

January 16, 2024

Administrative Review – 23-10-002  
Served Personally

### **Administrative Penalty**

NORTHSIDE AUTO LTD.  
o/a STONEY TRAIL MAZDA  
7727 110 AVENUE NW  
CALGARY, AB  
T3R 1R8

### **Attention: Asheet Ruparell**

Dear Asheet Ruparell:

**Re: Northside Auto Ltd. o/a Stoney Trail Mazda  
– Provincial Automotive Business Licence No. B1024583**

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

### **Facts**

The evidence before me in relation to this matter consists of the material contained in an Alberta Motor Vehicle Industry Council (“AMVIC”) industry standards department application report (the “Application Report”) prepared by an industry standards officer (“ISO”) and the manager of industry standards. A copy of the Application Report is attached as Schedule “A” to this letter. The Supplier provided written representations via email on Dec. 11, 2023 (attached as Schedule “B”), in response to the Proposed Administrative Penalty, which I have also taken into consideration.

### ***Licensee Status***

Northside Auto Ltd. operating as Stoney Trail Mazda (the “Supplier”) holds an automotive business licence and is licensed to carry on the designated business activities of new and used sales, garage, leasing, service station and wholesale sales in the Province of Alberta.

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

1. On Jan. 15, 2018, a routine AMVIC industry standards inspection was completed at the business location of the Supplier. A Findings Letter outlining the inspection findings was completed and

sent to the Supplier on Jan. 17, 2018. The Findings Letter outlined some concerns including but not limited to:

- a) During the inspection, nine deals were reviewed by the ISO and of those nine deals, six did not reflect all-in pricing contrary to Section 11(2)(l) of the Automotive Business Regulation ("ABR").
  - b) Various issues with the completion of Mechanical Fitness Assessments ("MFAs") contrary to Section 15(1) of the Vehicle Inspection Regulation ("VIR").
  - c) Discrepancies were found between the information provided by the consumer and the information the dealership provided to the financial institution regarding the consumer's salary.
2. On Jan. 31, 2023, a followup AMVIC industry standards inspection was completed on the Supplier. This inspection focused specifically on the Supplier's advertising and compliance with all-in pricing legislation. The inspection conducted on Jan. 31, 2023 was therefore not comprehensive in nature and as such, not all documentation or business practices were reviewed in comparison to the previous comprehensive inspection conducted in 2018. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on Feb. 3, 2023. The Findings Letter outlined the following concern:
- a) During the inspection, four deals were reviewed by the ISO and of those four deals, one did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.

As a result of the Jan. 31, 2023 followup inspection, a written warning was emailed to the Supplier on Feb. 27, 2023.

3. On Sept. 6, 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 Sept. 19, 2023. The Findings Letter outlined the following concerns:
- a) During the inspection, seven deals were reviewed by the ISO and of those seven deals, two did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
  - b) The vehicle history information is not always being disclosed in the sales tags affixed to the vehicles as per Section 31.1(1) of the ABR.
  - c) A number of the BOS that were reviewed in the deal jackets had issues including missing the salesperson registration number of the salesperson, the government issued identification of the consumer used to confirm the identity of the consumer and rounding mileage contrary to Section 31.2 of the ABR.
  - d) Two MFAs were dated after the date of the BOS and one MFA was not dated contrary to Section 15(1) of the VIR.
4. The Supplier provided written representations on Dec. 11, 2023, in response to the Proposed Administrative Penalty (see Schedule "B").

## Applicable Legislation

### **Automotive Business Regulation**

#### **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.

#### **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.

### **Consumer Protection Act**

#### **Interpretation of documents**

##### **Section 4**

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

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

(b) a provision of the document is ambiguous,

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

### **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 ABR and VIR?

A routine AMVIC industry standards inspection was completed on Jan. 15, 2018. The inspection findings were discussed with the Supplier and the Findings Letter was emailed to the business on Jan. 17, 2018. The 2018 inspection findings identified the Supplier selling over the advertised price, some MFA issues and a discrepancy in a salary of a consumer relayed to a financial institution in a loan application.

A second AMVIC industry standards inspection was completed on Jan. 31, 2023. This inspection focused specifically on the Supplier's advertising and compliance with all-in pricing legislation. The inspection conducted on Jan. 31, 2023 was therefore not comprehensive in nature and as such, not all documentation or business practices were reviewed in comparison to the previous comprehensive inspection conducted in 2018. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on Feb. 3, 2023. The Supplier was found to have sold one vehicle over the advertised price. As a result of the followup inspection, a written warning was emailed to the Supplier on Feb. 27, 2023.

Based on the facts outlined in the Application Report and supporting documents (see Schedule "A"), I will be considering the alleged breaches from the Sept. 6, 2023 AMVIC industry standards inspection.

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

The Director noted that the Application Report submitted by the ISO stated that during the third inspection, they reviewed seven retail vehicle sale files (sold) but the Findings Letter dated Sept. 19, 2023 that was sent to the Supplier indicates that 15 new and 15 used vehicle sale files were reviewed.

During the Sept. 6, 2023 inspection, the ISO found two vehicles sold over the advertised price. Prices advertised must include all fees the seller intends to charge. The only fee that can be added to the advertised price is the goods and services tax ("GST") and costs associated with financing as per Section 11(2)(l) of the ABR. Pre-installed products such as batteries and anti-theft must be included in the advertised price. Destination fees, documentation fees, the AMVIC levy and tire recycling levy must be included in the advertised price. In these two consumer transactions the Supplier charged the consumer above the advertised price by a total of **\$562.79**.

- Stock No. M4455 was sold over the advertised price by \$357.54; and
- Stock No. S3528 was sold over the advertised price by \$205.25.

In reviewing the evidence in relation to Stock No. S3528 (see Schedule "A" Exhibits 7 and 7.1), the Director notes the Supplier's advertisement that was pulled on Aug. 11, 2023 lists the price of the

vehicle as \$39,975. Below the price of the vehicle in the advertisement it lists an "Administration/registration" cost of \$699 and then below that in small print, "+Sales Taxes". The advertisement does not make a distinction as to whether the \$699 administration/registration cost is in addition to the advertised price or is included in the advertised price nor is there any other fees (ie. AMVIC levy of \$6.25) or costs itemized in the advertisement. The Director finds the advertisement ambiguous as the total cost of the vehicle is not listed.

A business operator must include 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.

When the Director reviewed the BOS in relation to the sale of Stock No. S3528, the price of the vehicle is listed at a \$500 reduced cost of \$39,475 in comparison to the advertised price of \$39,975. Fees of \$699 and the AMVIC levy of \$6.25 were then added to the vehicle price of \$39,475. The consumer would have been unaware the Supplier was going to charge an AMVIC levy of \$6.25 as it was not embedded in the total cost of the vehicle and the administration/registration cost does not specify if this cost is in addition to the price of the vehicle or was broken out from the total cost of the vehicle. There is no other line item broken down in the advertisement. By the spirit and intent of the legislation the Supplier is in breach of Section 11(2)(l) of the ABR as the Supplier failed to include the total cost of the vehicle in the advertisement and sold the vehicle over by \$205.25.

The evidence before the Director in relation to Stock No. S3528 is limited to a screenshot of the advertisement, therefore the Director is taking into consideration the fact that the Supplier included in their advertisement the cost of "Administration registration fee" of \$699 and included it as a separate line item on the BOS. The "Administration registration fee" fee of \$699 should be included in the advertised price. Due to ambiguity in this advertisement and the fact that the "Sales Taxes" has a "+" beside it and the fee does not it is unclear to the Director whether the "Administration registration fee" was being disclosed as part of the advertised price or if the intention was that the "Administration registration fee" would be added to the advertised price. While the Supplier added the administration fee to the advertisement on their website, the price listed must include all fees other than GST and the costs associated with financing. If the Supplier wants to provide additional disclosure by itemizing the breakdown of the price of the vehicle the "Price" listed must still be the all-in price and the Supplier can then breakdown all itemized costs that are included in the price such as the "Administration registration fee" or any other applicable costs included in the all-in price that must be advertised. The advertisements must be clear, unambiguous and comply with Section 11(2)(l) of the ABR.

In the Supplier's written representations (see Schedule "B") they indicate Stock No. M4455 "was a CX5 Turbo and we inadvertently posted a price of a CX5 non turbo". The Supplier did not provide any supporting evidence regarding this claim nor did they provide any information about the difference in price of a "CX5 Turbo" and a "CX5 non turbo". The Director closely reviewed all the documentation currently before him and there is no indication in any of the documents that would suggest Stock No. M4455 was a "CX5 Turbo". The Director must make a determination based on the current evidence, which is an advertisement for Stock No. M4455 and the associated documents that are available to be reviewed. The Supplier also stated in their written representations (see Schedule "B") "The customer at no time that I am aware of felt that they were being taken advantage of. To the best of my knowledge our Web price was never an issue." The Supplier is a member of the automotive industry, which is a

regulated industry that has been legislated to aid in creating an even playing field between the Supplier, who is a subject matter expert, and the consumer who is not. As a member of a regulated industry it is the Supplier's responsibility to adhere to the legislation in all consumer transactions, it is not the responsibility of the consumer to bring forward non-compliant business practices of the Supplier in the course of their transaction. It is an expectation of consumers that a Supplier in a regulated industry is adhering to the legislation.

Based on the small sample size of deal jackets reviewed by the ISO and before me as evidence, the Supplier in two consumer transactions has charged consumers over the advertised price by a total of **\$562.79**.

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 2018 inspection was completed on the Supplier prior to the legislative changes. The Supplier was educated regarding the BOS requirements during the 2023 industry standards inspection. The Findings Letter provided to the Supplier as a result of the 2023 inspection 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 Sept. 6, 2023, it is noted that the Supplier's BOS was found to be non-compliant. In the sale of Stock No. S3528 the BOS is missing the salesperson registration number of the salesperson (see Schedule "A"; Exhibit 12). In the sale of Stock No. S3531, M4471, M4458 and M4475 (see Schedule "A"; Exhibit 13) the BOS' are missing the number of the government issued identification that the business operator uses to confirm the identity of the consumer and the business licence number of the Supplier.

In the sale of Stock No. ST2472 and S3489 the ISO identified that the mileage of the vehicles that were traded-in had been rounded off (see Schedule "A"; Exhibit 14).

Based on the evidence before me only in relation to the Sept. 6, 2023 inspection, on a balance of probabilities, I find the Supplier has breached Section 31.2 of the ABR.

#### C. Vehicle History Information (31.1 ABR)

The ISO commented in the Findings Letter that the Supplier failed to disclose the vehicle history information in vehicle sales tags that were affixed to vehicles in the Supplier's lot as per Section 31.1 of

the ABR. No supporting evidence was provided to the Director as to whether the vehicles on the Supplier's lot had the specific vehicle history that is required to be disclosed in accordance with the legislation. Due to the lack of evidence regarding the history of the vehicles at the Supplier's business location, on a balance of probabilities the Director does not find that the Supplier has breached Section 31.1 of the ABR.

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

In review of the documentation provided in the Application Report (see Schedule "A") the Supplier sold vehicles to consumers without providing the consumer the required MFA before entering into the contracts to sell the vehicles as required by Section 15 of the VIR. Stock No. S3534 was sold to a consumer on Aug. 22, 2023 yet the consumer did not sign the MFA until Aug. 25, 2023, after the consumer had already entered into a contract. In addition, Stock No. S3531 was sold to the consumer on Aug. 18, 2023 and the MFA is signed and dated on Aug. 19, 2023, after the consumer had already entered into a contract.

In review of the documentation currently before me it is noted that Stock No. S3524 does not have a date that the consumer signed the MFA. While it is not a requirement under Section 15 for the consumer to date the day they signed the MFA, it is the only way the business can demonstrate the MFA was provided prior to entering into the contract to sell the consumer the vehicle. 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. While the BOS in relation to Stock #S3524 indicated the consumer reviewed the MFA, the MFA does not indicate the date the consumer reviewed and signed the MFA. Furthermore, the two above mentioned stock numbers where the MFA was signed by the consumer after the BOS date, the consumer signed the same section of the BOS indicating they had reviewed the MFA, which based on the evidence was not the case. Therefore, based on the evidence before me, in accordance with Section 4 of the CPA, I must interpret the documentation against the Supplier and on a balance of probabilities I find the Supplier has not maintained records to demonstrate the MFA relating to Stock No. S3524 was provided prior to entering into the contract with the consumer. 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.

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.

By failing to give consumers an MFA before entering into a contract to sell a motor vehicle and failing to document a clear date the MFA was provided to the consumer, the Supplier has breached Section 15 of the VIR and Section 12(o) of the ABR.

#### E. 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 financial harm to consumers. It further concerns the Director that the Supplier has continued to breach rather straightforward legislation to the financial detriment of consumers, despite the education provided by AMVIC in two previous inspections.

In their written representations (see Schedule "B") the Supplier indicated *"I must add that the prospect of facing a \$2500 penalty for making an honest mistake is very unsettling"* and *"We feel that a penalty for administrative errors is not warranted and request that it be waived."* While the Director acknowledges the Supplier's comments and their position that they do not want to pay an Administrative Penalty, the Director must weigh the evidence and make a decision based on the documentation and supporting evidence in relation to the consumer transactions. If the Supplier's advertisements and paperwork have errors or do not clearly and unambiguously provide a clear depiction of the vehicle or the consumer transaction the Director must interpret the documentation against the Supplier as required by Section 4 of the CPA.

The aggravating factors in this matter include the resulting financial impact adversely affecting two consumers due to paying over the advertised price, in two transactions the Supplier charged consumers above the advertised price by a total of \$562.79, failing to provide the required MFA to consumers to prior to entering into a contract to allow them to make an informed purchasing decision 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 third 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 Northside Auto Ltd. operating as Stoney Trail Mazda pay an Administrative Penalty. This is based on my opinion Northside Auto Ltd. operating as Stoney Trail Mazda has contravened Sections 11(2)(l), 12(o) and 31.2(1) of the ABR, and Section 15 of the VIR.

Taking into consideration all the representations made by the Supplier and the representations made by AMVIC's industry standards department, the amount of the Administrative Penalty is **\$2,500**.

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

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

## The amount of the Administrative Penalty is \$2,500.

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

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

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

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

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

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

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

Under Section 4 of the Administrative Penalties (*Consumer Protection Act*) Regulation, the fee for appealing an Administrative Penalty is the lesser of \$1,000 or half the amount of the penalty. As such, the fee for an appeal of this Administrative Penalty, should you choose to file one, would be \$1,000. Should you choose to appeal this Administrative Penalty, you must send the appeal fee to the Minister of Service Alberta and Red Tape Reduction at the above noted address, made payable to the "Government of Alberta".

Yours truly,

"original signed by"

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

GG/kl  
Encl.

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