

March 29, 2023

Administrative Review – 23-01-003  
Served Personally

### **Administrative Penalty**

NO BULL RV SALES INC.  
200 FIRST AVENUE E  
SPRUCE GROVE, AB  
T7X 2K6

**Attention: Richard Showers**

Dear Richard Showers:

**Re: No Bull RV Sales Inc. – Provincial Automotive Business Licence No. B2036265**

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 written representations that were delivered in person to AMVIC on Feb. 7, 2023 in advance of the administrative review attached as Schedule "B" and the information exchanged during an administrative review held via teleconference call on Feb. 14, 2023. The Supplier provided written representations via email dated March 23, 2023 (attached as Schedule "D"), in response to the Proposed Administrative Penalty, which I have also taken into consideration.

### ***Licencee Status***

No Bull RV Sales Inc. (the "Supplier") holds an AMVIC business licence and carries on the business activities of wholesale, agent or broker, new and used sales, consignment and garage in the Province of Alberta.

### ***Administrative Review***

An administrative review was held on Feb. 14, 2023, at approximately 9 a.m., via teleconference call. Participating in the administrative review were Richard Showers, owner and director for the Supplier; [REDACTED]

██████ AMVIC investigator; ██████ AMVIC manager of investigations north; and G. Gervais, Director of Fair Trading (as delegated).

### **History**

The Supplier has been operating since approximately 2014. The Supplier employs 15 salespeople and has 27 employees. The Supplier advised during the administrative review that they have two business locations and that their yearly volume of sales of recreational vehicles is approximately 200 units or eight million dollars in sales.

As a result of an administrative review held on Sept. 22, 2021, the Supplier voluntarily agreed to enter into an Undertaking on **Oct. 13, 2021**. As part of the Undertaking, the Supplier undertook to change their business practices to comply with the applicable legislation. The Undertaking specifically stated:

*"The Supplier acknowledges and admits that it failed to comply with the provisions of the ABR, and undertakes to the Director that the Supplier will make every effort to ensure that it does not engage in acts or practices similar to those described above.*

*The Supplier will undertake to utilize a consignment agreement that meets the legislative requirements and will properly complete the consignment agreement as per Section 33 of the ABR.*

*The Supplier will undertake to pay out the proceeds of a consignment sale as per the legislative requirements as per Section 33.1(1) of the ABR."*

### **Preliminary Matters for Case File 22-06-256**

In advance of the scheduled administrative review, on Feb. 7, 2023, Mr. Showers personally attended the AMVIC office and delivered written representations and supporting material (see Schedule "B").

At the start of the administrative review, the Director addressed some preliminary matters. The Director identified there was some confusion in the application report disclosure material with respect to who made the initial complaint to AMVIC in regards to this case file. The Application Report (see Schedule "A") does not contain the original AMVIC complaint, however does contain a "can say" dated Oct. 21, 2022 from the consumer ("MG") who entered into the consignment agreement with the Supplier as listed in the AMVIC investigation Exhibit List (Exhibit 6).

Initially, it was not clear to the Director who made the consumer complaint to AMVIC, however based on Mr. Showers' written representations, he states the complaint to AMVIC was made by a third party who he then names by a first name who is MG's wife, ("LG").

The manager of investigation south confirmed the complaint was in fact made by LG and a letter of consent was obtained and received giving her authority to make the complaint on behalf of MG. The original complaint and letter of consent was not included in Schedule "A" and was an oversight on the part of AMVIC investigations.



Mr. Showers submitted a lengthy written response to provide clarity and context to the application report disclosure that was served to him on Jan. 25, 2023 as he contends that is when he first became aware of MG's "can say" statement. Mr. Showers comments that LG's involvement as a third party clouded the events as they occurred.

Based on the materials reviewed, LG as a third party had involvement and communication with the Supplier not limited to text messages and email communication.

AMVIC has the responsibility to investigate complaints as they relate to the automotive industry. AMVIC investigates complaints from consumers, from industry members, anonymous complaints and complaints received from Crime Stopper tips. It need not matter whether LG, a third party, made the initial complaint to AMVIC, she was involved in the consumer transaction assisting her spouse MG and communicating with the Supplier, therefore the Director finds that AMVIC did have jurisdiction to investigate this complaint regardless who submitted the original complaint to AMVIC.

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

#### **Case File 22-06-256**

1. In June of 2022, AMVIC received a consumer complaint alleging that a number of consignment agreement conditions with the Supplier were not adhered to by the Supplier.
2. MG entered into a consignment agreement on April 16, 2022 for the Supplier to sell his 2008 Arctic Fox recreational vehicle (the "Arctic Fox") on his behalf between April 16, 2022 and Sept. 30, 2022. It is to be noted, that the AMVIC investigator's chronology states that consumers, MG and LG entered into a consignment agreement which is not accurate as per the consignment sales agreement (Exhibit 3) that only lists MG.
3. MG agreed to a minimum of \$20,000 for the Arctic Fox, less the outstanding lien still owing on the trailer, a \$964 listing fee and \$650 to repair the roof plus taxes. MG was aware that the Arctic Fox was possibly in need of new tires, however was expecting an estimate for any repairs totaling over \$500, as stated in his consignment agreement contract.
4. MG alleges that he did not hear back from the Supplier until April 29, 2022 when he received an email from one of the Supplier's sales associate, advising that the Arctic Fox was sold. MG was surprised as he had not received any estimate for tire repairs or for any other repairs for that matter.
5. MG contacted his lender and provided a copy of the lien payout amount to the Supplier as requested by the Supplier.
6. On May 3, 2022, MG spoke with the Supplier and was advised that after the lien payout and repairs completed on the Arctic Fox, his consignor's share after disbursements would be \$2,342.86 over and above the \$964 listing fee and \$650 roof repair plus taxes that MG had paid in advance.

7. On May 3, 2022, MG received a copy of the consignment statement and when he reviewed it, he discovered that \$2,367.42 in repairs were completed without his knowledge. MG alleges the Supplier did not adhere to the consignment agreement conditions in that he did not receive an estimate for any repairs over \$500 and these repairs were completed without his knowledge. MG further alleges that some of the repairs such as the replacement of a 50 amp power cord for \$499 was unnecessary.
8. In communication with the Supplier regarding his concerns, MG discovered that the Arctic Fox was allegedly sold on April 22, 2022 yet he was not informed it was sold until April 29, 2022.
9. In August 2022, the purchasers of the Arctic Fox reached out to MG after they found a personal item belonging to MG and wanted to make arrangements to return it to him. In conversation with them, MG learned that the Arctic Fox was sold to them for more than the minimum amount of \$20,000 that MG had agreed to with the Supplier.
10. The AMVIC investigator obtained a copy of the vehicle purchase agreement for the Arctic Fox from the Supplier. The vehicle purchase agreement shows the Arctic Fox was sold on April 23, 2022 for a purchase price of \$29,091.75, not including added fees and the goods and services tax ("GST"). This is \$9,091.75 over what was paid out to MG. The consignor's share should have been **at least \$11,434.61** (\$2,342.86 that MG received plus \$9,091.75 that MG did not receive) and additional repair costs in the amount of \$2,367.42 were charged to MG that were allegedly completed without an estimate or his knowledge.
11. During the intake process after MG filed his AMVIC consumer complaint, alternative dispute resolution ("ADR") was attempted. The Supplier offered \$250 as a settlement offer which was declined by MG. There are no supporting documents in Schedule "A" to confirm this, however documents in Mr. Showers' written representations (see Schedule "B") corroborate this occurred.

***Supplier's Written Representations Feb. 7, 2023 in relation to Case File 22-06-256***

- Consumer complaint was made by a third party LG.
- The Supplier began their inspection on the Arctic Fox on April 25, 2022 and had to sub contract the tire repairs on April 26, 2022.
- The Supplier contends it did have communication with MG prior to April 29, 2022 however acknowledged the salesperson did not clearly communicate with MG that the deal for the Arctic Fox was written and deposited on April 22, 2022, signed for on April 23, 2023, scheduled for a pre-delivery inspection ("PDI") on April 25, 2022 and booked for final delivery on April 29, 2022.
- On May 6, 2022, the salesperson involved in MG's consignment agreement quit working for the Supplier without notice.
- In relation to the repairs that were completed on the Arctic Fox, the Supplier contends that in advance, MG was made aware he was responsible for any repairs required to ensure the major systems on the Arctic Fox were properly operating and the Supplier's shop rate is \$149 an hour.
- That MG was contacted by the Supplier on April 29, 2022 informing him that the Supplier had a solid deal moving forward and the buyer had arrived to take delivery.
- The Supplier asserts that MG was asked and declined an estimate at that time on April 29, 2022 and informed the Supplier words to the effect of *"get the deal done"*.



- With respect to completing repairs that were not necessary, the Supplier states that their salesperson notified MG via email correspondence dated March 24, 2022 and that the Supplier required the power cord and current propane tanks. (Note: The Supplier provided some blank email templates however this does not support this statement).
- When the AMVIC investigator requested the Supplier's BOS for the Arctic Fox to the new owners, no other details or documents were requested from the Supplier's sales jacket such as the trade in amount details from the new owners or subsequent trade in of their used recreational vehicle which they sold at auction for a loss of \$305.
- The Supplier marks up trailers beyond the consignor's asking price so the Supplier can accept overpriced trade-ins in the interest of attracting buyers and selling the consignor's trailer in a timely manner which is part of their consignment training script.
- The Supplier believes the original consumer complaint was sent to the junk mail of the manager for the Supplier, the third party complainant was seeking \$1,000 to remedy the complaint and an offer of \$250 plus GST was offered and refused by the third party complainant. The Supplier provided details and documentation of his interaction with the AMVIC consumer services officer ("CSO").
- The third party complainant was problematic to deal with and the Supplier involved their legal counsel to address her actions and involvement.

#### Case File 22-06-253

12. In June of 2022, AMVIC received another consumer complaint alleging that a number of consignment agreement conditions with the Supplier were not adhered to by the Supplier.
13. The consumer ("JD") entered into a consignment agreement in April of 2022 for the Supplier to sell her 2008 Laredo 30BH (the "Laredo") between April 27, 2022 and Sept. 30, 2022. (Note: the Director is unable to determine the date the consignment agreement was entered into (Exhibit 8) as when it was copied it is missing the top half of the form).
14. JD agreed to a minimum amount of \$10,000 for the Laredo less the outstanding lien still owing on the trailer, and paid a \$964 listing fee and \$800 to repair the roof plus taxes.
15. When JD received her consignment statement from the Supplier dated June 16, 2022 she alleges there were repairs charged to her totaling \$715.05 inclusive of the GST that she had not agreed to and that she never was provided an estimate for.
16. JD was paid a consignor's share of \$1,218 from the Supplier (\$10,000 minus the lien payout of \$8,066.95, minus the repairs of \$681 and the GST of \$34.05).
17. JD found the Laredo advertised on the Supplier's website and it was being advertised for more than what the Supplier had appraised it at. A bill of sale ("BOS") obtained through the investigation shows that on June 10, 2022, the Supplier sold the Laredo to another consumer for a purchase price of \$18,091.75. This is \$8,091.75 over the minimum amount of \$10,000 as per the consignment agreement JD entered into with the Supplier. The consignor's share disbursed to JD should have been **at least \$9,309.75** (\$1,218 that JD received plus \$8,091.75 that JD did not receive) and additional repairs costs charged to JD that were allegedly completed without an estimate or her knowledge.

18. In September of 2022, JD and the Supplier came to a mutual resolution and the Supplier issued JD a cheque in the amount of \$6,000 on top of the \$1,218 for a total of \$7,218 which is **still short \$2,091.75** of the minimum consignor's share of \$9,309.75 plus the repair costs of \$715.05 that were allegedly charged without her knowledge.

***Supplier's Written Representations Feb. 7, 2023 in relation to Case File 22-06-253***

19. Mr. Showers written representations in relation to this case file did not dispute or address any of the details disclosed to him but rather listed several general or legislative questions he had which were discussed and addressed in-depth during the administrative review.
20. The last page of Mr. Showers' written representations acknowledges the fact that most of the issues with the Supplier's clients stem from miscommunication between their salespeople and the consumers, and he provided a summary of some of the changes the Supplier has implemented to improve upon their business practices:
- The Supplier has adopted scripting to be used at all critical interaction points with consumers.
  - The Supplier has reworked their consignment agreement each year (2020, 2021, 2022 and 2023) to add greater clarity, in 2022 drafted a letter of understanding and in December of 2022 had their legal counsel draft a consignment sales agreement strictly based on the ABR which is under revision for 2023, and provided blank copies as supporting documents.
  - The Supplier has changed their hiring practices effective June 2020 adopting new hiring practices, screening and testing, and provided a copy of an assessment entitled "Job Fit Report & Interview Guide" that was completed on one specific salesperson on Aug. 20, 2021.
  - In November 2022, the Supplier removed one specific salesperson from handling consignment agreements and this individual no longer interacts with retail consumers.
  - The Supplier asserts they have participated in three previous AMVIC inspections and provided copies of the AMVIC inspection Findings Letters dated April 30, 2019, March 16, 2021 and March 7, 2022 that he received and contends that the Supplier has addressed the issues that were brought forward.
21. During the administrative review, the Director asked the Supplier why in both consignment sale transactions the consignor's share of the purchase price, being the purchase price less the amount payable to the lienholder and the Supplier's fees, were not paid out to MG and JD and they were only paid out the minimum amounts. The Supplier advised that is how he understood the consignment agreements to read.
22. During the administrative review, the Director asked the Supplier whether MG or JD were provided with a copy of the bill of sale when their recreational vehicles were sold as per legislative requirements in Section 33(3)(c) of the ABR and the Supplier advised they were not.
23. During the administrative review, the Director identified issues with the Supplier's records and the fact that some information is ambiguous and would need to be interpreted against the Supplier as per Section 4 of the CPA. The Supplier acknowledged that some of the details in their paperwork is wrong after the Director pointed out some specific instances.



24. The Supplier is not including the word "minimum" amount on their consignment sales agreement or in the completion of the form therefore it is ambiguous and does not conform to the legislation as per Section 33(2)(g) of the ABR.
25. Given the fact, the Supplier has already sought advice from legal counsel regarding their consignment sales agreement, during the administrative review the Director recommended to the Supplier to have their legal counsel review their scripted messaging to consumers, other internal related documents and/or their training program to ensure their wording conforms to the legislative requirements.
26. Even though notice was not given in advance regarding several other relevant sections of the legislation, during the administrative review the Director took the opportunity to discuss these relevant sections in detail with the Supplier and included them for reference in the proposed Administrative Penalty for the Supplier's benefit which was appreciated by the Supplier. A number of these relevant sections have already been pointed out and provided to the Supplier as per the three findings letters that Mr. Showers included in Schedule "B".
27. The AMVIC investigator indicated that she exercised discretion when asked by the Director why breaching an Undertaking was not also pursued as an alleged breach of legislation. The AMVIC investigator further remarked that the Supplier was cooperative in their interactions.
28. The Supplier had no representations during the administrative review in regards to a proposed Administrative Penalty.
29. The Supplier provided written representations, dated March 23, 2023, in response to the Proposed Administrative Penalty (see Schedule "D"). In their March 23, 2023 written representations, the Supplier requested clarity from the Director with respect to the legislation as well as asking for the Administrative Penalty to be reduced to \$7,500.

## **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.

### **Estimate**

#### **Section 31.6**

- (1) A business operator engaged in automotive repairs must, on request from the consumer, provide an estimate for the installation of parts or equipment in or on a vehicle or the repair or service of a vehicle.
- (2) An estimate under subsection (1) must be in writing and, subject to subsection (3), must contain the following information:
  - (a) a description of the proposed work;
  - (b) the estimated total cost of the proposed work, including labour and parts or equipment.
- (3) If the information in subsection (2) cannot be provided because diagnostic work is required, the estimate must state the estimated maximum cost of the diagnostic work.

### **Authorization of work**

#### **Section 31.7**

- (1) A business operator engaged in automotive repairs must not install parts or equipment in or on a vehicle or repair or service a vehicle unless the consumer has provided authorization.
- (2) An authorization under subsection (1) must be provided in writing, subject to section 31.8.
- (3) An authorization must contain the following information:
  - (a) the name of the consumer, or the consumer's agent, giving authorization;
  - (b) the date of authorization;
  - (c) a description of the work that the consumer, or the consumer's agent, authorizes to be carried out;
  - (d) the estimated total cost of the work described in clause (c) and confirmation that the consumer, or the consumer's agent, authorizes that cost.

**Authorization not in writing****Section 31.8**

An authorization of work may be in a form other than in writing if the business operator records the following information in writing:

- (a) the information required under section 31.7(3);
- (b) the time at which authorization is given;
- (c) the method by which authorization is given.

**Consignment Sales****Requirements****Section 33**

**(1)** A consignment agreement must be in writing and be signed by the business operator and the consignor.

**(2)** A consignment agreement must

- (a) set out the name, business address and business phone number of the business operator;
- (b) set out the name, address and phone number of the consignor;
- (c) set out a complete description of the vehicle being consigned, including
  - (i) its vehicle identification number,
  - (ii) the year, make, model number, colour, number of doors and options of the vehicle,
  - (iii) the odometer reading of the vehicle, and
  - (iv) the history of the vehicle within the consignor's knowledge, setting out any special uses of the vehicle, such as police or taxi use, whether it was recertified and any other information that a reasonable buyer would want to be aware of;
- (d) describe the consignor's ownership interest in the vehicle and, if the consignor has knowledge that the vehicle is subject to one or more liens, list those liens;
- (e) set out when the agreement ends and what happens to the vehicle if it has not been sold when the agreement ends;
- (f) set out the disbursements, fees and commissions that the business operator may charge the consignor for services provided by the operator;
- (g) set out the minimum amount that the consignor will receive from the business operator for the sale of the vehicle and whether the consignor will accept another vehicle or other personal property as part of the minimum amount;**
- (h) set out who is responsible for insuring the vehicle during the term of the agreement;
- (i) set out any repairs or other work on the vehicle that the consignor authorizes the business operator to perform and who is responsible for paying for the repairs or other work;**
- (j) contain the terms referred to in subsection (3).

**(3)** The following terms are deemed to be contained in every consignment agreement:

- (a) the business operator agrees not to use the vehicle for the operator's personal use without the written consent of the consignor;



- (b) the business operator agrees to be the trustee of any money, vehicles or other personal property that the operator receives as consideration for the sale of the vehicle being consigned less an amount for the operator's disbursements, fees and commission;
  - (c) **the business operator agrees to provide to the consignor, within 14 days of the date of sale of the vehicle, a copy of the bill of sale that sets out the purchase price for which the vehicle was sold.**
- (4) A business operator who enters into a consignment agreement must give a copy of the agreement to the consignor.
- (5) The provisions in a consignment agreement that deal with the matters referred to in subsection (2)(a) to (i) may be amended with the consent of the parties to the agreement.

#### **Paying out proceeds**

##### **Section 33.1**

- (1) A business operator who enters into a consignment agreement to sell a consignor's vehicle must, within 14 days of the date that the operator sells the vehicle,
- (a) if the business operator has knowledge that the vehicle is subject to a lien,
    - (i) issue a cheque for the amount owing under the lien payable to the lienholder and take reasonable steps to ensure that the lienholder receives the amount owing, and
    - (ii) **provide to the consignor a cheque payable to the consignor for the consignor's share of the purchase price, being the purchase price less the amount payable to the lienholder and the business operator's disbursements, fees and commissions, and a statement of account that meets the requirements of subsection (2),**
  - and
  - (b) in any other case, provide to the consignor a cheque payable to the consignor for the consignor's share of the purchase price, being the purchase price less the business operator's disbursements, fees and commissions, and a statement of account that meets the requirements of subsection (2).
- (2) The statement of account must set out
- (a) the amounts required to pay out any outstanding liens on the vehicle,
  - (b) a description of any vehicle or other personal property received as consideration for the sale of the consignor's vehicle and the value assigned to the vehicle or other property, and
  - (c) the amount payable to the consignor.

#### **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 and ABR?**

The material which formed the Application Report was the result of two consumer complaints received by AMVIC alleging that a number of consignment agreement conditions with the Supplier were not adhered to by the Supplier (case file no. 22-06-253 and 22-06-256). The administrative review identified other overarching concerns, issues and breaches of the legislation pertaining to deficiencies with respect to the Supplier's BOS, consignment sale agreement, failing to maintain accurate business records and the Supplier breaching a voluntarily agreed upon Undertaking.

#### **A. Consignment Sale Requirements (ABR Sections 33(2)(g), 33(2)(i) and 33(3)(c))**

There are stringent requirements in place to be licensed for the business activity of consignment sales. Effective Sept. 1, 2018, businesses licensed for consignment are required to provide AMVIC with \$300,000 in security. The security can be in the form of cash, irrevocable standby letter of credit or surety bond. Licensed businesses that cannot provide the required security will not meet the requirements for consignment sales. These businesses will not be permitted to conduct consignment sales in Alberta.

The consignment sales agreement for the Supplier does not set out the minimum amount that the consignor will receive from the business operator for the sale and is therefore not compliant with Section 33(2)(g) of the Automotive Business Regulation ("ABR"). The Supplier's consignment sales agreement in clause (n) states:

*"The amount acceptable to the Consignor/Owner(s) is \$20,000"*

Section 33(2)(i) of the ABR sets out that a consignment agreement must set out any repairs or other work on the vehicle that the consignor authorizes the business operator to perform and who is responsible for paying for the repairs or other work. The Supplier's consignment sales agreement in clause (l) states:

*"he/she agrees to allow No Bull RV Sales to deduct from the final sales proceeds. **UP TO \$500 of repairs without estimate**, any GST and any agreed fee (not prepaid) including Storage, Gas, Reconditioning, Inspection (Mechanical \_\_\_\_\_ Safety \_\_\_\_\_) Non-refundable listing fee (if vehicle is not sold)"*

The Supplier's consignment sales agreement also includes a clause (m) which authorizes the consignee/business to make repairs to ensure the major systems are working. In the opinion of the Director this is conflicting with clause (l) as it makes no mention regarding a provision to provide an estimate for the repairs that were completed that cost over \$500. Section 31.6(1), Section 31.7(1) and Section 31.8(8) of the ABR set out the requirements for estimate, authorization of work and authorization not in writing, respectively. These three sections of legislation relate to a business operator engaged in automotive repairs and this legislation applies to vehicles however does not mention recreational vehicles specifically. The Supplier is licensed for the business activity of garage and completes repairs, and are involved in repairing motorhomes.

Notwithstanding in both case files, the Supplier completed repairs totaling \$2,367.42 in relation to the trailer of MG and \$715.05 in relation to the trailer of JD without written or verbal authorization from either consumer and which exceeded \$500.

In relation to the repairs that were completed on the Arctic Fox, the Supplier contends that MG was made aware in advance that he was responsible for any repairs required to ensure the major systems on the Arctic Fox were properly operating and the Supplier's shop rate is \$149 an hour. The Supplier indicated that MG was contacted by the Supplier on April 29, 2022 informing him that the Supplier had a solid deal moving forward and the buyer had arrived to take delivery and that MG was asked and declined an estimate at that time on April 29, 2022 and informed the Supplier words to the effect of "get the deal done".

With respect to completing repairs that were not necessary, the Supplier states that their salesperson notified MG via email correspondence dated March 24, 2022 and that the Supplier required the power cord and current propane tanks. The Supplier provided some blank email templates however did not provide any evidence to support this claim.

The Arctic Fox was sold and delivered on April 23, 2022 as per the BOS (Exhibit 7). The paperwork provided by Mr. Showers supports repairs and work subcontracted out were completed after April 23, 2022. The Supplier's paperwork is ambiguous and therefore must be interpreted against the Supplier as per Section 4 of the CPA. During the administrative review, the Supplier acknowledged there were errors in their paperwork.

During the administrative review, the Director asked the Supplier whether MG or JD were provided with a copy of the bill of sale when their recreational vehicles were sold as per legislative requirements in Section 33(3)(c) of the ABR and the Supplier advised they were not.



On a balance of probabilities, the Director finds that the Supplier failed to properly complete the consignment agreement, obtain proper authorization for repair work, and provide a copy of the BOS to either consignees as required by Sections 33(2)(g), 33(2)(i) and 33(3)(c) of the ABR.

**B. Paying out Proceeds (ABR Section 33.1(1)(a)(ii))**

The Supplier derived an economic benefit of a **minimum of \$9,091.75** over and above what they paid out to MG in the first consumer complaint, not limited to the repair costs of \$2,367.42 that were charged without JD's knowledge and an estimate.

Even though the Supplier reached a mutual resolution with JD in the second consumer complaint and issued them a \$6,000 cheque, the Supplier still failed to pay out the minimum consignor's share of \$9,309.75 and profited an amount of **\$2,091.75** which also should have been paid out to JD, plus the repair costs of \$715.05 that were charged without JD's knowledge and an estimate.

During the administrative review, the Director asked the Supplier why in both consignment sale transactions the consignor's share of the purchase price, being the purchase price less the amount payable to the lienholder and the Supplier's fees, were not paid out to MG and JD, and they were only paid out the minimum amounts. The Supplier advised that is how he understood the consignment agreements to read.

In total, the Supplier derived at a minimum an economic benefit of **\$11,183.50** in the two consumer transactions after one of them was mutually resolved to the detriment of JD. In addition, a total of \$3,082.47 in unauthorized repairs were completed in which the Supplier also benefitted.

On a balance of probabilities, the Director finds that the Supplier failed to pay out the proceeds of the consignment sales as per Section 33.1(1)(a)(ii) of the ABR.

Having a consumer review and sign a consignment agreement with specific terms and then for a Supplier not to adhere to the agreed upon terms is a deceptive practice. In both case files, the AMVIC investigator identified that the Supplier has not changed their business practices in relation to consignment sales in that they do not complete consignment agreements properly, they completed unauthorized repair work without estimate or they did not pay out the proceeds of the consignment sales as per legislative requirements.

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

As a result of an administrative review held on Sept. 22, 2021, the Supplier voluntarily agreed to enter into the Undertaking on **Oct. 13, 2021**. As part of the Undertaking, the Supplier undertook to change their business practices to comply with the applicable legislation. The Undertaking specifically stated:

*"The Supplier acknowledges and admits that it failed to comply with the provisions of the ABR, and undertakes to the Director that the Supplier will make every effort to ensure that it does not engage in acts or practices similar to those described above."*

*The Supplier will undertake to utilize a consignment agreement that meets the legislative requirements and will properly complete the consignment agreement as per Section 33 of the ABR.*

*The Supplier will undertake to pay out the proceeds of a consignment sale as per the legislative requirements as per Section 33.1(1) of the ABR."*

The AMVIC investigator exercised discretion in not pursuing an alleged breach of an Undertaking and therefore the Director did not give notice in relation to this section of legislation.

Even though the Supplier has breached their voluntary Undertaking, the amount of the Administrative Penalty will only reflect the breaches relating to a consignment sales agreement and paying out the proceeds of a consignment sale, and not for breaching their agreed upon voluntary Undertaking.

**D. Other Overarching Concerns – Bill of Sale Issues (31.2 ABR)/ Maintain Records (132 CPA and 9 ABR)**

The submission of Mr. Showers' written representations in advance of the administrative review identified further overarching concerns not limited to BOS issues and a failure to maintain accurate records in the opinion of the Director. Even though notice was not given in advance regarding several other sections of the legislation, the Director took the opportunity to discuss these relevant sections in detail with the Supplier and included them for reference in the proposed Administrative Penalty for the Supplier's benefit.

On Oct. 31, 2018, the legislation was amended 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.

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 Director pointed out to the Supplier that the BOS (Exhibit 7) is dated April 23, 2023 and the delivery date is also April 23, 2023, therefore how could repairs and subcontracted work be completed on the Arctic Fox if it had already been picked up. In addition, if repairs or the replacement of parts or accessories was a condition of the sale, they are not listed on the BOS. The Supplier acknowledged the shortcomings identified.

In their March 23, 2023 written representations in response to the Proposed Administrative Penalty, the Supplier asked for clarification from the Director regarding the legislation. Specifically, relating to conditions of a sale, such as repairs being included on a BOS to a consumer if the consumer is not paying for the repairs. The Director cannot give the Supplier legal advice as each consumer transaction can



have specific and distinct circumstances. However to answer this generally, if the owner of a RV being sold has not agreed to pay for the repairs required and the consumer interested in purchasing the unit is only willing to purchase the unit if all “*major systems are in proper working condition*” or other repairs are completed, this is a condition of the sale, and should be placed on the BOS. If the owner of the RV is not willing to complete the repairs for the sale to be concluded, the consumer is not obligated to purchase the RV as the conditions have not been met. Ultimately, the Supplier must adhere to all the legislation they are subject to as a consignment business, both to the consumers purchasing RVs and the owners consigning RVs. Which includes not only full disclosure to consumers purchasing from the Supplier but also getting approval before completing any repairs outside of what is specifically agreed upon in a compliant consignment agreement.

The legislation is very clear that being negligent in keeping records is not only 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 “C”) 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.*

These additional breaches of legislation will also not be reflected in the amount of the Administrative Penalty being imposed.

It is also noted that the Supplier has been subject to three recent AMVIC inspections which was not identified in the Application Report (see Schedule “A”) but was included in Mr. Showers’ written representations (see Schedule “B”). The three findings letters dated April 30, 2019, March 16, 2021 and March 7, 2022 that he provided, identify that a number of the relevant and applicable legislation sections have been previously discussed with the Supplier yet the Supplier continues to be non-compliant with legislation, which in the opinion of the Director is unacceptable.

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 on Oct. 13, 2021 by continuing to use business practices that contravene similar sections of the ABR. The Director also considered imposing conditions on the Supplier’s business licence however, the Director is not convinced that this enforcement action

would adequately protect consumers. Given the Supplier is licensed for multiple business activities, the Director also considered cancelling the Supplier's business activity of consignment sales, however during the administrative review the Supplier expressed a strong commitment to cooperate and bring his business practices into compliance.

At the administrative review, the Supplier thanked the Director for taking the time to educate him further regarding his legislative responsibilities and strives to proactively address his deficiencies.

On average, the Supplier sells approximately 200 recreational vehicles annually or approximately eight million dollars in sales. During the administrative review, the Supplier reserved the right to not make any representations regarding a proposed Administrative Penalty at this time. An Administrative Penalty must be sufficient in that the Supplier and other Suppliers do not view the amount of the penalty as a cost of doing business that is preferable to following the law.

The aggravating factors in this matter include the recent continued non-compliance despite the education previously provided to the Supplier, recent administrative enforcement action, the significant minimum economic benefit of **\$11,183.50** derived by the Supplier and the Supplier's inability to comply with the rather straightforward requirements of the legislation.

The mitigating factor in the matter include some initial steps taken by the Supplier which was confirmed by correspondence provided in Schedule "B" such as seeking legal advice and opinion through their legal counsel, and willingness to remedy their shortcomings.

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

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

This Administrative Penalty is taking into account the number and seriousness of the breaches of the legislation found during the investigation, the Supplier's recent history with AMVIC, which cannot be ignored, as well as the cost of investigating the Supplier's activities.

In their March 23, 2023 written representations, the Supplier asked for the Administrative Penalty to be reduced to \$7,500. The Director is not inclined to reduce the Administrative Penalty to the extent requested by the Supplier due to the consumer harm and the economic benefited of at minimum **\$11,183.50** from the two consignment transactions that led to the consumer complaints received by AMVIC. 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 No Bull RV Sales Inc. pay an Administrative Penalty. This is based on my opinion that No Bull RV Sales Inc. contravened Sections 33(2)(g), 33(2)(i), 33(3)(c) and 33.1(1)(a)(ii) 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 **\$15,000**.

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 \$15,000.

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