

July 28, 2023

Administrative Review – 23-01-006  
Served personally

### **Administrative Penalty**

2286631 ALBERTA LTD.  
o/a AUTOZONEYYC  
2730 23 STREET NE  
CALGARY, AB  
T2E 8L2

### **Attention: Muhammad Mehri**

Dear Muhammad Mehri:

**Re: 2286631 Alberta Ltd. operating as AUTOZONEYYC  
– Provincial Automotive Business Licence No. B2034039**

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. On Feb. 9, 2023, the investigations department provided an addendum to the Application Report that I have taken into considerations (attached as Schedule “B”). I have also taken into consideration the information exchanged during an administrative review held via teleconference call on March 21, 2023. The Supplier provided written representations via email dated June 13, 2023 (attached as Schedule “D”), in response to the Proposed Administrative Penalty, which I have also taken into consideration.

### ***Licensee Status***

2286631 Alberta Ltd. operating as AUTOZONEYYC (the “Supplier”) holds an AMVIC business licence and carries on the business activities of retail and wholesale sales in the Province of Alberta.

### ***History***

The Supplier has been operating in retail and wholesale sales since July 2021. The Supplier employs two salespeople which includes the owner/director for the Supplier. During the administrative review, the Supplier advised that last year they sold approximately 150 vehicles.

The AMVIC investigation (case file 20-05-001), which was initiated as a result of a consumer complaint, determined that the MFA provided to the consumer was not completed by the technician whose name appeared on the document and that the signature of the technician had been forged. When Mr. Mehri was spoken to, he admitted to signing the MFA and acknowledged that it is fraudulent to do so. As a result of an administrative review the Director determined Mr. Mehri breached Section 6(4)(a) of the CPA, and Section 12(c) and (o) of the Automotive Business Regulation ("ABR") and entered into a Undertaking with Mr. Mehri on June 1, 2021. Some of the conditions outlined in the voluntary Undertaking with Mr. Muhammad Mehri specifically stated:

- 1. The Individual acknowledges and admits that he failed to comply with the provisions of the CPA and ABR, and undertakes to the Director that the Individual will make every effort to ensure that he does not engage in acts or practices similar to those described above.*
- 2. The Individual will successfully retake and pass the Salesperson Registration Course within **14 days** of signing this Undertaking.*
- 3. The Individual undertakes to conduct business according to the code of ethics as set out in AMVIC's Code of Ethics.*

On Aug. 24, 2022, the Supplier was served a Director's Order (Schedule "A" Exhibit P) in relation to consumer complaint file 22-05-027 as a result of the Supplier failing to provide business records available for inspection at a place in Alberta specified by the AMVIC investigator, who is designated and appointed as an inspector by the Director, and ordering the Supplier to remove all advertising regarding consignment sales, as the Supplier is not authorized to carry on this class of business activity as per Section 104(1) of the CPA. The AMVIC investigator made three requests to the Supplier to provide records prior to pursuing a Director's Order (Schedule "A" Exhibit N - Email from AMVIC investigator dated July 28, 2022 to the Supplier). The Director's Order directed the Supplier to:

- 1. Comply with providing business records of 2286631 ALBERTA LTD. doing business as AUTOZONEYYC no later than Sept. 2, 2022.*
- 2. Immediately remove all consignment sales advertising on mass media until properly licensed with the regulator AMVIC to engage in this activity.*
- 3. Cease all unlicensed, designated automotive business activity while unlicensed to do so under Section 104(1) of the Consumer Protection Act.*
- 4. Review AMVIC website at: [www.amvic.org/business/business-licence/apply-licence-registrationrenewals/](http://www.amvic.org/business/business-licence/apply-licence-registrationrenewals/) for licensing requirements.*

On June 8, 2022, the Supplier was issued a Findings Letter in relation to an AMVIC investigation (case file 22-02-187) for alleged breaches of the legislation including bill of sale ("BOS") and MFA issues. The AMVIC investigator had a meeting with the Supplier on April 28, 2022 and went over the issues and the legislation. The Supplier was provided with the applicable legislation and educated to ensure that their BOS complies with the legislative requirements as well as informed on the requirement to provide an MFA to a consumer prior to entering into a consumer transaction.

## ***Summary of Investigations***

### **Case File 22-05-027**

1. In May of 2022, AMVIC received a complaint alleging that a consumer had been misled by the Supplier regarding the condition of a vehicle that he purchased and other concerns in relation to the transaction.
2. On March 17, 2022, a consumer ("CM") gave a \$500 deposit to the Supplier to secure a 2017 Ford Fusion (the "Fusion") that he saw advertised on the Supplier's website.
3. As the Supplier did not offer financing at the time, the transaction was coordinated and financed through a third party who operates out of the same business location as the Supplier.
4. On March 25, 2022, CM entered into an agreement to purchase the Fusion for \$11,999 plus taxes and fees. CM provided another \$1,000 deposit to the third party and was told his initial \$500 would be reimbursed by the Supplier, which it was not.
5. In CM's consumer complaint to AMVIC he states:
  - The Supplier's advertisement indicated the Fusion came fully mechanically inspected.
  - The owner/director for the Supplier estimated the bi-weekly payments of \$150 for four years and the Fusion would come with a one year warranty and he was asked to fill out a form related to financing.
  - He was not shown a "mechanical report".
  - A representative from the third party contacted him on March 19, 2022 and he was quoted payments of \$180 bi-weekly for six years, \$3,699 for the cost of a warranty and \$1,499 in fees. CM went back and forth with this representative and he advised that he would not move forward with the purchase.
  - CM told the Supplier he did not want to move forward and requested his \$500 deposit back and the Supplier told him to attend their business location to discuss.
  - The Supplier offered him a one year warranty and that the payments could be reduced and they would advise the third party who is financing the Fusion.
  - On March 25, 2022 the third party contacted him and advised the Fusion would not be ready until March 28, 2022 but he could come in and sign documents.
  - CM questioned the third party on the warranty and was told it was the Supplier's responsibility.
  - The Fusion was not ready on March 28, 2022 and CM followed up regularly and the Supplier kept postponing the possession date.
  - At the time of complaint on May 4, 2022, CM still had not taken possession of the Fusion.
  - CM felt pressured to purchase the Fusion which included additional fees to the purchase price that were added over and above the advertised price.

- CM had been making payments on the Fusion that he did not yet have and was not refunded his initial deposit of \$500.
  - The third party had CM sign a BOS before he was provided an MFA.
6. On May 11, 2022, an AMVIC consumer services officer (“CSO”) sent the Supplier notice of the consumer complaint and requested a Supplier response to the consumer complaint. The Supplier was given a deadline of May 20, 2022 to provide the Supplier response and appropriate documents. The Supplier did not provide a Supplier’s response or provide the relevant documents by the May 20, 2022 deadline. Subsequently, the consumer complaint was forwarded to AMVIC’s investigation department.
  7. At the time of the complaint, the Supplier’s advertisements were offering the business activity of consignment sales, however the Supplier was not licensed for consignment sales.
  8. CM did not take delivery of the Fusion until May 10, 2022 and encountered significant mechanical issues immediately after taking possession. CM had been unable to drive the Fusion yet continued to make payments on a motor vehicle that he could not use.
  9. CM provided pictures of communication between him and various parties that support his claims not limited to text messages with the Supplier from March 21, 2022 to June 22, 2022 that provide the following timeline:
    - March 21, 2022, CM notified the Supplier he was not interested in the Fusion due to different payment amounts quoted, a high interest rate, the fact he was not made aware of a \$2,500 warranty charge and a \$999 fee, and requested his deposit back.
    - Between March 28 and April 29, 2022, CM inquired six times as to when the Fusion would be ready and reminded the Supplier he has not been refunded his \$500.
    - On May 6, 2022, CM requested the MFA from the Supplier and was advised that the Fusion was not 100 per cent fixed and that he could pick up the Fusion the next day. CM inquired about the Out of Province Inspection (the “OOP”) since it was last registered in Saskatchewan and the Supplier responded that he would get the inspection.
    - Between May 9 and May 17, 2022, CM made further inquiries as to when the Fusion would be ready for pick up. When CM picked up the Fusion he encountered mechanical issues and notified the Supplier of the mechanical issues including that the check engine light being illuminated, the Fusion not being driveable, and that it needed to be towed to a service and repair facility.
    - The subsequent text message exchanges between June 8 and June 17, 2022 are in relation to the Supplier allegedly repairing the Fusion and the Fusion being returned to the Supplier.
  10. The process of financing the Fusion through a third party at the same business location of the Supplier, and CM dealing with two different businesses created a confusing and misleading situation. This is not limited to documents and records, the return of the \$500 deposit to CM, and one of the businesses taking ownership and responsibility for CM’s concerns and issues relating to the Fusion. Schedule “A” provides evidence of communication between CM and the Supplier, as

well as communication between CM and the third party that completed the sale in June and July of 2022.

11. The AMVIC investigation identified that:

- On July 28, 2022 the AMVIC investigator emailed the Supplier a third request for records and documents, giving the Supplier until July 29, 2022 to provide a response and the Supplier failed to provide the records (see Schedule "A"; Exhibit N).
- On Aug. 24, 2022 a Director's Order was served on the Supplier to provide records by no later than Sept. 2, 2022 and to remove all consignment advertisements from mass media.
- The Supplier failed to provide all of the records requested by Sept. 2, 2022 and therefore breached the Director's Order.
- The bill of sale ("BOS") dated March 25, 2022 lists the seller as the third party who financed the Fusion.
- There is no BOS between the Supplier and CM.
- The Supplier sold the Fusion to the third party who financed the Fusion for CM on April 1, 2022 (see Schedule "A"; Exhibit S). The third party did not own the Fusion at the time of the transaction and therefore was not authorized to sell the Fusion to CM on March 25, 2022. The Fusion was owned by the Supplier at the time of the transaction.
- CM was told by the third party that there are penalty fees relating to paying out his loan, however the financial institution's conditional sales contract dated March 25, 2022 contradicts this statement, as page two and three on the contract in the pre-payment terms states that the buyer can pay the amount owing without penalty at any time.
- The Fusion was purchased by the Supplier from an auction company out of Saskatchewan on Feb. 10, 2022 for \$6,000. The BOS from the auction company lists an announcement that the Fusion has a transmission issue which will cost over \$750 to repair.
- An MFA and an out of province inspection were not completed on the Fusion until May 10, 2022 a month and a half after the BOS sale date of March 25, 2022.
- The Supplier failed to disclose to CM that the Fusion was an out of province vehicle. The Supplier also did not disclose the history of the Fusion, including the transmission issue.
- There is a repair and service invoice dated April 14, 2022 to replace the Fusion's transmission for a cost of \$2,719.50. There is a further repair invoice in the amount of \$780.50 dated May 10, 2022 to repair the transfer case of the Fusion. Both repairs were completed prior to CM taking possession of the Fusion but after CM entered into an agreement to purchase the Fusion on March 25, 2022. The repair invoices list the Supplier as the client who brought the vehicle in to have the repairs.
- When CM took possession of the Fusion on May 10, 2022, CM was only able to drive it approximately six days and in that time frame the Fusion broke down four times due to engine failure.
- After AMVIC's investigation began, the Supplier offered a resolution to CM in regards to the Fusion:
  - CM to attend in person to the Supplier's location to sign documents related to the cancellation of the transaction, as original signatures were required.

- The cancellation of the transaction would cover the amount currently owing on the Fusion and would not include a reimbursement to CM for the payments already made nor the cost of insurance.
- CM to make arrangements to have Fusion towed to the Supplier at CM's expense.
- Supplier will have the Fusion checked to ensure there is no damage, with the understanding that the Fusion is not driveable.
- Supplier to refund the initial \$500 deposit back to CM.

12. On Feb. 8, 2023, CM provided additional text messages to the AMVIC investigator that support that:

- CM had the Fusion towed and returned to the Supplier's lot on Nov. 17, 2022.
- As of Jan. 25, 2023, CM's loan had not yet been paid out and the Fusion has been sitting on the Supplier's lot for more than two months.

#### ***Supplier Representations during the Administrative Review – Case File 22-05-027***

13. During the administrative review the Director had a number of questions for the Supplier and the Director determined that:

- The Supplier confirmed the Fusion was towed to their lot at CM's expense on Nov. 17, 2022.
- CM's loan has not yet been paid off by the Supplier despite the Fusion being returned over four months ago.
- The Supplier expressed their intention is to pay off the loan this week.
- The Supplier could not offer a proper reason why the loan not yet been paid except the Supplier commented that they have had some financial difficulties as a result of having to buy out a former business partner.
- The Supplier has yet to refund CM his original \$500 deposit which should have been refunded almost a year ago. The Supplier could not provide a valid reason for the delay.
- The Supplier did remove their consignment advertising as directed by the Director's Order and have not applied to AMVIC's licensing department to have this business activity added.
- The Supplier did not provide all of the documents to the AMVIC investigator as required by legislation and as directed by the Director's Order because they could not find them, or the third party repair facility they employed would not provide them to them despite their requests.

14. During the administrative review, the Director expressed his concern with the above described transaction with CM and requested the Supplier advise why he felt he should be given the opportunity to continue to operate an automotive business. The Supplier stated:

- Mr. Mehri worked as a salesperson for another business previously, however did not know much about running his own business and made some "*honest mistakes*". He acknowledged the breaches of the legislation as set out and indicated that a former business partner whom he bought out was allegedly responsible for a number of the shortcomings and deficiencies not limited to the advertising and record keeping issues.

- Mr. Mehri advised he apologized to CM and reassured CM that he will pay off his loan, refund the deposit, and pay for the interest and payments to CM's satisfaction.
- Mr. Mehri commented that the Supplier's paperwork is now accurate, they have high Google review rating indicating customer satisfaction, however did not provide any documents to the Director to support this.
- Selling motor vehicles is a career for Mr. Mehri and he wants to be in business for a long time.
- The Supplier projects they will sell 200 vehicles this year.

### **Case File 22-07-162**

15. In July of 2022, AMVIC received a complaint alleging that a consumer had been misled by a Supplier regarding the condition of a vehicle that was purchased.

16. On Dec. 23, 2021, a consumer ("NM") purchased a 2013 Subaru Legacy (the "Subaru") for a purchase price of \$12,999 plus fees and taxes.

17. NM's consumer complaint to AMVIC can be summarized as follows:

- NM purchased the Subaru with a seven month engine warranty. The only documentation she was provided that references the warranty is the BOS. NM did not receive any warranty documents.
- After the purchase, NM encountered oil consumption issues and brought the Subaru to the Supplier where she was told she needed a new engine but her warranty only covered 7,000 kilometres ("kms") and the claim limit was \$600.
- NM was never made aware of the exclusions and limitations of the warranty that she received when she purchased the Subaru.
- The Supplier refused to honour the warranty and offered to cover half of the repair costs.
- The warranty represented to NM at the time of purchase was to cover the full cost of anything that went wrong which led her to believe the Subaru was in good mechanical condition. NM relied on this statement when making the decision to purchase the Subaru.

18. The Supplier was not responsive to the CSO during the complaint process and several followup requests were emailed to the Supplier. The Supplier eventually responded to the CSO advising they were in the process of trying to resolve the consumer complaint and requested if they could send documents once resolved which was agreed upon by the CSO. A resolution was never reached and the Supplier never provided the requested documents to the CSO.

19. The AMVIC investigation confirmed that the Supplier was making efforts to resolve the complaint with NM, however the Supplier's offer was not considered reasonable to NM. On Sept. 22, 2022 and Oct. 6, 2022, NM provided the AMVIC investigator an update advising that:

- The Supplier was adamant she needed to contribute towards the cost of repairs despite the fact that she was never made aware of any warranty limitations.

- NM had lost trust in the Supplier due to constant delays, difficulty in getting any proposals and information in writing, and a failure on the Supplier's part to have the Subaru assessed by a third party repair facility.
- NM was reluctant to give the Supplier any further money especially towards repair costs.
- The third party mentioned to her by the Supplier to complete the engine repair work was not AMVIC licensed at the time. The AMVIC investigator confirmed this information and identified that this third party repair facility was only issued a business licence for garage activity by AMVIC on Nov. 23, 2022.
- NM intended on having the repairs completed by a licensed technician that she trusts and has familiarity with an engine warranty better than the warranty offered by the Supplier.
- When NM first took the Subaru back to the Supplier, she was met by a third party representative employed at the same location of the Supplier who does not have a valid salesperson registration who offered to buy the Subaru from her and then sell it back to her with a better warranty fraudulently to get the engine repaired and covered under warranty. Mr. Mehri was present at the location at the time but never spoke with her. NM did not want any part of defrauding the warranty company to cover the engine repairs.
- The Supplier had purchased a motor for the Subaru on their own, however NM had lost trust in the Supplier and was not going to have the Supplier complete the engine replacement.
- NM had never previously purchased an after-market warranty and was unaware at the time she purchased the Subaru there was a separate contract for this. The Supplier had not had her sign any documents, did not provide her with any warranty documents and did not explain any limitations or exclusions of the warranty policy.

20. The AMVIC investigator met with Mr. Mehri, owner and director of the Supplier, on Oct. 7, 2022.

Mr. Mehri provided the following details:

- The warranty contract was not signed by NM and it only had Mr. Mehri's signature on it.
- The warranty contract was submitted to the warranty company on Dec. 23, 2021 without the consumer's signature.
- The Supplier was offering a seven month, 7,000 km warranty in December of 2021 as a promotion at no charge to consumers.
- Mr. Mehri told NM that an engine would cost \$9,000 but that he could get it done cheaper and would get her to pay a maximum of \$2,500 towards the repair costs.
- Mr. Mehri purchased an engine for \$3,150 and the engine is currently sitting at a third party repair facility who is owned by a relative of his. The AMVIC investigator notified him to cease referring consumers to this repair facility as they are not properly AMVIC licensed as confirmed through AMVIC's licensing database system.
- The cost to get the engine installed would be about \$5,000 and Mr. Mehri offered NM to split the cost. He further offered her a warranty for the engine and transmission.
- NM told Mr. Mehri that she did not trust him and wanted him to buy back the Subaru.
- After the Supplier purchased the Subaru from auction, it was repaired however Mr. Mehri could not recall which repair facility completed the repair and that an MFA was also completed on the Subaru.



- When the AMVIC investigator inquired about the comments made by a third party employee to NM who offered to resell the Subaru back from NM with a warranty, Mr. Mehri stated he was busy at the time and denied any involvement with this offer.
21. The BOS in relation to this consumer transaction was non-compliant with the legislation and the compliance issues identified were:
- The government issued identification is missing;
  - The delivery date is missing;
  - The BOS has slight discrepancies in the calculations in the amounts listed. The BOS lists the subtotal as \$13,333, the GST as \$667, the total as \$14,000 and the total balance due after the \$500 down payment as \$13,500. Based on the numbers listed on the BOS, the subtotal should have been \$13,333.25, the GST should be \$666.66, the total should be \$13,999.91 and the total balance due should be \$13,499.91 after the \$500 down payment;
  - The relevant declaration as per Section 31.1 of the ABR has not been included;
  - The Supplier listed in the *“Additional Agreement Provisions”* section of the BOS a *“7 month engine warranty”*, however no other information regarding the warranty or its limitations are listed; and
  - The BOS makes reference to an *“Automotive Inspection Sign-Off”* and states, *“by signing below the purchaser acknowledges having received, reviewed and approved the certificate of MFA mechanical fitness as required by AMVIC”*. The MFA is required by the *Traffic Safety Act (“TSA”)* and the associated Vehicle Inspection Regulation (*“VIR”*), not by AMVIC.
22. The MFA completed on the Subaru on Nov. 10, 2021 has all items on the Subaru marked as compliant. The MFA does not include the previous province of registration.
23. The AMVIC investigator made inquiries via email and phone call with the warranty company between Nov. 8 and 29, 2022. The AMVIC investigation determined that:
- The remittance or cost of the warranty was \$102.90;
  - The senior compliance specialist confirmed the warranty policy was for seven months of coverage, however the warranty does not mention a 7,000 km limitation;
  - They spoke to the Supplier and reiterated the importance of getting the contracts properly signed by the consumers;
  - The consumer did not pay for the warranty as it was offered on promotion;
  - The warranty company would be reaching out to the consumer and offering her a new seven month, 7,000 km warranty;
  - The warranty company was unaware that the consumer had a mechanical issue with the Subaru and to their knowledge the complaint was about the terms of the coverage when they spoke with the Supplier;
  - The warranty company stated they received the remittance on Nov. 2, 2022 and not Dec. 23, 2021 as communicated by the Supplier to the AMVIC investigator;
  - The warranty company confirmed they do not offer warranty contracts on vehicles with pre-existing conditions as referred to in their *“General Exclusions and Limitations”* clause; and

- The warranty company advised that all contracts need to be signed by the consumer, and they are also to receive a copy of the warranty with the coverages and information.
24. The AMVIC investigator made several requests verbally and in writing to the Supplier including Oct. 7, Oct. 13, and Nov. 8, 2022 for all of their records pertaining to this consumer transaction. The Supplier was not able to produce the diagnosis records and repair invoices for the repairs allegedly completed on the Subaru after it was purchased from auction but before the sale to NM, nor could the Supplier provide the invoice for the completion of the MFA on Nov. 10, 2021. The AMVIC investigator requested the diagnosis estimate records for the Subaru from July 2022, and the Supplier provided an estimate dated Oct. 17, 2022 from the third party who completed the estimate, who also operates out of the same business location as the Supplier. NM had the Subaru in her possession on Oct. 17, 2022, therefore the AMVIC investigator questioned the validity and accuracy of the record and followed up with the third party repair business.
25. On Nov. 22, 2022, the AMVIC investigator was advised by the third party repair business that the licensed technician had been laid off and had taken most of the paperwork with him, therefore they also could not supply the repair invoices requested.
26. On Dec. 14, 2022, NM confirmed that she had the engine in the Subaru repaired and replaced by a licensed technician she chose and provided the AMVIC investigator with a copy of the invoice dated Oct. 11, 2022. NM's total cost to have the engine repairs completed came to approximately \$6,800 excluding clutch repairs she also had completed.

#### ***Supplier Representations during the Administrative Review – Case File 22-07-162***

27. During the administrative review the Director had a number of questions for the Supplier in relation to this consumer transaction and Mr. Mehri provided the following details:
- The Supplier confirmed the unlicensed third party repair facility he referred NM and whom they intended to employ to replace the engine is a relative of Mr. Mehri, and they were unaware this business did not have an AMVIC licence. The Supplier no longer does business with this third party repair facility.
  - The Supplier asserts they had the engine for the Subaru repaired prior to selling it to NM, however cannot provide evidence to support this claim as they did not maintain their records and allegedly the third party repair facility they utilized went out of business and will not provide the required paperwork to them.
  - The Supplier re-affirmed that they remitted the \$102.90 to the warranty company on Dec. 23, 2021 and did not deceive the AMVIC investigator. The Supplier contends the date of Nov. 2, 2022 as communicated to the AMVIC investigator by the warranty company is an error by the warranty company as the Supplier regularly remits their warranty payments every three or four months, not 11 months after the BOS date which was alleged by the warranty company.
  - Mr. Mehri stated he was out of the country at the time of the consumer transaction with NM and stated the reason NM was not provided a copy was their printer was not working that day.

- Mr. Mehri and salesperson for the Supplier involved in the consumer transaction with NM both received training from the warranty company and were both aware of the requirements to have warranty policies signed by consumers, to provide a signed copy of the warranty to consumers and to explain the limitations and exclusions of the warranty. Despite having this training and knowledge, Mr. Mehri could not provide a reason why NM did not sign the warranty, receive a copy of the warranty or why NM would not have an understanding of the limitations and exclusions as required. Mr. Mehri again reiterated he was out of the country.
- Mr. Mehri confirmed his signature is on the warranty policy and not the salesperson who sold the Subaru to NM, yet he was certain that the warranty had been explained to NM.
- The Supplier could not provide a valid reason why the third party estimate for the diagnosis and repair for the Subaru given to the AMVIC investigator is dated October of 2022, when he did not have possession of the Subaru.
- The Supplier confirmed they purchased a used engine for the Subaru at a cost of \$3,150 and their intention was to have the engine replaced. The Supplier contends that they were in contact with NM's lawyer and were even prepared to have her licensed technician complete the replacement, however did not provide any supporting evidence to support this claim.
- The Supplier was unaware that NM already had the engine replaced at a cost of approximately \$6,800.
- Mr. Mehri commented that now that he is the sole owner, he does not think there will be any more consumer complaints to AMVIC and wants to stay in business for the long term.

28. The Supplier provided written representations, dated June 13, 2023, in response to the Proposed Administrative Penalty (see Schedule "D"). These representations were fulsome and addressed the multiple concerns that were brought forward as a result of the two consumer complaints.

## 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  
(o) comply with any legislation that may apply to the selling, leasing, consigning, repairing, installing, recycling or dismantling of vehicles.

## Vehicle history information

### Section 31.1

(1) A business operator engaged in automotive sales must disclose the following information in accordance with subsection (2), on the basis of information the business operator knew or ought to have known:

- (a) whether the vehicle has been bought back by the manufacturer under the Canadian Motor Vehicle Arbitration Plan;
- (b) whether the vehicle has sustained damage caused by fire;
- (c) whether the vehicle has sustained damage caused by immersion in liquid to at least the level of the interior floorboards;
- (d) whether the vehicle has been used as a police car or an emergency vehicle;
- (e) whether the vehicle has been used as a taxi cab or a limousine;
- (f) whether the vehicle has been previously owned by a rental vehicle business or used as a rental vehicle on a daily or other short-term basis;
- (g) whether the vehicle has, at any time, been assigned a status in one of the following categories under the Vehicle Inspection Regulation (AR 211/2006) or an equivalent status under the laws of another jurisdiction:
  - (i) salvage motor vehicle;
  - (ii) non-repairable motor vehicle;
  - (iii) unsafe motor vehicle;
- (h) whether the vehicle has been damaged in an incident or collision where the total cost of repairs fixing the damage exceeded \$3000 and, if the repairs were carried out by the business operator, the total cost of the repairs;
- (i) whether the vehicle was registered in any jurisdiction other than Alberta immediately before it was acquired by the business operator and, if so,
  - (i) the name of the jurisdiction in which the vehicle was previously registered,
  - (ii) whether the vehicle was required to be inspected prior to registration in Alberta, and
  - (iii) whether the vehicle passed or failed any required inspections.

(2) The business operator must disclose the information required under subsection (1) in a clear and legible manner (a) in any online advertisement for the vehicle, (b) on any sales tag affixed to the vehicle, and (c) in writing to the consumer before purchase.

## Bill of sale

### Section 31.2

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

- (a) the name and address of the consumer;
- (b) the number of the government-issued identification that the business operator uses to confirm the identity of the consumer;
- (c) the name, business address and licence number of the business operator;
- (d) if a salesperson is acting on behalf of the business operator, the name and registration number of the salesperson;
- (e) the make, model and model year of the vehicle;

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

### **Receipt of information**

#### **Section 31.3**

A business operator engaged in automotive sales must not enter into a bill of sale with a consumer unless the business operator has obtained written confirmation from the consumer that the consumer has received the information required under section 31.1.

### **Vehicle Inspection Regulation**

#### **Sale of out of province motor vehicle**

##### **Section 14**

A person shall not sell a motor vehicle that is an out of province motor vehicle unless, before the sale,

(a) the person provides the buyer with a subsisting out of province motor vehicle inspection certificate for the motor vehicle, or

(b) the person provides the buyer with a written statement advising that the motor vehicle is an out of province motor vehicle for which there is no subsisting out of province motor vehicle inspection certificate.

#### **Sale of used motor vehicle**

##### **Section 15**

**(1)** Subject to subsection (2), a dealer in used motor vehicles shall, before entering into a contract to sell a motor vehicle, give to the buyer a used motor vehicle mechanical fitness assessment that contains the following:

(a) a statement identifying the type of motor vehicle as a truck, motorcycle, bus, van, light truck, automobile or other type of motor vehicle;

(b) a statement showing the make, model, year, vehicle identification number, odometer reading in kilometres or miles, licence plate number and province of registration of the vehicle;

(c) the name and address of the dealer selling the vehicle and the name of the technician who issued the mechanical fitness assessment;

(d) a statement that the mechanical fitness assessment expires 120 days after the date on which it was issued;

(e) a statement certifying that at the time of sale the motor vehicle

(i) complies with the Vehicle Equipment Regulation (AR 122/2009), or

(ii) does not comply with the Vehicle Equipment Regulation (AR 122/2009)

and containing a description of the items of equipment that are missing or do not comply with the Vehicle Equipment Regulation (AR 122/2009);

(f) the signature of the technician who conducted the mechanical fitness assessment;

(g) the date the mechanical fitness assessment was issued.

### **Consumer Protection Act**

#### **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.

(3) It is an unfair practice for a supplier

(a) to enter into a consumer transaction if the supplier knows or ought to know that the consumer is unable to receive any reasonable benefit from the goods or services;

(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.

### **Non-compliance with orders, etc.**

#### **Section 163**

Any person who

- (a) fails to comply with an order of the Director under section 129, 151(3) or 157, unless the order has been stayed
  - (d) fails to comply with an undertaking under this Act
- contravenes this Act and is guilty of an offence.

### **Vicarious liability**

#### **Section 166**

For the purposes of this Act, an act or omission by an employee or agent of a person is deemed also to be an act or omission of the person if the act or omission occurred

- (a) in the course of the employee's employment with the person, or
- (b) in the course of the agent's exercising the powers or performing the duties on behalf of the person under their agency relationship.

### **Analysis – Did the Supplier fail to comply with the provisions of the CPA, ABR and VIR?**

The material which formed the Application Report was the result of two consumer complaints in which they were both misled by the Supplier, AMVIC case files 22-05-027 and 22-07-162.

#### **A. Unable to Receive Benefit (CPA Section 6(3)(a))/ Mislead and Deceive (CPA Section 6(4)(a))**

##### **Case file 22-05-027**

The Supplier advertised they offered financing and the Fusion came fully mechanically inspected. These are false and misleading statements as the Supplier did not offer financing at that time and the Fusion did not have an Out of Province Inspection or MFA completed at the time the Fusion was sold to the



consumer. An MFA and an out of province inspection were not completed on the Fusion until May 10, 2022, a month and a half after the BOS sale date of March 25, 2022. In their written representations in response to the Proposed Administrative Penalty (see Schedule “D”), the Supplier indicated they will not allow a sale to proceed prior to the required assessments or inspections being completed in the future.

CM was misled in many other facets during the course of his transaction with the Supplier including but not limited to the timeframe he would be able to take possession of the Fusion, the condition of the Fusion, the vehicle history of the Fusion including the transmission issues, that the Fusion was an out of province motor vehicle and that CM would be refunded his initial \$500 deposit. Although CM requested to have his \$500 deposit refunded or applied towards the purchase of the Fusion, the Supplier did not comply and as of March 21, 2023 had not yet been refunded the deposit, almost a year after CM purchased the Fusion. The Supplier provided evidence that the loan for the Fusion has been paid in full and CM had been provided payment to cover the expensed incurred as a result of the transaction with the Supplier (see Schedule “D”).

The third party who financed the Fusion was not authorized to sell the Fusion to CM on March 25, 2022 as they did not yet own it. The Fusion was still owned by the Supplier as of April 1, 2022. An employee for the third party who was engaged in the consumer transaction with CM was not registered for automotive sales therefore was not authorized to conduct business on behalf of this third party.

A repair and service invoice dated April 14, 2022 to replace the transmission of the Fusion in the amount of \$2,719.50 and a further repair and service invoice dated May 10, 2022 to repair the transfer case in the amount of \$780.50 were both completed prior to CM taking possession of the Fusion, and after CM entered into an agreement to purchase the Fusion on March 25, 2022.

When CM took possession of the Fusion on May 10, 2022, he was only able to drive it approximately six days and in that time frame the Fusion broke down four times due to engine failure. CM alleges that he was told the Fusion would be ready for him to pick up within two days of signing the BOS on March 25, 2022. Text messages between CM and the Supplier dated between March 21, 2022 and June 20, 2022 provide evidence of the Supplier’s inactions and false promises made to CM (Schedule “A”; Exhibit H). The documents further support CM’s claims regarding the mechanical failures of the Fusion after he took possession. Although the Supplier provided CM with a loaner vehicle, CM had been paying for the Fusion and had not gotten any reasonable use of the motor vehicle, yet had been making monthly payments on the Fusion during this time. As of March 21, 2023, the Supplier has yet to pay out CM’s loan or reimburse him reasonable costs, not limited to interest and payments made, despite CM arranging and paying for towing and delivery costs for the return of the Fusion to the Supplier’s lot on Nov. 17, 2022.

### **Case file 22-07-162**

On Oct. 21, 2021, the Supplier purchased the Subaru from an auction. The auction announcement identified that the Subaru required engine repairs. The BOS obtained from the auction company shows that there was an auction announcement that the Subaru had engine issues requiring repairs over \$750.

NM purchased the Subaru from the Supplier Dec. 23, 2021 with a courtesy “7 month engine warranty”. NM was not provided the warranty documents and alleges the Supplier held the warranty out to fully cover any issues that may arise with the engine. NM relied on this statement when making the decision to purchase the Subaru. While the Supplier asserted he was certain the salesperson explained the warranty to NM, the evidence does not support this. NM did not sign the warranty documents nor was she provided a copy of the warranty documents and the BOS does not list any details about the warranty. In addition, the warranty document has Mr. Mehri’s signature on it, not the salesperson who completed the transaction, yet he asserts he was out of the country at the time of the transaction and provided no evidence to support that the salesperson explained the warranty to NM. Further, the Director cannot ascertain when the warranty documents and remittance were submitted to the warranty company as Mr. Mehri and the warranty company state different dates. In weighing the evidence, the Director finds that the Supplier’s comments are unreliable, Mr. Mehri told the Director he was out of the country at the time of the sale, but yet signed the warranty document and asserts he submitted the warranty documents the same day as the transaction. On a balance of probabilities, based on the totality of the evidence, the Director finds that the Supplier did not explain the engine warranty to NM.

The Supplier did not disclose to NM any information about the engine issues that had been announced at the auction when the Supplier purchased the Subaru. After the purchase NM noticed the Subaru had an oil consumption issue and she was advised the Subaru required a new engine. The Supplier advised that a new engine could cost upwards of \$9,000 but they could get it done for her cheaper but she would be required to pay \$2,500 towards the cost of the repair, NM did not agree to this as she no longer trusted the Supplier. The Supplier intended to have the Subaru’s engine replaced at an unlicensed repair facility of a known relative of Mr. Mehri. The AMVIC investigation confirmed the repair facility was not licensed by AMVIC for the designated business activity of garage at the time and only became licensed for garage on Nov. 23, 2022.

While the Supplier claims they completed repairs on the Subaru to address the engine repairs required, they could not produce records to support any repairs were completed on the Subaru prior to selling it to NM. Ultimately NM took the Subaru to a business that she trusted and had the engine replaced at an out of pocket cost of approximately \$6,800. In totality, the evidence currently before the Director supports the Supplier did not have the engine repairs completed prior to selling the vehicle to NM.

Not only did the Supplier knowingly sell NM a vehicle that required engine repairs without disclosing the required repairs to NM, they provided NM a warranty, advising it would cover any engine issues that may arise in full. They did not accurately depict the details and coverage of the warranty to NM. Furthermore, the warranty could never have been used by NM as the engine issues would be considered a pre-existing condition as it is outside the “*Terms and Conditions*”. This is a deceptive practice towards NM and the warranty company. The Subaru was not mechanically sound as per the declaration from auction and the Supplier signed the warranty contract falsely certifying the Subaru was eligible for coverage. In the Supplier’s June 13, 2023 written representations (see Schedule “D”), they reiterated that they will ensure that the required assessments or inspections that are required will be completed prior to the sale of any vehicle to a consumer and further advised that they have strengthened their knowledge to better explain what is included in the warranty coverage they are selling.

Finally, the BOS in relation to the Subaru is misleading to a consumer as it describes the MFA as an “*Automotive Inspection*”. Referring to an MFA as an “inspection” in itself is a misleading statement to a consumer. In the Provincial Court of Alberta decision *R. v. 954355 Alberta Inc. (The Fast Lane)*, 2016 ABPC 229, the Honourable Judge H.A. Lamoureux outlines the distinct differences, requirements and standards of an MFA versus an inspection.

These type of business practices leverage the Supplier’s knowledge and position and does not foster a level playing field between the consumer and the Supplier, leading to consumer harm.

On a balance of probabilities the Director finds that the Supplier entered into a consumer transaction when he knew or ought to have known the consumer would not be able to receive any reasonable benefit from the purchase of the Subaru, breaching Section 6(3)(a) of the CPA. CM and NM were further misled by the Supplier’s actions and words throughout the course of their consumer transactions contrary to Section (6)(4)(a) of the CPA.

## **B. Bill of Sale Issues (31.2(1)(2) ABR)**

### **Case file 22-05-027**

CM reached out to the Supplier after seeing an advertisement posted by the Supplier for the Fusion. CM spoke with the Supplier who provided details about the Fusion and quoted CM with what the payments would likely be for the Fusion. When CM made the decision to purchase the Fusion the Supplier advised he could not offer financing but that a third party, that shares a business location with the Supplier, could finance the Fusion for CM. The BOS selling the Fusion to CM is dated March 25, 2022 and lists the seller as the third party who financed the Fusion. However, based on the BOS between the Supplier and the third party who financed the Fusion dated April 1, 2022, the third party was not authorized to sell the Fusion to CM on March 25, 2022 as they did not yet own it and the Fusion belonged to the Supplier.

The details of this transaction are quite convoluted and the BOS misrepresents the true seller of the Fusion to CM. However, given there is no actual BOS between the Supplier and CM, the Director cannot hold the Supplier accountable for the non-compliant BOS in relation to this transaction therefore the Director does not find the Supplier has breached Section 31.2(1)(2) of the ABR in relation to this case file.

### **Case file 22-07-162**

The BOS in relation to the Subaru sold to NM does not comply with the legislation. The BOS does not list the government issued identification of NM, the delivery date is not listed and there are slight calculation errors in the amounts listed on the BOS. The BOS lists the subtotal as \$13,333, the GST as \$667, the total as \$14,000 and the total balance due after the \$500 down payment as \$13,500. The subtotal should be \$13,333.25, the GST should be \$666.66, the total should be \$13,999.91, and the total balance due should be \$13,499.91 after the \$500 down payment. The Director acknowledges the calculation discrepancies on the BOS are minimal, however the calculations are not accurate. The

business practice of not accurately completing the calculations in a consumer transaction is a concern to the Director. Further, the relevant declaration required by Section 31.1 of the ABR is not on the BOS.

The Supplier advised in their July 13, 2023 written representations (see Schedule “D”) that they have created an updated BOS to comply with Section 31.2 of the ABR.

Based on the evidence before me, on a balance of probabilities, I find the Supplier has breached Section 31.2(1)(2) of the ABR.

### **C. Vehicle History Information (31.1(1)(2) ABR)**

#### **Case file 22-05-027**

CM reached out to the Supplier after seeing an advertisement posted by the Supplier for the Fusion. Throughout the entire course of the transaction up until the decision to purchase the Fusion, CM only spoke with the Supplier. CM did not deal with the third party until he decided to purchase the Fusion and only did so because the Supplier did not have the ability to offer financing. At no time did the Supplier advise CM that the Fusion was an out of province motor vehicle or that it had a known transmission issue. While failing to disclose this information to CM causes the Director concern, the BOS in this transaction is not between Supplier and CM, the Director does not find the Supplier breached 31.3 of the ABR in relation to this case file.

While ultimately the Fusion was sold by a third party, the Supplier advertised the Fusion. The Supplier advertised the Fusion, and CM reached out to the Supplier because of that advertisement. The Supplier’s advertisement did not indicate the Fusion was registered in Saskatchewan immediately before it was acquired, nor did it disclose whether the Subaru was required to be inspected prior to registration in Alberta or whether the Subaru passed or failed any required inspections. Based on the evidence before me, on a balance of probabilities, I find the Supplier has breached Section 31.1 of the ABR in relation to this case file.

In their written representations in response to the Proposed Administrative Penalty (see Schedule “D”), the Supplier provided details of changes they have made to their business practices to ensure that the consumer is provided the required information as per Section 31.1 of the ABR.

### **D. Maintain Records (132 CPA and 9 ABR)**

The AMVIC investigations revealed to the Director that the Supplier has issues with record keeping. In case file 22-05-027, financing the Fusion through a third party located at the same business location of the Supplier and CM dealing with two different businesses created a confusing and misleading situation not limited to documents and records. Additionally, the fact that there is no BOS between the Supplier and CM has created a question of liability in regards to the many problems that have been encountered as a result of this transaction.

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 legislative requirements.

Major issues that the Director found in the Findings Letters provided to the Supplier as results of previous AMVIC industry standards inspections include the completion of and/or disclosure of MFAs, issues with the completion of the BOS, failure to disclose vehicle history information, advertising issues and the accuracy of the documents themselves provided or produced by the Supplier. 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 licensed business activities.

It further concerns the Director that the Supplier failed to produce and provide their records to the AMVIC investigator after multiple requests. The issuance of a Director's Order had to be sought and served on the Supplier. After being served a Director's Order, the Supplier failed to abide by the Director's Order as they did not provide all of the requested records.

In case file 22-07-162, the consumer transaction with NM in the purchase of the Subaru, it took several requests for the AMVIC investigator to obtain records from the Supplier and they were unable to produce the repair records in relation to the Subaru's engine that the Supplier alleges were conducted after they purchased the Subaru from auction and before the sale to NM, as well as an invoice for the completion of the MFA. The Supplier's response to the investigator was that the third party repair facility was unable to locate the documents.

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.*

In the Supplier's June 13, 2023 written representations (see Schedule "D"), they indicated they have put additional processes in place to ensure they are keeping track of all documents for each vehicle sold.

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

## E. MFA Compliance Issues (14 and 15(1) VIR)/General Code of Conduct (12(o) ABR)

### Case file 22-05-027

In the sale of the Fusion to CM, the AMVIC investigation revealed that the MFA was not shown or given to CM prior to entering into a consumer transaction because one had not been completed. Section 15(1) of the VIR requires an MFA be provided to the consumer prior to entering into a contact to sell a vehicle. The most egregious issue is the fact that the MFA was completed on May 10, 2022, after the BOS date of March 25, 2022, **over a month and a half** after the sale of the Fusion. The Director further noted that the MFA shows that the powertrain, transmission and all other components of the Fusion are compliant yet within days CM encountered significant mechanical issues immediately after taking delivery and was unable to drive the Fusion.

The MFA dated May 10, 2022 further does not list the address of the Supplier, the previous province of registration is listed as Alberta which is incorrect, the odometer reading is listed as 200,073 kms which is incorrect and CM signed the MFA on May 10, 2022 after the BOS date.

The MFA is required as per Section 15(1) of the VIR. The VIR is a regulation under the *Traffic Safety Act* ("TSA"). The requirement to provide an MFA is required under the TSA and is therefore in the jurisdiction of Alberta Transportation. Although the MFA falls under the requirement of Alberta Transportation, it comes into AMVIC's purview in the course of our mandated duties as per a number of legislated sections that apply to following all legislation applicable to the sale of motor vehicles such as Section 12(o) of the ABR and Section 127(b)(v.1) of the CPA.

The AMVIC investigation further revealed that the Fusion was an out of province vehicle purchased at auction through an auction company out of Saskatchewan by the Supplier on Feb. 10, 2022 for \$6,000. The BOS from the auction company (Schedule "A", Exhibit O) identifies an auction announcement that the Fusion had a transmission issue requiring a repair that would cost over \$750. A service and repair invoice dated May 10, 2022 (Schedule "A", Exhibit W) demonstrates that the Out of Province Inspection was completed on May 10, 2022 yet the Fusion was sold to CM on March 25, 2022. CM was never made aware of the vehicle history of the Fusion, provided with a subsisting out of province motor vehicle inspection certificate for the motor vehicle or provided with a written statement advising that the motor vehicle is an out of province motor vehicle for which there is no subsisting out of province motor vehicle inspection certificate.

### Case file 22-07-162

The MFA completed on Nov. 10, 2021 in reference to the Subaru is missing the previous province of registration and the MFA has all items marked as compliant. The Subaru had a known engine issue as per the auction declaration on Oct. 21, 2021 and the Supplier could not produce records that they repaired the engine prior to sale. Further, when NM purchased the Subaru on Dec. 23, 2021 she was not made aware of the vehicle history and not long after purchase had mechanical issues with the Subaru including having to have the engine replaced. In the opinion of the Director, the reliability and

credibility of the MFA completed on Nov. 10, 2021 is questionable as it does not align with the other evidence currently before the Director.

Having a consumer sign and date the MFA is the best way to document that a consumer was shown the MFA prior to entering into a transaction. By failing to give CM an MFA and an out of province motor vehicle inspection certificate for the Fusion before entering into a contract to sell him the vehicle, the Supplier has breached Sections 14 and 15(1) of the VIR and Section 12(o) of the ABR.

The Supplier advised in their written representations (see Schedule “D”) that they will ensure they are complying with Section 15(1) of the VIR and provide the required MFA to the consumer prior to entering into a contract to sell a motor vehicle.

#### **F. Breach Director’s Order/ Breach of Undertaking (163(a) and 163(d) CPA)**

##### **Director’s Order**

On Aug. 24, 2022, the Supplier was served a Director’s Order (Schedule “A”; Exhibit P) in relation to consumer complaint file 22-05-027. This was as a result of the Supplier failing to provide business records available for inspection at a place in Alberta specified by the AMVIC investigator who is designated and appointed as an inspector by the Director, and to remove advertising consignment sales from their advertising as the Supplier is not authorized to carry on this class of business activity as per Section 104(1) of the CPA. The AMVIC investigator made three requests to the Supplier to provide records prior to pursuing a Director’s Order (Schedule “A” Exhibit N). The Director’s Order directed the Supplier to:

5. *Comply with providing business records of 2286631 ALBERTA LTD. doing business as AUTOZONEYYC no later than Sept. 2, 2022.*
6. *Immediately remove all consignment sales advertising on mass media until properly licensed with the regulator AMVIC to engage in this activity.*
7. *Cease all unlicensed, designated automotive business activity while unlicensed to do so under Section 104(1) of the Consumer Protection Act.*
8. *Review AMVIC website at: [www.amvic.org/business/business-licence/apply-licence-registrationrenewals/](http://www.amvic.org/business/business-licence/apply-licence-registrationrenewals/) for licensing requirements.*

The Director acknowledges that the Supplier did remove its’ consignment advertising, and did produce and provide some of the business records, however the Supplier did not provide all of the requested documents to the AMVIC investigator by Sept. 2, 2022 as required by the Director’s Order.

The investigator requested the “Autozone Repair Centre invoice for the work completed to the vehicle” and the “Cleared cheque for the sale to Autoplex” in relation to the Fusion (case file 22-05-027) (see Schedule “A”; Exhibit V). While the evidence before the Director indicates the third party repair facility would not release the repair documents until such time that the Supplier paid the remaining amount owing on their bill, the Supplier did not provide the cheque for the sale of the Fusion to the third party business that completed the sale and financing of the Fusion, nor did the Supplier provide a reason for

why this was not provided to the investigator. Therefore the Supplier has breached the Director's Order contravening Section 163(a) of the CPA.

### **Undertaking**

As a result of an administrative review held on May 11, 2021, in regards to a consumer complaint, Muhammad Mehri, the owner and director for the Supplier voluntarily agreed to enter into an Undertaking with the Director on June 1, 2021. The Director determined Mr. Mehri breached Section 6(4)(a) of the CPA, among other legislative breaches, in relation to this case file which resulted in the Undertaking the Director and Mr. Mehri voluntarily entered into. During this administrative review Mr. Mehri was educated regarding Section 6(4)(a) and the General Codes of Conduct he is expected to abide by as per Section 12 of the ABR. Some of the terms outlined in Mr. Mehri's voluntary Undertaking specifically state:

- 1. The Individual acknowledges and admits that he failed to comply with the provisions of the CPA and ABR, and undertakes to the Director that the Individual will make every effort to ensure that he does not engage in acts or practices similar to those described above.*
- 2. The Individual will successfully retake and pass the Salesperson Registration Course within **14 days** of signing this Undertaking.*
- 3. The Individual undertakes to conduct business according to the code of ethics as set out in AMVIC's Code of Ethics.*

Given the Undertaking was agreed upon with Mr. Mehri as a salesperson the Director does not find the Supplier breached the June 1, 2021 Undertaking and therefore did not breach Section 163(d) of the CPA. However, Mr. Mehri is the owner and Director of the Supplier and was educated regarding not only Section 6(4)(a) but also the General Codes of Conduct expected of members of the automotive industry and the Director does consider the administrative review and the subsequent Undertaking as education that was provided to Mr. Mehri in regards to the legislation requirements he is expected to abide by as a business in the automotive industry.

In their written representations in response to the Proposed Administrative Penalty (see Schedule "D"), the Supplier stated they *"have been working very hard to ensure our recording [sic] keeping is better managed to prevent further issues."*

### **G. Other Considerations**

The Supplier had been provided the opportunity and education to rectify the business practice in regards to not misleading consumers, the requirements and disclosure of an MFA, addressing BOS concerns through the education provided at the previous administrative review, the information contained in the Undertaking, the General Codes of Conduct provided with the Undertaking, the education provided to the Supplier as a result of an AMVIC industry standards inspection and education



given to the Supplier by the AMVIC investigators. However, the Supplier continued to engage in non-compliant business practices.

There exists an onus on the Supplier to do their due diligence and ensure they are complying with the 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 enforcement actions and education provided by AMVIC.

The aggravating factors in this matter include the resulting financial impact adversely affecting the consumers; the Supplier selling a motor vehicle with a known transmission issue to CM before completing any repairs and then CM encountering immediate mechanical issues immediately after delivery and being unable to drive the vehicle while he continued to make payments; the Supplier breaching the Director’s Order and the continued non-compliance with the rather straightforward requirements of the legislation despite enforcement and education provided to the Supplier. NM had to pay for the cost of repairing and replacing the engine of her Subaru at an approximate cost of \$6,800.

The mitigating factors in this matter include the Supplier’s willingness to improve upon their business practices to bring them into compliance with the legislation as well as the Supplier providing CM payment to cover the costs incurred as a result of the transaction with the Supplier and paying the outstanding loan for the Fusion.

This Administrative Penalty is taking into account the number and seriousness of the contraventions of the legislation; and the aggravating and mitigating factors listed above.

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 a decision to ensure what level of enforcement is appropriate to the contravention.

The Director considered whether other enforcement actions would be appropriate in this circumstance. The Director considered either imposing conditions on the business licence of the Supplier or entering

into an Undertaking with the Supplier. However, in the opinion of the Director, neither of these enforcement actions would adequately protect the public as the Director is not satisfied the Supplier has ceased the contraventions. In addition, the Director entered into an Undertaking with Mr. Mehri in 2021.

The Director gave consideration to suspending or cancelling the business licence and the salesperson registration of Mr. Mehri given the egregiousness and the number of contraventions committed, the consumer harm and the recent enforcement history of a voluntary Undertaking and a Director's Order. However the Director took into consideration the recommendation of the AMVIC investigator and the Supplier's representations during the administrative review.

At the administrative review, the Supplier took responsibility for the legislative breaches and stated a willingness to work with the regulator and improve upon their business practices. On average, the Supplier sells approximately 150 motor vehicles annually. The Supplier further provided evidence to the Director that they are taking actionable steps to bring their business practices into compliance in their June 13, 2023 written representations (see Schedule "D").

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. In the opinion of the Director, the contraventions are serious, there was substantial harm to the consumers and therefore a significant Administrative Penalty is warranted.

### **Action**

In accordance with Section 158.1(a) of the CPA and based on the above facts, I am requiring that 2286631 Alberta Ltd. operating as AUTOZONEYYC pay an Administrative Penalty. This is based on my opinion that 2286631 Alberta Ltd. operating as AUTOZONEYYC contravened Sections 6(3)(a), 6(4)(a), 132 and 163(a) and of the CPA and Sections 9, 12(o), 31.1 and 31.2 of the ABR and Sections 14 and 15(1) of the VIR.

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 **\$13,500**.

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 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 degree of willfulness or negligence in the contravention or failure to comply;
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 \$13,500.**

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.

**If the Supplier chooses, he can utilize a payment plan of:**

September 1, 2023 – \$3,500  
October 1, 2023 – \$1,000  
November 1, 2023 – \$1,000  
December 1, 2023 – \$1,000  
January 1, 2024 – \$1,000  
February 1, 2024 – \$1,000  
March 1, 2024 – \$1,000  
April 1, 2024 – \$1,000  
May 1, 2024 – \$1,000  
June 1, 2024 – \$1,000  
July 1, 2024 – \$1,000

If the Supplier chooses to utilize this payment plan, he must provide AMVIC postdated cheques for all payments within **thirty (30) days** of the date of service of this notice and those cheques must be made **payable to the Government of Alberta.**

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