

December 13, 2022

Administrative Review – 22-10-008
Served Personally

Administrative Penalty

2317723 ALBERTA LTD.
o/a TOWN & COUNTRY MOTORS
10466 FULTON DRIVE
ACHESON, AB
T7X 6A1

Attention: Nathan Bizeau and Dwayne Bizeau

Dear Nathan Bizeau and Dwayne Bizeau:

**Re: 2317723 Alberta Ltd. operating as Town & Country Motors
– Provincial Automotive Business Licence No. B2035569**

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 information exchanged during an administrative review held via teleconference call on Nov. 15, 2022 and the written representations received via email on Dec. 9, 2022 (attached as Schedule "B"), in response to the Proposed Administrative Penalty.

Participating in the administrative review held on Nov. 15, 2022 were a director for the Supplier, N. Bizeau; [REDACTED], AMVIC manager of investigations north; [REDACTED] AMVIC investigator and G. Gervais, Director of Fair Trading (as delegated).

Licencee Status

2317723 Alberta Ltd. operating as Town & Country Motors (the "Supplier") holds an AMVIC business licence and carries on the business activities of retail sales in the Province of Alberta.

History

The Supplier has been operating in retail sales since February 2021. The Supplier employs five salespeople and has five employees. The Supplier advised during the administrative review that their monthly volume of vehicle sales is approximately 3-4 vehicles.

As a result of an administrative review held on May 17, 2022, in regards to a consumer complaint, the Supplier voluntarily agreed to enter into an Undertaking on June 30, 2022. 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 not to do or say anything that might reasonably deceive or mislead a consumer during the course of a consumer transaction as per Section 6(4)(a) of the CPA."

"The Supplier will undertake to ensure their BOS is completed in compliance with Section 31.2 of the ABR."

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

"To ensure that the Supplier is in full compliance with the CPA and its related regulations, the Supplier agrees to assist AMVIC with an industry standards inspection which will take place before Jan. 31, 2023."

Summary of Investigation

Case File 22-08-385

1. In August 2022, AMVIC received a complaint alleging that a consumer had been misled about the condition of a vehicle that was purchased. The consumer ("KM") purchased a 2014 Ford Mustang V6 Coupe (the "Mustang") on July 23, 2022 for \$27,587.20 inclusive of all taxes, fees and an extended warranty.
2. KM had been referred to the Supplier, the negotiations and purchase were made over the phone. There was no advertisement for the Mustang and the Supplier provided KM with two photographs of the Mustang. When KM's husband picked up the Mustang on Aug. 3, 2022 he observed and discovered the exhaust had been modified to no longer have a muffler and other cosmetic issues with the vehicle (loose rocker panel, rear and front bumper).
3. According to KM, the Supplier never advised her of a modified exhaust or disclosed the visible cosmetic damages on the Mustang. KM was not provided any photographs showing these issues or provided with any vehicle history for the Mustang.
4. The Supplier offered to have the exhaust repaired by their technician, however KM had lost trust in the Supplier. Further, the inconvenience of returning the Mustang to Edmonton from Peace River

was not practical for KM. KM had the repairs done at a third party repair facility for a total cost of \$1,401.75.

5. KM wanted the Supplier to pay for the complete bill, however the Supplier countered with an offer of \$800 as they told her this is what it would have cost their technician to do the work. KM agreed to the \$800, however negotiations fell through when the Supplier required her to sign an agreement not to report the matter to AMVIC or make any other claims against them.
6. The AMVIC investigation revealed that KM was not provided with a Mechanical Fitness Assessment ("MFA") before the Supplier entered into a contract to sell the Mustang. The MFA was not completed until Aug. 2, 2022. In the technician comments it states, *"TPM system light on, mufflers gone [sic]"*. Had the MFA been presented prior to entering into a contract as per legislation, KM would have been made aware of the exhaust issue.
7. During the administrative review, the Director further noted that the MFA that was completed is non-compliant and missing the previous province of registration as per Section 15(1)(b) of the Vehicle Inspection Regulation ("VIR") as well as the name and address of the dealer selling the vehicle as per Section 15(1)(c) of the VIR.
8. There is a requirement as per the Automotive Business Regulation ("ABR") to disclose the vehicle history information to a consumer in writing before purchase. KM was not provided the vehicle history information of the Mustang before purchase. A CarFax with a run date of Aug. 5, 2022 was provided to KM after the purchase date of July 23, 2022.
9. The AMVIC investigation further noted that the Supplier's bill of sale ("BOS") is non-compliant and missing items as required by the ABR:
 - It is missing the buyer's government identification number as required by Section 31.2(1)(b) of the ABR;
 - The salesperson's name and registration number are missing on the BOS provided by KM as required by Section 31.2(1)(d) of the ABR. The BOS provided by the Supplier is missing the salesperson's registration number;
 - It is missing the licence number of the business operator as required by Section 31.2(1)(c) of the ABR;
 - The BOS lists the delivery date as July 29, 2022 when KM's husband did not pick up the vehicle until Aug. 3, 2022. The delivery date is therefore inaccurate and in breach of Section 31.2(1)(i) of the ABR;
 - The BOS date is July 23, 2022 and contains KM's initials and signature. KM has initialed a disclosure statement that states, *"As a purchaser of a used vehicle I have received and reviewed the Mechanical Fitness Assessment Form"*. This is inaccurate and misleading as the MFA was not given or shown to KM prior to entering into a contract as the MFA had not been completed at the time of the sale; and
 - The BOS date is July 23, 2022 and contains KM's initials and signature. KM has initialed a disclosure statement that states, *"As a purchaser of a used vehicle I have received the vehicle history information"*. This is inaccurate and misleading as the Supplier provided a

copy of a CarFax with a report date of Aug. 5, 2022 which is not only after the date of the BOS but after the date KM's husband took possession of the Mustang on Aug. 3, 2022.

10. Through the Supplier's actions they breached several conditions of their Undertaking just weeks after they voluntarily agreed to it on June 20, 2022.
11. KM was misled regarding the exhaust system and condition of the Mustang. An MFA was not given to KM prior to entering into a contract, the BOS in this consumer transaction is non-compliant and the Supplier failed to comply with the vehicle history disclosure requirements.
12. During the administrative review, the investigator advised that KM provided some photographs of the Mustang in her complaint, however they were not disclosed as they were of poor quality and did not afford any evidentiary value to the condition of the Mustang.
13. During the administrative review, the Supplier did not refute any of the details given by the investigator.
14. The Supplier indicated they sent photographs and a video of the Mustang to KM. The Supplier could not comment whether the video was clear or not however advised that it depicted the Mustang being started and there was a walk around of the vehicle. The Supplier acknowledged that KM might not have known the exhaust was not there on the Mustang, which is why they were willing to work with her regarding this issue.
15. The Supplier tried to come to an agreement with KM however a mutually agreed upon resolution could not be met. The Supplier told her they were willing to pay \$800 for the repair and required her to sign a release to not make a complaint to AMVIC or make any further claims against them.
16. The Supplier accepted responsibility for the issues and states that they are now ensuring that their customers are provided with all of the necessary documents and information and that their documents are completed fully. The Supplier advised they have a scheduled AMVIC inspection on Nov. 28, 2022 which was a condition of their agreed upon Undertaking.
17. The Supplier had no representations in regards to a Proposed Administrative Penalty.
18. The Supplier provided written representations via email on Dec. 9, 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.

Vehicle Inspection Regulation

Sale of used motor vehicle

Section 15

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

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

Consumer Protection Act

Unfair practices

Section 6

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

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

(4) Without limiting subsections (2) and (3), the following are unfair practices if they are directed at one or more consumers or potential consumers:

- (a) a supplier's doing or saying anything that might reasonably deceive or mislead a consumer;

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

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

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 a consumer complaint received by AMVIC regarding a consumer allegedly being misled regarding the condition of the vehicle they purchased (case file no. 22-08-385). The subsequent investigations identified other breaches of the

legislation pertaining to deficiencies with respect to the Supplier's BOS, their MFA, failing to disclose the vehicle history information and the Supplier breaching a voluntary agreed upon Undertaking.

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

In reviewing the BOS for the Mustang the following deficiencies were noted:

- It is missing the buyer's government identification number as required by Section 31.2(1)(b) of the ABR;
- The salesperson's name and registration number are missing on the BOS provided by KM as required by Section 31.2(1)(d) of the ABR. The BOS provided by the Supplier is missing the salesperson's registration number;
- It is missing the licence number of the business operator as required by Section 31.2(1)(c) of the ABR;
- The BOS lists the delivery date as July 29, 2022 when KM's husband did not pick up the vehicle until Aug. 3, 2022. The delivery date is therefore inaccurate and in breach of Section 31.2(1)(i) of the ABR;
- The BOS date is July 23, 2022 and contains KM's initials and signature. KM has initialed a disclosure statement that states, *"As a purchaser of a used vehicle I have received and reviewed the Mechanical Fitness Assessment Form"*. This is inaccurate and misleading as the MFA was not given or shown to KM prior to entering into a contract as the MFA had not been completed at the time of the sale; and
- The BOS date is July 23, 2022 and contains KM's initials and signature. KM has initialed a disclosure statement that states, *"As a purchaser of a used vehicle I have received the vehicle history information"*. This is inaccurate and misleading as the Supplier provided a copy of a CarFax with a report date of Aug. 5, 2022 which is not only after the date of the BOS but after the date KM's husband took possession of the Mustang on Aug. 3, 2022.

The Supplier is not completing the BOS in compliance with Section 31.2 of the ABR. Based on the evidence presented the Director finds that the Supplier has breached Section 31.2 of the ABR.

In KM's statement she states that when her husband picked up the Mustang there was evidence to suggest the Mustang had previously been in an accident but was never reported. She commented that a number of things were just hanging off the car when her husband picked it up. The mechanic had to zip tie the rocker panel to hold it up; that the fender was traced and cut out, was not the right part; the rear bumper was cracked and scratched up; the front bumper was not aligned and was repainted as you could see over-spray on the grill; and that clips were missing. KM's husband also noted that there was no exhaust/muffler and the Mustang had been modified. KM remarks in her statement that she has attached some pictures of how they received the Mustang. The Director was not provided with these photos or they were not included in the disclosure material.

Nonetheless, there is no evidence in the documents that the Supplier disclosed the previous history of the Mustang to KM as the CarFax lists a run date of Aug. 5, 2022, well after the date of the BOS. The CarFax does not list the Mustang being involved in an accident. In the technician comments of the MFA completed on Aug. 2, 2022 it states *"TPM system light on, mufflers gone"*. Had KM been presented with the MFA prior to entering into a contract she would have been made aware of the muffler or exhaust

issue at that time or other deficiencies. 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.

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

Completing an MFA and presenting it days after the BOS date is a misleading practice. The Director has some concerns regarding the validity of the MFA that was completed. Although the Director does not have any photos to support KM's claims regarding the condition of the Mustang and evidence that it had been involved in a collision, KM listed a number of issues that would appear obvious to a buyer and yet the MFA lists the frame and body component section of the Mustang to be compliant in all aspects. It is also to be noted that the third party Supplier who performed the MFA on behalf of the Supplier also completed repair work on the Mustang's *"pinion seal, washer hoses, fender liner, and evap brace fuel tank vent canister"*. A work invoice in the amount of \$1,027.32 was paid by the Supplier to this third party Supplier. There is no evidence that this work performed was disclosed to KM.

KM states the salesperson told her husband when he picked up the Mustang that he had disclosed to her about the exhaust/muffler and KM denies this. The Supplier indicated they sent photographs and video of the Mustang to KM. The Supplier could not comment whether the video was clear or not, however advised that it depicted the Mustang being started and there was a walk around of the vehicle. The Supplier acknowledged that KM might not have noticed the exhaust was not there which is why they were willing to work with her regarding this issue. There was no mention on the BOS of the exhaust modification or any other document until the MFA was completed on Aug. 2, 2022, well after the BOS date.

By completing and presenting an MFA well after the BOS date and failing to disclose any known mechanical issues of the Mustang or its previous history to a consumer, on a balance of probabilities, the Director finds that the Supplier misled KM and did contravene Section 6(4)(a) of the CPA.

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

In the sale of the Mustang to KM, the AMVIC investigation noted concerns with the MFA. The most egregious issue is the fact that the MFA was completed on Aug. 2, 2022 after the BOS date of July 23, 2022, 11 days after the sale of the Mustang. The Director further noted that the MFA is non-compliant and missing the previous province of registration as per Section 15(1)(b) of the VIR as well as the name and address of the dealer selling the vehicle as per Section 15(1)(c) of the VIR.

The MFA is required as per Section 15(1) of the VIR. The 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. 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.

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 KM an MFA before entering into a contract to

sell her a motor vehicle and further failing to complete an MFA as per the legislative requirements, the Supplier has breached Section 15(1) of the VIR and Section 12(o) of the ABR.

D. Breach of Undertaking (CPA Section 163(d))

As a result of an administrative review held on May 17, 2022, the Supplier voluntarily agreed to enter into the Undertaking on **June 30, 2022**. 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 not to do or say anything that might reasonably deceive or mislead a consumer during the course of a consumer transaction as per Section 6(4)(a) of the CPA."

"The Supplier will undertake to ensure their BOS is completed in compliance with Section 31.2 of the ABR."

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

"To ensure that the Supplier is in full compliance with the CPA and its related regulations, the Supplier agrees to assist AMVIC with an industry standards inspection which will take place before Jan. 31, 2023."

The Supplier continues to use a non-compliant BOS, failed 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 a vehicle being sold to a consumer. Through their actions and words, the Supplier has further misled the consumer and has breached a number of their agreed upon Undertaking conditions which they voluntarily agreed to abide by on June 30, 2022 and has therefore contravened Section 163(d) 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 Undertaking voluntarily entered into less than a month after 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 accepted responsibility for the issues and stated that they are now ensuring that their customers are provided with all of the necessary documents and information, and that their documents are completed fully. The Supplier tried to come to an agreement with KM however a mutually agreed upon resolution could not be met. They did tell her they were willing to pay \$800 for the repair and required her to sign a release to not make a complaint to AMVIC or make any further claims against them. During the administrative review the Supplier did not have any representations regarding an Administrative Penalty.

In response to the Proposed Administrative Penalty, the Supplier's written representations of Dec. 9, 2022 (see Schedule "B") stated:

"I am of the belief that [KM] husband had the opportunity to refuse delivery of the Mustang when he picked it up from Edmonton if the damages were truly dealbreakers [sic]. On top of this fact, Town & Country Motors have been willing to work with the customer to resolve all the issues they had with the vehicle since the time of delivery. [KM] refused to accept our solution that would solve all her noted issues with the vehicle. Because of the above, I propose a penalty of \$1401.75 paid to [KM] to reimburse the cost of all repairs she paid for on the Mustang through her third party shop in Peace River. The amount could be paid to her immediately."

While the Supplier is welcome to reimburse KM the cost of the repairs which were incurred, this remedy is not within the scope of an Administrative Penalty. An Administrative Penalty is assessed against the business for breaches of the legislation. The monies from an Administrative Penalty are not provided to a consumer nor AMVIC, but rather are payable to the Government of Alberta. The Supplier had the opportunity and still has the opportunity to reimburse KM the cost of the repairs, however restitution to the consumer cannot be included as part of an Administrative Penalty. The Director has found the Supplier breached multiple sections of the legislation. In addition, the Supplier recently entered into an Undertaking with AMVIC and therefore the most appropriate administrative enforcement action is an 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 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.

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 enforcement 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 2317723 Alberta Ltd. operating as Town & Country Motors pay an Administrative Penalty. This is based on my opinion that 2317723 Alberta Ltd. operating as Town & Country Motors contravened Sections 12(o), 31.1 and 31.2 of the ABR, Section 15 of the VIR and Sections 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 **\$5,500**.

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 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 \$5,500.

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 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.

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. Payment of the fee for an appeal may be made payable to the **"Government of Alberta"** and sent to the **Minister of Service Alberta at the above address.**

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