section 11(2)(m) of the ABR.
  - b) Advertisements containing odometer readings of vehicles were being rounded off which were not always accurate contrary to Section 11(2)(d) of the ABR.
3. On Nov. 4, 2019 the Supplier entered into an Undertaking with the Director as a result of an AMVIC investigation for the following issues:
  - a) Engaged in the designated activity of leasing while not licensed to do so contrary to Section 104(1) of the CPA.
  - b) Advertisements on vehicles for sale did not include the stock number contrary to Section 11(2)(m) of the ABR.
  - c) Consumer transaction documents did not accurately reflect the true nature of the consumer transaction contrary to Section 132(1) of the CPA.
4. As part of the Undertaking the Supplier agreed and undertook to:
  - a) Assist AMVIC with an inspection by Jan. 31, 2020.
  - b) Pay investigation costs of \$1,750.
  - c) Ensure they maintain accurate business records and documents as per legislative requirements.
  - d) Ensure their advertising conforms to advertising requirements as set out in the ABR.
  - e) Cease engaging in automotive leasing unless licensed under the CPA to engage in the business activity.
5. On March 10, 2020, a third AMVIC industry standards inspection was completed on the Supplier as per the agreed upon Undertaking. The findings of the inspection were not discussed with the

Supplier. A findings letter dated March 22, 2020 was emailed to the business on March 25, 2020.

The inspection found:

- a) Two salespeople who no longer work for the Supplier were still listed as designated agents with the Supplier in AMVIC's online database. Failure to remove expired salespeople who are no longer employees as designated agents in AMVIC's database is contrary to Section 21 of the ABR.
- b) Advertisements on vehicles for sale at the Supplier's business did not include or display stock numbers contrary to Section 11(2)(m) of the ABR.
- c) In-house financing is being offered without a finance agreement in place. One deal was found to offer financing however did not contain required information as required by the COC.
- d) There were various issues with the completion of and disclosure of the MFA in the deal jackets breaching Section 15(1) of the VIR.
- e) There were various issues with the bills of sale that were reviewed in the deal jackets. Some issues noted in the findings letter include, the AMVIC business number was not indicated, the salesperson registration number was not indicated, the consumer's government issued identification number was not indicated, the balance due was not listed and the address of the consumer was missing contrary to Section 31.2(1) of the ABR.
- f) Failing to provide vehicle history disclosures contrary to Section 31.1 of the ABR.
- g) The Supplier was requested during the inspection to locate and forward documentation on a 2009 Toyota Tundra (stock #84755). The Supplier was again given instructions to produce the documents verbally on March 19, 2020. The inspector sent a follow up by email on March 19, 2020 requesting the same. The Supplier was required to provide the following documents by March 20, 2020 by 4:30 p.m. and failed to do so contrary to Section 132(2) of the CPA:
  - i. All bills of sale for vehicles sold after Jan. 1, 2020.
  - ii. Documents pertaining to a 2009 Toyota Tundra (stock #84755) as requested during inspection on March 10, 2020.
  - iii. Police report for the February 2020 break and enter in which documents were alleged to have been stolen from the Supplier's business.

6. On July 29, 2020, the Supplier was issued and served with a Director's Order and directed to:

*"Cease utilizing its current version of a bill of sale and immediately implement the use and completion of a bill of sale that meets the legislative requirements under Section 31.2 of the Automotive Business Regulation."*

7. On September 18, 2020, the Supplier was given a \$5,000 Administrative Penalty for the following issues:

- a) Failing to produce records as per Section 132(2) of the CPA.
- b) Failing to notify AMVIC when a salesperson ceases to be authorized as per Section 21 of the ABR.
- c) Non-compliant bills of sale ("BOS") as per Section 31.2(1) of the ABR.
- d) MFA issues as per Section 15(1) of the VIR and Section 12(o) of the ABR.
- e) Breach Undertaking as per Section 163(d) of the CPA.

### ***Preliminary Matters***

In advance of the scheduled administrative review, on July 10, 2022, Mr. A. Chak, legal counsel for the Supplier submitted written representations and supporting material (see Schedule “B”). Mr. A. Chak reiterated some of his initial Supplier Response from Feb. 17, 2022 to AMVIC and brought forward other concerns with respect to legislation and the AMVIC investigation. Overall Mr. A. Chak’s position is that the complaint should be dismissed with no Administrative Penalty being assessed against the Supplier.

The consumer (“JL”) and her partner (“DH”) purchased a 2009 Dodge Journey (the “Journey”) from the Supplier. When appropriate, the Director will refer to JL and DH as the “consumers”.

Mr. A. Chak asserts that the complainant DH is not the individual who purchased the vehicle therefore there is no reason for the complaint to go forward.

Initially it was not clear to the Director whether JL or DH made the initial complaint to AMVIC as the complaint was not included but appears to be cut and pasted in the investigator’s chronology and in Tab 4 (see Schedule “A”). The AMVIC investigation does not contain any independent written or audio statements from JL or DH for clarification.

AMVIC has the responsibility to investigate complaints as they relate to the automotive industry. AMVIC investigates complaints from consumers, from industry members, anonymous complaints and complaints received from Crime Stopper tips. It need not matter whether DH made the initial complaint to AMVIC, he was involved in the consumer transaction in some capacity indirectly assisting his partner JL and therefore the Director finds that AMVIC did have jurisdiction to investigate this complaint regardless if he submitted the original complaint or JL did. The AMVIC investigator spoke to both JL and DH and sometimes spoke to them jointly.

Mr. A. Chak submitted that if DH is the complainant and given he is a mechanic, a Mechanical Fitness Assessment (“MFA”) is not required to be given to him before entering into a contract as per Section 15(2) of the Vehicle Inspection Regulation (“VIR”).

DH stated to the AMVIC investigator that he was previously a licensed technician in the Province of Ontario, however there is no evidence to support DH’s qualifications and the investigator determined that DH is not a licensed technician in the Province of Alberta or that he is a person or partnership engaged in the business of repairing, dismantling or wrecking motor vehicles. As such, the Director does not find that the exclusion clause in Section 15(2) of the VIR, which primarily relates to dealer to dealer transactions or dealer to auction transactions in which an MFA is not required to be given, applies in this circumstance.

Mr. A. Chak takes issue with investigator bias or an attempt at charge “stacking” however did not provide a fulsome explanation or evidence to support this claim. The Director will not be addressing this issue.

Mr. A. Chak put forward that there is a concurrent case relating to this matter with the Provincial Court of Alberta with the same parties which is a better avenue for the issues. He provided the Director with the civil claim, dispute note and counterclaim (see Schedule “B”).

Notwithstanding, the concurrent civil case may be a better avenue for perhaps any financial remedies owed to either party, the Director is not making any financial decisions relating to remedies owed to parties in this matter.

The Director's responsibility is to hold suppliers accountable for any breaches of legislation as it relates to the CPA and its associated regulations, to prevent them from reoccurring and to ensure a fair and equitable marketplace.

Mr. A. Chak takes the position that improper evidence was obtained by AMVIC by the investigator speaking to previous registrants or looking into how the vehicle purchased was previously acquired from the Supplier and it is highly irregular and prejudicial.

The Director finds that these are common investigative strategies observed in other previous administrative reviews held and in particular in investigations where the condition of the vehicle is in question or when a consumer may or may not have been misled. The Director finds this is similar fact evidence and therefore does not deem this evidence to be excluded.

During the administrative review, the Director confirmed with Mr. A. Chak that all of his issues and concerns were addressed.

### ***Summary of Investigation***

#### Case File 22-01-286

1. In January 2022 AMVIC received a complaint alleging that a consumer had been misled about the condition of a vehicle that was purchased. The consumers purchased the Journey for \$5,500 plus the goods and services tax ("GST") of \$275.
2. The original AMVIC complaint was not contained in the evidence provided to the Director and is not signed by either JL or DH therefore the Director was unsure who made the complaint to AMVIC. During the administrative review, the AMVIC investigator indicated the consumer complaint was listed under DH. The manager of investigations south stated the complaint was made by JL and an authorization form to have DH act on her behalf was completed but was not included in the documentation provided to the Director or disclosed to the Supplier, which was an oversight.
3. JL or DH did not submit or provide any documents to AMVIC in regards to the consumer transaction.
4. JL and DH assert that DH paid \$5,500 for the vehicle with his money and JL paid \$275 for the GST. The consumers advised that delivery of the Journey was taken on Jan. 12, 2022 however, the BOS lists the delivery date as Jan. 11, 2022.
5. Prior to purchase, the Journey was taken for a 10 minute test drive. The Supplier told JL and/or DH that the Kijiji advertisement listed the Journey as a salvage vehicle, however JL and DH did not see

the advertisement prior to the purchase as they were simply driving by the Supplier's business. The advertisement was not provided as evidence from the AMVIC investigator or the Supplier.

6. The consumers state that they were only advised the Journey was a salvage vehicle when the vehicle was paid for and were not told it had previously been in an accident. When the consumers drove the Journey off the Supplier's lot, the Journey was blowing smoke. When they were given their paperwork and reviewed it, they discovered the Journey had previously been in an accident.

7. DH states that the Journey did not have an oil dipstick therefore DH purchased one from an auto wrecker for \$10.

8. The consumers took the Journey to a third party repair facility ("BAR") on Jan. 19, 2022 complaining that the Journey would blow blue smoke out of the exhaust for roughly three minutes after starting it. The BAR invoice dated Jan. 19, 2022 states that:

- BAR was unable to confirm the issue;
- They pulled the front three spark plugs and found no evidence of oil being on the plugs;
- They removed the air box to the intake and found no oil;
- Both exhaust tips had no oil;
- Did not find any large external oil leaks or any coolant leaks;
- Found the Journey to be low on oil and topped it up with one litre of 10W30 oil; and
- BAR recommended that the oil level be monitored and if the level drops they could pull the intake to check the other three spark plugs and conduct a compression test on all six cylinders.

9. The consumers took the Journey to BAR again on Jan. 24, 2022 stating they noticed blue smoke blowing from the exhaust on start-up and while driving and also that when accelerating the Journey would lag. The BAR invoice dated Jan. 24, 2022 states that:

- BAR was unable to confirm a smoking exhaust on a road test;
- BAR confirmed some lagging on acceleration and recommended the Journey be taken to a transmission shop for further diagnostic, as suspected an issue with the transmission;
- Oil levels were found to be a little less than halfway down the safe area;
- Confirmed an oil consumption issue as it was filled right to max last visit last week and vehicle had only minor leaks;
- Removed the intake manifold from engine and found the intake was filled with oil and some oil in the PCV tube;
- No engine codes were found;
- Suspected either the PCV valve had failed and is allowing oil in to intake, or engine had worn rings/cylinder walls causing excessive blow by and pushing oil from crank case in to intake;
- Removed all of the spark plugs;
- BAR repaired the front windshield washer sprayers;
- The PCV valve was removed and replaced;
- BAR cleaned out oil that built up in the intake manifold;
- When performing the induction cleaner exhaust the Journey was smoking heavily at the time however stopped half way through when the Journey was taken for a road test;

- Might take a few drive cycles to burn off residual oil/cleaner; and
  - If engine continues to smoke after a few drive cycles suspect that it has worn rings/cylinder walls causing excessive blow by and pushing oil from crank case in to intake and customer will need to take vehicle to an engine rebuilder to have engine taken apart and cylinder walls/piston/rings/valve guide seals inspected and measured for wear.
10. The consumers took the Journey to another third party repair facility ("RC"), the date this occurred is unknown, and were told the Journey needed a new engine. The AMVIC investigator followed up with RC and confirmed that DH is a client. However, there is no invoice from RC and the Journey was never booked in for service. RC's licensed technician simply looked at the Journey and advised the Journey needed a new engine. There is no evidence or statement to confirm the assertion that the Journey requires a new engine.
11. The Journey was returned to the Supplier on Jan. 28, 2022 by the consumers after they contacted the warranty company and were advised to return the vehicle to the Supplier. The consumers attempted to get their money back from the Supplier unsuccessfully. The Journey was left with the Supplier where it continues to remain with JL's vehicle licence plate still attached.
12. During the AMVIC complaint process with AMVIC's consumer services officer ("CSO") on Feb. 17, 2022, legal counsel for the Supplier, Mr. A. Chak, provided a Supplier response to AMVIC. Mr. Chak took the position that:
- "Overall, the issues raised by the complaint are not issues covered under the Consumer Protection Act or the Automotive Business Regulation  
The complainant is not the purchaser of the vehicle, therefore they are not the Consumer.  
The complainant is the person who is alleged to have caused damage to the vehicle.  
The complaint completely contradicts the documentation of the purchase."  
"Calgary Auto Gallery is happy to assist in all valid complaints, but would ask that this be dismissed based on the response provided."*
13. On Feb. 17, 2022, the Supplier prepared a response to the CSO and supplied documents. The Supplier's response to the consumer complaint stated:
1. *"The 2009 Dodge Voyager [sic] (the "vehicle") was placed on Kijiji and Facebook as a rebuilt vehicle in November 2021.*
  2. *On January 11, 2021, [REDACTED] [sic] purchased the vehicle from Calgary Auto Gallery. She conducted a thorough examination herself of the vehicle, with the assistance of her mechanic boyfriend. She took it for a test drive and she had the full opportunity to take it for as many inspections as she wanted.*
  3. *Safwan Hniedi was the salesperson and he had worked with [REDACTED] so she could fully understand the vehicle and understood what ex-salvage and rebuilt meant. That was the reason the vehicle was for a reduced fee. Normally the retail cost would be between 8-9,000 [sic]*

4. *She drove the vehicle for many days and when she brought it back and there was damage done to the engine.*
  5. *I did not have any vehicle sales agreement with [REDACTED]. He has harassed me and he has most probably fraudulently tampered with the engine of the vehicle.*
  6. *[REDACTED] (the complainant) threatened me and filed complaints on social media and tried to make other frivolous claims.*
  7. *The car was sold and there was also warranty which the actual purchaser could have applied [sic]*
  8. *The car was abandoned and the actual owner was informed they could pick up the car.*
  9. *The car was sold with the purchaser having full knowledge and there was no warranty on behalf of Calgary Auto Gallery [sic]*
  10. *The complainant has lied about being the vehicle purchaser and then claiming that they were not aware of the specifics on the Bill of Sale and the CarFax, even though the actual purchaser's initials are on all the documents.*
  11. *The complaint is about an issue that is a warranty issue or an issue of buyer remorse. Both which are not proper complaints before AMVIC.*
  12. *The complainant has made steps to harm the engine through alterations. [REDACTED] represented himself as a licensed mechanic. He even wanted to work for Calgary Auto Gallery as a mechanic.*
  13. *This matter should be dismissed."*
14. The Supplier provided documents to AMVIC relating to the consumer transaction consisting of the BOS, MFA and a six month Global Warranty that was purchased for \$1,149 with a start date of Jan. 11, 2022 and end date of July 10, 2022. All documents are completed under JL's name alone. In addition, a four page CarFax vehicle history report was provided and shows JL's initials in several different areas where important information is specified.
  15. After the Journey was returned to the Supplier on Jan. 28, 2022, the Supplier arranged to have the Journey inspected by a third party licensed technician. A YouTube video inspection was taken on Feb. 3, 2022 regarding the condition of the Journey and the video was forwarded to the AMVIC investigator on March 4, 2022. The technician who completed the MFA on the Journey on Nov. 13, 2021 is the same technician who completed the YouTube inspection.
  16. An AMVIC investigation was undertaken in relation to whether or not JL and DH were misled regarding the previous history of the Journey and its condition. The AMVIC investigation subsequently identified other potential breaches of the legislation pertaining to deficiencies with respect to the Supplier's BOS, failing to disclose vehicle history information, MFA concerns and the Supplier breaching a Director's Order and a voluntary agreed upon Undertaking.
  17. The BOS was found to be missing the government issued identification of JL, the registration number of the salesperson, the warranty charge, the MFA is not listed, and a declaration that the business operator disclosed the required information and history as required in Section 31.1 of the ABR. In addition, the delivery date of the Journey is in question.



18. There were no written or audio witness statements from JL or DH provided to the Director as evidence in this matter.
19. As part of the AMVIC investigation, the investigator spoke verbally on the phone with the previous registrant of the Journey ("LL") on March 10, 2022. According to the summarized phone call notes of the AMVIC investigator, LL stated the following:
  - He purchased the Journey from the Supplier on Nov. 13, 2021 and took delivery on Nov. 17, 2021.
  - He returned the Journey to the Supplier after registering and owning the Journey for one day and traded it back in for another vehicle.
  - The second vehicle he purchased has lots of problems.
  - The Journey would not start and AMA came out and could not get it going even though the battery had a full charge.
  - The Journey was towed back to the Supplier and an employee reached in and turned the ignition and it started.
  - It seemed like the motor seized but it started when it was being taken off the tow truck.
  - He could not check the oil on the Journey as it was missing a dipstick.
  - The Journey was a salvage vehicle but he was not told that until after the money was exchanged.
  - He did not receive any documents on either vehicle until the money was exchanged.
  - He did not have a BOS.
  - He does not recall who the salesperson was.
20. During the administrative review, Mr. Hniedi stated he disclosed and explained the previous history and condition of the Journey to JL before payment was obtained and his Supplier documents support this. He denies the claim that the previous history and condition was not disclosed until after payment.
21. The Supplier contends that JL drove the Journey from Jan. 11 to 28, 2022 with no concerns. The Supplier advised that at no time did JL bring to their attention the repairs or issues noted on the BAR invoices, she simply dropped the Journey back off at his lot.
22. Mr. Hniedi asserts that the Journey was sold with an oil dipstick and the pictures in his advertisement contained photos of the engine which would show there was an oil dipstick. The Supplier did not provide the investigator or the Director with the advertisement or photos to support this claim. During the course of the investigation the advertisement was not requested by the investigator.
23. Mr. Hniedi does not know why JL and DH or the previous registrant, LL would state there was no dipstick. The MFA signed by JL dated Jan. 11, 2022 does not list or make note that the Journey was missing the oil dipstick.
24. During the administrative review, Mr. Hniedi was asked by the Director if the previous registrant had the Journey for only one day as it had mechanical issues, why were no repairs made to the

Journey prior to reselling the vehicle to JL. Mr. Hniedi indicated no repairs were completed as he believed there was nothing wrong with the Journey. He stated that he is uncertain why LL expressed dissatisfaction to the AMVIC investigator as LL traded the Journey in for another salvage vehicle, he has never heard back from him and considers him to be a friend.

25. During the administrative review, the Director asked Mr. Hniedi to clarify why the Global Warranty of \$1,149 is not listed on the BOS as required by legislation. Mr. Hniedi advised that a six month Global Warranty was offered and accepted by JL at no charge even though the warranty is not listed. The Director pointed out then the Global Warranty should have been itemized and noted on the BOS. A clear explanation for this discrepancy was not provided other than it was an error.

26. In the written representations submitted by Mr. A. Chak on July 10, 2022, many points were reiterated from the Feb. 17, 2022 Supplier's Response as well as provided the following additional information (see Schedule "B"):

*"1) Calgary Auto Gallery has been operating their Automotive Business for many years and has been licensed since that date."*

*"8) The milage [sic] on the car when it was sold was 148 302, and on January 24, it was 148989. [REDACTED] drove the vehicle for minimum 687 km in the two-week time period.*

*9) The oil dipstick was not the original one that was provided at the time of sale, as the one that was returned with the vehicle had a shorter dipstick then what was in the vehicle when it was originally sold to [REDACTED].*

*10) The oil level was high on the vehicle when it was returned. This was not the case when the vehicle was sold to [REDACTED].*

*11) There was no vehicle sale agreement signed between [REDACTED], the Complainant, and Calgary Auto Gallery."*

27. The Supplier's legal counsel provided written representations, dated Sept. 11, 2022, in response to the Proposed Administrative Penalty (see Schedule "C"). The Sept. 11, 2022 representations were seeking a payment plan to pay the Administrative Penalty.

## **Applicable Legislation**

### **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 history information**

#### **Section 31.1**

(2) The business operator must disclose the information required under subsection (1) in a clear and legible manner

(c) in writing to the consumer before purchase.

## 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.
- (2) Subsection (1) does not apply to a used motor vehicle sold by a dealer
- (a) to another dealer,
  - (b) to a person or partnership engaged in the business of repairing, dismantling or wrecking motor vehicles, or
  - (c) through a sale by public auction within the meaning of section 119 of the Consumer Protection Act.

## **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;

#### **Administrative Penalties**

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

#### **Section 158.1**

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

(a) has contravened a provision of this Act or the regulations, or

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

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

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

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

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

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

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

#### **Section 158.2**

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

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

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

#### **Non-compliance with orders, etc.**

#### **Section 163**

Any person who

(a) fails to comply with an order of the Director under section 129, 151(3) or 157, unless the order has been stayed,

(d) fails to comply with an undertaking under this Act  
contravenes this Act and is guilty of an offence.

**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 complaint received by AMVIC regarding whether or not JL and DH were misled regarding the previous history and condition of the Journey sold to them (case file no. 22-01-286). The subsequent investigation identified other breaches of the legislation pertaining to deficiencies with respect to the Supplier's BOS, failing to disclose vehicle history information, MFA concerns, and the Supplier breaching a Director's Order and a voluntarily agreed upon Undertaking.

**A. Non-Compliant BOS (ABR Section 31.2)/Vehicle History Information (ABR Section 31.1(2)(c))**

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.

In reviewing the BOS for the Journey (see Schedule "A") the BOS is missing the following:

- a) The number of the government-issued identification that the business operator uses to confirm the identity of the consumer as per Section 31.2(1)(b) of the ABR.
- b) The registration number of the salesperson as per Section 31.2(1)(d) of the ABR.
- c) An itemized list of all applicable fees and charges the consumer is to pay, including without limitation: charges for warranties as per Section 31.2(1)(j)
- d) Any MFA that has been issued under the VIR as per Section 31.2(1)(u) of the ABR.
- e) A declaration that the business operator has disclosed to the consumer the information required under Section 31.1 as per Section 31.2(1)(w) of the ABR.

During the administrative review, Mr. Hniedi advised that a six month Global Warranty was offered and accepted by JL at no charge even though it is not listed on the BOS as \$0 and the Global Warranty document lists the warranty purchase price in the amount of \$1,149. A clear explanation for this discrepancy was not provided other than it was an error.

On the BOS in the consumer transaction under the heading Basic Vehicle, it lists the words of "XBC CAR, XSALVAGE, REBUILT, CHECK AND CARFAX" with JL's initials beside each item. Although this may potentially satisfy to some degree Section 31.2(1)(v) of the ABR in which a business operator engaged in automotive sales must use a BOS that includes 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, there are no declaration statements contained on the BOS that the information

required under Section 31.1 of the ABR has been disclosed to JL. Further, the Director is uncertain of the meaning of the word "CHECK" being listed on the BOS or what this represents.

JL stated to the AMVIC investigator that she was only told the vehicle was salvage once the Journey was paid for. The AMVIC investigator identified that the BOS lists that the Journey was delivered to JL on Jan. 11, 2022 and JL asserts that she only took possession of the vehicle on Jan. 12, 2022, however the Director found there were conflicting statements in the application report. In the chronology it states: "I took and bought this car. And it has been blowing smoke since the next day being January 12, 2022". Due to the conflicting evidence the Director is unsure of the true delivery date of the Journey to JL.

On a balance of probabilities, the Director finds that the Supplier's BOS continues to be non-compliant and in this consumer transaction to JL the BOS is incomplete, therefore the Supplier has breached Section 31.1 and 31.2 of the ABR.

The Director further remarks that a business operator engaged in automotive sales must not enter into a bill of sale with a consumer unless the business operator has **obtained written confirmation from the consumer** that the consumer has received the information required under Section 31.1 as per Section 31.3 of the ABR.

#### B. Breach Director's Order/Breach Undertaking (CPA Section 163(a) and 163(d))

As a result of an administrative review held on Sept. 25, 2019, the Supplier voluntarily agreed to enter into an Undertaking on Oct. 31, 2019 and the Undertaking was signed off by the Director on Nov. 4, 2019. During this administrative review, it was identified that the leasing documents, BOS, MFAs, and warranty agreement either created by the Supplier or received in relation to the consumer transaction did not depict and accurately reflect the true nature of the consumer transaction between the consumer and the Supplier.

Some of the conditions outlined in the Undertaking specifically stated:

*"The Supplier acknowledges and admits that it failed to comply with 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 further undertake to ensure they maintain accurate business records and documents as per legislative requirements. Licensed businesses and registered salespersons have an obligation to ensure that books, records and documents created or received in relation to an activity authorized by the licensee accurately reflect the true nature of the transaction."*

The Director acknowledges that it has been close to three years since the voluntary Undertaking was agreed upon however despite education and enforcement, the Supplier continues to fail to maintain accurate business records and documents as per legislative requirements and in doing so is breaching the CPA and ABR. The Supplier has breached the agreed upon Undertaking, which they voluntarily agreed to abide by on Oct. 31, 2019 and has therefore contravened Section 163(d) of the CPA.

On July 29, 2020, the Supplier was issued and served with a Director's Order and directed to:

*“Cease utilizing its current version of a bill of sale and immediately implement the use and completion of a bill of sale that meets the legislative requirements under Section 31.2 of the Automotive Business Regulation.”*

The Director acknowledges that the Supplier has made improvements to their BOS and corrected some of the previous deficiencies, however as previously stated the BOS continues to be non-compliant and not filled out completely therefore the Supplier has breached the Director’s Order contravening Section 163(a) of the CPA.

The Supplier has had more than sufficient time to bring their BOS into compliance since July 29, 2020.

C. MFA (VIR Section 15(1))/General Code of Conduct (ABR Section 12(o))

Mr. Hniedi is the sole director for the Supplier and was the salesperson involved in this consumer transaction. Mr. Hniedi participated in the administrative review and maintains he provided an MFA to JL before entering into a contract with JL. The MFA provided by the Supplier is signed and dated by JL and supports Mr. Hniedi’s statement. The BOS does not list that an MFA has been issued under the VIR as required by Section 31.2(1)(u) of the ABR which has been addressed above. No documents were provided to AMVIC by the consumers. 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.

Based on the evidence, on a balance of probabilities, the Director finds that the Supplier did not breach Section 15(1) of the VIR and Section 12(o) of the ABR.

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

JL asserts that she was not told that the Journey was a salvage vehicle until the Journey was paid for, or provided with any documents prior paying for the Journey. JL also stated that she was not provided with an MFA before entering into a contract to purchase the Journey.

The AMVIC investigator identified that the BOS lists that the Journey was delivered to JL on Jan. 11, 2022 and JL asserts she took possession of the vehicle on Jan. 12, 2022, however the Director found there were conflicting statements in the application report. In the chronology the complainant’s statement reads, *“I took and bought this car. And it has been blowing smoke since the next day being January 12, 2022”*.

Mr. Hniedi is the sole director for the Supplier and was the salesperson involved in this consumer transaction. Mr. Hniedi participated in the administrative review and maintains before entering into a contract with JL, he disclosed and explained the CarFax and history of the Journey to JL, and had her initial and sign the documents. The BOS, MFA and CarFax provided by the Supplier support Mr. Hniedi’s evidence (see Schedule “A”).

Schedule “A” as provided by AMVIC investigations does not contain any independent written or audio statements from JL or DH that support the claim that the Supplier did not disclose the prior history of the Journey before entering into the contract.



The AMVIC investigator put forward similar fact evidence that the condition of the Journey was not disclosed to the previous registrant until after the Journey was paid for or until this consumer received his paperwork which is very concerning to the Director. The AMVIC investigator spoke verbally with the previous registrant ("LL"), who told him that he was not told the Journey was a salvage vehicle until after the money was exchanged and never received any documents. There was no written or audio statement taken from LL.

During the administrative review, Mr. Hniedi denied this claim and stated that he is uncertain why LL expressed dissatisfaction to the AMVIC investigator as LL traded in the Journey for another salvage vehicle, he has never heard back from him and considers LL to be a friend.

Mr. Hniedi was asked why no repairs were made to the Journey prior to reselling the vehicle to another consumer after LL had only owned it for one day and returned it due to mechanical issues. Mr. Hniedi indicated no repairs were completed as he believed there was nothing wrong with the Journey.

The condition of the Journey itself is in question in this matter. Mr. A. Chak put forward to the Director that when considering whether JL was misled or not, the condition of the Journey should not be the focal point in making the determination if Section 6(4)(a) of the CPA was breached or not but rather if the Supplier disclosed the previous history and condition of the Journey. The Supplier asserts there was nothing wrong with the Journey when it was sold.

JL and DH state that the Journey would blow blue smoke out of the exhaust for roughly three minutes when started or the Journey would lag on acceleration. BAR, a third party repair facility, was unable to confirm the issue of the Journey blowing blue smoke on both Jan. 19, 2022 and Jan. 24, 2022. BAR did determine on a road test on Jan. 24, 2022 that the Journey was lagging and recommended it be taken to a transmission shop for further diagnostic. There is no evidence that JL and DH took the Journey to determine the cause of the lagging.

The BAR invoice of Jan. 24, 2022 suggests there is an oil consumption issue with the Journey between the previous visit of Jan. 19, 2022 however there is no evidence before the Director regarding the cause of the oil consumption.

JL and DH state that RC, another third party business, advised them the engine on the Journey needed to be replaced however, there is no invoice or evidence that the Journey was ever taken into service by RC. One of RC's licensed technicians merely looked at the Journey outside and made the claim to DH.

The Journey was returned to the Supplier on Jan. 28, 2022. On Feb. 3, 2022, an independent inspection was completed on the Journey by the same technician who completed the MFA. A YouTube video was taken of the inspection regarding the condition of the Journey and they submit the technician did not identify any major issues or concerns. The Supplier asserts that DH may have tampered with the Journey or overfilled it with oil. This claim is unsubstantiated and not relevant therefore the Director will not be taking it into consideration.

Based on the evidence, even on a balance of probabilities, the Director is unable to determine whether the Supplier misled JL regarding the previous history and condition of the Journey as per Section 6(4) of the CPA.

## E. Other Considerations

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 Director cannot consider entering into another Undertaking with the Supplier as the Supplier has breached the Director's Order served on July 29, 2020; and the Undertaking voluntarily entered into a little over three years ago by not maintaining accurate business records and documents as per legislative requirements, and continuing to use business practices that contravene similar sections of the CPA and ABR. The Director also considered imposing conditions on the Supplier's business licence however, the Director is not persuaded that this enforcement action would adequately protect consumers given the totality of the education and enforcement previously provided to the Supplier.

At the administrative review, the Supplier did not make any representations regarding their position on an appropriate Administrative Penalty. In advance of the administrative review, Mr. A. Chak submitted written representations in regards to a proposed Administrative Penalty summarized as follows (see Schedule "B"):

- "27) My client maintains that there was no proper complaint against his company. The Investigator has used a tactic of "stacking" to essentially exaggerate the complaint.*
- 28) If there was an honest approach to the situation, my client was happy to assist the customers with the vehicle. The consumers simply seem like they have abused and used the vehicle and now want to try and improperly get their money through AMVIC.*
- 29) If the customers were being honest about the Bill of Sale they entered into, they would also have an opportunity to assess and repair certain issues, which would then make the car better than it was when the buyer originally purchased it.*
- 30) It is improper for a remedy to be more than what someone would gain under Consumer Protection Laws. It is especially troubling because the jurisprudence in this area confirms that this is a situation of "Buyer Beware".*
- 31) Customer had use of the vehicle. They had the opportunity to fully review the Mechanical Fitness Assessment as well as get their own inspection prior to purchase. This matter is resolved.*
- 32) My client has spent a considerable amount of legal fees in this matter."*
- "33) Overall, the complaint should be dismissed with no penalty should be awarded against Calgary Auto Gallery."*

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.

According to the Supplier they have been in business since July 2009. Mr. Hniedi is currently the only employee and his volume of sales is approximately 80 to 100 vehicles a year.

AMVIC has completed three previous inspections with the Supplier; assessed two Administrative Penalties, one in 2017 and one in 2020; entered into an Undertaking in 2019 and issued a Director's Order in 2020. The Supplier ought to have a basic knowledge or understanding of the legislation that governs the automotive industry and ought to ensure that they stay informed of all changes made in legislation.

The AMVIC industry standards department has been conducting inspections and providing education to the industry about the legislative requirements expected to be met by automotive businesses. Through the three inspections the Supplier had been given the opportunity to implement changes to ensure business practices were brought into compliance with the legislation, however continues to fail to do so.

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

The mitigating factors in the matter include the Supplier having made some efforts to improve upon their BOS since the Director's Order was issued and served.

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 1478509 Alberta Ltd. operating as Calgary Auto Gallery pay an Administrative Penalty. This is based on my opinion that 1478509 Alberta Ltd. operating as Calgary Auto Gallery contravened Sections 31.1, and 31.2(1) of the ABR and Sections 163(a) and 163(d) of the CPA.

Taking into consideration all the representations made by the Supplier and the representations made by AMVIC's investigations department, the amount of the Administrative Penalty is **\$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 degree of willfulness or negligence in the contravention or failure to comply;
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 King'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.

**At the request of the Supplier, he can utilize a payment plan of:**

October 1, 2022 – \$500  
November 1, 2022 – \$500  
December 1, 2022 – \$500  
January 1, 2022 – \$500

To utilize this payment plan, the Supplier must provide AMVIC postdated cheques for all payments within **thirty (30) days** of the date of service of this notice and those cheques must be made **payable to the Government of Alberta**.

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  
Enclos.

cc: [REDACTED] senior manager of investigations, AMVIC