

January 17, 2024

Administrative Review – 23-07-004
Served Personally

Administrative Penalty

MACLIN MOTORS LIMITED
o/a MACLIN FORD
135 GLENDEER CIRCLE SE
CALGARY, AB
T2H 2S8

Attention: Patrick Priestner and Daniel Priestner

Dear Patrick Priestner and Daniel Priestner:

Re: Maclin Motors Limited o/a Maclin Ford – Provincial Automotive Business Licence No. B1010490

As the Director of Fair Trading (as delegated) (the “Director”), I am writing to you pursuant to Section 158.1(1) of the *Consumer Protection Act* (“CPA”) to provide you with written notice of the Administrative Penalty issued under that section.

Facts

The evidence before me in relation to this matter consists of the material contained in an Alberta Motor Vehicle Industry Council (“AMVIC”) industry standards department application report (the “Application Report”) prepared by an industry standards officer (“ISO”) and the manager of industry standards. A copy of the Application Report is attached as Schedule “A” to this letter.

Licensee Status

Maclin Motors Limited operating as Maclin Ford (the “Supplier”) holds an automotive business licence and is licensed to carry on the designated business activities of new and used sales, service station, garage, leasing, and wholesale sales in the Province of Alberta.

Direct communications with the Supplier and its representatives

1. On July 3, 2015, a routine AMVIC industry standards inspection was completed at the business location of the Supplier. An undated Findings Letter outlining the inspection findings was completed and sent to the Supplier on July 6, 2015. The Findings Letter outlined some concerns including but not limited to:
 - a) Advertising issues contrary to requirements in Section 11 of the Automotive Business Regulation (“ABR”).

- b) During the inspection, six deals were reviewed by the ISO and of those six deals, two did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
- c) Three salespeople were found to be acting on behalf of the Supplier to sell vehicles without the required salesperson registration contrary to the ABR.
- d) Various issues with the completion of and/or disclosure of Mechanical Fitness Assessments ("MFAs") contrary to Section 15(1) of the Vehicle Inspection Regulation ("VIR").

2. On Aug. 22, 2016, a followup AMVIC industry standards inspection was completed on the Supplier. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on Aug. 25, 2016. The Findings Letter outlined some concerns including but not limited to:

- a) Advertising issues contrary to requirements in Section 11 of the ABR and Sections 4 and 6 of the Cost of Credit Disclosure Regulation ("COC").
- b) During the inspection, six deals were reviewed by the ISO and of those six deals, two did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
- c) Four salespeople designated to act on behalf of the Supplier to sell vehicles had an expired salesperson registration contrary to the ABR.
- d) Various issues with the completion of and/or disclosure of MFAs contrary to Sections 15(1) and 16(1) of the VIR.
- e) Issues with the completion of the Supplier's bill of sale ("BOS").

3. On May 21, 2019, a followup AMVIC industry standards inspection was completed on the Supplier. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on May 22, 2019. The Findings Letter outlined some concerns including but not limited to:

- a) Advertising issues contrary to requirements in Section 11 of the ABR.
- b) One salesperson designated to act on behalf of the Supplier to sell vehicles had an expired salesperson registration contrary to the ABR.
- c) Various issues with the completion of and/or disclosure of MFAs contrary to Sections 15(1) and 16(1) of the VIR.
- d) Various issues with the completion of the Supplier's BOS contrary to Section 31.2 of the ABR.

The ISO reviewed 10 deal jackets, of those 10 deals the Supplier was found to be compliant with all-in pricing during this inspection.

4. On Aug. 12, 2020, the Supplier was issued a Warning Letter as a result of an AMVIC investigation completed in relation to a consumer complaint received by AMVIC. The AMVIC investigation identified issues in the completion of the Supplier's BOS and the disclosure of the MFA.

5. On Aug. 30, 2022, a followup AMVIC industry standards inspection was completed on the Supplier. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on Sept. 13, 2022. The Findings Letter outlined some concerns including but not limited to:

- a) During the inspection, two deals reviewed by the ISO did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.

- b) Advertising issues contrary to requirements in Sections 11 and 31.1 of the ABR.
 - c) Issues with the completion of and/or disclosure of MFAs contrary to Section 15(1) of the VIR.
 - d) Various issues with the completion of the Supplier's BOS contrary to Section 31.2 of the ABR.
 - e) One salesperson designated to act on behalf of the Supplier to sell vehicles had an expired salesperson registration contrary to the ABR.
6. On Feb. 13, 2023, the Supplier was issued a Findings Letter as a result of an AMVIC investigation completed in relation to a consumer complaint received by AMVIC. The AMVIC investigation identified that the Supplier's BOS did not accurately reflect the details of the transaction and failed to list cash back to the consumer.
7. On April 4, 2023, a followup AMVIC industry standards inspection was completed on the Supplier. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on April 14, 2023. The Findings Letter outlined the following concerns:
- a) During the inspection, nine deals were reviewed by the ISO and of those nine deals, three did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
 - b) Various issues with the completion of the Supplier's BOS contrary to Section 31.2 of the ABR.
 - c) Various issues with the completion of and/or disclosure of MFAs contrary to Sections 15(1) and 16 of the VIR.
 - d) In five consumer transactions, the Supplier advised consumers they could not pay out their loans in full for a minimum of six to seven months, having consumer sign and agree that if they pay off their loans in full within the timeframe specified, the Supplier will charge them "*the bank cancellation costs*". This is contrary to Sections 6(2)(b) and 68 of the CPA and Section 8 of the COC.
8. On Dec. 14, 2023, the proposed Administrative Penalty was served on the Supplier. The Proposed Administrative Penalty provided the Supplier an opportunity to make written representations with respect to the matter by 12:00 p.m. noon on Jan. 15, 2024. The Supplier did not provide any written representations in response to the Proposed Administrative Penalty.

Applicable Legislation

Automotive Business Regulation

Records

Section 9

In addition to the requirement to create and maintain financial records in accordance with section 132(1) of the Act, every business operator and former business operator must maintain all records and documents created or received while carrying on the activities authorized by the licence for at least 3 years after the records were created or received.

Advertising

Section 11

(2) A business operator must ensure that every advertisement for an automotive business that promotes the use or purchase of goods or services

(l) includes in the advertised price for any vehicle the total cost of the vehicle, including, but not limited to, all fees and charges such as the cost of accessories, optional equipment physically attached to the vehicle, transportation charges and any applicable taxes or administration fees, but not including GST or costs and charges associated with financing, and

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.

Acting on behalf of business operator

Section 20.1

No business operator may allow a salesperson to act on the business operator's behalf unless

- (a) the salesperson is registered for the class of licence held by the business operator, and
- (b) the business operator authorizes the salesperson to act on its behalf.

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.

Vehicle Inspection Regulation

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.

Expiry of mechanical fitness assessment

Section 16

A dealer's mechanical fitness assessment provided under section 15(1) for a used motor vehicle expires 120 days after the date on which it was issued.

Cost of Credit Disclosure Regulation

Advertisements

Section 4

Where an advertisement contains information that under section 6, 7(2), 12(1) or 18 requires disclosure of the APR or other information in the advertisement,

- (a) the APR must be as prominent, in relation to looking at it, listening to it, or both, as the case may be, as any of the information that required the APR to be disclosed, and
- (b) any other information required to be disclosed must be conspicuous.

Advertisements

Section 6

- (1)** This section applies only to advertisements that offer credit and state the interest rate or amount of any payment.
- (2)** The information required to be disclosed for the purposes of section 76(1) of the Act is
 - (a) the APR, and
 - (b) the term.
- (3)** In addition to the information required under subsection (2),
 - (a) an advertisement for a credit sale of a specifically identified product must disclose the cash price, and
 - (b) an advertisement for a credit sale in connection with which any non-interest finance charge would be payable must disclose
 - (i) the cash price, and
 - (ii) the total cost of credit,except that an advertisement on radio, television or a billboard or other media with similar time or space limitations is not required to disclose the total cost of credit.
- (4)** Where any of the information required to be disclosed by subsections (2) and (3) would not be the same for all credit agreements to which the advertisement relates, the information must be for a representative transaction and must be disclosed as such.

Initial disclosure statement for fixed credit

Section 8

- (1)** The initial disclosure statement for the purposes of section 77 of the Act for a scheduled-payments credit agreement must disclose the effective date of the statement and as much of the following information as is applicable:

(s) for a credit agreement other than a mortgage loan, a statement that the borrower is entitled to prepay the entire outstanding balance at any time without penalty and is entitled to make partial prepayments without penalty on any scheduled payment date;

Consumer Protection Act

Act prevails

Section 2

(1) Any waiver or release by a person of the person's rights, benefits or protections under this Act or the regulations is void.

Interpretation of documents

Section 4

If a consumer and a supplier enter into a consumer transaction, or an individual enters into a contract with a licensee and the licensee agrees to supply something to the individual in the normal course of the licensee's business, and

(a) all or any part of the transaction or contract is evidenced by a document provided by the supplier or licensee, and

(b) a provision of the document is ambiguous,

the provision must be interpreted against the supplier or licensee, as the case may be.

Unfair practices

Section 6

(1) In this section, "material fact" means any information that would reasonably be expected to affect the decision of a consumer to enter into a consumer transaction.

(1.1) It is an offence for a supplier to engage in an unfair practice.

(2) It is an unfair practice for a supplier, in a consumer transaction or a proposed consumer transaction,

(b) to take advantage of the consumer as a result of the consumer's inability to understand the character, nature, language or effect of the consumer transaction or any matter related to the transaction;

Prepayment of non-mortgage credit

Section 68

(1) This section does not apply to mortgage loans.

(2) A borrower is entitled to pay the full outstanding balance under a credit agreement at any time without any prepayment charge or penalty.

(3) Where a borrower prepays the full outstanding balance under a credit agreement for fixed credit, the credit grantor must refund or credit the borrower with a portion of any non-interest finance charge that was paid by the borrower or was added to the outstanding balance of the credit agreement.

(4) The portion of each non-interest finance charge that must be refunded or credited to the borrower under subsection (3) is to be determined in accordance with the regulations.

(5) A borrower is entitled to prepay a portion of the outstanding balance of a credit agreement for fixed credit on any scheduled payment date or at least monthly without any

prepayment charge or penalty, but is not entitled by reason of the payment to a credit for any non-interest finance charges.

Duty to maintain records

Section 132

- (1) Every licensee and former licensee must create and maintain
- (a) complete and accurate financial records of its operations in Alberta for at least 3 years after the records are made, and
 - (b) other records and documents described in the regulations for the period specified in the regulations.

Administrative Penalties

Notice of administrative penalty

Section 158.1

- (1) If the Director is of the opinion that a person
- (a) has contravened a provision of this Act or the regulations, or
 - (b) has failed to comply with a term or condition of a licence issued under this Act or the regulations,

the Director may, by notice in writing given to the person, require the person to pay to the Crown an administrative penalty in the amount set out in the notice.

(2) Where a contravention or a failure to comply continues for more than one day, the amount set out in the notice of administrative penalty under subsection (1) may include a daily amount for each day or part of a day on which the contravention or non-compliance occurs or continues.

(3) The amount of an administrative penalty, including any daily amounts referred to in subsection (2), must not exceed \$100 000.

(4) Subject to subsection (5), a notice of administrative penalty shall not be given more than 3 years after the day on which the contravention or non-compliance occurred.

(5) Where the contravention or non-compliance occurred in the course of a consumer transaction or an attempt to enter into a consumer transaction, a notice of administrative penalty may be given within 3 years after the day on which the consumer first knew or ought to have known of the contravention or non-compliance but not more than 8 years after the day on which the contravention or non-compliance occurred.

Right to make representations

Section 158.2

Before imposing an administrative penalty in an amount of \$500 or more, the Director shall

- (a) advise the person, in writing, of the Director's intent to impose the administrative penalty and the reasons for it, and
- (b) provide the person with an opportunity to make representations to the Director.

Vicarious liability

Section 166

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

- (a) in the course of the employee's employment with the person, or

(b) in the course of the agent's exercising the powers or performing the duties on behalf of the person under their agency relationship.

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

A routine AMVIC industry standards inspection was completed on July 3, 2015. The inspection findings were discussed with the Supplier and the undated Findings Letter was emailed to the business on July 6, 2015. The 2015 inspection findings identified advertising concerns, issues with the completion and disclosure of MFAs and the business had unregistered salespeople acting on their behalf.

Three subsequent AMVIC industry standards inspections were completed in 2016, 2019 and 2022. A Findings Letter outlining the inspection findings was sent to the Supplier following each inspection providing education to the Supplier. In all three inspections, the Findings Letter addressed a number of legislative breaches including but not limited to the same issues that were identified during the initial 2015 inspection.

As a result of consumer complaints the Supplier received a Warning Letter in 2020 due to concerns regarding the completion of the Suppliers BOS and the disclosure of the MFA; and a Findings Letter in 2023 regarding the Supplier's BOS not accurately reflecting the details of the transaction.

On April 4, 2023 a fifth AMVIC industry standards inspection was completed on the Supplier. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on April 14, 2023. The inspection completed found similar breaches to the inspections completed in 2015, 2016, 2019 and 2022; and AMVIC investigations conducted in 2020 and 2023.

The ISO identified that advertising and MFA issues were found in all five inspections. In addition, in four of the five inspection the Supplier was found to be selling vehicles over the advertised price and the Supplier was not meeting the legislative requirements with regards to the completion of their BOS.

Based on the facts outlined in the Application Report and supporting documents (see Schedule "A"), I will be considering the alleged breaches from the April 4, 2023 AMVIC industry standards inspection.

A. Selling Above Advertised Price (11(2)(I) ABR)

During the April 4, 2023 inspection, the ISO reviewed nine new and used vehicle deal jackets. Of the nine deal jackets reviewed by the ISO, three of the vehicles were sold over the advertised price contrary to Section 11(2)(I) of the ABR. Prices advertised must include all fees the seller intends to charge. The only fee that can be added to the advertised price is the goods and services tax ("GST") and costs associated with financing as per Section 11(2)(I) of the ABR. Pre-installed products such as batteries and anti-theft must be included in the advertised price. Destination fees, documentation fees, the AMVIC levy and tire recycling levy must be included in the advertised price. In these three consumer transactions the Supplier derived an economic benefit of **\$1,503.75** at the cost of the consumers:

- Stock No. 23EX7153A was sold over the advertised price by \$701.25;
- Stock No. 21P1670A was sold over the advertised price by \$201.25;
- Stock No. 2090015D was sold over the advertised price by \$601.25.

In reviewing Schedule “A”; Exhibit 8, the Director noted that in relation to Stock No. 21P1990A (see Schedule “A”; Exhibit 11) the ISO found the Supplier sold over the advertised price, however the Director determined that the Supplier actually sold this vehicle under the advertised price by \$804.75.

The Director further noted that the Findings Letter dated April 14, 2023 and issued to the Supplier states that 31 vehicle sale files were reviewed. The Director inquired with the manager of industry standards and determined that 31 vehicle sales files were reviewed, however only nine of the 31 vehicle sale files were reviewed in relation to the Supplier’s advertisements.

Based on the small sample size of nine deal jackets reviewed by the ISO and before me as evidence, the Supplier has derived an economic benefit by charging consumers over the advertised price. This is concerning as the Supplier has been provided more than ample opportunity and education to rectify this business practice, however continues to engage in this practice and derive an economic benefit at the cost of consumers.

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

B. Bill of Sale Issues (31.2 ABR)

On Oct. 31, 2018, legislation was put into effect with regards to BOS requirements. Between Sept. 25, 2018 and Nov. 6, 2018 AMVIC sent out a number of industry bulletins, updated the AMVIC website with information regarding the legislative amendments, sent multiple bulletins to inform the industry and the public regarding the changes, updated social media regularly, sent out a special edition of the IMPACT newsletter to the industry regarding the legislative changes and all AMVIC employees had an email signature attached to staff emails regarding the legislative changes. These are just a few of the initiatives that AMVIC took to ensure all licensees were advised of the legislative changes that were coming into effect on Oct. 31, 2018 regarding the BOS.

The 2015 and 2016 inspections were completed on the Supplier prior to the legislative changes. The Supplier was educated regarding the BOS requirements during the 2019 and 2022 industry standards inspections as well as the 2020 Warning Letter from AMVIC investigations and the 2023 Findings Letter from AMVIC investigations. The Findings Letter provided to the Supplier as a result of the 2019 and 2022 industry standards inspections provided the Supplier with the legislation they must comply with in the completion of their BOS.

In reviewing the documentation relating to the most recent inspection conducted on April 4, 2023, it is noted that the Supplier continues to be non-compliant with the rather straightforward BOS legislation. In the sale of seven vehicles (see Schedule “A”; Exhibit 14) the Supplier’s BOS is missing the number of the government issued identification that the business operator uses to confirm the identity of the consumer.

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

C. Maintain Records (132 CPA and 9 ABR)

The Director does want to address an overarching issue. Specifically, the Findings and Warning Letters revealed to the Director that the Supplier has issues with record keeping. It is imperative that the Supplier creates and maintains accurate records. Creating and maintaining accurate records is the best way for the Supplier to ensure the consumer is fully aware of all the details and required information during their transaction, and is also the best way for the Supplier to demonstrate they are complying with the legislative requirements.

Issues that the Director found in the Findings Letters include the completion of and/or disclosure of MFAs and issues with the completion of the BOS. Further, the ISO noted in the Application Report (see Schedule "A") all used vehicle deal jackets were missing vehicle history information. The legislation is very clear, that being negligent in keeping records is not only an offence under the CPA but in addition, if a provision of the document is ambiguous, the provision must be interpreted against the Supplier in accordance with Section 4 of the CPA. The Supplier is vicariously liable for all records created and maintained by an employee or agent acting on behalf of the Supplier in the course of completing the Supplier's delegated business activities.

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

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

Based on the totality of all of the issues and concerns with the Supplier's paperwork on a balance of probabilities, the Director does find that the Supplier is in contravention of Section 132(1) of the CPA and Section 9 of the ABR.

D. MFA Issues (15 VIR)/ General Code of Conduct (12(o) ABR)

The ISO's Findings Letter dated April 14, 2023 identified that Stock #22EX1152C and #22F18052B did not have an MFA in the deal jacket.

In further review of the documentation provided in the Application Report in relation to Stock #20P1018 (see Schedule "A"; Exhibit 13), the mileage of the vehicle listed on the BOS is 78,092 kilometres and the MFA listed the mileage at the time it was completed by the technician was 74,779 however, the MFA does not indicate if the vehicle is in miles or kilometres. Section 15(1)(b) of the VIR requires the MFA to include the odometer and it must be specified if it is in kilometres or miles, therefore the Supplier has breached Section 15(1)(b). In addition, the Director notes that if the odometer is in fact in kilometres, there is a difference of 3,313 kilometres between the odometer on the day the MFA was completed and the day the BOS was created, which in the opinion of the Director is a significant amount of mileage to have accrued on a vehicle that is for sale on a business' lot in the 118 days between the date the technician issued the MFA and the date of the BOS.

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.

In Schedule “A”; Exhibit 13 the MFA was completed on Nov. 8, 2022, however there is no date written down in the section of the form to demonstrate when the consumer was provided the MFA during the course of the transaction. While there is a clause on the Supplier’s BOS initialed by the consumer, indicating they had received the MFA, in the opinion of the Director, without having the consumer fill in the date section when they signed the MFA leaves ambiguity between the documents. The legislation is very clear that if a provision of the document is ambiguous, the provision must be interpreted against the Supplier in accordance with Section 4 of the CPA.

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 maintain an MFA in two deal jackets, failing to have the consumer date the day they signed the MFA to demonstrate they received the MFA prior to entering into a contract to sell the motor vehicle and by failing to indicate if the odometer is in miles or kilometres on an MFA the Supplier has breached Section 15 of the VIR and Section 12(o) of the ABR.

E. Unfair Practice to Take Advantage of Consumer Inability to Understand any Matter Related to Transaction (6(2)(b) CPA) / Prepayment of Non-Mortgage Credit (Section 68(1) CPA/Section 8(1)(s) COC)

During the April 4, 2023 inspection the ISO identified that in five instances (Schedule “A”; Exhibit 15) the Supplier had consumers sign a “LOAN PAYOUT AGREEMENT” in which the consumers agreed to not pay out their loan in full for a minimum of six or seven months. The “LOAN PAYOUT AGREEMENT” further had consumers agree that the Supplier can charge them “*the bank cancellation costs*” if they pay their loan in full within the specified timeframe. The Supplier listed the lien amount that the Supplier would place against the vehicle if the consumer paid the loan in full within the timeframe listed.

In five consumer transactions, the Supplier advised consumers they could not pay out their loans in full for a minimum of six to seven months; having the consumer sign and agree that if they pay off their loans in full within the timeframe specified, the Supplier will charge them “*the bank cancellation costs*”. This is contrary to Sections 6(2)(b) and 68 of the CPA and Section 8 of the COC.

The legislation is very clear that a borrower in a non-mortgage credit agreement is entitled to pay the full outstanding balance under a credit agreement at any time without any prepayment charge or penalty as per Section 68 of the CPA. By having consumers sign the “LOAN PAYMENT AGREEMENTS” advising them information contrary to the legislation and having consumer agree to waive their rights under the CPA, the Supplier has breached Sections 6(2)(b). Section 2 of the CPA states that any waiver or release by a person of their rights, benefits or protections under the CPA is void, therefore the loan payout agreements signed by the consumers would be considered void in the opinion of the Director.

Based on the evidence, on a balance of probabilities, I find the Supplier has breached Sections 6(2)(b) and 68 of the CPA, and Section 8(1)(s) of the COC.

F. Other Considerations

In addition to the individual education AMVIC provided the Supplier in the form of the Findings Letters provided after each AMVIC industry standards inspection, AMVIC has issued numerous industry bulletins and newsletters over the past two years explaining all-in pricing and advertising regulations, educating the automotive industry as a whole. As a licensed member of the automotive industry, the Supplier would have received the AMVIC industry bulletins and newsletters and in the opinion of the Director, is expected to have reviewed these education bulletins and newsletters to ensure their business practices are in compliance.

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

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

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

The aggravating factors in this matter include the resulting financial impact adversely affecting the consumers due to paying over the advertised price, in only three transactions the Supplier derived an economic benefit of **\$1,503.75** and continued non-compliance with the rather straightforward requirements of the legislation despite education provided to the Supplier.

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

The amount of the Administrative Penalty cannot be viewed as a cost of doing business but rather as a deterrent for continuing to engage in non-compliant business practices.

Action

In accordance with Section 158.1(a) of the CPA and based on the above facts, I am requiring that Maclin Motors Limited operating as Maclin Ford pay an Administrative Penalty. This is based on my opinion that Maclin Motors Limited operating as Maclin Ford contravened Sections 6(2)(b), 68 and 132(1) of the CPA, Sections 9, 11(2)(l), 12(o) and 31.2(1) of the ABR, Section 15 of the VIR, and Section 8(1)(s) of the COC..

Taking into consideration all the evidence currently before the Director, the amount of the Administrative Penalty is **\$5,000**.

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

1. The financial harm on the persons adversely affected by the contraventions or failure to comply;
2. The seriousness of the contraventions or failure to comply;
3. The economic benefit derived from the contraventions or failure to comply;
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 \$5,000.

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

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

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

Section 179 of the CPA allows a person who has been served a notice of Administrative Penalty to appeal the penalty. To appeal the penalty, the person must serve the Minister of Service Alberta and Red Tape Reduction

Minister of Service Alberta and Red Tape Reduction
103 Legislature Building
10800 - 97 Avenue NW
Edmonton, AB
Canada T5K 2B6

with a notice of appeal within **thirty (30) days** after receiving the notice of Administrative Penalty. The appeal notice must contain your name, your address for service, details of the decision being appealed and your reasons for appealing.

Pursuant to Section 180(4) of the CPA, service of a notice of appeal operates to stay the Administrative Penalty until the appeal board renders its decision on the appeal or the appeal is withdrawn.

Under Section 4 of the Administrative Penalties (*Consumer Protection Act*) Regulation, the fee for appealing an Administrative Penalty is the lesser of \$1,000 or half the amount of the penalty. As such, the fee for an

appeal of this Administrative Penalty, should you choose to file one, would be \$1,000. Should you choose to appeal this Administrative Penalty, you must send the appeal fee to the Minister of Service Alberta and Red Tape Reduction at the above noted address, made payable to the "Government of Alberta".

Yours truly,

"original signed by"

Alberta Motor Vehicle Industry Council (AMVIC)
Gerald Gervais, Registrar
Director of Fair Trading (as Delegated)

GG/kl
Encl.

cc: Roxanne S [REDACTED], Manager of Industry Standards, AMVIC