

March 1, 2023

Administrative Review – 22-11-017

Served via email: [REDACTED]

Administrative Penalty

RENFREW CHRYSLER INC.
1920 BOW TRAIL SW
CALGARY, AB
T3C 3N4

Attention: David Lamont

Dear David Lamont:

Re: Renfrew Chrysler Inc. – Provincial Automotive Business Licence No. B203506

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 an 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 Jan. 17, 2023.

Licensee Status

Renfrew Chrysler Inc. (the “Supplier”) holds an automotive business licence and carries on business as an automotive sales business in the province of Alberta. Renfrew Chrysler Inc. operates out of Calgary, Alberta and holds a current AMVIC business licence and is authorized for autobody, new and used sales, garage, leasing, and wholesale business activity.

Administrative Review

An administrative review was held on Jan. 17, 2022, at approximately 10 a.m., via teleconference call. Participating in the administrative review were Steve McDonald, chief financial officer for the Supplier; David Lamont, director/president for the Supplier; Paul Frank, legal counsel for the Supplier; [REDACTED], AMVIC investigator; [REDACTED] AMVIC manager of investigations south; and G. Gervais, Director of Fair Trading (as delegated) (the “Director”).

Enforcement History

- A. On May 20, 2014, the Supplier entered into an Undertaking regarding an advertising concern and paid the investigation costs of \$500 to AMVIC.
- B. On Dec. 5, 2016, an Administrative Penalty of \$1,000 was levied on the Supplier in relation to advertising concerns.
- C. On April 8, 2020, the Supplier entered into a voluntary Undertaking in regards to an investigation and agreed to comply with the CPA and Automotive Business Regulation ("ABR"), to maintain accurate business records and ensure they do not over charge consumers or make representations or exaggerations of a price benefit or advantage when they do not exist, and to review their current bill of sale ("BOS") and ensure their form as well as the completion of the form meet the legislative requirements as set out in Section 31.2(1) and (2) of the ABR. As part of the Undertaking the Supplier further agreed to reimburse the consumer the sum of \$13,406.03 and paid the investigation costs of \$3,038 to AMVIC.
- D. On May 21, 2021, an Administrative Penalty of \$4,500 was levied on the Supplier in relation to unfair practices.

Educational Inspection

- E. On Sept. 22, 2020 the Supplier was sent an inspection findings letter as a follow-up to an industry standards inspection that took place via telephone on Sept. 14, 2020. This letter provided a summary of the inspection that was completed by S. N [REDACTED], an industry standards officer ("ISO"). The findings letter addressed a number of shortcomings and deficiencies. As per paragraph 7, the Supplier was directed to update their BOS immediately to disclose the government issued identification, as well as a declaration that all vehicle history information from ABR Section 31.1 was provided to the consumer.

Summary of Investigation

Case File 22-08-346

1. In August 2022, AMVIC received a complaint in regards to the mechanical condition of a vehicle not long after the purchase. The AMVIC investigation did not find any evidence to support any breaches on the part of the Supplier in relation to the mechanical condition of the vehicle, however other breaches of legislation were identified relating to unfair practices and a failure to maintain accurate business records, including but not limited to their BOS.
2. On May 28, 2022, the consumer ("CD") contacted the Supplier in regards to a 2015 Ford Super Duty truck (the "Ford") after he saw the Supplier's advertisement for the Ford.
3. CD did not wish to put a deposit down on the Ford however the salesperson for the Supplier insisted on this. The salesperson put \$500 on his own personal credit card for a deposit to hold the Ford on behalf of CD and then CD electronically transferred \$500 to him the same day.

4. On June 1, 2022, CD attended the Supplier in person and negotiated a price for the Ford which was to be delivered to him in Cherry Grove, AB after some conditions were met which included the Supplier wet sand the Ford to the point of near new condition relative to the age of the truck and repair four other blemishes. CD signed a written agreement with the Supplier's finance manager in regards to this condition, however it is not listed on the BOS (Exhibit G).
5. On June 7, 2022 the Ford was scheduled to be delivered to CD in Cherry Grove, AB. As CD was at work this day and his fiancé missed the delivery driver, the Supplier dropped the Ford and keys at an automotive business in Cold Lake, AB. When CD attended and picked up the Ford, no paperwork was provided to him and no paperwork was found in the Ford.
6. CD asserts that any delivery costs were not discussed with him and these arrangements are also not listed on the BOS.
7. CD advised that he signed the paperwork at the dealership when he looked at the Ford to save him from having to return back which was the Supplier's idea. He does not recall if the BOS was fully completed as he indicated the finance manager was going so fast he had a hard time understanding.
8. As CD had not been provided a BOS, he was unable to register the Ford. CD attempted to contact the Supplier via email and phone call to get his BOS to no avail. CD was not able to register the Ford until July 4, 2022 as evidenced by a ROADS query conducted by the AMVIC investigator when CD states he received his BOS, finance documents and cash back cheque.
9. CD had been in communication via email with the Supplier's finance manager to obtain his BOS and paperwork between June 6 and June 22, 2022 as evidenced by Exhibit M. Based on the email string, CD had not yet received his BOS or documents as of June 22, 2022 at 7:37 p.m. The finance manager for the Supplier provided CD with the following explanation and a timeline of events:
 - June 6 – finance manager was advised CD was moving forward with the deal;
 - June 8/9 – finance manager received CD's void cheque;
 - June 9 – finance manager sent CD's void cheque to the bank;
 - June 14 – funds received from the bank for the vehicle and allowed for the release of a cash back cheque;
 - June 15/16 – envelope to be sent via a courier to go out; with CD to expect receiving paperwork including BOS, by about June 20 or June 22.

The finance manager also indicated to CD that he should have received an advanced copy of his BOS either texted or emailed to him by his salesperson to allow him to register his Ford within the 14 day window allowed in Alberta.

10. Based on these email messages and the timeline provided by the finance manager, CD had possession of the Ford on June 7, 2022 before funding to the bank for the Ford had even been submitted by the Supplier.

11. Upon eventually receiving and reviewing his paperwork, CD discovered charges that he had not agreed to, had no understanding of or items/conditions that were simply not listed. CD asserts he did not agree to pay for transportation costs, fuel or ETCH fees. However the BOS includes a number of additional fees as well as other issues, which are listed as follows:
 - Accessories charge for \$1,650;
 - Fuel charge for \$99 (vehicle was delivered with a quarter tank of fuel);
 - ETCH for \$199;
 - His deposit of \$500 is not listed;
 - Charge of \$600.73, payable on delivery; and
 - CD received a cash back cheque in the amount of \$1,799.27 which is not listed on BOS (the cash back cheque is dated May 31, 2022 and the description identifies it was to be \$1,900 less \$100.73 toward down payment (Exhibit H)).
12. A worksheet (Exhibit D), dated May 24, 2022 between CD and the Supplier indicates a sale price of \$60,000 all in with bi-weekly payments of \$480 and the BOS, Exhibit C indicates a total for GST calculation of \$60,692.86, a difference of \$692.86 above the all in price indicated on the worksheet.
13. The Supplier provided various explanations to the AMVIC investigator regarding the fees and accessories charged to CD which differ from what CD alleges he was told or he explained to the AMVIC investigator. The Supplier states the \$1,650 accessories charge included a few things which are the scratches and blemishes on the vehicle and the shipping of the Ford to Cherry Grove, AB. In an email between the Supplier and the AMVIC investigator dated Nov. 2, 2022, the Supplier asserts that there was no cash back of \$1,900 and that this money was reimbursement to CD for repairs to the Ford as the Supplier had replaced the windshield and then took a rock while delivering it (Exhibit N). The Supplier provided clarification on some of the other fees such as the ETCH and PPSA charges, yet CD asserts he was unaware of these fees. The Supplier indicated that the Ford should have been full of gas and were prepared to reimburse CD for this fuel charge of \$99.
14. The AMVIC investigation determined that the Supplier's BOS is not compliant with Section 31.2 of the ABR:
 - The consumer's government issued identification is missing;
 - The salesperson's name and registration number are missing;
 - The date the BOS was entered into is not correct;
 - A deposit was made on May 28, 2022 and is not listed on the BOS;
 - The date the vehicle was to be delivered to CD is incorrect. The BOS lists actual delivery date as June 1, 2022 when the Ford was delivered on June 7, 2022;
 - An itemized list of all applicable fees and charges that CD was required to pay, including the charges for transportation is missing;
 - If CD was to receive cash back this is not listed on the BOS; and
 - The agreement and expectations regarding the repair to the body of the Ford such as what was to be completed and who was responsible for the cost.

15. Based on the paperwork and information before the Director, the Director was unsure whether the wet sanding of the Ford and repairing of the blemishes took place and who took responsibility to pay for these costs. The purchaser's agreement (Exhibit G), signed by the Supplier's finance manager and CD on June 1, 2022 identifies that the Ford would be wet sanded to the point of near new condition and blemishes would be eliminated, however it does not identify who would be responsible to take care of this. The Supplier provided a supplier response to the initial consumer complaint as part of the complaint process (Exhibit B). The Director is unsure who prepared this response as there is a signature however no name associated to it and it is not dated. In the Supplier response it states, *"That being said they were unhappy with the condition of the vehicle so the dealership agreed to fix the blemishes on the body however the timing did not work out for the dealership to fix it so both parties agreed Renfrew would reimburse [sic] CD for the body to be fixed at his local shop."*
16. During the administrative review, the AMVIC investigator clarified and confirmed that the Supplier did complete the wet sanding of the Ford and eliminated the blemishes prior to the delivery of the Ford to CD.

Supplier's Representations

17. The Supplier has been in the automotive industry since 1935 and is a high volume automotive business that sold approximately 1,800 vehicles in 2021 and 2,128 vehicles in 2022.
18. The Supplier indicated that the salesperson involved in this consumer transaction has been on leave from the Supplier since October 2022. During the administrative review, the Supplier advised they were unable to speak to him directly to get further details regarding this consumer transaction.
19. The Supplier put forth that it is not against the law for a salesperson to use their personal credit card to put a deposit down on behalf of a consumer, however this is not a common practice for deposits that is followed by the Supplier and as they were unable to speak to the salesperson involved, could not provide any other rationale or information to the Director why this took place.
20. The Supplier expressed that they take this matter seriously and the alleged breaches relate to one single complaint and there is no pattern of behaviour on their part despite selling nearly 4,000 vehicles in the last two years.
21. The Supplier asserts they have a proven track record and are the number one Chrysler dealership in the Calgary area and the third in the province of Alberta.
22. Legal counsel for the Supplier advised that this consumer complaint was not related to a consumer being unhappy with his vehicle. It is the Supplier's position that CD signed a BOS and and therefore agreed to the charges and fees listed on the BOS and the Ford was delivered to him as expected and promised. The delivery of the Ford with a quarter tank of fuel was an oversight on the part of the Supplier and they were willing to reimburse CD this cost.

23. The Supplier stated they were cooperative with the AMVIC investigator and expressed a willingness to work with the regulator.
24. The Supplier does not know why CD expressed that he did not receive his BOS as the finance manager recalls sending it to him three times, which differs from what the finance manager communicated to CD in his email messages (Exhibit M).
25. It is the position of the Supplier that they should have done a better job with their BOS and could have been better with their descriptions, details and conditions of sale written on the BOS.
26. Since 2020, the Supplier feels they have done an outstanding job in addressing AMVIC's concerns and their business practices as evidenced by having only one consumer complaint since 2020.
27. The Supplier acknowledged the general conduct described in the AMVIC investigation and regrets engaging in the aforementioned activity and strives to do better.
28. The Supplier expressed that should the Director find the Supplier was in breach of the legislation to address it immediately by way of a warning letter which can serve as a deterrent. If the Director seeks an alternative enforcement action, the Supplier proposed an Administrative Penalty in the range of \$1,000 to \$2,000.
29. On Feb. 28, 2023, AMVIC received an email from the Supplier's legal counsel in response to the proposed Administrative Penalty, attached as Schedule "D". The email advised that the Supplier is *"prepared to accept the \$6,000 administrative penalty"*.

Legislation

Automotive Business Regulation

Records

Section 9

In addition to the requirement to create and maintain financial records in accordance with section 132(1) of the Act, every business operator and former business operator must maintain all records and documents created or received while carrying on the activities authorized by the licence for at least 3 years after the records were created or received.

General codes of conduct

Section 12

Every business operator must comply with section 6 of the Act and in addition must
(c) not abuse the trust of a consumer or exploit any fear or lack of experience or knowledge of a consumer,

Bill of sale

Section 31.2

- (1) A business operator engaged in automotive sales must use a bill of sale that includes the following:
- (a) the name and address of the consumer;

- (b) the number of the government-issued identification that the business operator uses to confirm the identity of the consumer;**
- (c) the name, business address and licence number of the business operator;
- (d) if a salesperson is acting on behalf of the business operator, the name and registration number of the salesperson;**
- (e) the make, model and model year of the vehicle;
- (f) the colour and body type of the vehicle;
- (g) the vehicle identification number of the vehicle;
- (h) the date that the bill of sale is entered into;**
- (i) the date that the vehicle is to be delivered to the consumer;**
- (j) an itemized list of all applicable fees and charges the consumer is to pay, including, without limitation:**
 - (i) charges for transportation of the vehicle;**
 - (ii) fees for inspections;**
 - (iii) fees for licensing;**
 - (iv) charges for warranties;**
 - (v) taxes or levies, including GST;**
- (k) the timing for payment by the consumer of the fees and charges under clause (j);
- (l) an itemized list of the costs of all extra equipment and options sold to the consumer in connection with the vehicle or installed on the vehicle at the time of sale;
- (m) the total cost of the vehicle, which must include the fees, charges and costs listed under clauses (j) and (l);
- (n) the down payment or deposit paid by the consumer, if any, and the balance remaining to be paid;
- (o) if the consumer is trading in another vehicle to the business operator in connection with the purchase of the vehicle,
 - (i) information about the vehicle being traded in, and
 - (ii) the value of the trade-in allowance incorporated into the cost of purchase of the vehicle;
- (p) the balance of any outstanding loan that is incorporated into the cost of purchase of the vehicle;
- (q) if, in connection with the purchase of the vehicle, the business operator enters into a credit agreement with the consumer or arranges a credit agreement for the consumer, the disclosure statement required under Part 9 of the Act;
- (r) an itemized list of any items or inducements the business operator agrees to provide with the vehicle at no extra charge;
- (s) the odometer reading of the vehicle at the time the bill of sale is entered into, if the vehicle has an odometer and the odometer reading is available to the business operator;
- (t) the maximum odometer reading of the vehicle at the time of delivery to the consumer if the vehicle has an odometer and
 - (i) the odometer reading is not available to the business operator at the time the bill of sale is entered into, or
 - (ii) the vehicle is a new, specifically identified vehicle;

- (u) any mechanical fitness assessment that has been issued under the Vehicle Inspection Regulation (AR 211/2006);
- (v) any disclosure statement or documentation respecting a vehicle's previous use, history or condition, including disclosure statements or documentation required under the laws of another jurisdiction;
- (w) a declaration that the business operator has disclosed to the consumer the information required under section 31.1.

(2) The business operator must ensure that all restrictions, limitations and conditions imposed on the consumer under the bill of sale are stated in a clear and comprehensible manner.

Consumer Protection Act

Interpretation of documents

Section 4

If a consumer and a supplier enter into a consumer transaction, or an individual enters into a contract with a licensee and the licensee agrees to supply something to the individual in the normal course of the licensee's business, and

- (a) all or any part of the transaction or contract is evidenced by a document provided by the supplier or licensee, and
- (b) a provision of the document is ambiguous,

the provision must be interpreted against the supplier or licensee, as the case may be.

Unfair practices

Section 6

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

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

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

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

Duty to maintain records

Section 132

(1) Every licensee and former licensee must create and maintain

- (a) complete and accurate financial records of its operations in Alberta for at least 3 years after the records are made, and
- (b) other records and documents described in the regulations for the period specified in the regulations.

(2) Every licensee and former licensee must make the records referred to in subsection (1) available for inspection by an inspector at a place in Alberta and at a time specified by the inspector.

Administrative Penalties

Notice of administrative penalty

Section 158.1

- (1) If the Director is of the opinion that a person
- (a) has contravened a provision of this Act or the regulations, or
 - (b) has failed to comply with a term or condition of a licence issued under this Act or the regulations,
- the Director may, by notice in writing given to the person, require the person to pay to the Crown an administrative penalty in the amount set out in the notice.
- (2) Where a contravention or a failure to comply continues for more than one day, the amount set out in the notice of administrative penalty under subsection (1) may include a daily amount for each day or part of a day on which the contravention or non-compliance occurs or continues.
- (3) The amount of an administrative penalty, including any daily amounts referred to in subsection (2), must not exceed \$100 000.
- (4) Subject to subsection (5), a notice of administrative penalty shall not be given more than 3 years after the day on which the contravention or non-compliance occurred.
- (5) Where the contravention or non-compliance occurred in the course of a consumer transaction or an attempt to enter into a consumer transaction, a notice of administrative penalty may be given within 3 years after the day on which the consumer first knew or ought to have known of the contravention or non-compliance but not more than 8 years after the day on which the contravention or non-compliance occurred.

Right to make representations**Section 158.2**

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

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

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, case file 22-08-346.

- A. Mislead and Deceive (CPA Section 6(4)(a))/ Not Abuse the Trust of a Consumer (ABR Section 12(c))

As per Section 4 of the CPA, if a provision of a document is ambiguous in a consumer transaction, the provision must be interpreted against the Supplier or licensee. CD signed an agreement with the Supplier's finance manager that the Ford would be wet sanded to the point of near new condition and blemishes would be eliminated, however the document does not identify who would be responsible to pay for this or if this was a condition of sale nor is it listed as a special condition on the BOS, the worksheet or any other paperwork. The Supplier's response to the initial consumer complaint (Exhibit B) further confuses the issue when they state, *"That being said they were unhappy with the condition of the vehicle so the dealership agreed to fix the blemishes on the body however the timing did not work out for the dealership to fix it so both parties agreed Renfrew would reimbursed [sic] CD for the body to be fixed at his local shop."*

In the opinion of the Director, based on the documentation, it would be reasonable for CD to think that the Supplier would be completing the required repair work on the Ford at their cost. The Supplier indicated that CD was responsible for this and that the \$1,650 accessories charge on the BOS was to cover the repair costs. However, CD asserted that he did not know what the \$1,650 was for on the BOS and the BOS does not indicate that the \$1,650 was for the repairs required to the body of the Ford. Due to the ambiguity in the evidence before the Director, as per Section 4 of the CPA, the Director must interpret the document against the Supplier.

In fact, there were a number of issues with the line items on the BOS and CD indicted he had no understanding of or had not agreed to a number of charges listed on the BOS. While the Supplier's legal counsel's position is that if the consumer signs it, they understand and agree to the terms of the BOS, this is not the pattern generally seen by AMVIC and in the opinion of the Director, in order for CD to understand every line item in the BOS, those line items must be accurate, which is not the case in this matter. Issues with the BOS that would be misleading are:

- Accessories charge of \$1,650;
- ETCH for \$199;
- \$500 deposit was not listed;
- Charge of \$600.73 (payable on delivery); and
- The cash back agreed to was not listed on the BOS.

A worksheet (Exhibit D), dated May 24, 2022 between CD and the Supplier indicates a sale price of \$60,000 all-in with bi-weekly payments of \$480 and the BOS (Exhibit C) indicates a total for GST calculation of \$60,692.86, a difference of \$692.86 above the agreed all-in price.

Email string messages between the Supplier's finance manager and CD identified CD had possession of the Ford on June 7, 2022 before funding to the bank for the Ford had even been submitted by the Supplier which would account for why CD was not provided with a BOS and was unable to register the Ford.

The Supplier asserts this consumer complaint was not related to a consumer being unhappy with his vehicle. It is the Supplier's position that CD signed a BOS and therefore knew what charges and fees he was paying and the Ford was delivered to him as expected and promised. However, the charges and fees on the BOS are not all clear and therefore the Director's opinion is that CD did not understand all

the charges listed on the BOS. The Supplier indicated the delivery of the Ford with a quarter tank of fuel was an oversight on the part of the Supplier and they were willing to reimburse CD this cost, however to the knowledge of the Director, the Supplier has not reimbursed CD for the fuel charge.

During the administrative review, the Supplier acknowledged they should have done a better job addressing the BOS issues and there were deficiencies and they could have been better with their descriptions/details or conditions of sale written on the BOS.

The BOS has a number of deficiencies as noted below and as a result of being improperly completed or not having all of the conditions of sale properly listed the Supplier's BOS and paperwork is ambiguous and is to be interpreted against the Supplier. On a balance of probabilities, the Director finds that the Supplier misled CD regarding the price of the Ford and that there were extra charges that were added without his knowledge. Based on the email string messages, it is the opinion of the Director that CD was not provided a BOS initially or sent one by the salesperson nor was one in the Ford upon delivery. It was only after he repeatedly requested a BOS did CD finally receive one via courier along with his cash back cheque and finance documents.

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

Based on the evidence, on a balance of probabilities, the Director does not find the Supplier abused the trust of the consumer and therefore did not breach Section 12(c) of the ABR.

B. Non-compliant BOS (ABR Section 31.2(1)(2))

On Oct. 31, 2018, amended legislation was put into effect with regards to BOS requirements. Between Sept. 25, 2018 and Nov. 6, 2018 AMVIC sent out a number of industry bulletins, updated the AMVIC website with information regarding the amended legislation, sent multiple bulletins to inform the industry and the public regarding the changes, updated social media regularly, sent out a special edition of the IMPACT newsletter to the industry regarding the legislative changes and all AMVIC employees had an email signature attached to staff emails regarding the legislative changes. These are just a few of the initiatives that AMVIC took to ensure all licensees were advised of the legislative changes that were coming into effect on Oct. 31, 2018 regarding the BOS.

The Supplier's BOS and the fact they were not maintaining accurate business records was discussed during the administrative reviews held on Jan. 8, 2020 and addressed in the Supplier's voluntary Undertaking dated April 8, 2020 and in the Administrative Penalty assessed against the Supplier dated May 21, 2020.

On Sept. 22, 2020 the Supplier was sent an inspection findings letter as a follow-up to a phone inspection that took place on Sept. 14, 2020. The findings letter addressed a number of shortcomings and deficiencies not limited to the Supplier's BOS. As per paragraph 7, the Supplier was directed to update their BOS immediately to disclose the government issued identification, as well as a declaration that all vehicle history information from ABR Section 31.1 was provided to the consumer.

The BOS for the Ford is missing the number of the government issued identification the Supplier used to confirm the identity of the consumer, contravening Section 31.2(1)(b) of the ABR. The salesperson's name and registration number are missing on the BOS contravening Section 31.2(1)(d) of the ABR. The date the BOS was entered into is incorrect as the deposit was made on May 28, 2022 and is not listed on the BOS contravening Section 31.2(1)(h) and Section 31.2(1)(n) of the ABR. The delivery date on the BOS for the Ford is incorrect contravening Section 31.2(1)(i) of the ABR.

The BOS for the Ford also failed to include an itemized list of the applicable fees and charges the consumer was required to pay not limited to charges for transportation which is not identified on the BOS in accordance with Section 31.2(1)(j) of the ABR.

CD was not aware what the \$1,650 accessories charge was for. CD was charged \$99 for fuel and the Ford was delivered with less than a quarter tank of fuel. CD asserts he did not agree to purchase ETCH and in fact did not know what it was. CD believed he put a down payment of \$500 for the Ford as an e-transfer of \$500 supports he reimbursed the salesperson who put the \$500 deposit down with his personal credit card. CD stated he was unaware that \$600.73 was to be payable on delivery as per the BOS. CD also received a cash back cheque of \$1,799.27 which is not identified on the BOS. In an email between the Supplier and the AMVIC investigator dated Nov. 2, 2022, the Supplier explains that there was no cash back of \$1,900 and that this money was reimbursement to CD for repairs to the Ford as the Supplier had replaced the windshield and then took a rock while delivering it (Exhibit N). However, this explanation of the cheque, which memo states was for cash back, does not align with the evidence as the cheque is dated May 31, 2022, which is before the Ford was delivered to CD. The Supplier indicated that the Ford should have been full of gas and were prepared to reimburse CD for this fuel charge of \$99.

As such, the Director finds that the Supplier has not made it clear with respect to all of the restrictions, limitations and conditions imposed on the consumer as per the BOS agreement in a clear and comprehensible manner as per Section 31.2 (2) of the ABR.

Based on the evidence before me, on a balance of probabilities, the Director finds the Supplier contravened Sections 31.2(1)(b), 31.2(1)(d), 31.2(1)(h), 31.2(1)(i), 31.2(1)(j) and 31.2(2) of the ABR.

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

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

In reviewing the evidence, the issues found with the Supplier's records show that they have failed to maintain accurate records. The Supplier stated during the administrative review that they could not explain a number of things because they could not contact the salesperson who acted on their behalf during this transaction. The records maintained by the business should be able to stand alone and not only should the Supplier be able to determine what happened based on their records, the Director should be able to review the business records and ascertain what happened in the transaction, which is not the case in this matter.

Record keeping is an incredibly important part of running a business within a regulated industry. A recent Service Alberta Appeal Board rendered a decision (attached as Scheduled "B") regarding the importance of record keeping as a member of a regulated industry. Paragraph 152 of the Service Alberta Appeal Board decision states:

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

Accurate record keeping is the best way for the Supplier to evince that they have complied with the legislation in the course of a transaction or potential transaction. On a balance of probabilities, the Director finds that the Supplier failed to maintain accurate records and has contravened Section 132(1) of the CPA and Section 9 of the ABR.

D. 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 Supplier has been subject to the following enforcement actions:

- 2014 – Undertaking for advertising issues.
- 2016 – Administrative Penalty for advertising issues in the amount of \$1,000.
- 2020 – Undertaking in which Supplier agreeing to comply with the CPA and ABR, maintain accurate business records and ensure their BOS meets legislative requirements.
- 2020 – Administrative Penalty in the amount of \$4,500 for unfair practices.

The Director also considered other enforcement actions such as entering into an Undertaking. In considering whether entering into a voluntary Undertaking with the Supplier would be appropriate, the Director is not satisfied that the Supplier has ceased the contraventions as per Section 152(1)(b) of the CPA. Further, the Director does not feel an Undertaking would adequately protect consumers due to the Supplier's continued failure to maintain complete and accurate records such as their BOS.

The Supplier has been provided education in the form of an industry standards inspection, previous administrative reviews and has been subject to multiple enforcement actions however, they continue to engage in non-compliant business practices.

There are a number of inconsistencies in the evidence provided by the Supplier which is a concern to the Director. During the administrative review, in response to being asked certain questions, the Supplier stated they were unable to speak with the salesperson who was involved in this transaction, however in the Nov. 2, 2020 email from the Supplier to the AMVIC investigator (Exhibit N), the Supplier indicated "I

spoke to the sales person [sic] ...". In addition, during the administrative review, the Supplier insisted the cash back cheque was not actually for cash back, however the explanation they provided during the administrative review does not factually line up with the evidence. During the administrative review, the Supplier asserted the cheque had been for damage sustained during delivery. However, if this was the case, the cheque would not have been dated in May, before delivery of the Ford. Moreover, this is not consistent with the Supplier's Nov. 2, 2022 email to the AMVIC investigator (Exhibit N) which provides a different explanation for the cash back cheque. It is imperative that the information provided to the Director accurately represents the facts and circumstances.

During the administrative review, the Supplier indicated that if the Director found an administrative penalty was warranted they suggested an Administrative Penalty in the range of \$1,000 to \$2,000. Based on the education previously provided to the Supplier, the enforcement history of the Supplier and the evidence regarding the current matter, in the opinion of the Director, the suggested outcome by the Supplier is not appropriate. The amount of the Administrative Penalty cannot be viewed as a cost of doing business but rather as a deterrent for continuing to engage in non-compliant business practices.

There exists an onus on the Supplier to do their due diligence and ensure they are complying with the law. As stated in the Supreme Court of British Columbia in *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers, 2014 BCSC 903* addressed the issue of the onus and responsibility the Supplier has when operating within regulated industry. The court at paragraph 59 stated:

In my view, it is incumbent upon a party that operates within a regulated industry to develop at least a basic understanding of the regulatory regime, including its obligations under the regime, as well as the obligations, and the authority, of the regulator.

In reviewing all the evidence and determining the contraventions of the legislation, in the opinion of the Director, the Supplier's business practices are continuing to fall short of what is expected of a business in the automotive industry. A recent Service Alberta Appeal Board rendered a decision (attached as Scheduled "C") and addressed the onus and responsibility of salespeople and Suppliers. The appeal panel at paragraph 91 stated:

At the same time, we recognize that AMVIC is not there to hold a party's hand through the administrative process. Nor is it there to train applicants in terms of being administratively efficient. AMVIC is there to protect the public. The onus is on salespersons and car dealerships to remain current with AMVIC and to comply with the regulatory framework in place at any given time.

While although the Supplier indicated the consumer complaint that led to this administrative review was the only consumer complaint they received since 2020, there was no evidence of this provided and the AMVIC investigations department did not put evidence forward to the Director regarding the number of consumer complaints that have been received by AMVIC in the past two years. Due to the lack of evidence of this claim, the Director will not be relying on this statement in determining the amount of the Administrative Penalty.

Misleading a consumer and/or abusing their trust, failing to maintain proper records not limited to their BOS, and failing to disclose the cost of all fees leverages the Supplier's knowledge and does not foster a

level playing field between the consumer and the Supplier which eliminates the consumer's ability to make an informed purchasing decision. It further concerns the Director that the Supplier, despite all of the education and enforcement action, is repeating similar breaches of the legislation to the detriment of consumers.

The aggravating factors in this matter include the resulting impact adversely affecting the consumer including being charged for items he did not agree to, the non-compliance with the rather straightforward requirements of the legislation after multiple enforcement actions and attempts to educate the Supplier. The mitigating factors are that the Supplier asserts they have had only one consumer complaint in the last two years and have sold nearly 4,000 vehicles in that period which cannot be ignored.

This Administrative Penalty is taking into account the number and seriousness of the contraventions of the legislation found during the investigation as well as the cost of investigating the Supplier's activities; the aggravating and mitigating factors listed above; and the continued non-compliant business practices despite education and enforcement.

Action

In accordance with Section 158.1(a) of the CPA and based on the above facts, I am requiring that Renfrew Chrysler Inc. pay an Administrative Penalty. This is based on my opinion that Renfrew Chrysler Inc. contravened Sections 6(4)(a) and 132 of the CPA, and Sections 9, 12(c), 31.2(1), and 31.2(2) of the ABR.

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 **\$6,000**.

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 \$6,000.

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.

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 and Red Tape Reduction

Minister of Service Alberta and Red Tape Reduction
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. Should you choose to appeal this Administrative Penalty, you must send the appeal fee to the Minister of Service Alberta and Red Tape Reduction at the above noted address, made payable to the "Government of Alberta".

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