

March 2, 2023

Administrative Review – 23-02-007
Served Personally

Administrative Penalty

AUTOCANADA SHERWOOD PARK VEHICLES GP INC.
o/a SHERWOOD PARK HYUNDAI
41 AUTOMALL ROAD
SHERWOOD PARK, ALBERTA
T8A 0C7

Attention: Paul Antony, Michael Borys, and Michael Rawluk

Dear Paul Antony, Michael Borys, and Michael Rawluk:

**Re: Autocanada Sherwood Park Vehicles GP Inc. operating as Sherwood Park Hyundai
– Provincial Automotive Business Licence No. B2028011**

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”) industry standards department application report (the “Application Report”) prepared by an industry standards officer (“ISO”) and the manager of industry standards. A copy of the Application Report is attached as Schedule “A” to this letter.

Licensee Status

Autocanada Sherwood Park Vehicles GP Inc. operating as Sherwood Park Hyundai (the “Supplier”) holds an automotive business licence and is licensed to carry on the designated business activities of retail sales, wholesale sales, agent or broker, leasing and garage in the Province of Alberta.

Direct communications with the Supplier and its representatives

1. On Sept. 4, 2015, a routine AMVIC industry standards inspection was completed at the business location of the Supplier. An undated Findings Letter outlining the inspection findings was completed and sent to the Supplier. The Findings Letter outlined the following concerns:

- a) Three of eight used sales deal jackets that were reviewed had various issues with the completion of and/or disclosure of Mechanical Fitness Assessment ("MFA") contrary to Section 15(1) of the Vehicle Inspection Regulation ("VIR").

Education regarding all-in pricing was included in the Findings Letter and provided the legislation relating to all-in pricing, Section 11(2)(l) of the Automotive Business Regulation ("ABR").

2. As a result of a number of consumer complaints received by AMVIC, an investigation commenced which resulted in an AMVIC investigator putting forth an application report requesting administrative enforcement action be taken against the Supplier. On Jan. 18, 2022, an administrative review was held with the Director and the Supplier resulting in the Director imposing conditions on the Supplier's business licence. On Jan. 21, 2022, the Supplier accepted and agreed to abide by those conditions for a period of 12 months. The Supplier agreed to abide by the following conditions imposed by the Director:
 1. *As the dealer principal, you will keep the peace and be in full compliance with all laws and regulations including but not limited to the CPA of Alberta and the Criminal Code of Canada.*
 2. *If a consumer complaint is received, the Supplier will respond to an investigator, inspector or consumer services officer's email request for documentation regarding the complaint as per the guidelines in the email request.*
 3. *As the Supplier, you and your employees, agents or persons acting on your behalf will ensure business records are being properly maintained. You will make your business records available as per Section 132(2) of the CPA for an AMVIC industry standards inspection to ensure you are keeping the proper business records and that you are in compliance with the legislation that governs the automotive industry. The AMVIC inspection will take place prior to **September 30, 2022.***

[Legislative citations omitted]

4. *While operating in the automotive industry the Supplier will ensure that their AMVIC business licence does not expire by renewing prior to the expiry date.*
5. *The Supplier will ensure that all Mechanical Fitness Assessments ("MFAs") are completed in full and by a licensed technician as per Section 15 and 16 of the Vehicle Inspection Regulation and given to a consumer **before** entering into a contract to sell a motor vehicle. The Supplier will discontinue making reference to an MFA as an "inspection" in its advertising and documents provided to its consumers and will further ensure its advertising conforms to the advertising regulations as set out in the ABR.*

[Legislative citations omitted]

6. *The Supplier will discontinue the use of an "As Is" Waiver and will ensure that any mechanical failings or deficiencies in motor vehicles that are sold are properly documented and disclosed to the consumer prior to entering into a contract to sell a motor vehicle.*

[Legislative citations omitted]

3. On July 26, 2022, as per the agreed upon conditions, an AMVIC industry standards inspection was completed on the Supplier. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on July 29, 2022. The Findings Letter outlined the following concerns:
 - a) Online advertisements (YouTube, Twitter, Instagram) did not include the AMVIC logo or equivalent wording.
 - b) Two advertisements reviewed did not include the vehicle history information required as per Section 31.1 of the ABR.
 - c) During the inspection, 30 deals were reviewed by the ISO and of those 30 deals, 11 did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR (based on the evidence provided, the Director only finds eight deals did not comply with Section 11(2)(l), explained below in the analysis of this letter).
 - d) The MFA in five used sales deal jackets that were reviewed were signed by the consumer after the bill of sale ("BOS") date indicating that the consumer did not receive the MFA prior to entering into a contract to purchase the vehicle contrary to Section 15(1) of the VIR.
 - e) All vehicle history information does not have a date the consumer signed it. Vehicle history information must be provided in writing to the consumer prior to purchase as per Section 31.1 of the ABR.
 - f) Two BOS did not include the AMVIC salesperson registration number as required by Section 31.2(1) of the ABR.
 - g) All 30 BOS did not include the delivery date of the vehicle as required by Section 31.2(1) of the ABR.
 - h) Service repair invoices did not reference whether or not the business had offered to return all parts removed from the vehicle back to the consumer as required by Section 12(n) of the ABR.
4. The AMVIC industry standards inspection completed in July 2022 was a result of recent administrative enforcement action resulting from a number of consumer complaints received by AMVIC. The results of this inspection show the number of compliance concerns has increased since the first inspection completed in 2015, including continued issues with providing the consumer the MFA prior to entering into a contract to sell a motor vehicle.

5. On Feb. 16, 2023, the proposed Administrative Penalty was served on the Supplier. The proposed Administrative Penalty provided the Supplier an opportunity to make written representations with respect to the matter by March 22, 2023. On March 1, 2023, AMVIC received a cheque via mail in the amount of the proposed Administrative Penalty from the Supplier. No written representations were received.

Applicable 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.

Advertising

Section 11

- (1) Every business operator must ensure that the business operator's advertising indicates in a conspicuous manner
 - (b) in the case of print and television advertising, that the business operator holds an automotive business licence under the Act.
- (2) A business operator must ensure that every advertisement for an automotive business that promotes the use or purchase of goods or services
 - (l) includes in the advertised price for any vehicle the total cost of the vehicle, including, but not limited to, all fees and charges such as the cost of accessories, optional equipment physically attached to the vehicle, transportation charges and any applicable taxes or administration fees, but not including GST or costs and charges associated with financing, and

General codes of conduct

Section 12

Every business operator must comply with section 6 of the Act and in addition must

- (n) offer to return all parts removed from the vehicle in the course of work or repairs to the consumer, and return them unless advised by the consumer that the consumer does not require the parts to be returned, and
- (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

- (a) in any online advertisement for the vehicle,
- (b) on any sales tag affixed to the vehicle, and
- (c) in writing to the consumer before purchase.

Bill of sale

Section 31.2

(1) A business operator engaged in automotive sales must use a bill of sale that includes the following:

- (a) the name and address of the consumer;
- (b) the number of the government-issued identification that the business operator uses to confirm the identity of the consumer;
- (c) the name, business address and licence number of the business operator;
- (d) if a salesperson is acting on behalf of the business operator, the name and registration number of the salesperson;
- (e) the make, model and model year of the vehicle;
- (f) the colour and body type of the vehicle;
- (g) the vehicle identification number of the vehicle;
- (h) the date that the bill of sale is entered into;
- (i) the date that the vehicle is to be delivered to the consumer;
- (j) an itemized list of all applicable fees and charges the consumer is to pay, including, without limitation:
 - (i) charges for transportation of the vehicle;
 - (ii) fees for inspections;
 - (iii) fees for licensing;
 - (iv) charges for warranties;
 - (v) taxes or levies, including GST;
- (k) the timing for payment by the consumer of the fees and charges under clause (j);
- (l) an itemized list of the costs of all extra equipment and options sold to the consumer in connection with the vehicle or installed on the vehicle at the time of sale;
- (m) the total cost of the vehicle, which must include the fees, charges and costs listed under clauses (j) and (l);
- (n) the down payment or deposit paid by the consumer, if any, and the balance remaining to be paid;
- (o) if the consumer is trading in another vehicle to the business operator in connection with the purchase of the vehicle,

(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 the 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

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.

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.

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?

A routine AMVIC industry standards inspection was completed on Sept. 4, 2015. The inspection findings were discussed with the Supplier and the Findings Letter was sent to the business. The 2015 inspection findings found minimal concerns.

In January 2022 an administrative review was held with the Director and the Supplier resulting in an administrative enforcement action. The Director imposed conditions on the Supplier's business licence, and on Jan. 21, 2022 the Supplier accepted and agreed to abide by those conditions for a period of 12 months. Two of the conditions are particularly relevant to the matter currently before the Director. The two relevant conditions to be noted are:

3. *As the Supplier, you and your employees, agents or persons acting on your behalf will ensure business records are being properly maintained. You will make your business records available as per Section 132(2) of the CPA for an AMVIC industry standards inspection to ensure you are keeping the proper business records and that you are in compliance with the legislation that governs the automotive industry. The AMVIC inspection will take place prior to **September 30, 2022.***

5. *The Supplier will ensure that all Mechanical Fitness Assessments ("MFAs") are completed in full and by a licensed technician as per Section 15 and 16 of the Vehicle Inspection Regulation and given to a consumer **before** entering into a contract to sell a motor vehicle. The Supplier will discontinue making reference to an MFA as an "inspection" in its advertising and documents provided to its consumers and will further ensure its advertising conforms to the advertising regulations as set out in the ABR.*

As a result of the conditions imposed on the Supplier's business licence, an AMVIC industry standards inspection was completed on the Supplier on July 26, 2022. The inspection findings were discussed with the Supplier and the Findings Letter was sent to the business. The 2022 inspection found legislative breaches consistent with the MFA breaches that had been identified in the previous inspection, as well as the consumer complaints resulting in condition five that was imposed on the Supplier's business licence, outlined above. It is to be noted by the Director that the Application Report submitted by industry standards indicated the Supplier entered into an Undertaking in January 2022, this is incorrect. The Director imposed conditions on the Supplier's business licence in January 2022, the signed conditional letter is included in the Application Report (see Schedule "A"; Exhibit 3).

Details of the breaches that are currently under consideration are identified in the Findings Letter dated July 29, 2022. Based on the facts outlined by the ISO and the supporting documents, I will be considering the alleged breaches from the 2022 inspection that have supporting evidence provided in the Application Report. In the opinion of the Director, the number of legislative breaches for the Supplier has increased rather than decreased, despite the education and enforcement provided to the Supplier.

A. MFA Concerns (15(1) VIR and 12(o) ABR)

During each inspection it was identified that the Supplier was not complying with Section 15(1) of the VIR due to issues with the completion and disclosure of the MFA. The 2015 Findings Letter completed as a result of the findings of the AMVIC industry standards inspection indicated that two of eight used vehicle deal jackets did not contain an MFA and one did not have a signature, indicating it was not provided to the consumer.

In 2022, an administrative review was held with the Supplier as a result of a number of consumer complaints. As a result of the findings during the course of the investigations and the administrative review, the Supplier continued to have issues with the completion of and/or disclosure of the MFA to consumers. When imposing the conditions on the Supplier's business licence, the Director added emphasis to the word "before" when writing about providing the MFA to the consumer.

During the 2022 AMVIC industry standards inspection, five used deal jackets reviewed had an MFA that was signed after the Supplier entered into a contract to sell a motor vehicle. This business practice specifically causes concern for the Director. The Supplier is required to ensure the MFA is provided to the consumer prior to entering into the transaction. An MFA is a key document given to a consumer before entering into a contract to purchase a vehicle. Failing to provide an MFA prior to entering into a transaction leverages the Supplier's knowledge and does not foster a level playing field between the consumer and the Supplier. There is an onus on the Supplier to relay correct and accurate information to the consumer to allow the consumer to make an informed purchasing decision.

The Supplier has been provided with education regarding this non-compliant business practice in 2015 and during the administrative review held in 2022, yet only six months after signing and agreeing to abide by the conditions imposed by the Director, the Supplier was continuing to engage in this non-compliant business practice.

Section 12(o) of the ABR requires automotive businesses to comply with all legislation regarding the sale of vehicles, therefore by breaching Section 15(1) of the VIR, the Supplier has further breached Section 12(o) of the ABR.

B. Selling Above Advertised Price (11(2)(l) ABR)

During the July 26, 2022 2022 AMVIC industry standards inspection it was identified that the Supplier was not complying with Section 11(2)(l) of the ABR by selling vehicles over the advertised price. According to the Findings Letter provided to the Supplier in 2015, the ISO provided the Supplier education regarding all-in pricing legislation.

During the 2022 inspection eight vehicles were sold above the advertised price. In these eight consumer transactions the Supplier derived an economic benefit of \$8,136 at the cost of the consumers.

- Stock No. 22EL8574 was sold over the advertised price by \$6,071.25;
- Stock No. 22SF1406A was sold over the advertised price by \$305.25;
- Stock No. 22KN4375A was sold over the advertised price by \$6.25;
- Stock No. 22TU6136A was sold over the advertised price by \$6.25;
- Stock No. 22SC9426A was sold over the advertised price by \$1,105.25;
- Stock No. 22TU3587A was sold over the advertised price by \$6.25;
- Stock No. P12154 was sold over the advertised price by \$6.25; and
- Stock No. 22SF2708 was sold over the advertised price by \$629.25.

The Application Report indicates three additional transactions reviewed by the ISO, Stock No. 22EL7090A, Stock No. 22KN6207A and Stock No. P7218, were sold over the advertised price. Based on the evidence provided regarding Stock No. 22EL7090A (see Schedule "A"; Exhibits 12 and 12.1), the sale price of the vehicle was \$22,288 plus the \$6.25 AMVIC levy, however the advertised price of the vehicle was \$23,288. Therefore the Supplier sold Stock No. 22EL7090A below the advertised price. Based on the evidence provided regarding Stock No. 22KN6207A (see Schedule "A"; Exhibit 17), no advertisement was provided and therefore the Director cannot determine if this vehicle was sold over the advertised price. Based on the evidence provided regarding Stock No. P7218 (see Schedule "A"; Exhibits 14 and 14.1), the sale price of the vehicle was \$13,987 plus the \$6.25 AMVIC levy. The advertised price of the vehicle was \$13,987, however based on a deal summary, the consumer received \$1,000 cashback therefore, Stock No. P7218 was not sold over the advertised price.

In three of the deal jackets reviewed by the ISO, the Supplier provided the consumer cashback however did not include this on their BOS. Therefore the BOS is not an accurate representation of the transaction, as discussed in detail below. The application report indicates Stock No. 22TU6136A, Stock No. 22SF2708 and Stock No. P7218 included cashback to the consumer that was not indicated on the BOS. Based on the Application Report and evidence provided regarding Stock No. 22TU6136A (see Schedule "A"; Exhibits 10 and 10.1), the Supplier inflated the purchase price of the vehicle and provided the same amount to the consumer as cashback. While the evidence provided does not include a deal summary to demonstrate this is accurate, the Application Report states the consumer was provided cashback in the amount of \$4,200. Based on the evidence provided regarding Stock No. 22SF2708, the Supplier inflated the purchase price of the vehicle by \$10,000 and provided the same to the consumer as cashback. The specifics regarding Stock No. P7218 were discussed in the above paragraph. The practice

of inflating the purchase price to include cashback to the consumer is in breach of the legislation as discussed below.

It is to be noted one of the above listed vehicle sales, included a charge of \$200 for an MFA above the advertised price (see Schedule "A"; Exhibit 11). While there is no legislation that prohibits the Supplier from charging the consumer for the MFA, in the opinion of the Director, this charge must be included in the advertised price, as it is a requirement to sell the vehicle. The Supplier cannot sell a used vehicle without providing the consumer an MFA **prior** to entering into the transaction and therefore if the Supplier is charging consumers for an MFA, it cannot be added to the advertised price.

According to the evidence provided to the Director, the ISO reviewed 30 deal jackets during the 2022 inspection, eight of which the Supplier sold over the advertised price contrary to Section 11(2)(l) of the ABR. In the year 2021 the Supplier sold 1,381 vehicles. Based on the small sample size of 30 deal jackets reviewed by the ISO and before me as evidence, the Supplier has derived significant economic benefit by charging consumers over the advertised price. Eight of 30, or approximately 27 per cent of the deal jackets reviewed, were sold over the advertised price; 27 per cent of the 1,381 vehicles sold by the Supplier is approximately 373 and on average the Supplier overcharged consumers \$1,017 per transaction. **This would equate to deriving an economic benefit of over \$412,911 in one year alone.**

The Director finds that on a balance of probabilities, the Supplier has breached Section 11(2)(l) of the ABR.

C. Bill of Sale Issues (31.2 ABR)

On Oct. 31, 2018, new 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 new 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 ISO noted in the 2022 Findings Letter the following legislative breaches regarding the BOS requirements as per Section 31.2(1).

- All 30 BOS reviewed were missing the actual delivery date; and
- Two BOS were missing the AMVIC registration number of the salesperson;

The 2022 Findings Letter indicates additional concerns with the completion of the BOS, however the additional concerns listed by the ISO are not specific breaches of Section 31.2(1) but rather concerns with missing information that in order to complete the BOS form that the Supplier uses was missing, such as missing the mileage of a trade-in vehicle and missing the salesperson's signature.

The Application Report does not include all 30 BOS reviewed by the ISO evincing that all BOS reviewed were missing the delivery date, however the Director reviewed all the BOS provided as supporting documentation to the Application Report and all BOS included are missing the actual delivery date as required under Section 31.2(1) of the ABR.

The two BOS that are missing the AMVIC registration number of the salesperson included the name of the salesperson but did not include the AMVIC registration number as required by 31.2(1) of the ABR.

Based on the evidence before me, on a balance of probabilities, I find the Supplier has breached Section 31.2 of the ABR.

D. Disclosure of Vehicle History (31.1 ABR)

As part of the legislative changes put into effect on Oct. 31, 2018, as mentioned above, requirements regarding the disclosure of vehicle history were also included. When reading Sections 31.1, 31.2 and 31.3 it is clear the spirit and intent of the legislation was to ensure consumers were not only being provided the vehicle history information, but that the information being provided was clearly documented and included in advertisements, on any sales tag affixed to the vehicle and provided in writing to the consumer before purchase.

During the 2022 industry standards inspection, the ISO reviewed some of the Supplier's advertisements and compared them to corresponding deal jackets. The 2022 Findings Letter and the Application Report indicate two advertisements failed to disclose the vehicle history information as required by Section 31.1 of the ABR. The advertisements were included in the supporting documents provided to the Director (see Schedule "A") however, no evidence was provided to demonstrate either vehicle had relevant vehicle history information that must be disclosed in accordance with Section 31.1 of the ABR.

According to the 2022 Findings Letter, it was also found that in all used sales deal jackets reviewed by the ISO, the vehicle history information did not indicate the date the consumer signed the vehicle history information. The legislation in 31.1 states that the vehicle history information must be given to the consumer in writing prior to the purchase of the vehicle. Without the date the consumer signed the vehicle history information clearly indicated, it is impossible for the Director to determine whether or not the Supplier provided the required information prior to completing the sale. In accordance with Section 4 of the CPA, the Director must interpret the documents against the Supplier.

Therefore, on a balance of probabilities, the Director is unable to determine whether the Supplier has contravened Section 31.1 of the ABR.

E. Maintain Records (132 CPA and 9 ABR)

The 2022 Findings Letter revealed to the Director that the Supplier has not been creating and maintaining accurate business records as required by Section 132 of the CPA and Section 9 of the ABR.

It is imperative that the Supplier creates and maintains accurate records. Creating and maintaining accurate records is the best way for the Supplier to ensure the consumer is fully aware of all the details and required information during their transaction and is also the best way for the Supplier to demonstrate they are complying with the legislative requirements.

The main issue demonstrated by the Application Report and supporting evidence is the business is not including cashback to the consumer on the BOS. The information included on the BOS should portray an accurate description of the actual details of the transaction. Hiding cashback by inflating the purchase price is not an accurate description of the details of the transaction. Another issue noted in reviewing the Supplier's records include failure to complete the BOS in full with all required information as required by Section 31.2 of the ABR. The legislation is very clear, that being negligent in keeping records not only is an offence under the CPA but in addition, if documents are ambiguous the Director must find against the Supplier in accordance with Section 4 of the CPA. The Supplier is vicariously liable for all records created and maintained by an employee or agent acting on behalf of the Supplier in the course of completing the Supplier's delegated business activities.

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.

Based on the totality of all of the issues and concerns with the Supplier's paperwork on a balance of probabilities, the Director does find that the Supplier is in contravention of Section 132 of the CPA and Section 9 of the ABR.

F. Other Considerations

The continued non-compliance regarding failing to provide consumers with an MFA prior to entering into a transaction to sell a used motor vehicle is an aggravating factor and causes the Director concern. This business practice leverages the Supplier's knowledge and does not foster a level playing field between the consumer and the Supplier, and removes the opportunity for the consumer to make an informed purchasing decision. Furthermore, the Supplier continued this non-compliant business practice less than six months after agreeing to abide by the conditions imposed on their business licence, which included a condition that the Supplier would ensure they are providing the MFA to the consumer before entering into a contract to sell a motor vehicle. This blatant disregard for the legislative requirements and fostering a level playing field with consumers causes concern to the Director.

There exists an onus on the Supplier to do their due diligence and ensure they are complying with the legislation that governs the regulated industry they have chosen to be a member of. 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 a 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.”

The aggravating factors in this matter include the resulting financial impact adversely affecting the consumer due to paying over the advertised price (on eight out of 30 files reviewed Supplier derived economic benefit of \$8,136), failure to provide consumers with an MFA prior to entering into a contract and the continued non-compliance with the rather straightforward requirements of the legislation despite a recent administrative enforcement action and education provided to the Supplier.

This Administrative Penalty is taking into account the number and seriousness of the contraventions of the legislation found during the 2022 inspection and the aggravating factors listed above.

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.

Action

In accordance with Section 158.1(a) of the CPA and based on the above facts, I am requiring that Autocanada Sherwood Park Vehicles GP Inc. operating as Sherwood Park Hyundai pay an Administrative Penalty. This is based on my opinion that Autocanada Sherwood Park Vehicles GP Inc. operating as Sherwood Park Hyundai contravened Section 132 of the CPA, Sections 9, 11(2)(l), 12(o), and 31.2 of the ABR, and Section 15(1) of the VIR.

Taking into consideration all the evidence currently before the Director, the amount of the Administrative Penalty is **\$10,000**.

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 financial harm on the persons adversely affected by the contraventions or failure to comply;
2. The seriousness of the contraventions or failure to comply;
3. The previous history of enforcement and non-compliance;
4. The economic benefit derived from the contraventions or failure to comply;
5. The degree of willfulness or negligence in the contravention or failure to comply;
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 \$10,000.

We confirm receipt of the payment of the Administrative Penalty.

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)

/kl
Encl.

cc: Evelyn L-J., Manager of Industry Standards, AMVIC