

October 27, 2022

Administrative Review – 22-07-001
Served Personally

Administrative Penalty

1366675 ALBERTA LTD.
o/a GREEN-LINE AUTO CLEARANCE
12336 66 STREET
EDMONTON, ALBERTA
T5B 1K3

Attention: Stanley Igiwa, Matthew Igiwa, Nasu Igiwa

Dear Stanley Igiwa, Matthew Igiwa, Nasu Igiwa:

**Re: 1366675 Alberta Ltd. operating as Green-line Auto Clearance
AMVIC Business Licence B2030202**

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 the investigator and the senior manager of investigations. A copy of the Application Report is attached as Schedule "A" to this letter. I have taken into consideration the addendum provided by the AMVIC investigations department, which is attached as Schedule "B". I have also taken into consideration the information exchanged during the administrative review held via teleconference call on Aug. 24, 2022. The Supplier provided written representations via email dated Oct. 12, 2022, received on Oct. 13, 2022 (attached as Schedule "C"), in response to the Proposed Administrative Penalty, which I have also taken into consideration.

Participating in the administrative review held on Aug. 24, 2022 was Ms. V. Zepeda, representative for 1366675 Alberta Ltd. operating as Green-line Auto Clearance; [REDACTED] delegate for the AMVIC manager of investigations north; [REDACTED], AMVIC investigator; and G. Gervais, Director of Fair Trading (as delegated).

Licensee Status

1366675 Alberta Ltd. operating as Green-line Auto Clearance (the "Supplier") holds an AMVIC business licence and carries on business as used sales in the Province of Alberta.

1366675 Alberta Ltd. has three trade names associated to their legal entity: Peace Motor, Easy Motors, and Green-line Auto Clearance. Since becoming licensed, 1366675 Alberta Ltd. has held AMVIC business licences associated with all three trade names. 1366675 Alberta Ltd. operated as Peace Motor from October 2008 until December 2014. In 2014, 1366675 Alberta Ltd. added the trade name Easy Motors and operated under that trade name. In 2018, 1366675 Alberta Ltd. added the trade name it currently operates as, Green-line Auto Clearance. Stanley Igiwa has been a director of 1366675 Alberta Ltd. since its incorporation in 2007.

History

In 2014, AMVIC had four separate consumer complaints regarding 1366675 Alberta Ltd. operating as Peace Motor, which included several breaches of the *Fair Trading Act* (now *Consumer Protection Act*), its related regulations and the Vehicle Inspection Regulation (“VIR”). As a result of these matters 1366675 Alberta Ltd. operating as Peace Motor entered into an Undertaking in September 2014. In the Undertaking the Supplier acknowledged they had breached multiple sections which included but was not limited to unfair practices, duty to maintain records and issues regarding the completion of Mechanical Fitness Assessments (“MFAs”). 1366675 Alberta Ltd. operating as Peace Motor agreed to buy back four vehicles and pay \$1,000, a portion of the investigation costs.

In July 2016, AMVIC assessed an Administrative Penalty of \$10,000 against 1366675 Alberta Ltd. operating as Easy Motors. The Administrative Penalty found the Supplier breached multiple sections of applicable legislation regarding unfair practices, duty to maintain business records and providing consumers improperly completed MFAs. The Supplier appealed the decision of the Director of Fair Trading (as delegated) and on March 27, 2017 a consent agreement was entered into reducing the Administrative Penalty to \$5,000.

In July 2018, AMVIC assessed an Administrative Penalty of \$7,000 against 1366675 Alberta Ltd. operating as Easy Motors. The Administrative Penalty found the Supplier breached Section 132 of the CPA.

In September of 2018, 1366675 Alberta Ltd. operating as Green-line Auto Clearance was served a Director’s Order as they had been operating without the required licence from AMVIC to which they became compliant.

In January 2021, AMVIC assessed an Administrative Penalty of \$7,500 against 1366675 Alberta Ltd. operating as Green-line Auto Clearance. The Administrative Penalty found the Supplier failed to provide records, misled and deceived a consumer, improperly completed their MFA, failed to comply with an Undertaking and use of a non-compliant bill of sale (“BOS”) (see Schedule “A”; exhibit ZZ4).

Preliminary Matters

At the start of the administrative review on Aug. 24, 2022, the Director went over the relevant legislation and noted that the unfair practices alleged, contained in Sections 6(4)(a), 6(4)(b), 6(4)(e) and 6(4)(h) of the CPA, as listed in the Notice of Administrative Review and served personally on the Supplier on July 13, 2022, are very similar in nature. The Director requested that during the administrative

review, the AMVIC investigator be specific in her representations as to how the Supplier allegedly breached one or more of the sections of the legislation to ensure procedural fairness to the Supplier.

Summary of Investigation

Case File 22-01-203

1. On Jan. 24, 2022, AMVIC received a complaint from a consumer (“KO”) regarding the purchase of a 2008 GMC Acadia (the “Acadia”). The complaint was in regards to being misled regarding the mechanical condition of the Acadia and the lack of disclosure of the mechanical condition of the Acadia prior to the purchase.
2. On Dec. 14, 2021, KO attended the Supplier along with her Uncle and Aunt to look at the Acadia on the advice of one of the Supplier’s salespeople who stated to KO that the Acadia was a good, sound vehicle that would be perfect for her as a young single mother. The salesperson indicated that the battery needed to be changed but that was all that was wrong with the vehicle.
3. On Dec. 14, 2021, KO purchased the Acadia for a negotiated price of \$9,500 plus \$500 for the goods and services tax (“GST”) for a total of \$10,000. During the administrative review the Director noted that GST amount the Supplier charged to KO was inaccurate and should have been \$475 rather than \$500.
4. After KO signed the BOS, she stated that she was told the Acadia needed an up to date “inspection” and the battery needed to be changed. The salesperson left with the Acadia and returned approximately one to one and a half hours later while KO and her Uncle and Aunt waited at the Supplier’s business.
5. KO asserted that she was never shown an “inspection” report. Upon the salesperson’s return, he had KO sign an MFA. KO is a first time car purchaser and indicated to the AMVIC investigator that at no time was the MFA shown or explained to her other than for her to simply sign it.
6. The AMVIC investigation revealed that two MFAs were completed on the Acadia by the same licensed technician. One is dated July 14, 2021 with an odometer reading of 187,272 kilometres (“kms”) and lists the ball joints and the windows as non-compliant. The second MFA is dated Dec. 14, 2021 with an odometer reading of 187,300, a difference of 28 kms from the first MFA. The Dec. 14, 2021 MFA lists the licence plate lamp, disc brakes, shoes/pads, ball joints, independent/multilink rear/arms, rear wipers and washer, and mirrors as non-compliant but does not indicate any issue with the windows. The technician further remarks in the technician comments of the second MFA, “*Non Compliant items need Full Diagnostics.*” An additional check box further indicates that the Acadia was shampooed and rechecked (see Schedule “A”; exhibit D).
7. KO and her Uncle assert that at no time they were shown a copy of a CarFax or told the history of the Acadia. The BOS does have KO’s signature stating she was shown a copy of the CarFax, however her signature or initials are not noted on the actual CarFax to confirm KO did in fact review it (see Schedule “A”; exhibit E).

8. On Dec. 15, 2021, the day after the purchase, the Acadia began stalling and was difficult to start causing KO's Uncle to have to boost the battery on her behalf. KO attempted to insure the Acadia and was advised based on the year of the vehicle she required a current compliant vehicle inspection to be completed before she could have it insured.
9. KO's Uncle contacted the Supplier's salesperson, who they dealt with by phone and text, advising the Acadia was stalling and advising him of the work that needed to be completed before it could get it insured and was told by the salesperson that the Supplier could not do anything as the Acadia was already discounted by \$500.
10. On Dec. 17, 2021, KO took the Acadia to her Uncle's work to have it inspected and repaired. A number of repair issues were identified (see Schedule "A"; exhibits F and G).
11. On Dec. 20, 2021, KO's Uncle took the Acadia to a third party business to complete repairs to the resonator pipe and assembly, upper control arms, replace a broken stud (caused by KO's Uncle) and have a wheel alignment performed on the Acadia. An invoice in the amount of \$1,094.06 was paid (see Schedule "A"; exhibit H).
12. On Dec 21, 2021, after the repairs exceeding \$1,000 were completed, the Acadia passed an Automobile Insurance Motor Vehicle Inspection Report (see Schedule "A"; exhibit I).
13. On Jan. 21, 2022, a little over a month after purchase, KO's Uncle had the Acadia towed to a third party repair facility to have the Acadia's engine assessed as it continued to stall and not start. A repair quote was obtained in the amount of \$6,467.46 to remove the engine, and replace the piston rings and the cylinder head gasket (see Schedule "A"; exhibit K and L).
14. Over the next couple of days, KO's Uncle contacted the Supplier several more times and attended in person only to be told they would not help in any way. It was at this time that KO filed her AMVIC complaint on Jan. 24, 2022 (see Schedule "A"; exhibit N).
15. On Feb. 16, 2022, the Supplier provided a Supplier's Response to AMVIC in which one of their Directors, Mr. Stanley Igiwa, stated the consumer signed an MFA and was aware of the issues with the vehicle. He told them there was nothing he could do as their stories were inconsistent. Mr. Igiwa remarks that, "*The 2008 GMC Acadia was sold in good condition*" (see Schedule "A"; exhibit O).
16. The AMVIC investigation revealed that the Supplier purchased the Acadia from Adesa Auction in Calgary on June 30, 2021 as a "*red light*" (or as is) vehicle for \$5,200. The investigator was advised that a "*red light*" sale means there is something wrong with the vehicle mechanically and it is the purchaser's responsibility to fix it. The purchaser is made aware before they bid on the vehicle, that it is "*red light*" or an "*as is*" sale (see Schedule "A"; exhibit S).
17. The AMVIC investigator spoke to the previous seller of the Acadia who purchased it on June 8, 2021 for \$5,500 from Adesa Auction and who described the Acadia as a "*piece of garbage*". The engine

was very noisy and clunky. This seller had it towed to Adesa Auction in Calgary for \$300 where it was sold to the Supplier (see Schedule "A"; exhibit T).

18. The AMVIC investigator spoke to the original business who sold the Acadia to Adesa Auction and learned that the Acadia had electrical issues and it *"kept throwing the traction on/off light"* (see Schedule "A"; exhibit U).
19. The Supplier was asked by the AMVIC investigator to provide any documents for any repair work performed on the Acadia since purchasing it from auction. The Supplier did not provide any repair work orders or invoices.
20. KO and her Uncle were never told that the Acadia came from an auction or that it was a *"red light"* or *"as is"* vehicle.
21. On July 13, 2022, the Supplier bought back the Acadia from KO for \$10,000, the amount she paid for it, however she was not reimbursed any money for the repair work she had completed on the Acadia which exceeded over \$1,000.
22. During the administrative review, the AMVIC investigator expressed that the Supplier was not cooperative with her. It took several attempts to obtain documents which eventually were provided however, when Mr. Stanley Igiwa did get back to the investigator he was argumentative and berated the investigator over the phone.

Supplier Representations - Case File 22-01-203

23. During the administrative review, Ms. Zepeda acknowledged that on occasion she works at the Supplier completing paperwork and been requested to represent the Supplier during the administrative review. Her main representation regarding this complaint was questioning how a buyer could sign documents without reading them first.
24. In relation to KO's transaction, Ms. Zepeda advised she was present when KO purchased the Acadia and that KO knew there were things wrong with the Acadia which is why it was discounted by \$500. At this time, the Director confirmed and clarified that Ms. Zepeda was not directly involved in the consumer transaction with KO as she does not hold a valid salesperson registration, to which she agreed and stated she had no interactions with KO.
25. Ms. Zepeda questioned the logic of KO making repairs to the vehicle instead of simply returning the Acadia to get her money back. She further questioned why KO would spend money on a vehicle that does not work. If there were legitimate problems with the vehicle and it was returned to get the consumer's money back, Ms. Zepeda stated, *"We would never say no"*.
26. Ms. Zepeda expressed the reason the second MFA was completed was because KO complained and requested it. At this time, Ms. Zepeda was advised that it is a legislative requirement for an MFA to be given to a consumer prior to entering into a contract to purchase a motor vehicle.

27. During the administrative review, Ms. Zepeda indicated that the Supplier relies on the most recent MFA that has been completed.
28. Despite no receipts or invoices for work performed from the Supplier, Ms. Zepeda stated that work was done on the Acadia after the Supplier purchased it from auction as a "red light" vehicle. Ms. Zepeda did not provide any details regarding what repair work she claims had been completed on the Acadia.
29. Ms. Zepeda questioned the validity of the repairs completed on the Acadia by the third party repair facilities that completed the repairs for KO, despite the evidence of the AMVIC investigator and invoices of the repair work to support the repairs were completed by licensed technicians.
30. Ms. Zepeda expressed that it was fair that the Supplier bought back the vehicle. She stated that it was KO's problem she paid for repairs and is out of pocket.

Case File 22-01-088

31. On Jan. 11, 2022, AMVIC received a complaint from a consumer ("DH") regarding the purchase of a 2012 Dodge Journey (the "Journey"). The complaint was in regards to being misled regarding the mechanical condition and history of the Journey.
32. DH purchased the Journey on Jan. 7, 2022 from the Supplier for a negotiated purchase price of \$7,600 plus \$400 GST for a total of \$8,000. During the administrative review the Director noted that GST amount the Supplier charged to KO was inaccurate and should have been \$380 rather than \$400. The odometer on the BOS lists the mileage as 676,755 kms however the advertisement for the vehicle stated the mileage was 166,000 kms. An MFA completed the following day showed the odometer reading as 167,602 kms (see Schedule "A"; exhibits AA, BB, CC).
33. At the time of purchase on Jan. 7, 2022, DH asserts he was shown a CarFax which did not show any accidents. This CarFax was ran on Sept. 4, 2020 approximately a year and a half earlier and therefore did not depict the recent history of the vehicle (see Schedule "A"; exhibit DD). The AMVIC investigator contacted CarFax and determined that the CarFax provided to DH was not run by the Supplier but by another business (see Schedule "A"; exhibits RR and SS).
34. DH did not take immediate possession of the Journey on Jan. 7, 2022 as the Supplier needed to complete an up to date MFA the following day. According to DH, the MFA that was completed showed some non-compliant issues however he was told by an employee of the Supplier that they were minor issues which would be relatively cheap to repair and no electrical issues were noted.
35. The MFA completed on Jan. 8, 2022, which should have been presented to DH prior to entering into a contract to purchase a motor vehicle, lists the front/rear/spindles axles, ball joints, struts and shocks, independent/multilink rear, window glazing, tread depth, tire sidewalls as all non-compliant. The technician further remarks in the technician comments of the MFA, "*Non Compliant items need Full Diagnostics.*" An additional check box further indicates that the Journey was shampooed and rechecked (see Schedule "A"; exhibit CC).

36. The AMVIC investigator identified that another MFA had previously been completed by the same technician on the Journey on Oct. 14, 2020. A total of 1,317 kms had been put on the Journey in the timeframe between the two MFAs. The Oct. 14, 2020 MFA lists the front/rear/spindles axles, ball joints, struts and shocks and window glazing as non-compliant. The independent/multilink rear and the tread depth and tire sidewalls were marked compliant on this MFA which is different than the Jan. 8, 2022 MFA (see Schedule "A"; exhibit PP).
37. On Jan. 8, 2022, when DH picked up the Journey it immediately showed signs of electrical issues. The windshield wipers began turning off then on again and the oil light came on. DH took the vehicle to two repair facilities where they could not identify the source of the issue and did not identify the Journey needed an oil change despite the warning light being illuminated.
38. DH took the Journey to a car wash to wash the exterior and when he went to start the vehicle it would not start. When an attempt was made to boost the Journey, it started spontaneously and numerous warning lights lit up on the dash. DH drove and parked the Journey at his residence where again it would not start. DH attempted to contact the Supplier numerous times unsuccessfully.
39. On Jan. 9, 2022, DH got a ride to the Supplier where he spoke with one of the directors, Mr. Stanley Igiwa. After much discussion, Mr. Igiwa agreed to refund DH provided he could get the Journey running and drive it back to the Supplier. DH went and purchased an alternator at a cost of \$322.86 (see Schedule "A"; exhibit OO) and had it changed on the Journey at which time he returned to the Supplier with the Journey only to be told by Mr. Igiwa that he would not unwind the deal.
40. On Jan. 11, 2022, DH took the vehicle to a third party repair facility for an inspection. After a lengthy inspection on the wiring of the Journey, it was determined that the cam lock was broken and there were numerous wiring issues. The wiper motor was replaced and DH paid an invoice in the amount of \$2,001.41. DH then made a complaint to AMVIC.
41. On Jan. 13, 2022, AMVIC received a Supplier's response from the salesperson Monica Uboro who was involved in this consumer transaction. In her response to AMVIC, Ms. Uboro blamed the consumer for causing the wiring issues by washing the engine during -36 degree temperatures. Despite the issues identified on the two MFAs completed on the Journey, Ms. Uboro further states in her Supplier's response, *"I Monica sold a perfect electrical and mechanical 2012 dodge journey..."* (see Schedule "A"; exhibit LL Supplier's response).
42. Video footage from the car wash obtained by the AMVIC investigator shows that at no time did DH wash the Journey's engine (see Schedule "A"; exhibit II USB video from car wash).
43. On Feb. 1, 2022, the AMVIC investigator spoke with the service manager from the third party repair facility who provided a copy of their invoice for the repairs to the Journey (see Schedule "A"; exhibit JJ) and told the investigator:
 - The Journey needed a new wiper motor;

- The MFA would not have picked up the wiring issues unless there were lights going off on the dash at the time of the MFA;
 - There was no water in the engine or on the wires, supporting DH did not wash the engine;
 - The cam lock was broken indicating someone at some point may have looked into the issue; and
 - DH paid \$2001.41 in repairs for the wiring.
44. On Feb. 17, 2022, AMVIC investigators attended the Supplier and spoke with Ms. Uboro, the salesperson involved in this consumer transaction, who stated the consumer caused the wiring issues when he washed the vehicle's engine during cold temperatures.
45. The AMVIC investigation determined that the Journey was purchased by the Supplier from Adesa Auction on Oct. 1, 2020 as an "AS IS" vehicle with an odometer reading of 166,768 kms (see Schedule "A"; exhibit UU).
46. On March 28, 2022, the AMVIC investigator requested the Supplier furnish any documents and invoices for any work completed on the Journey since purchase from Adesa Auction. On April 5, 2022, Mr. Stanley Igiwa sent an email containing documents which showed on Oct. 22, 2022, two years after the Journey was purchased by the Supplier, the rear wheel bearing was replaced, the oil was changed and the rear struts were replaced at a total cost of \$785.06 (see Schedule "A"; exhibit XX).
47. On July 13, 2022, the AMVIC investigator contacted DH who advised that he had not heard from the Supplier therefore he sold the Journey to a dealership for \$500 (see Schedule "B"; exhibit 5). The investigator confirmed this information and spoke with the dealership who advised that the Journey needed \$11,366 worth of repair work and provided an MFA and a hand written quote for the repairs (see Schedule "B"; exhibits 5, 7 and 8).

Supplier Representations - Case File 22-01-088

48. Ms. Zepeda advised that Mr. Stanley Igiwa spoke with DH and offered to buy back the Journey but when Mr. Igiwa discovered DH had washed the Journey in cold temperatures he changed his mind.
49. Ms. Zepeda advised that she watched the video at the car wash and the video was unclear. When questioned whether she watched the entire 4.5 hour video in which the engine hood is closed the entire time DH is washing the vehicle, she indicated she watched what she needed to.
50. Ms. Zepeda questioned how DH could drive the Journey for a month and put a large amount of kms on it when it had all these problems. The AMVIC investigator clarified that DH had to have the Journey towed as it didn't run for a month and that DH only put a total of 200 kms on it.
51. Ms. Zepeda again questioned why DH would spend money to fix a vehicle with problems and why he simply did not return the vehicle to the Supplier despite the evidence and comments of the investigator during the administrative review that DH not only completed one of the repairs at the

direction of the Supplier, but also attempted to return the vehicle and was told the Supplier would not take the vehicle back.

52. Although not a licensed technician, Ms. Zepeda questioned the validity of the numerous problems with the Journey despite the invoices and evidence put forward in Schedule "A". She went on to say that she guarantees that no vehicle will run with 26-28 problems and that the repair facilities exaggerated the issues because they wanted to make money. Ms. Zepeda did not provide any evidence to support these claims.
53. Ms. Zepeda's representations did not change during the administrative review despite the evidence discussed that directly contradicted her representations.
54. On Oct. 13, 2022, the Supplier provided written representations, dated Oct. 12, 2022, in response to the Proposed Administrative Penalty (see Schedule "C").

Legislation

Automotive Business Regulation ("ABR")

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 Inspection Regulation

Sales 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.

(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;
- (b) a supplier’s misleading statement of opinion if the consumer is likely to rely on that opinion to the consumer’s disadvantage;
- (e) a supplier’s representation that goods or services are of a particular standard, quality, grade, style or model if they are not;
- (h) a supplier’s representation that goods have or do not have a particular prior history or usage if that is different from the fact;

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

- (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 received by AMVIC. In one file, KO purchased a 2008 GMC Acadia. The complaint was in regards to KO being misled regarding the mechanical condition of the Acadia and the lack of disclosure of the mechanical condition of the Acadia to KO (AMVIC case file 22-01-203).

In the second file, DH purchased a 2012 Dodge Journey. The complaint was in regards to DH being misled regarding the mechanical condition and history of the Journey (AMVIC case file 22-01-088).

After reviewing all the information before me, the breaches that are currently under consideration are based on AMVIC case files 22-01-088 and 22-01-203 (the "case files").

- A. Mislead and deceive (CPA Section 6(4)(a))/ Supplier represent prior history or usage different from fact (CPA Section 6(4)(h))

On the advice of one of the Supplier's salespeople KO attended the Supplier with her Aunt and Uncle. In statements provided, KO and her Uncle assert that the salesperson told them that the Acadia was a good, sound vehicle that would be perfect for her as a young single mother. The salesperson indicated that the battery needed to be changed but that was all that was wrong with the vehicle.

KO asserts that she was never shown an inspection or an MFA prior to signing the BOS. After signing the BOS, KO waited as the salesperson took the vehicle for a new battery and what the salesperson called an inspection. Upon the salesperson's return, he had KO sign an MFA. Based on the evidence, the salesperson did not have an inspection completed while KO waited after signing the BOS. The salesperson took the Acadia to have an MFA completed during this time. KO is a first time car purchaser and indicated to the AMVIC investigator that at no time was the MFA shown or explained to her other than for her to simply sign it.

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/standards of an MFA versus an inspection.

KO and her Uncle assert that at no time were they shown a copy of a CarFax or told the history of the Acadia. The BOS does have KO's signature stating she was shown a copy of the CarFax, however her signature or initials are not noted on the actual CarFax to confirm KO reviewed it.

On Dec. 20, 2021 KO's Uncle took the Acadia to a third party business to complete repairs to the resonator pipe and assembly, upper control arms, replace a broken stud (caused by KO's Uncle) and have a wheel alignment performed on the Acadia. An invoice in the amount of \$1,094.06 was paid.

On Jan. 21, 2022, a little over a month after purchase, KO's Uncle had the Acadia towed to a third party repair facility to have the Acadia's engine assessed as it continued to stall and not start. A quote to complete the necessary repairs was obtained in the amount of \$6,467.46 to remove the engine and replace piston rings and the cylinder head gasket. Over the next couple of days, KO's Uncle contacted the Supplier several more times and attended in person only to be told they would not help in any way.

In the Supplier's response to AMVIC regarding the Acadia one of the Supplier's directors, Mr. Stanley Igiwa stated, "*The 2008 GMC Acadia was sold in good condition*". However, based on the known condition of the Acadia when it was purchased at auction as a "*red light*" and "*as is*", the fact that there is no evidence the Supplier completed any repairs on the Acadia, the information contained in the MFA completed on the Acadia after KO entered into the BOS and the immediate issues encountered after the purchase, the Director finds this statement made by the Supplier to be untrue and contrary to the evidence.

The AMVIC investigator learned on July 13, 2022 that the Supplier purchased the Acadia back from KO, however this does not discount the fact that she was originally misled regarding the condition and history of the Acadia. The Supplier only reimbursed KO once she made her complaint to AMVIC and the investigator got involved despite contacting and attending the dealership several times and paying for repairs exceeding \$1,000 and obtaining repair quotes to properly fix it. The Supplier continues to assert they would have taken it back, when the evidence is contrary to that, the AMVIC complaint was filed before the Supplier was willing to help the consumer.

The other complainant, DH, purchased a 2012 Journey on Jan. 7, 2022. According to DH, the Supplier told him "*this is a good working cars [sic]*". DH asserts he was shown a CarFax which did not show any

accidents. This CarFax was ran on Sept. 4, 2020 approximately a year and a half earlier and therefore did not depict the recent history of the vehicle. The AMVIC investigator contacted CarFax and determined that the CarFax provided to DH was not run by the Supplier but by another business. In the Supplier's written representations they continue to indicate the Journey was in good condition when the evidence is contrary to the fact and are questioning the validity of a repair estimate from the third party business, indicating that all automotive businesses would take advantage of a consumer by providing them with inaccurate estimates. The Supplier provided no evidence to support their claims that the third party business was trying to take advantage of the consumer.

While it is true the Supplier sent an email containing documents to the AMVIC investigator which showed on Oct. 22, 2022 (two years later) the Supplier replaced the rear wheel bearing, changed the oil and replaced the rear struts on the Journey for a total of \$785.06, this does not discount the fact DH was misled about the condition right from the start of the consumer transaction. DH entered into the transaction with the Supplier without being provided an MFA, in fact the MFA was completed the day after DH signed the BOS. The MFA listed numerous items as non-compliant and the technician added an additional comment that further diagnosis was needed.

Not long after purchase, DH paid for an alternator in the amount of \$322.86, at the direction of the Supplier. In addition, DH completed various other repairs totalling \$2,001.41 and when the Journey continued to have issues, DH sold it for \$500 to a dealership. The dealership provided the AMVIC investigator a repair quote for the Journey in the amount of \$11,366, which exceeds the original value of what DH paid for the vehicle. As a result of the transaction with the Supplier, DH is out of pocket nearly \$10,000.

In the Supplier's response to AMVIC in relation to the Journey, the salesperson, Monica Uboro who was directly involved in the consumer transaction stated, *"I Monica sold a perfect electrical and mechanical 2012 dodge journey..."*

The Supplier purchased the Acadia and Journey from Adesa auction knowing these two vehicles were "red light" or "as is" vehicles with known mechanical issues. The evidence presented by the AMVIC investigator supports that the Supplier took little to no steps to determine what was actually wrong with these vehicles to properly repair them before selling them to unsuspecting consumers. No repairs were completed on the Acadia after the Supplier purchased it at auction and the repairs completed to the Journey while in the Supplier's possession for two years, were minor.

The Director did not find the representations made by Ms. Zepeda during the administrative review to be credible.

Ms. Zepeda expressed that it was fair that the Supplier bought back the Acadia. She stated that it was KO's problem she paid for repairs and is out of pocket. Ms. Zepeda blamed DH for the issues he encountered as she continued to allege he washed the engine of the Journey in cold temperatures causing the electrical issues even when the evidence does not support this claim and actually supports that DH did not wash the engine of the Journey at all.

In the written representations dated Oct. 12, 2022, in response to the Proposed Administrative Penalty, the Supplier continues to indicate the vehicles had no mechanical issues despite the evidence. In addition, the Supplier indicated he employs the services of a certified mechanic who completes inspections on the vehicles he purchases at auction however, there is no evidence of inspections being completed on these vehicles. The Supplier has not taken any responsibility for their actions despite the overwhelming evidence put forward by the AMVIC investigator.

Ms. Zepeda made it sound like KO and DH should have simply returned the vehicles back to the Supplier to get their money back the instant they discovered issues with their vehicles. Ms. Zepeda was advised that this is exactly what KO and DH tried to do several times, but the Supplier was not receptive to helping KO and DH until AMVIC became involved; yet Ms. Zepeda's representations did not change, she continued to assert the consumers should have simply returned the vehicles at the first sign of issues.

The evidence in Schedule "A" in totality, in the opinion of the Director, supports unequivocally that both the Acadia and Journey were not in good condition or "*perfect electrical and mechanical...*" condition and that both KO and DH were misled. The Director also finds that the true history of the Acadia and Journey were not properly disclosed to KO or DH in particular, given the fact that MFAs were completed after entering into contracts with the consumers. Furthermore, the consumers were not advised that the vehicles has been purchased at auction as "*red light*" and "*as is*". Based on the evidence, on a balance of probabilities, the Director finds that the Supplier has contravened Sections 6(4)(a) and 6(4)(h) of the CPA.

B. MFA concerns (ABR Section 12(o), VIR Section 15(1))

Although notice was not initially given to the Supplier regarding Section 15(1) of the VIR and Section 12(o) of the ABR, these sections were discussed at length during the administrative review.

Section 128 of the CPA requires the Director to give notice before refusing to issue or renew a licence, suspend or cancel a licence or when terms and conditions are being imposed. In this matter, notice was given in the form of the Proposed Administrative Penalty and the Supplier had the opportunity to make representations prior to the final Administrative Penalty being imposed. The Supplier made written representations in relation to the Proposed Administrative Penalty (see Schedule "C"). In the Supplier's Oct. 12, 2022 written representations they state:

"ARDESA [sic], where I buy a lot of my vehicles, provide MFAs when I purchase the vehicles. Those MFAs are the ones that I provide to my customers. I don't see why I would need to pay again to provide another MFA when I have already paid for the MFA that I get from ARDESA [sic] when purchasing the vehicle. If the MFA that ARDESA [sic] provides to me is [sic] inaccurate, I don't believe that should be blamed on me because I pay for those MFAs."

MFAs completed by the auction on either the Acadia or the Journey were not provided to AMVIC. In the event that the Supplier did receive MFAs from the auction, they would have been expired at the time of the transactions. In addition, this does not change the fact that the consumers were not provided MFAs prior to entering into the transactions to purchase the vehicles.

The Supplier still does not seem to understand the basic legislative requirements regarding the MFA. The legislation is very clear that an MFA must be provided to the consumer **before** entering into a contract to sell a used motor vehicle and that an MFA cannot be expired. In the Supplier's representations he fails to address the issue at hand, that the consumer transactions were entered into without providing MFAs to the consumers but rather blames the auction for the quality of MFA he receives from them when buying a vehicle from the auction.

After KO signed the bill of sale, she states that she was told the Acadia needed an up to date "inspection" on the vehicle and the battery needed to be changed. The salesperson left with the Acadia and returned approximately one to one and a half hours later while KO and her Uncle and Aunt waited at the Supplier.

The AMVIC investigation revealed that two MFAs were completed on the Acadia by the same licensed technician. One is dated July 14, 2021 with an odometer reading of 187,272 kms and lists the ball joints and the windows as non-compliant. The second MFA is dated Dec. 14, 2021 with an odometer reading of 187,300, a difference of 28 kms from the first MFA, and lists the licence plate lamp, disc brakes, shoes/pads, ball joints, independent/multilink rear/arms, rear wipers and washer, and mirrors as non-compliant but does not show any issue with the windows. The technician further remarks in the technician comments of the second MFA, "*Non Compliant [sic] items need Full Diagnostics*". An additional check box further indicates that the Acadia was shampooed and rechecked. The Director finds it concerning given the fact that the initial MFA completed differs significantly in comparison to the second MFA when only 28 kms had been put on the Acadia as it could place consumers at risk.

In DH's transaction he did not take immediate possession of the Journey on Jan. 7, 2022 as the Supplier needed to complete an up to date MFA, which was completed the day after DH signed the BOS. According to DH, the MFA that was completed showed some non-compliant issues however he was told by an employee of the Supplier that they were minor issues which would be relatively cheap to repair and no electrical issues were noted.

An MFA completed on Jan. 8, 2022, which should have been presented to DH prior to entering into a contract to purchase a motor vehicle, lists the front/rear/spindles axles, ball joints, struts and shocks, independent/multilink rear, window glazing, tread depth, tire sidewalls as all non-compliant. The technician further remarks in the technician comments of the MFA, "*Non Compliant [sic] items need Full Diagnostics*." An additional check box further indicates that the Journey was shampooed and rechecked.

The AMVIC investigator identified that another MFA had previously been completed by the same technician on the Journey on Oct. 14, 2020. A total of 1,317 kms had been put on the Journey in the timeframe between the two MFAs. This MFA only lists the front/rear/spindles axles, ball joints, struts and shocks and window glazing as non-compliant. The independent/multilink rear and the tread depth and tire sidewalls were marked compliant on this MFA, different than the most recent one.

As per Section 166 of the CPA, the Supplier is vicariously liable for the actions and representations made to consumers. An MFA is a key document given to a consumer before entering into a contract to

purchase a vehicle. There is an onus on the Supplier to relay correct and accurate information to the consumer to allow the consumer to make an informed purchasing decision.

Failing to give an MFA to a consumer prior to entering into a contract is a very serious breach in the opinion of the Director. In both of these consumer transactions the MFAs were completed after entering into contracts and both vehicles came back with numerous non-compliant issues. The Director is not persuaded that either KO or DH were properly notified of the mechanical condition of the vehicles they were purchasing.

Notwithstanding education provided by AMVIC to the Supplier, the Supplier has been subject to three previous administrative actions relating to the proper completion of MFAs and yet is still not ensuring compliance of Section 15 of the VIR.

Based on the evidence, on a balance of probabilities, the Director finds that the Supplier has contravened Section 15(1) of the VIR. Section 12(o) of the ABR states that every business operator must comply with **any** legislation that may apply to the selling, leasing, consigning, repairing, installing, recycling or dismantling of vehicle requires automotive businesses to comply with all legislation regarding the sale of vehicles. By breaching Section 15(1) of the VIR, the Supplier has therefore breached Section 12(o) of the ABR.

- C. Misleading statement of opinion (CPA Section 6(4)(b))/Supplier represent standard, grade, style or model if they are not (CPA Section 6(4)(e))

In the opinion of the Director both of these breaches are very similar in nature to Section 6(4)(a) of the CPA with respect to misleading the consumers. To be procedurally fair to the Supplier the Director will not be making any findings with respect to these two alleged breaches.

- D. BOS and paperwork concerns

In both consumer transactions, the GST amount charged to each consumer was inaccurate and brought to the attention of the Supplier during the administrative review. The Supplier is charging consumers GST over and above the actual amount of GST they should be paying on the purchase price. This demonstrates a blatant disregard for the importance of accurate record keeping that extends beyond just AMVIC's legislative requirements. The Supplier has previous history regarding failing to maintain accurate records. This issue was not taken into consideration in determining the amount of the Administrative Penalty however the Director felt it was pertinent to include this as it was discussed during the administrative review.

- E. Other considerations

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 as outlined in the CPA.

The Supplier has been subject to the following administrative actions:

- 2015 – Voluntary Undertaking; buy back four vehicles, pay portion of investigations costs \$1,000.
- 2016 – Administrative Penalty of \$10,000; appealed and reduced to \$5,000 via consent decision.
- 2018 – Administrative Penalty of \$7,000.
- 2018 – Director's Order issued for operating without the proper AMVIC licence.
- 2021 – Administrative Penalty of \$7,500.

It is concerning to the Director that in a period of seven years (between 2015 and 2022) this will be the fifth administrative action and fourth Administrative Penalty being levied on the Supplier for similar breaches in particular regarding MFA issues, paperwork issues or misleading consumers and the subsequent financial harm to consumers.

The Supplier ought to have a basic knowledge or understanding of the legislation that governs the automotive industry and is responsible to stay informed of all changes made to the legislation that governs the industry in which they are a member of.

There exists an onus on the Supplier to do their due diligence and ensure they are complying with the law. As stated in the Supreme Court of British Columbia in *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers, 2014 BCSC 903* there is an onus and responsibility on a Supplier operating within regulated industry to have at least a basic understanding of the regulatory regime. 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

When determining an appropriate enforcement action, the Director will consider several factors before making a decision to ensure the level of enforcement is appropriate to the contravention. In this matter the aggravating factors include but are not limited to the continued non-compliance despite the education previously provided to the Supplier, recent administrative enforcement action, the Supplier's inability to comply with the rather straightforward requirements of the legislation, the Supplier not taking responsibility for their actions and the significant financial harm to both consumers.

The AMVIC investigator expressed that the Supplier was not cooperative with her. It took several attempts to obtain documents which eventually were provided however, when Mr. Stanley Igiwa, one of the Supplier's directors did get back to the investigator, he was argumentative and berated the investigator over the phone.

The mitigating factors in the matter include the Supplier having bought back the Acadia from KO once AMVIC became involved.

This Administrative Penalty is taking into account the breaches of the legislation found during the investigation regarding the case files, the economic benefit derived from the sale of the motor vehicles, the factors listed in the paragraphs above and significant financial consumer harm. As well as the

Supplier's previous enforcement history with AMVIC including an Undertaking, three Administrative Penalties and a Director's Order which cannot be ignored. In the opinion of the Director, the Supplier does not seem to be able to comply with the rather straightforward requirements of the legislation governing the automotive industry. 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.

Action

In accordance with Section 158.1(a) of the CPA and based on the above facts, I am requiring that 1366675 Alberta Ltd. operating as Green-line Auto Clearance pay an Administrative Penalty. This is based on my opinion that 1366675 Alberta Ltd. operating as Green-line Auto Clearance contravened Sections 6(4)(a) and 6(4)(h) of the CPA, Section 15(1) of the VIR and Section 12(o) of the ABR.

Taking into consideration all the representations made by the Supplier and the representations made by AMVIC's investigations department, the amount of the Administrative Penalty is **\$10,000**.

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

1. The seriousness of the contraventions or failure to comply;
2. The impact on the persons adversely affected by the contravention 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 \$10,000.

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

Minister of Service Alberta
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.

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