

**IN THE MATTER OF THE
CONSUMER PROTECTION ACT ("CPA")**

THIS **UNDERTAKING** is made pursuant to Section 152 of the *Consumer Protection Act*.

BY: A&E AUTOMOTIVE LTD.
in the city of Calgary, in the Province of Alberta
(hereinafter called the "Supplier")

TO: The DIRECTOR OF FAIR TRADING (as delegated)
(hereinafter called the "Director")

WHEREAS:

- A. At the time of the complaint, the Supplier was licensed by the Alberta Motor Vehicle Industry Council ("AMVIC") to carry on the automotive business activity of retail sales and wholesale sales in the Province of Alberta.
- B. An administrative review was held on Jan. 9, 2024 at approximately 1 p.m. via teleconference call. Participating in the administrative review were Mr. Elias Chammas, owner and director for the Supplier; [REDACTED], AMVIC investigator; [REDACTED], manager of investigations south; and G. Gervais, Director of Fair Trading (as delegated).
- C. AMVIC received a consumer complaint in April 2023 (case file 23-04-172) relating to the purchase of a 2015 Toyota Sienna (the "Sienna") by a consumer ("PC"). On Jan. 30, 2023 PC agreed to purchase the Sienna for \$30,000 including all fees, and the goods and services tax ("GST"), and provided the Supplier a \$500 deposit. The Supplier agreed to complete some repairs prior to PC taking possession of the Sienna.
- D. The Sienna had been advertised by the Supplier for \$33,900 which is in line with retail black book value for the vehicle in good condition. The AMVIC investigation revealed that the Sienna was a salvage vehicle and the Carfax reports several incidents, and \$35,009 in claims with the Sienna being deemed a total loss. The Carfax report and the complete vehicle history had not been disclosed to PC. PC was further not shown the Salvage Motor Vehicle Inspection Certificate which would have clearly identified the Sienna as having been branded salvage and then repaired. As per Section 166 of the CPA, the Supplier is vicariously liable for the representations made to consumers by their employees or designated agents. By failing to disclose the complete accident history of the Sienna, the Supplier deprived PC of making a fully informed purchasing decision. The evidence supports that there has been a breach of Sections 6(2)(c) and 6(4)(a) of the CPA, and Section 13 of the Vehicle Inspection Regulation ("VIR").

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.

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

(c) to use exaggeration, innuendo or ambiguity as to a material fact with respect to the consumer transaction;

(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;

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.

Vehicle Inspection Regulation

Sale of salvage motor vehicle

Section 13

A person shall not sell a motor vehicle that is a salvage motor vehicle unless, before the sale,

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

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

- E. A Kijiji advertisement for the Sienna states that the Sienna was fully inspected and “*recertified*” rather than the correct branding terminology of “*rebuilt*”. The advertisement further omits the required vehicle history disclosure requirements as per Section 31.1(2)(a) of the Automotive Business Regulation (“ABR”), legislation included below in paragraph F. In addition, there is no stock number listed in the advertisement. In doing so, the Supplier has breached Sections 11(2)(m) and 11(2)(n) of the ABR.

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

(m) includes the stock number of the specific vehicle that is advertised as being available for sale at the time the advertisement is placed,

(n) does not use false, misleading or deceptive statements,

- F. The AMVIC investigation identified that the Supplier used a private bill of sale (“BOS”) which is dated Feb. 4, 2023 and lists the selling price of the Sienna as \$29,998.50 which is not accurate. During the administrative review, the Supplier acknowledged the number was an accounting error on their part. In review of the Supplier’s BOS, it is not compliant with Section 31.2 of the ABR. The private BOS fails to include all of the BOS requirements and disclosures, not limited to: the business address and business licence number of the business operator; the name and registration number of the salesperson; the date the Sienna was to be delivered; the deposit of \$500 paid by PC; the repairs that the Supplier agreed to complete prior to PC taking possession; the remaining balance owing after the deposit; the total cost of the vehicle including a breakdown of fees, charges and costs; the declaration indicating that the vehicle history was disclosed in accordance with Section 31.1 of the ABR; a disclosure statement or documentation respecting the Sienna’s previous use, history or condition; and that a Mechanical Fitness Assessment (“MFA”) was issued to the consumer. The Supplier failed to disclose in writing to PC before purchase that the Sienna was previously registered in a jurisdiction other than in Alberta immediately before it was acquired and that the Sienna had passed a salvage motor vehicle inspection certificate. Based on the evidence before me, the Supplier has breached Sections 31.1, 31.2 and 31.3 of the ABR.

Automotive Business Regulation**Vehicle history information****Section 31.1**

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

(a) whether the vehicle has been bought back by the manufacturer under the Canadian Motor Vehicle Arbitration Plan;

(b) whether the vehicle has sustained damage caused by fire;

(c) whether the vehicle has sustained damage caused by immersion in liquid to at least the level of the interior floorboards;

(d) whether the vehicle has been used as a police car or an emergency vehicle;

(e) whether the vehicle has been used as a taxi cab or a limousine;

(f) whether the vehicle has been previously owned by a rental vehicle business or used as a rental vehicle on a daily or other short-term basis;

(g) whether the vehicle has, at any time, been assigned a status in one of the following categories under the Vehicle Inspection Regulation (AR 211/2006) or an equivalent status under the laws of another jurisdiction:

- (i) salvage motor vehicle;
 - (ii) non-repairable motor vehicle;
 - (iii) unsafe motor vehicle;
 - (h) whether the vehicle has been damaged in an incident or collision where the total cost of repairs fixing the damage exceeded \$3000 and, if the repairs were carried out by the business operator, the total cost of the repairs;
 - (i) whether the vehicle was registered in any jurisdiction other than Alberta immediately before it was acquired by the business operator and, if so,
 - (i) the name of the jurisdiction in which the vehicle was previously registered,
 - (ii) whether the vehicle was required to be inspected prior to registration in Alberta, and
 - (iii) whether the vehicle passed or failed any required inspections.
- (2)** The business operator must disclose the information required under subsection (1) in a clear and legible manner (a) in any online advertisement for the vehicle, (b) on any sales tag affixed to the vehicle, and (c) in writing to the consumer before purchase.

Bill of sale

Section 31.2

- (1)** A business operator engaged in automotive sales must use a bill of sale that includes the following:
- (a) the name and address of the consumer;
 - (b) the number of the government-issued identification that the business operator uses to confirm the identity of the consumer;
 - (c) the name, business address and licence number of the business operator;
 - (d) if a salesperson is acting on behalf of the business operator, the name and registration number of the salesperson;
 - (e) the make, model and model year of the vehicle;
 - (f) the colour and body type of the vehicle;
 - (g) the vehicle identification number of the vehicle;
 - (h) the date that the bill of sale is entered into;
 - (i) the date that the vehicle is to be delivered to the consumer;
 - (j) an itemized list of all applicable fees and charges the consumer is to pay, including, without limitation:
 - (i) charges for transportation of the vehicle;
 - (ii) fees for inspections;
 - (iii) fees for licensing;
 - (iv) charges for warranties;
 - (v) taxes or levies, including GST;
 - (k) the timing for payment by the consumer of the fees and charges under clause (j);
 - (l) an itemized list of the costs of all extra equipment and options sold to the consumer in connection with the vehicle or installed on the vehicle at the time of sale;

- (m) the total cost of the vehicle, which must include the fees, charges and costs listed under clauses (j) and (l);
- (n) the down payment or deposit paid by the consumer, if any, and the balance remaining to be paid;
- (o) if the consumer is trading in another vehicle to the business operator in connection with the purchase of the vehicle,
 - (i) information about the vehicle being traded in, and
 - (ii) the value of the trade-in allowance incorporated into the cost of purchase of the vehicle;
- (p) the balance of any outstanding loan that is incorporated into the cost of purchase of the vehicle;
- (q) if, in connection with the purchase of the vehicle, the business operator enters into a credit agreement with the consumer or arranges a credit agreement for the consumer, the disclosure statement required under Part 9 of the Act;
- (r) an itemized list of any items or inducements the business operator agrees to provide with the vehicle at no extra charge;
- (s) the odometer reading of the vehicle at the time the bill of sale is entered into, if the vehicle has an odometer and the odometer reading is available to the business operator;
- (t) the maximum odometer reading of the vehicle at the time of delivery to the consumer if the vehicle has an odometer and
 - (i) the odometer reading is not available to the business operator at the time the bill of sale is entered into, or
 - (ii) the vehicle is a new, specifically identified vehicle;
- (u) any mechanical fitness assessment that has been issued under the Vehicle Inspection Regulation (AR 211/2006);
- (v) any disclosure statement or documentation respecting a vehicle's previous use, history or condition, including disclosure statements or documentation required under the laws of another jurisdiction;
- (w) a declaration that the business operator has disclosed to the consumer the information required under section 31.1.

(2) The business operator must ensure that all restrictions, limitations and conditions imposed on the consumer under the bill of sale are stated in a clear and comprehensible manner.

Receipt of information

Section 31.3

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

- G. The AMVIC investigation identified other issues with the Supplier's records or paperwork. The Supplier failed to maintain a copy of the Salvage Inspection Certificate and was unable to produce this record. During the administrative review, the Supplier advised that the document had been

submitted to Alberta Registries and they failed to retain a copy for their records which is why they were not able to provide it to the AMVIC investigator. The Supplier's MFA fails to list their name and address. The business practices and the evidence support that on a balance of probabilities the Supplier has breached Section 132(1) of the CPA, Sections 9 and 12(o) of the ABR and Section 15 of the VIR.

Consumer Protection Act

Duty to maintain records

Section 132

- (1)** Every licensee and former licensee must create and maintain
 - (a) complete and accurate financial records of its operations in Alberta for at least 3 years after the records are made, and
 - (b) other records and documents described in the regulations for the period specified in the regulations.
- (2)** Every licensee and former licensee must make the records referred to in subsection (1) available for inspection by an inspector at a place in Alberta and at a time specified by the inspector.

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.

Automotive Business Regulation

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

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.
- H. During the administrative review, the AMVIC investigator remarked the Supplier was cooperative and has no previous enforcement history.
- I. During the administrative review, the Supplier indicated that they were unaware of the ABR regulation changes from 2018 as they were not receiving AMVIC's communication emails. The Supplier has since updated their email address with AMVIC and confirmed they are now receiving AMVIC's email communication.
- J. In advance of the administrative review, the Supplier forwarded to the Director an updated BOS they have created as well as an example of one of their advertisements to demonstrate they have changed their advertising practices.
- K. During the administrative review, the Supplier advised they have changed their business practices and now ensure their consumers receive all of the required disclosure information prior to entering into a consumer transaction and the Supplier has the consumer sign off on everything.
- L. The Supplier acknowledged the general conduct described in the AMVIC investigation, regrets engaging in the aforementioned activity and is taking this matter very seriously.

NOW THEREFORE THIS UNDERTAKING WITNESSES THAT:

1. The Supplier acknowledges and admits that it failed to comply with the provisions of the CPA, ABR and VIR, and undertakes to the Director that the Supplier will make every effort to ensure that it does not engage in acts or practices similar to those described above.

2. The Supplier will undertake to ensure that they do not use exaggeration, innuendo or ambiguity as to a material fact as per Section 6(2)(c) of the CPA and not to engage in business practices that could mislead or deceive a consumer as per Section 6(4)(a) of the CPA.
3. The Supplier will undertake that all MFAs are completed in full by a licensed technician and is given to a consumer **before** entering into a contract to sell a motor vehicle as per Section 15 of the VIR. Additionally, the Supplier will undertake to ensure they comply with the legislative requirements outlined in the sale of a salvage motor vehicle as per Section 13 of the VIR.
4. The Supplier will undertake to create and maintain complete and accurate financial business records required by Section 132(1) of the CPA and Section 9 of the ABR.
5. The Supplier will undertake to ensure their advertising conforms to the legislation as required in Section 11 of the ABR. In particular, the Supplier will ensure all advertisements include the correct stock number and does not use false, misleading or deceptive statements as per the legislation outlined above in paragraph E.
6. The Supplier will undertake to ensure their BOS is completed in full and properly itemizes the accurate details of the transaction in accordance with the requirements of Section 31.2 of the ABR.
7. The Supplier will undertake to disclose the vehicle history information, as applicable, in writing to consumers before entering into a contract as per the requirements in Section 31.1 and 31.3 of the ABR.
8. To ensure that the Supplier is in full compliance with the CPA and its related regulations, the Supplier agrees to assist AMVIC with an industry standards inspection which will take place before **Sept. 30, 2024**.
9. The Supplier will buy back the 2015 Toyota Sienna from PC for **\$30,000** less twenty (20) cents per kilometre driven while in PC's possession (the current odometer reading when it is returned to the Supplier minus the odometer reading listed on the original BOS). The AMVIC investigator will contact PC to arrange to deliver the Sienna back to the Supplier at PC's cost within **thirty (30) days** of the Supplier signing this Undertaking. Once the return of the vehicle is completed, the Supplier will provide AMVIC with a copy of the BOS, copy of the cheque given to PC and a photograph of the final odometer reading of the Sienna within **seven (7) days**.
10. The Supplier shall pay the sum of **\$500** to the Alberta Motor Vehicle Industry Council, an amount that represents a portion of the costs AMVIC has incurred investigating the matters herein. Such payment is to be made to AMVIC within **thirty (30) days** from the date of signing this Undertaking.
11. This Undertaking will remain in force,
 - Unless:
 - a. Terminated by the Director or varied with the consent of the Supplier;

- b. Varied by an Order of the Judge of the Court of King's Bench where the Judge is satisfied that the circumstances warrant varying the provisions of the Undertaking; or
 - c. Terminated by an Order of the Judge of the Court of King's Bench where the Judge is satisfied that the act or practice that the Supplier has undertaken to refrain from engaging in was not unfair; however, in any such case, the termination or variance does not invalidate anything done under this Undertaking prior to termination or variance.
12. The Supplier acknowledges the Director may, upon breach of any term of the Undertaking, institute such proceedings and take such action under the *Consumer Protection Act* as they may consider necessary.
13. The Supplier acknowledges this Undertaking is a public document and will be maintained in the public record by the Director of Fair Trading (as delegated) as required by Section 157.1 of the *Consumer Protection Act*.
14. The Supplier acknowledges that they were advised by AMVIC and are aware that they are entitled to seek independent professional advice regarding the signing of this Undertaking, and the Supplier acknowledges they are entering into this Undertaking voluntarily.

IN WITNESS WHEREOF the Supplier, has on the 9 day of February, 2024.

A&E Automotive Ltd.

PER: "original signed by"
Elias CHAMMAS
Director of the Supplier

ACCEPTED by the Director of Fair Trading on the 27 day of February, 2024

PER: "original signed by"
Gerald Gervais
Director of Fair Trading
(as delegated)