

August 2, 2022

Administrative Review – 22-04-012  
Served via email: [REDACTED]

1545358 ALBERTA LTD.  
o/a ALL AUTO SALES  
320 39 AVENUE SE  
CALGARY, AB  
T2G 1X6

Attention: Qudratullah Mehri

**Re: 1545358 Alberta Ltd. operating as All Auto Sales – AMVIC Business Licence No. B2007104**

Dear Qudratullah Mehri:

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 May 17, 2022. 1545358 Alberta Ltd. operating as All Auto Sales provided written representations via email dated July 26, 2022 (attached as Schedule “B”), in response to the Proposed Administrative Penalty, which I have also taken into consideration.

### ***Licencee Status***

1545358 Alberta Ltd. operating as All Auto Sales (the “Supplier”) holds an AMVIC business licence and carries on the business activities of consignment sales, retail sales and wholesale in the Province of Alberta.

### ***History***

The Supplier was first issued an AMVIC business licence for wholesale sales in September of 2015. In 2018 the Supplier added the business activity of retail sales to their business licence. Then in 2019 the Supplier added the business activity of consignment sales to their business licence. The Supplier has two salespeople and employs approximately seven employees. The Supplier advised during the administrative review that their annual volume of sales is approximately 250 vehicles.

Between February 2019 and November 2020 nine consumer complaints were received against the Supplier. In each of the nine case files, the Supplier resolved the issue with the consumer once they were notified of the complaint against them and in each of these case files the Supplier did not provide AMVIC's consumer services officers with the requested records as part of the Supplier response.

On March 4, 2020, a findings letter was issued to the Supplier as a result of an advertising inspection that was completed by AMVIC's industry standards department. The findings letter outlined various advertising issues including failing to disclose vehicle history.

On Feb. 3, 2021, the Supplier was issued a warning letter in relation to two AMVIC investigations for numerous violations.

As a result of an administrative review held on June 13, 2021, the Supplier voluntarily agreed to enter into an Undertaking on July 25, 2021. Some of the conditions outlined in the Undertaking specifically stated:

*"The Supplier acknowledges and admits that it failed to comply with the provisions of the CPA, 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."*

*"The Supplier will undertake to utilize a BOS that meets the legislative requirements and will properly complete the BOS to comply with Section 31.2 of the ABR."*

*"The Supplier will undertake not to do or say anything that might reasonably deceive or mislead a consumer as per Section 6(4)(a) of the CPA. "*

*"The Supplier will undertake that their business provides a consumer with full disclosure at the time of the sales transaction as defined in Section 6 of the CPA and abide by all regulations including the general codes of conduct in Section 12 of the ABR."*

*"The Supplier will undertake that all MFAs are completed in full and by a licensed technician as per Section 15 and 16 of the VIR and given to a consumer **before** entering into a contract to sell a motor vehicle."*

*"The Supplier will ensure they purchase their vehicles through properly licensed businesses and individuals and that they will not engage in designated business activities unless he holds a licence under this Act that authorizes him to engage in that business activity as per Section 104(1) of the CPA."*

## ***Summary of Investigation***

### Case File 21-09-093

1. In September 2021, AMVIC received a complaint alleging that a consumer had been misled about the condition of a vehicle that was purchased. The consumer ("JP") purchased a 2012 Dodge Ram 2500 (the "Ram") on Aug. 11, 2021 for \$20,054.21 inclusive of all taxes, fees and an extended warranty. JP picked up the Ram on Aug. 18, 2021 and shortly after purchase he started encountering mechanical issues and took the Ram to two third party repair facilities for inspections and estimates. JP reported the issues to the Supplier on Aug. 20, 2021.
2. According to JP, the Supplier stated the Ram was in good mechanical shape outside of the struts which they had replaced.
3. JP provided invoices to AMVIC outlining a number of mechanical issues not limited to a cracked leaf spring, non-functioning emergency brake, wheel alignment issues and a blower motor that did not work at high speeds. The cost to complete the required repairs was quoted at \$5,563.24.
4. JP continued to make payments on the Ram but was not able to drive it. JP tried to resolve the matter with the Supplier unsuccessfully and then filed a complaint with AMVIC.
5. When AMVIC became involved, the Supplier agreed to cover \$4,000 towards the repair of the Ram and issued a cheque to JP on Sept. 20, 2021.
6. The AMVIC investigation revealed that the Supplier acquired the Ram from an auction on April 20, 2021. The auction announcements of the Ram were:  
  

*"ENGINE KNOCK REPAIR OVER 750  
ENGINE LIGHT ON  
PRE PSI COMPLETE  
ROCKER PANEL DAMAGE  
REAR WINDOW SWITCHES/REGULATOR INOP"*
7. An Out of Province Inspection Certificate ("OOP") was completed on the Ram on May 5, 2021 and it lists the Ram as *"PASSED"*.
8. The Supplier took the Ram to a third party repair business ("EAR"). A repair invoice dated May 12, 2021 from EAR shows that various repairs were completed on the Ram at a cost of \$260.48.
9. The Supplier took the Ram to a different a third party repair business ("GACL") and a repair invoice dated June 1, 2021 shows that GACL completed a Mechanical Fitness Assessment ("MFA") and completed diagnostic tests and repairs on the Ram. Some of the items listed on the invoice from GACL were items that had been marked as passed on the OOP. The invoice noted numerous issues and

recommended repairs. Of the numerous repairs recommended only some were completed however, the MFA lists all items as compliant with the exception of diagnostic trouble codes, which was left blank.

10. A repair invoice dated June 9, 2021 from another business ("STCD") indicates recall work being completed on the Ram related to the steering wheel wiring. The invoice does not list the Supplier or a consumer as the customer. A completely separate business is listed as the customer.
11. The AMVIC investigation revealed that the Ram had been previously sold to another consumer ("RP") on June 3, 2021 who encountered similar mechanical issues experienced by JP. RP took the Ram back to the Supplier because he did not feel safe driving it. Although RP purchased the vehicle on June 3, 2021 he did not take delivery or register the vehicle until June 30, 2021 as he was told the Ram needed repairs.
12. RP indicated when he did take possession of the Ram, any repairs completed were not done to his satisfaction. He stated that there were electrical issues as the windows did not work, knocking in the steering column, a broken leaf spring, and the heater only went up to three, among other issues. RP returned the Ram to the Supplier who would not take the Ram back but agreed to sell it on consignment on behalf of RP. When the Ram was sold to JP, RP did not recoup the full amount he purchased the Ram for.
13. The AMVIC investigator could not find any evidence to support that the Supplier completed any repairs to the Ram between when it was consigned with the Supplier on July 15, 2021 and sold to JP on Aug. 11, 2021.
14. The finance manager at the time of JP's transaction provided AMVIC an email outlining his concerns regarding the Supplier's business practices and the reasons he has now left the Supplier.
15. The AMVIC investigation noted that the Supplier's bill of sale ("BOS") is non-compliant and missing items as required by the Automotive Business Regulation ("ABR"):
  - The business address listed is incorrect.
  - The BOS makes reference to an Automobile Inspection Certificate Sign-Off and states, *"by signing below the purchaser acknowledges having received, reviewed and approved the certificate of mechanical fitness as required by AMVIC"*.
  - The BOS makes reference that the customer acknowledges they received and approved the *"Automobile Inspection Certificate"* which is an inaccurate statement as the MFA was not signed by the consumer until Aug. 17, 2021 after the BOS date of Aug. 11, 2021.
  - The BOS makes reference that the customer acknowledges they reviewed and approved the *"Car Proof report"* which is an inaccurate statement as the CarFax was not pulled until Aug. 12, 2021 which is after the BOS date.

16. The MFA is required as per Section 15(1) of the Vehicle Inspection Regulation. The Vehicle Inspection Regulation ("VIR") is a regulation under the *Traffic Safety Act* ("TSA"). The requirement to provide an MFA is required under the TSA and is therefore in the jurisdiction of Alberta Transportation. Further, an MFA is an assessment and should not be presented as an "*inspection*" as it is misleading to a consumer. The AMVIC investigation noted the following concerns with the Aug. 12, 2021 MFA:
- The dealer name and address is missing;
  - The province of registration is missing;
  - There is a slight odometer discrepancy between the MFA and the BOS; and
  - The MFA was completed after the BOS date of Aug. 11, 2021 and signed by the consumer on Aug. 17, 2021.
17. A second MFA was completed by GACL when the Ram was sold to JP. The MFA notes all of the items listed on the form as being compliant or not applicable however, immediately after purchase JP had mechanical issues with the Ram.
18. Through the Supplier's actions they breached several conditions of their Undertaking just weeks after they voluntarily agreed to it on July 25, 2021.

#### Case File 21-12-183

19. In December 2021, AMVIC received a complaint alleging that a consumer had been misled about the condition of a vehicle that was purchased. On Oct. 30, 2021, the consumer ("KA") purchased a 2010 BMW X3 (the "BMW") with an odometer reading of 178,735 kilometres. Not long after purchase, KA encountered mechanical issues with the BMW.
20. KA took the BMW back to the Supplier on Nov. 5, 2021 to have the Supplier check it and subsequently picked it up the same day. On Nov. 14, 2021, while driving the BMW, it stopped unexpectedly in the middle of the road and the check engine light, airbag light and 4x4 light came on.
21. KA took the BMW to the Supplier on Nov. 16, 2021 to have it repaired and picked it up on Nov. 24, 2021 after being told that the Supplier had it repaired.
22. KA does not know where the BMW was repaired both times in November but was assured by the Supplier the BMW was mechanically sound.
23. KA was not provided a CarFax or any previous history of the BMW at the time of her signing the BOS. When the airbag light came on, KA started getting concerned with her purchase and took the BMW to a third party repair facility on Dec. 17, 2021.
24. KA tried to contact the Supplier several times unsuccessfully. When she did reach the Supplier she was told she knows what she got herself into. KA did not feel safe driving the BMW.

25. When KA made her complaint to AMVIC, the Supplier then agreed to fix the BMW at no cost to KA, provide her with a loaner vehicle and have the BMW towed away from KA's residence at their expense as it was not drivable.
26. The AMVIC investigation revealed that the BMW had been previously sold to another consumer ("MA") on June 25, 2021 who encountered significant mechanical issues similar to KA. MA returned the BMW back to the Supplier after complaining of the mechanical issues and traded the BMW in for another vehicle.
27. The AMVIC investigator found no evidence to support that the Supplier completed any repairs to the BMW after it was returned by MA prior to the sale to KA.
28. The AMVIC investigator identified that the Supplier took the BMW to an unlicensed automotive business ("SCL") for repair work. The BMW was also taken to ("SAL") for repair work when this business is not licensed with AMVIC for the business activity of repair. Both of these invoices are dated prior to the sale of the BMW to MA.
29. The BOS in this consumer transaction is also non-compliant and the Supplier failed to comply with the vehicle history disclosure requirements. The BOS continues to describe the MFA as an *"Automotive Inspection"* which is misleading to consumers.
30. During the administrative review, the Supplier advised that he was not directly involved in the sale of the Ram and that it was sold by his other salesperson. Mr. Mehri explained that he took the Ram to five different licensed technicians and relied on their expertise as they could not determine the exact issue. He understands that it is his business and he is responsible for the breaches of the legislation. He recognizes the Ram could have been sold through his wholesale business licence rather than to a consumer.
31. Mr. Mehri was forthright and advised that he is not 100 per cent sure that all of the mechanical issues of the Ram were disclosed to JP.
32. With respect to the BMW, Mr. Mehri indicated that when he took back the vehicle from MA he was unaware that MA had completed electronic work on his own on the BMW prior to trading it in for another vehicle.
33. The Supplier had repairs completed on the BMW costing approximately \$1,300 to the satisfaction of KA who got the BMW back on Feb. 10, 2022. This was confirmed by the AMVIC investigator.
34. The Supplier advised that they lost money on both the Ram and the BMW transactions however ensuring consumer satisfaction is more important to their business.
35. The Supplier indicated he has taken steps to improve his BOS and it is now in digital format. He has had some discussions with the AMVIC investigator to ensure his changes are compliant with legislation.

36. The Supplier accepted responsibility for the issues and states that he relied on the work of the third party licensed technicians that he employed. Mr. Mehri is taking steps to identify alternative AMVIC licensed businesses that he can rely upon and will ensure that they are properly licensed which was a previous oversight of his. The Supplier recognizes that he is vicariously liable for anyone acting or performing work on behalf of his business.
37. The Supplier indicated the breaches were not intentional, they are making efforts to comply with the legislation, were cooperative with the AMVIC investigator and in each incident resolved the mechanical deficiencies with the consumer to their satisfaction.
38. The Supplier provided written representations, dated July 26, 2022, in response to the Proposed Administrative Penalty (see Schedule "B").

## **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**

(1) A business operator engaged in automotive sales must disclose the following information in accordance with subsection (2), on the basis of information the business operator knew or ought to have known:

- (a) whether the vehicle has been bought back by the manufacturer under the Canadian Motor Vehicle Arbitration Plan;
- (b) whether the vehicle has sustained damage caused by fire;
- (c) whether the vehicle has sustained damage caused by immersion in liquid to at least the level of the interior floorboards;
- (d) whether the vehicle has been used as a police car or an emergency vehicle;
- (e) whether the vehicle has been used as a taxi cab or a limousine;
- (f) whether the vehicle has been previously owned by a rental vehicle business or used as a rental vehicle on a daily or other short-term basis;
- (g) whether the vehicle has, at any time, been assigned a status in one of the following categories under the Vehicle Inspection Regulation (AR 211/2006) or an equivalent status under the laws of another jurisdiction:
  - (i) salvage motor vehicle;
  - (ii) non-repairable motor vehicle;

- (iii) unsafe motor vehicle;
- (h) whether the vehicle has been damaged in an incident or collision where the total cost of repairs fixing the damage exceeded \$3000 and, if the repairs were carried out by the business operator, the total cost of the repairs;
- (i) whether the vehicle was registered in any jurisdiction other than Alberta immediately before it was acquired by the business operator and, if so,
  - (i) the name of the jurisdiction in which the vehicle was previously registered,
  - (ii) whether the vehicle was required to be inspected prior to registration in Alberta, and
  - (iii) whether the vehicle passed or failed any required inspections.
- (2)** The business operator must disclose the information required under subsection (1) in a clear and legible manner

**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.

### **Receipt of information**

#### **Section 31.3**

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 he consumer has received the information required under section 31.1.

### **Vehicle Inspection Regulation**

#### **Sale of used motor vehicle**

##### **Section 15**

**(1)** Subject to subsection (2), a dealer in used motor vehicles shall, before entering into a contract to sell a motor vehicle, give to the buyer a used motor vehicle mechanical fitness assessment that contains the following:

- (a) a statement identifying the type of motor vehicle as a truck, motorcycle, bus, van, light truck, automobile or other type of motor vehicle;
- (b) a statement showing the make, model, year, vehicle identification number, odometer reading in kilometres or miles, licence plate number and province of registration of the vehicle;
- (c) the name and address of the dealer selling the vehicle and the name of the technician who issued the mechanical fitness assessment;
- (d) a statement that the mechanical fitness assessment expires 120 days after the date on which it was issued;
- (e) a statement certifying that at the time of sale the motor vehicle
  - (i) complies with the Vehicle Equipment Regulation (AR 122/2009), or
  - (ii) does not comply with the Vehicle Equipment Regulation (AR 122/2009) and containing a description of the items of equipment that are missing or do not comply with the Vehicle Equipment Regulation (AR 122/2009);
- (f) the signature of the technician who conducted the mechanical fitness assessment;
- (g) the date the mechanical fitness assessment was issued.

### **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;

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

#### **Section 163**

Any person who

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

### **Administrative Penalties**

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

##### **Section 158.1**

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

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

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

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

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

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

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

### **Right to make representations**

#### **Section 158.2**

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

- (a) advise the person, in writing, of the Director's intent to impose the administrative penalty and the reasons for it, and
- (b) provide the person with an opportunity to make representations to the Director.

### **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.

### **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 two consumer complaints received by AMVIC regarding consumers allegedly being misled regarding the condition of the vehicles they purchased and not being able to receive reasonable benefit from their purchase (case file numbers 21-09-093 and 21-12-183). The subsequent investigations identified other breaches of the legislation pertaining to

deficiencies with respect to the Supplier's BOS, their MFAs, failing to disclose vehicle history information and the Supplier breaching a voluntarily agreed upon Undertaking.

**A. Non-Compliant BOS (ABR Section 31.2)/Vehicle History Information (ABR Section 31.1) /Receipt of Information (ABR Section 31.3)**

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 Ram had the incorrect business address listed contrary to Section 31.2(1)(c) of the ABR. The BOS for the Ram further makes reference that the customer acknowledges they received and approved the *"Automobile Inspection Certificate"* which is an inaccurate statement as the MFA was not signed by the consumer until Aug. 17, 2021 after the BOS date of Aug. 11, 2021.

The BOS for the Ram and BMW make reference that the customer acknowledges they reviewed and approved the *"Car Proof report"* which is an inaccurate statement as the CarFax was not acquired for the Ram until Aug. 12, 2021 which is after the BOS date and was not acquired for the BMW until Nov. 2, 2021 which is also after the BOS date.

The Supplier is using a BOS that is misleading and not compliant with Section 31.2 of the ABR. Both bills of sale make reference to an *"Automobile Inspection Certificate Sign-Off"* and state, *"by signing below the purchaser acknowledges having received, reviewed and approved the certificate of mechanical fitness as required by AMVIC"*. The MFA is required as per Section 15(1) of the VIR. The VIR is a regulation under the TSA. The requirement to provide an MFA is required under the TSA and is therefore in the jurisdiction of Alberta Transportation. Although the MFA falls under the requirement of Alberta Transportation, it comes into AMVIC's purview in the course of our mandated duties as per a number of legislated sections that apply to following all legislation applicable to the sale of motor vehicles such as Section 12(o) of the ABR and Section 127(b)(v.1) of the CPA. In addition, a MFA is an assessment and should not be presented as an *"inspection"* as is misleading to a consumer.

There is no evidence in the documents that the Supplier disclosed to either consumer that the Ram and BMW were previously registered in a jurisdiction other than Alberta. The previous province of registration is not listed on the MFA. On a balance of probabilities, the Director finds that the Supplier failed to properly disclose the vehicle history information as per Section 31.1 of the ABR and failed to obtain written confirmation from the consumer that the consumer received the information required under Section 31.1 as per Section 31.3 of the ABR.

## B. Mislead and Deceive (CPA Section 6(4)(a))/No Reasonable Benefit (CPA Section 6(3)(a))

Presenting an MFA as an inspection to consumers is a misleading practice. The Director is further concerned regarding the validity of the MFAs being completed. The MFA completed on the Ram was marked either compliant or not applicable for all aspects of the vehicle even though on the same invoice for the completion of the MFA, GACL listed numerous repair recommendations that had not been completed. The consumer encountered numerous mechanical issues almost immediately after purchase. When JP went to an independent repair facility a number of mechanical issues were discovered including but not limited to a cracked leaf spring, non-functioning emergency brake, alignment issues and a blower motor that did not work at high speeds. The cost to complete the required repairs was quoted at \$5,563.24.

Similarly, KA experienced mechanical issues almost immediately after purchase of the BMW. The MFA completed on the BMW was also marked as either compliant or not applicable for all components of the vehicle. The BMW had multiple dashboard warning lights come on less than one week after the BMW was purchased and the BMW required extensive repairs.

The Supplier is variously liable for the work performed by their employees or agents or persons acting on their behalf as per Section 166 of the CPA. In both AMVIC investigations, the AMVIC investigator determined that Supplier had previously sold the vehicles to other consumers who had mechanical issues with them and subsequently brought them back to the Supplier. The AMVIC investigator could not find any evidence to support that the Supplier completed any repairs to the Ram or BMW after they had been brought back to the Supplier before the Supplier subsequently sold them to new unsuspecting consumers.

In the Suppliers written representations (see Schedule “B”) they provided a number of invoices they claim support that work had been completed on the Ram and the BMW. The invoices provided show repairs were completed on the BMW and the Ram, however based on the dates on the invoices, they do not demonstrate that repairs were completed on either of the vehicles in the time frame between when the first consumers returned the vehicles due to mechanical issues and when the second consumers, who ultimately made AMVIC complaints due to the poor mechanical condition of the vehicles, purchased the vehicles.

By presenting an MFA as an inspection and failing to disclose the known mechanical issues of the Ram and BMW to the consumers, on a balance of probabilities, the Director finds that the Supplier misled both JP and KA and did contravene Section 6(4)(a) of the CPA.

In both consumer transactions the Supplier sold vehicles with known mechanical issues to consumers that immediately required extensive repairs before the consumers were able to drive them and receive reasonable benefit from the purchase of the vehicle therefore the Director finds that the Supplier also breached Section 6(3)(a) of the CPA.

In addition, the Director is particularly concerned that the Supplier is engaging in the business practice of having repairs completed by businesses that are either not licensed by AMVIC at all or are not licensed with AMVIC for the designated business activity to complete repairs.

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

In the sale of the Ram to JP, the AMVIC investigation noted concerns with the MFA that is dated Aug. 12, 2021 and completed by an agent of the Supplier. Specifically the dealer name and address as well as the province of registration is missing. The investigator noted a slight odometer discrepancy between the MFA and the BOS. The most egregious issue is the fact that the MFA was completed after the BOS date of Aug. 11, 2021 and was not signed by the consumer until Aug. 17, 2021, six days after the sale of the Ram.

Having a consumer sign and date the MFA is the best way to document that a consumer was shown the MFA prior to entering into a transaction. By failing to give JP an MFA before entering into a contract to sell him a motor vehicle, the Supplier has breached Section 15(1) of the VIR and Section 12(o) of the ABR.

#### C. Breach of Undertaking (CPA Section 163(d))

As a result of an administrative review held on June 13, 2021, the Supplier voluntarily agreed to enter into the Undertaking on **July 25, 2021**. Some of the conditions outlined in the Undertaking specifically stated:

*"The Supplier acknowledges and admits that it failed to comply with the provisions of the CPA, 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."*

*"The Supplier will undertake to utilize a BOS that meets the legislative requirements and will properly complete the BOS to comply with Section 31.2 of the ABR."*

*"The Supplier will undertake not to do or say anything that might reasonably deceive or mislead a consumer as per Section 6(4)(a) of the CPA. "*

*"The Supplier will undertake that their business provides a consumer with full disclosure at the time of the sales transaction as defined in Section 6 of the CPA and abide by all regulations including the general codes of conduct in Section 12 of the ABR."*

*"The Supplier will undertake that all MFAs are completed in full and by a licensed technician as per Section 15 and 16 of the VIR and given to a consumer **before** entering into a contract to sell a motor vehicle."*

*"The Supplier will ensure they purchase their vehicles through properly licensed businesses and individuals and that they will not engage in designated business activities unless he holds a licence under this Act that authorizes him to engage in that business activity as per Section 104(1) of the CPA."*

The Supplier continues to use a non-compliant BOS with misleading statements, is failing to provide a fully completed MFA or provide the MFA to the consumer before entering into a contract and is failing to disclose the previous history of vehicles being sold to consumers. The Supplier has breached a number of

their agreed upon Undertaking conditions which they voluntarily agreed to abide by on July 25, 2021 and has therefore contravened Sections 163(d) of the CPA.

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 Undertaking voluntarily entered into less than one year ago by continuing to use business practices that contravene similar sections of the CPA, ABR and VIR. 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.

At the administrative review, the Supplier took responsibility for the legislative breaches and stated a willingness to work with the regulator and improve upon their business practices. On average, the Supplier sells approximately 250 motor vehicles annually. The Supplier now has a digital BOS they have implemented and is seeking different licensed repair facilities to work with. Although the Supplier is not inclined to have to pay an Administrative Penalty, they asked the Director to consider the steps and actions they have taken to improve upon and rectify their shortcomings. The Director considered the representations from the Supplier regarding their position on an appropriate Administrative Penalty. An Administrative Penalty must be sufficient in that the Supplier and other Suppliers do not view the amount of the penalty as a cost of doing business that is preferable to following the law.

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

The mitigating factors in the matter include the reasonable compensation resolutions made to the consumers in resolving their issues once their complaints were made to AMVIC.

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, the COVID-19 pandemic's financial impact on the Supplier, 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 1545358 Alberta Ltd. operating as All Auto Sales pay an Administrative Penalty. This is based on my opinion that 1545358 Alberta Ltd. operating as All Auto Sales contravened Sections 12(o), 31.1, 31.2 and 31.3 of the ABR, Section 15 of the VIR and Sections 6(3)(a), 6(4)(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 **\$3,500**.

The amount takes into consideration the factors outlined in Section 2 of the Administrative Penalties (*Consumer Protection Act*) Regulation, AR 135/2013 and the principles referenced in *R v Cotton Felts Ltd., (1982), 2 C.C.C (3d) 287 (Ont. C.A.)* as being applicable to fines levied under regulatory legislation related to public welfare including consumer protection legislation. In particular the Director took into account:

1. The 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 \$3,500.**

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)  
Gerald Gervais, Registrar  
Director of Fair Trading (as Delegated)

GG/kl  
Encl.

cc: [REDACTED] Senior Manager of Investigations, AMVIC