

July 19, 2023

Administrative Review – 23-03-022
Served Personally

Administrative Penalty

2146088 ALBERTA LTD.
o/a NORTH EDMONTON KIA
13634 ST. ALBERT TRAIL NW
EDMONTON, AB
T5L 4P3

Attention: Robert Aaltonen and Mark Sakounkhon

Dear Robert Aaltonen and Mark Sakounkhon:

**Re: 2146088 Alberta Ltd. operating as North Edmonton Kia
– Provincial Automotive Business Licence No. B2024821**

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 June 20, 2023 (attached as Schedule "C"), in response to the Proposed Administrative Penalty, which I have also taken into consideration.

Licensee Status

2146088 Alberta Ltd. o/a North Edmonton Kia (the "Supplier") holds an automotive business licence and is licensed to carry on the designated business activities of new and used sales, garage, leasing, agent or broker, specialty service, service station and wholesale sales in the Province of Alberta.

Direct communications with the Supplier and its representatives

1. On Aug. 14, 2020, 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 Aug. 14, 2020. The Findings Letter outlined some concerns including but not limited to:

- a) During the inspection, seven deal jackets reviewed by the ISO were sold over the advertised price contrary to Section 11(2)(l) of the Automotive Business Regulation ("ABR").
 - b) Advertising issues contrary to requirements in Sections 11 and 31.1 of the ABR, and Sections 6 and 7 of the Cost of Credit Disclosure Regulation ("COC").
 - c) Issues with the completion of and/or disclosure of Mechanical Fitness Assessments ("MFAs") contrary to Sections 15(1) and 16 of the Vehicle Inspection Regulation ("VIR").
2. On Feb. 7, 2023, a followup 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 Feb. 7, 2023 was therefore not comprehensive in nature and as such, not all documentation or business practices were reviewed in comparison to the previous comprehensive inspection conducted in 2020. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on Feb. 17, 2023. The Findings Letter outlined the following concern:
 - a) During the inspection, 17 deals were reviewed by the ISO and of those 17 deals, 15 did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
3. Selling a vehicle over the advertised price was found in both AMVIC inspections, based on the Findings Letters provided to the Supplier following each AMVIC industry standards inspection. During the most recent inspection, 88 per cent of the deals reviewed by the ISO were sold over the advertised price.
4. The Supplier provided written representations, dated June 20, 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 Aug. 14, 2020. The inspection findings were discussed with the Supplier and a Findings Letter was emailed to the Supplier on Aug. 14, 2020. The inspection completed in 2020 found a number of legislative breaches including the Supplier selling over the advertised price. After this inspection the Supplier was provided with information and education regarding Section 11(2)(l) of the ABR.

On Feb. 7, 2023 a second 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 Feb. 7, 2023 was therefore not comprehensive in nature and as such, not all documentation or business practices were reviewed in comparison to the previous comprehensive inspection conducted in 2020. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on Feb. 17, 2023. The ISO identified that 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 Feb. 7, 2023 inspection, the ISO found 15 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. In these 15 consumer transactions the Supplier derived an economic benefit of **\$52,351** at the cost of the consumers.

- Stock No. 23SP6215 was sold over the advertised price by \$6,521.25;
- Stock No. 23SN9195 was sold over the advertised price by \$6,854.25;
- Stock No. 23RH9756 was sold over the advertised price by \$3,572.25;
- Stock No. 23RH9612 was sold over the advertised price by \$3,221.25;
- Stock No. 23FT2555 was sold over the advertised price by \$1,673.25;
- Stock No. 23SE6393 was sold over the advertised price by \$5,570.25;

- Stock No. 23SP8300 was sold over the advertised price by \$5,371.50;
- Stock No. 23SP6997 was sold over the advertised price by \$4,254.25;
- Stock No. 23SN9318 was sold over the advertised price by \$3,091.25;
- Stock No. 23FT2538 was sold over the advertised price by \$5,099.25;
- Stock No. 23SN9195A was sold over the advertised price by \$705.25;
- Stock No. U554130B was sold over the advertised price by \$1,604.25;
- Stock No. U011191AA was sold over the advertised price by \$1,604.25;
- Stock No. U316354 was sold over the advertised price by \$1,604.25; and
- Stock No. U335166Z was sold over the advertised price by \$1,604.25.

In 2022, the Supplier submitted sales levies to AMVIC that indicates they sold 946 vehicles over the course of the year. The Findings Letter dated Feb. 17, 2023 states seven used and 10 new vehicle sale files were reviewed. Of the 17 deal jackets reviewed by the ISO, 15 of the vehicles were sold over the advertised price contrary to Section 11(2)(l) of the ABR. Based on the sample size of 17 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. Fifteen of the 17, or approximately 88 per cent, of the deal jackets reviewed were sold over the advertised price. This high percentage is a concern to the Director. This is also concerning as the Supplier has been provided the 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 Supplier did not provide any information or evidence regarding the above listed vehicles sold over the advertised price breaching Section 11(2)(l) in their written representations in response to the Proposed Administrative Penalty (see Schedule “C”).

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 the Supplier has issues with 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.

Issues that the Director found in the two Findings Letters include the completion of and/or disclosure of MFAs, advertising issues and issues with the completion of the BOS. 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.

In particular, based on the evidence currently before the Director, there are eight BOS that are not accurate records. The Supplier was educated regarding the BOS requirements during the 2020 industry standards inspection. The Findings Letter provided to the Supplier as a result of the 2020 industry standards inspection provided the Supplier with the legislation they must comply with in the completion of their BOS. The Supplier was further educated in regards to BOS requirements in a Warning Letter, which included the legislation, that was issued to the Supplier by AMVIC's investigations department on Oct. 2, 2020 (Schedule "A"; Exhibit 19). On Nov. 8, 2021, as a result of another consumer complaint received by AMVIC a second Warning Letter was issued to the Supplier by AMVIC's investigations department. This Warning Letter outlined the sections of the legislation where the Supplier was found to be non-compliant including Sections 11(2)(n) and 31.2(1) of the ABR (Schedule "A"; Exhibit 20).

In reviewing the documentation when completing the Application Report, the ISO noticed a financial discrepancy in the calculations of eight of the 17 deal jackets reviewed. In seven of the eight transactions with discrepancy in the calculations, \$100 per transaction was added with no corresponding fee on the BOS (Schedule "A"; Exhibits 4,5,7,8,9,11 and 13). To demonstrate this clearly below is the breakdown of the "OPTIONAL EQUIPMENT /INDUCEMENTS" of Exhibit 4. The "OPTIONAL EQUIPMENT /INDUCEMENTS" add up to a total of \$46,564, however the Supplier charged the consumer \$46,664, \$100 more than the cost of all the products listed on the BOS.

"BASIC VEHICLE	\$38,195.00
GRAVITY GREY	+ \$250.00
DEALER TRAINING FEE	+ \$25.00
FREIGHT	+ \$1,950.00
SMART 5YR	+ \$998.00
MARKET ADJUSTMENT	+ \$4,758.00
DEALER SERVICE FINAN	+ \$899.00
NEK ACC PACKAGE"	+ <u>\$2,499.00</u>
	\$46,564.00
BOS "TOTAL CASH SALE PRICE"	\$46,664.00
	- <u>\$46,564.00</u>
	\$100.00

In the eighth transaction that had a discrepancy in the calculations, it was identified that there was a \$400 discrepancy (Schedule "A"; Exhibit 6). In the Application Report the ISO indicated the discrepancy in the calculations lead to the consumer being charged an additional \$400. However, in reviewing the documentation the discrepancy in the calculation of the "Optional Equipment /Inducements" actually adds up to be \$400 less, nonetheless the amount is inaccurate on the BOS. Even with the calculation discrepancy the Supplier still sold the vehicle over the advertised price in this consumer transaction and derived an economic benefit of \$3,572.25. Below is the breakdown of the "OPTIONAL EQUIPMENT /INDUCEMENTS" of Exhibit 6.

"BASIC VEHICLE		\$18,645.00
DEALER TRAINING FEE	+	\$25.00
FREIGHT	+	\$1,750.00
MARKET ADJUSTMENT	+	\$3,398.00
DEALER SERVICE PACKAGE	+	\$3,398.00
FACTORY INCENTIVE"	-	<u>\$500.00</u>
		\$26,716.00
BOS "TOTAL CASH SALE PRICE"		\$26,316.00
	-	<u>\$26,716.00</u>
		-\$400.00

In reviewing the documentation, in particular the Supplier's BOS, the Supplier is not creating **accurate** records as required by the legislation. Eight of the 17 BOS currently before the Director have calculation errors, seven of which over charged consumers \$100 that is not accounted for in the documentation.

A recent Service Alberta Appeal Board rendered a decision (attached as Schedule "B") regarding the importance of record keeping as a member of a regulated industry. Paragraph 152 of the Service Alberta Appeal Board decision states:

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

The written representations from the Supplier in response to the Proposed Administrative Penalty (see Schedule "C") did not address the contraventions of Section 132 of the CPA and Section 9 of the ABR.

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

Consumer harm is not just limited to selling over the advertised price or inaccuracies on a BOS. The consumer is further harmed as the amount that the vehicle was sold over the advertised price is financed with interest. As such, over the course of the financing term, the consumer is paying more than they would have if the vehicle had been sold at the advertised price. In the Application Report (Schedule "A"; Exhibit 3.1) the ISO illustrates the financial impact to a consumer over the course of the term of the loan using Exhibit 4 (Stock No. 23SP6215) as an example. The Supplier sold Stock No. 23SP6215 over the advertised price by \$6,521.25. The consumer is therefore financing \$6,521.25 more than they should have, in which they will be paying interest on that additional \$6,521.25. The example provided by the ISO demonstrates, at the same loan payment with the same payment frequency and interest rate, the consumer would have paid off the loan approximately 17 months sooner had the vehicle been sold at the advertised price.

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 extensive 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 17 transactions the Supplier derived an economic benefit of **\$52,351**, failing to create accurate records and the continued non-compliance with the rather straightforward requirements of the legislation despite education provided to the Supplier.

The Supplier forwarded written representations in response to the Proposed Administrative Penalty (see Scheduled "C") on June 20, 2023 seeking a complete *"no force and effect"* for the following reasons:

1. Issues with the manner and method of the collection of the evidence by the ISO.
2. The authority of the ISO under Section 145(1) vs. Section 147 of the CPA.
3. Conflict of interest between the Supplier and the ISO.
4. The decision of the Director to move forward giving notice with a Proposed Administrative Penalty in writing vs. the Director first holding an in person administrative review.

The Director will address the Supplier's issues in detail:

1. Issues with the manner and method of the collection of the evidence by the ISO.
2. The authority of the ISO under Section 145(1) vs Section 147 of the CPA.

The Director will combine and address the first two issues. The inspection of Feb. 7, 2023 undertaken by the ISO was part of a project which focused specifically on Supplier's advertising and compliance with all-in pricing legislation. The inspection conducted on Feb. 7, 2023 was therefore

not comprehensive in nature and as such, not all documentation or business practices were reviewed in comparison to the previous comprehensive inspection conducted in 2020. The ISO is not an AMVIC investigator and did not attend the Supplier as part of an investigation. The ISO had lawful authority to inspect the Supplier to determine if there was compliance with the CPA and its associated regulations as per Section 145 of the CPA. The inspector in the course of their duties has the authority to ask the Supplier to give written or oral replies to questions, to produce any books, records, documents or other things and to provide copies of them and to provide any other information. The Director does not find that the ISO acted outside her authority.

The inspector may also in the course of an inspection inspect, examine and make copies of or temporarily remove books, records or documents or other things that are relevant to determine if there is compliance with the Act and the regulations. The legislation also states in Section 145(5) of the CPA that if an inspector removes any books, records, documents or other things, the inspector must give a receipt for them to the person from whom they were taken, may make copies of, take photographs of or otherwise record them, and must, within a reasonable time, return them to the person to whom the receipt was given. The Supplier in their written representations takes issue with the manner and method of how the exhibits or evidence were taken or collected or of the exhibits themselves (*"not complete Ads, none of the exhibits were complete, several were what appears to be pictures taken via a cell phone"*). The Supplier did not provide any evidence that the ISO did not adhere to the requirements set out in Section 145 of the CPA.

In the Supplier's written representations the Supplier states, *"The CPA section 172 clearly dictates on how evidence will be collected and supported in an inspection"*.

Copies

Section 172

A copy of a document made during an inspection or investigation under this Act and certified to be a true copy by the person who conducted the inspection or investigation is admissible in evidence without proof of the signature or appointment of the person who signed the certificate and, in the absence of evidence to the contrary, the copy has the same probative force as the original.

This section of the legislation speaks to the probative force of the copy in comparison to the original if it is a certified copy without proof of the signature or appointment of the person who signed the certificate and, in the absence of evidence to the contrary, however the Director disagrees with the Supplier's interpretation that this legislation dictates *"on how the evidence will be collected and supported in an inspection"*.

The Director is not bound by the formal rules of evidence. Under Section 169.1(3) of the CPA, the Director may accept any oral or written evidence that the Director considers proper, whether or not it would be admissible in a court of law, and is not bound by the law of evidence applicable to judicial proceedings. The burden of proof in an administrative matter is on a balance of probability and not to the same standard of beyond a reasonable doubt in a criminal judicial proceeding.

The Director has not been provided any evidence to the contrary of the evidence of the ISO or any evidence to support the Supplier's claim. In the opinion of the Director, the ISO acted in good faith and gathered information and evidence appropriately.

Consumer Protection Act**Evidence****Section 169.1****(3) The Director**

- (a) may accept any oral or written evidence that the Director considers proper, whether or not it would be admissible in a court of law, and
- (b) is not bound by the law of evidence applicable to judicial proceedings.

3. Conflict of interest between the Supplier and the ISO.

The Supplier indicated that the ISO is a close friend with a former ex-employee of the Supplier who was terminated and allege that the termination "*would most certainly*" reach the ISO. In addition, the Supplier states, "*After the termination was completed by North Edmonton Kia to this employee, ISO put forward the Admin Penalty to North Edmonton Kia*". The Supplier has not provided any evidence of a relationship between the ISO and their former employee or how the ISO had knowledge of the termination of this employee to support their claim of any apprehension of bias. The ISO conducted an inspection on the Supplier on Aug. 14, 2020 and the Director has no knowledge of any concerns that arose at that time. The second inspection took place on Feb. 7, 2023 and to the Director's knowledge, the Supplier did not raise any concerns at the time of this inspection with AMVIC or more specifically the ISO's manager, if there was an alleged perceived conflict of interest. In AMVIC's Industry Standards Policy which was approved by AMVIC's board of directors on June 23, 2020 (attached Schedule "D") it states:

3.2.12 Conflict of interest

Should there be a potential conflict of interest or perceived conflict of interest for an ISO to complete an inspection, the ISO shall inform the manager. The manager shall evaluate the potential conflict of interest and ensure arrangements are made to avoid any potential conflict.

The role of the ISO and the manager of industry standards can also be found in AMVIC's Industry Standards Policy as noted below:

3.1.2 Manager of industry standards

The manager is appointed an inspector by the Registrar and has the overall responsibility for the processes of inspections. The role of the manager is to:

- *oversee the ISO's conduct with regard to compliance inspections and advertising compliance;*
- *determine whether a compliance concern identified by an ISO should go to administrative review before the Registrar or be forwarded to investigations; and*
- *determine and approve the best method of progressive enforcement on non-compliant suppliers as required.*

3.1.3 Industry standards officer (ISO)

The ISO is appointed an inspector by the Registrar. The role of the ISO is to:

- *establish and maintain relationships with suppliers in their region and be the primary point of contact on compliance concerns for suppliers;*
- *conduct compliance inspections and educate suppliers on the legislation governing automotive businesses as required; and*
- *refer serious compliance concerns to the manager, where required.*

The decision to move forward with an application report to the Director may come from the ISO, however it is in consultation with the manager, who may recommend enforcement action against a supplier for non-compliance with the legislation. The Director notes that the Application Report received on March 13, 2023 was signed and dated by the Manager of industry standards, not the ISO who performed the inspection on the Supplier. Therefore the ISO who completed the inspection on the Supplier did not put forward the Application Report to the Director nor did the ISO make the decision to take enforcement action on the Supplier. The decision whether or not to take enforcement action is solely the decision of the Director.

4. The decision of the Director to move forward giving notice with a Proposed Administrative Penalty in writing vs the Director first holding an in person administrative review with the parties involved.

In the Supplier's written representations they state, *"The Supplier and Agent for North Edmonton Kia feel an 'in person' hearing would have been more appropriate and would have provided jurisprudence"*. The Director respects the opinion of the Supplier, however there is no legislative requirement that compels the Director to hold an in person administrative review to allow for *"cross examine the witnesses and evidence"*. The Supplier has been provided with all the evidence that is currently before the Director and was provided ample opportunity to respond to the alleged breaches as indicated in the Proposed Administrative Penalty. The Director has complied with the requirements of Sections 158.1 and 158.2 of the CPA.

The Supplier further takes issue with the fact that the Findings Letter sent to the Supplier dated Feb. 17, 2023 stated that a further inspection was required. A re-inspection is separate to an administrative enforcement action. A re-inspection is completed as a follow up to a previous inspection where the ISO identified and documented compliance concerns. The purpose of the re-inspection is to determine whether the Supplier has taken corrective action and if so, whether the corrective action taken has resolved any compliance concerns identified previously. A re-inspection may also identify new compliance concerns. In the AMVIC Industry Standards Policy a re-inspection is not an administrative enforcement action. An administrative enforcement action does not bar the re-inspection of the Supplier. Conversely, the need of a re-inspection does not bar an administrative enforcement action.

3.2.8 Re-inspection

A re-inspection is completed as a follow up to a previous inspection where the ISO identified and documented compliance concerns.

The purpose of the re-inspection is to determine whether the supplier has taken corrective action and if so, whether the corrective action taken has resolved any compliance concerns identified previously. A re-inspection may also identify new compliance concerns.

In the Supplier's written representations (see Schedule "C"), the Supplier states "...the Administrative Penalty be quashed as new information has come to light (no force and effect)?" The Supplier did not provide any material evidence to the Director to support their claims nor did they provide any information or evidence regarding the breaches of the legislation outlined in the Proposed Administrative Penalty.

This Administrative Penalty is taking into account the number and seriousness of the contraventions of the legislation found during the second 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 2146088 Alberta Ltd. o/a North Edmonton Kia pay an Administrative Penalty. This is based on my opinion 2146088 Alberta Ltd. o/a North Edmonton Kia has contravened Section 132 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 **\$75,000**.

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 person adversely affected by the contraventions or failure to comply;
2. The economic benefit derived from the contraventions or failure to comply;
3. The seriousness of 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 \$75,000.

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