

May 9, 2023

Administrative Review – 23-03-004  
Served Personally

### **Administrative Penalty**

ROYAL OAK NISSAN LTD.  
7690 110 AVENUE NW  
CALGARY, AB  
T3R 1R8

**Attention: Jason Bender, James McManes and Michael McManes**

Dear Jason Bender, James McManes and Michael McManes:

**Re: Royal Oak Nissan Ltd. – Provincial Automotive Business Licence No. B1031445**

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. The Supplier provided written representations via email dated April 26, 2023 (attached as Schedule “C”), in response to the Proposed Administrative Penalty, which I have also taken into consideration.

### ***Licensee Status***

Royal Oak Nissan Ltd. (the “Supplier”) holds an automotive business licence and is licensed to carry on the designated business activities of new and used sales, garage, leasing, service station, and wholesale sales in the Province of Alberta.

### ***Direct communications with the Supplier and its representatives***

1. On May 17, 2017, a routine AMVIC industry standards inspection was completed at the business location of the Supplier. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on May 24, 2017. The Findings Letter outlined some concerns including but not limited to:

- a) Advertising issues contrary to requirements in Section 11 of the Automotive Business Regulation (“ABR”).
  - b) During the inspection, eight deals were reviewed by the ISO and of those eight deals, three did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
  - c) Supplier was engaging in the designated business activity of leasing without an AMVIC business licence contrary to Section 104(1) of the CPA.
2. On May 16, 2019, a followup AMVIC industry standards inspection was completed on the Supplier. A Findings Letter dated May 16, 2019 outlining the inspection findings was completed and sent to the Supplier. The Findings Letter outlined some concerns including but not limited to:
- a) Advertising issues contrary to requirements in Section 11 of the ABR.
  - b) During the inspection, 12 deals were reviewed by the ISO and of those 12 deals, one did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
  - c) Issues with the completion of Mechanical Fitness Assessments (“MFAs”) contrary to Section 15(1) of the Vehicle Inspection Regulation (“VIR”).
  - d) A number of bills of sale (“BOS”) that were reviewed were not compliant with Section 31.2 of the ABR.
3. On Oct. 16, 2019, a followup AMVIC industry standards inspection was completed on the Supplier as a result of a consumer complaint alleging that a vehicle was sold over the advertised price. A Findings Letter dated Nov. 1, 2019 outlining the inspection findings was sent to the Supplier. The Findings Letter does not indicate the outcome of the consumer complaint. The Findings Letter outlined some concerns including but not limited to:
- a) During the inspection, 14 deals were reviewed by the ISO and of those 14 deals, six did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
4. On Jan. 31, 2023, a follow up AMVIC industry standards inspection was completed on the Supplier. This inspection focused specifically on the Supplier’s advertising and compliance with all-in pricing legislation. The inspection conducted on Jan. 31, 2023 was therefore not comprehensive in nature and as such, not all documentation or business practices were reviewed in comparison to the previous comprehensive inspections conducted in 2015, 2017 and 2019. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on Feb. 14, 2023. The Findings Letter outlined the following concern:
- a) During the inspection, 18 deals were reviewed by the ISO and of those 18 deals, seven did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
5. Selling vehicles over the advertised price was found in all four AMVIC inspections, based on the Findings Letters provided to the Supplier following each AMVIC industry standards inspection.
6. The Supplier provided written representations, dated April 26, 2023, in response to the Proposed Administrative Penalty (see Schedule “C”).

## **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**

- (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

### ***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 and ABR?**

A routine AMVIC industry standards inspection was completed on May 17, 2017. The inspection findings were discussed with the Supplier and Findings Letter was emailed to the Supplier on May 24, 2017. The inspection completed in 2017 identified legislative breaches including the Supplier selling vehicles over the advertised price contrary to Section 11(2)(l) of the ABR.

A second AMVIC industry standards inspection was completed on May 16, 2019 and a Findings Letter outlining the inspection findings was sent to the Supplier which included finding the Supplier had sold a vehicle over the advertised price.

A third AMVIC industry standards inspection was completed on Oct. 16, 2019 as a result of a consumer complaint that alleged a vehicle was sold over the advertised price. A Findings Letter dated Nov. 1, 2019

outlining the inspection findings was sent to the Supplier which included findings the Supplier had sold vehicles over the advertised price contrary to Section 11(2)(l) of the ABR. The outcome of the consumer complaint that led to this inspection is not before the Director.

On Jan. 31, 2023 a fourth AMVIC industry standards inspection was completed on the Supplier. This inspection focused solely on the Supplier's advertising and compliance with all-in pricing legislation. The inspection conducted on Jan. 31, 2023 was therefore not comprehensive in nature and as such, not all documentation or business practices were reviewed in comparison to the previous comprehensive inspections conducted in 2017 and 2019. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on Feb. 14, 2023. The ISO identified the Supplier has continued to sell vehicles over the advertised price contrary to Section 11(2)(l) of the ABR. Based on the facts outlined in the Application Report and supporting documents (see Schedule "A"), I will be considering the alleged breaches from the 2023 AMVIC industry standards inspection.

#### A. Selling Above Advertised Price (11(2)(l) ABR)

During the Jan. 31, 2023 inspection, the ISO found seven vehicles sold above the advertised price. Prices advertised must include all fees the seller intends to charge. The only fee that can be added to the advertised price is the goods and services tax ("GST") and costs associated with financing as per Section 11(2)(l) of the ABR. Pre-installed products such as batteries and anti-theft must be included in the advertised price. Destination fees, documentation fees, the AMVIC levy and tire recycling levy must be included in the advertised price.

The Findings Letter dated Feb. 14, 2023 states 18 used vehicle sale files were reviewed. Of the 18 deal jackets reviewed by the ISO, seven of the vehicles were sold over the advertised price contrary to Section 11(2)(l) of the ABR. The Application Report states that in seven consumer transactions the Supplier derived an economic benefit of \$8,561.59 at the cost of the consumers.

- Stock No. A01615 was sold over the advertised price by \$5,305.25;
- Stock No. 743055A was sold over the advertised price by \$6.25;
- Stock No. 210741A was sold over the advertised price by \$605.25;
- Stock No. A01613 was sold over the advertised price by \$6.25;
- Stock No. B00109 was sold over the advertised price by \$290.48;
- Stock No. B00101B was sold over the advertised price by \$2,242.86; and
- Stock No. A01614 was sold over the advertised price by \$105.25.

The ISO noted in the Application Report that the deal jackets of six of the seven above vehicles included printed advertisements that did not align with the advertisements the ISO had captured on Jan. 6, 2023 for the purposes of the 2023 AMVIC industry standards inspection. The Application Report states that the business could not produce any documentation demonstrating when the advertisements for the vehicles were updated online.

#### Stock No. A01615

In reviewing the documentation relating to the sale of Stock No. A01615 (see Schedule "A"; Exhibit 6), the advertisement printed in the deal jacket was not dated and did not include the stock number in the

advertisement. Given that this advertisement is undated and does not specify the stock number, the Director will be relying on the Jan. 6, 2023 advertisement captured by the ISO for the purposes of the inspection.

In their written representations (see Schedule "C") the Supplier indicated the consumer received cash back in the amount of \$5,776.31 and this amount was added to the selling price. The Supplier stated *"It is very clear that [REDACTED] received the money and was the only one to benefit from the add of \$5,776.31 to the advertised price."* The Supplier did not provide any evidence in their written representations to support this claim.

The BOS must be an accurate representation of the transaction that occurred. This ensures full, complete disclosure and transparency to the consumer to understand the details of the transaction, and the costs of all goods and services they are paying for. This is also the best way for the Supplier to demonstrate they are complying with the legislation. The legislation is very clear, if a provision of a document is ambiguous, the provision must be interpreted against the Supplier in accordance with Section 4 of the CPA. In this case, there is no indication in any of the documents currently before the Director that demonstrates the consumer received cash back (\$5,776.31). As this is ambiguous and in accordance with Section 4 of the CPA, the Director must interpret the provision against the Supplier.

Based on the documentation currently before me, I find that Stock No. A01615 was sold over the advertised price by **\$5,305.25**.

#### Stock No. 743055A

The evidence before the Director regarding Stock No. 743055A (see Schedule "A"; Exhibit 7) includes the advertisement captured by the ISO on Jan. 6, 2023 advertising the vehicle for \$16,900, the BOS dated Jan. 10, 2023, the *"Deal Summary"*, the financing documents which appear to have been submitted on Jan. 9, 2023 at 11:22:42 a.m. and the advertisement from the deal jacket dated Jan. 13, 2023 advertising the vehicle for \$17,900. The BOS shows the vehicle selling price as \$16,900, which aligns with the advertisement captured by the ISO, plus the AMVIC levy of \$6.25. The Director acknowledges that Stock No. 743055A was sold over the advertised price by the cost of the AMVIC levy, which is not a significant dollar amount. In addition, the advertisement captured by the ISO and the advertisement on the deal jacket are both captured three to four days from the sale of the vehicle. Given the Director cannot determine, on a balance of probabilities, which advertisement would have been posted online at the time of the sale combined with the minimal financial impact on the consumer, the Director does not find the Supplier in breach of selling over the advertised price regarding Stock No. 743055A.

#### Stock No. 210741A

In reviewing the documentation relating to the sale of Stock No. 210741A (see Schedule "A"; Exhibit 8) the advertisement captured by the ISO on Jan. 6, 2023 advertised the vehicle for \$15,900 whereas the advertisement in the deal jacket dated Jan. 18, 2023 advertised the vehicle for \$16,900. While the final BOS is dated Jan. 14, 2023, the *"OFFER TO PURCHASE"* the vehicle is dated Jan. 7, 2023, only one day after the advertisement the ISO captured from the Supplier's website. The *"OFFER TO PURCHASE"* indicated the cost of the vehicle as \$15,900, which aligns with the advertisement captured by the ISO on Jan. 6, 2023 for the purpose of the inspection. The *"OFFER TO PURCHASE"* adds the AMVIC Levy and a \$599 *"Doc fee"* for a total purchase price of \$16,505.25. The BOS indicated the cost of the vehicle as \$15,900 plus the AMVIC

Levy and a “Nitro” fee of \$599, for a total price that matched the price on the “OFFER TO PURCHASE”. The “Deal Summary” completed the same day as the BOS demonstrates the \$599 was listed as “Admin Used Nissan”.

In review of the “Deal Summary”, it is noted that it includes a line that says “transmission and safety” with a numerical value listed as “-7,876.44” however, the documents are not clear on how that supports the increase in price of the vehicle. It is unclear when the Supplier would have had the knowledge of the transmission issue as the MFA was not provided by the Supplier and is not currently before the Director. However, given the timeline of the documents, the MFA was required to be disclosed to the consumer before entering into any purchase contact. The consumer entered into the “OFFER TO PURCHASE” for the vehicle one day after the advertisement captured by the ISO on Jan. 6, 2023. The MFA should have therefore already been completed on the vehicle at the time of the advertisement and therefore the Supplier should have known the cost that would have been associated to repair the vehicle, which should have been reflected in the advertised price. Alternatively, if the Supplier had not completed the MFA prior to the “OFFER TO PURCHASE” (which would be contrary to Section 15 of the VIR) and the sale was contingent on the Supplier completing the MFA and subsequently the repairs, this should have been clearly noted in the documentation, which it was not. There is no evidence before the Director when the Supplier changed the advertised price of the vehicle however, the one on the deal jacket is dated days after the BOS, while the advertisement the ISO captured is within one day of the “OFFER TO PURCHASE”. In the Director’s opinion there is not enough evidence to support the Supplier’s claim that the difference in cost was due to the cost of the transmission. The evidence before the Director demonstrates the Supplier charged the consumer a \$599 “Admin Used Nissan” fee and the AMVIC levy of \$6.25 above the advertised price of \$15,900.

Therefore, based on the evidence currently before me, I find that Stock No. 210741A was sold over the advertised price by **\$605.25**.

#### Stock No. A01613

The evidence before the Director regarding Stock No. A01613 (see Schedule “A”; Exhibit 9) includes an advertisement captured by the ISO and an advertisement that was on the deal jacket, both of which advertised Stock No. A01613 for \$13,900. The documentation demonstrates the vehicle was sold for \$13,301 plus a \$599 “Admin Used Nissan” fee plus the AMVIC levy of \$6.25 for a total selling price of \$13,906.25. Which is \$6.25 over the advertised price, which is an insignificant amount that would have minimal financial impact on the consumer.

Based on the evidence currently before me, I find that Stock No. A01613 was sold over the advertised price by **\$6.25**. Given the nominal amount, in determining the amount of this Administrative Penalty, this breach will not be given the same weight as the other determined breaches.

#### Stock No. B00109

The evidence before the Director regarding Stock No. B00109 (see Schedule “A”; Exhibit 10) includes the advertisement captured by the ISO on Jan. 6, 2023 advertising the vehicle for \$15,900, the BOS dated Jan. 14, 2023, an “OFFER TO PURCHASE” dated Jan. 6, 2023, the “Deal Summary”, a sales receipt dated Jan. 6, 2023, the advertisement from the deal jacket dated Jan. 6, 2023 advertising the vehicle for \$16,900, and a screen shot from sourcetrader.ca showing the last advertised price of the vehicle was \$15,900. Given both



advertisements before the Director were captured on the same day and the last advertised price for the vehicle was \$15,900, based on the documentation currently before me, I find that Stock No. B00109 was sold over the advertised price by **\$290.48**.

#### Stock No. B00101B and Stock No. A01614

In reviewing the documentation relating to the sale of Stock No. B00101B (see Schedule "A"; Exhibit 11) the advertisement captured by the ISO on Jan. 6, 2023 advertised the vehicle for \$14,900 whereas the advertisement in the deal jacket dated Jan. 21, 2023 advertised the vehicle for \$17,900. The advertisement in the deal jacket is dated the same day as the offer to purchase. Similarly, the documentation relating to the sale of Stock No. A01614 (see Schedule "A"; Exhibit 12), the advertisement captured by the ISO on Jan. 6, 2023 advertised the vehicle for \$24,900 whereas the advertisement in the deal jacket dated Jan. 18, 2023 advertised the vehicle for \$25,900. The advertisement in the deal jacket is dated the same day as the offer to purchase. The advertisements in the deal jackets of Stock No. B00101B and Stock No. A01614 are dated the same day as both offers to purchase. Therefore, based on the evidence, the Director does not find the Supplier in breach of selling over the advertised price regarding Stock No. B00101B and Stock No. A01614.

After thorough review of all the evidence currently before me (see Schedule "A"), the Supplier sold four vehicles over the advertised price and derived an economic benefit of **\$6,207.23** at the cost of the consumers.

- Stock No. A01615 was sold over the advertised price by \$5,305.25;
- Stock No. 210741A was sold over the advertised price by \$605.25;
- Stock No. A01613 was sold over the advertised price by \$6.25; and
- Stock No. B00109 was sold over the advertised price by \$290.48.

In 2022, the Supplier submitted sales levies to AMVIC that indicates they sold 893 vehicles over the course of the year. Based on the sample size of 18 deal jackets reviewed by the ISO and before me as evidence, the Supplier has derived an economic benefit by charging consumers over the advertised price. This is concerning as the Supplier has been provided more than ample opportunity and education to rectify this business practice, however continues to engage in this practice and derive an economic benefit at the cost of consumers.

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

#### B. Maintain Records (132 CPA and 9 ABR)

The Director does want to address an overarching issue. Specifically, the Findings Letters revealed to the Director that there are issues with the Supplier's record keeping. 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.

During the most recent inspection on Jan. 31, 2023 the ISO identified issues with the dates of the advertisements contained in the vehicle deal jackets which is identified in Schedule "A", Exhibit 5 and the supporting documentation in Exhibits 6, 7, 8, 10, 11, and 12. The discrepancies found between the



advertisements captured by the ISO on Jan. 6, 2023 on the Supplier's website and the advertisements in the deal jackets are concerning to the Director.

In particular, the advertisement regarding Stock No. B00109 (see Schedule "A"; Exhibit 10) in the deal jacket (\$16,900) and the advertisement the ISO captured (\$15,900) have the same date, yet different advertised prices. During the inspection, the Supplier provided an additional document showing a sourcetrader.ca inventory listing for this stock number with the asking price as \$15,900 and the ISO advised that this was the last advertised price before the advertisement was removed from the internet. The Supplier's advertisement in the deal jacket did not reflect the last advertised price. Logically, the last advertised price would be the price advertised at the time the vehicle was sold, therefore the advertisement in the deal jacket at a higher price does not align with the other evidence before the Director.

Discrepancies between the advertised price captured by the ISO, the deal jacket and the sourcetrader.ca inventory listing cause the Director concern and are not logical. If the sourcetrader.ca inventory listing is the last advertised price before the advertisement was removed, how does the advertisement in the deal jacket have a higher advertised price? The advertisement available to the consumer when they attend the Supplier's business to purchase a vehicle must be the same advertisement that is captured in the deal jacket. These records do appear accurate and keeping accurate records is a requirement of Section 132 of the CPA and Section 9 of the ABR.

In addition, in four deal jackets the Supplier charged the consumer \$599 for "Nitro" according to their BOS, however in the "Deal Summary" it is listed as an "Admin Used Nissan". Stating the charge on the BOS is for nitrogen when it is actually an admin fee is not being honest and transparent with the consumer about what they are actually paying for in their transaction and demonstrates the Supplier is not creating accurate records. The legislation is very clear, that being negligent in keeping records is not only an offence under the CPA but in addition, if a provision of the document is ambiguous, the provision must be interpreted 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.

### C. Other Considerations

In addition to the individual education AMVIC provided the Supplier in the form of the Findings Letters provided after each AMVIC industry standards inspection, AMVIC has issued industry bulletins and

newsletters over the past two years explaining advertising regulations to educate the automotive industry as a whole. As a licensed member of the automotive industry, the Supplier would have received the AMVIC industry bulletins and newsletters and in the opinion of the Director, is expected to have reviewed these education bulletins and newsletters to ensure their business practices are in compliance.

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 Supplier’s business practices discussed above leverages the Supplier’s knowledge and position, and does not foster a level playing field between the consumer and the Supplier, leading to financial harm to consumers. It further concerns the Director that the Supplier has continued to breach rather straightforward legislation, to the financial detriment of consumers, despite the education provided by AMVIC.

The aggravating factors in this matter include the resulting financial impact adversely affecting the consumers due to paying over the advertised price, in four transactions the Supplier derived an economic benefit **\$6,207.23** and continued non-compliance with the rather straightforward requirements of the legislation despite education provided to the Supplier.

In their written representations to the Proposed Administrative Penalty (see Schedule “C”) the Supplier indicated *“We always look to make improvements and accept every opportunity to educate ourselves and update business practices”*. The Supplier further advised that they have conducted training with all sales staff and have added steps to ensure compliance with Section 11(2)(l) of the ABR.

This Administrative Penalty is taking into account the number and seriousness of the contraventions of the legislation found during the fourth 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 Royal Oak Nissan Ltd. pay an Administrative Penalty. This is based on my opinion Royal Oak Nissan Ltd. contravened Section 132(1) of the CPA and Sections 9 and 11(2)(l) of the ABR.

Taking into consideration all the representations made by the Supplier and the representations made by AMVIC’s industry standards department, the amount of the Administrative Penalty is **\$5,500**.

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

1. The financial harm on the person adversely affected by the contraventions or failure to comply;
2. The seriousness of the contraventions or failure to comply;
3. The economic benefit derived from the contraventions or failure to comply;
4. Administrative Penalties issued in similar circumstances;
5. The maximum penalty under Section 158.1(3) of the CPA of \$100,000; and
6. The deterrent effect of the penalty.

**The amount of the Administrative Penalty is \$5,500.**

Pursuant to Section 3 of the Administrative Penalties (*Consumer Protection Act*) Regulation, you are required to submit payment within **thirty (30) days** of the date of service of this notice. Failure to pay the Administrative Penalty will result in a review of the licence status. Payment may be made payable to the **“Government of Alberta” and sent to AMVIC** at:

Suite 303, 9945 – 50th Street  
Edmonton, AB T6A 0L4.

If payment has not been received in this time period, the Notice may be filed in the Court of King’s Bench and enforced as a judgement of that Court pursuant to Section 158.4 of the CPA and further disciplinary action will be considered.

Section 179 of the CPA allows a person who has been served a notice of Administrative Penalty to appeal the penalty. To appeal the penalty, the person must serve the Minister of Service Alberta 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: Evelyn L-J., Manager of Industry Standards, AMVIC