

June 1, 2023

Administrative Review – 23-03-003
Served via email: [REDACTED]

Administrative Penalty

SPV MOTORS GP INC.
o/a SHERWOOD PARK VOLKSWAGEN
2365 BROADMOOR BOULEVARD
SHERWOOD PARK, AB
T8H 1N1

Attention: Paul Antony, Michael Borys and Jeffrey Thorpe

Dear Paul Antony, Michael Borys and Jeffrey Thorpe:

**Re: SPV Motors GP Inc. operating as Sherwood Park Volkswagen
Provincial Automotive Business Licence No. B2026551**

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 dated April 14, 2023 (attached as Schedule "B"), in response to the Proposed Administrative Penalty, which I have also taken into consideration.

Licensee Status

SPV Motors GP Inc. operating as Sherwood Park Volkswagen (the "Supplier") holds an automotive business licence and is licensed to carry on the designated business activities of new and used sales, garage, leasing, specialty service, service station, and wholesale sales in the Province of Alberta.

Direct communications with the Supplier and its representatives

1. On Jan. 19, 2021, a routine AMVIC industry standards inspection was completed at the business location of the Supplier. A Findings Letter was emailed to the Supplier on Jan. 21, 2021 outlining the inspection findings and was sent to the Supplier. The Findings Letter outlined a number of concerns including but not limited to:

- a) Advertising issues contrary to requirements found in Section 11 of the Automotive Business Regulation (“ABR”).
 - b) During the inspection, five deals reviewed by the ISO did not comply with all-in pricing legislation, Section 11(2)(l) of the ABR.
 - c) A number of the bills of sale (“BOS”) that were reviewed in the deal jackets had multiple issues contrary to Section 31.2 of the ABR. The Findings Letter noted issues such as no delivery date, the salesperson registration number for the salesperson was missing, the consumer’s government issued identification was missing; and not itemizing options, cash back and inducements.
 - d) The Mechanical Fitness Assessment (“MFA”) in three used sales deal jackets reviewed were completed after the BOS date contrary to Section 15(1) of the Vehicle Inspection Regulation (“VIR”).
 - e) Salespeople who were no longer working for the Supplier were still listed as designated agents for the Supplier and one salesperson’s registration was expired contrary the ABR.
2. On Feb. 2, 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 Feb. 2, 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 2021. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on Feb. 8, 2023. The Findings Letter outlined the following concerns:
- a) During the inspection, 27 deals were reviewed by the ISO and of those 27 deals, seven did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
3. Selling a vehicle over the advertised price was found in both AMVIC inspections, based on the Findings Letters provided to the Supplier following each AMVIC industry standards inspection.
4. The Supplier provided written representations, dated April 14, 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

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?

A routine AMVIC industry standards inspection was completed on Jan. 19, 2021. The inspection findings were discussed with the Supplier and the Findings Letter was emailed to the business on Jan. 21, 2021. The 2021 inspection findings identified a number of breaches including five vehicles sold over the advertised price. After this inspection, the Supplier was provided with information and education regarding the legislative requirement of adhering to the advertised price when selling vehicles as per Section 11(2)(l) of the ABR.

On Feb. 2, 2023 a followup AMVIC industry standards inspection was completed on the Supplier. This inspection focused solely on the Supplier's advertising and compliance with all-in pricing legislation. The inspection conducted on Feb. 2, 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 2021. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on Feb. 8, 2023. The ISO identified that the Supplier has continued to sell vehicles over the advertised price contrary to Section 11(2)(l) of the ABR. Based on the facts outlined by the ISO in the Application Report and supporting documents (see Schedule "A"), I will be considering the alleged breaches from the 2023 AMVIC industry standards inspection.

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

During the Feb. 2, 2023 AMVIC industry standards inspection, the ISO found seven vehicles sold above the advertised price.

Prices advertised need to 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 seven consumer transactions the Supplier derived an economic benefit of \$7,790.69 at the cost of the consumers.

- Stock No. 23GF0592 was sold over the advertised price by \$2,271.25;
- Stock No. 22TG2136 was sold over the advertised price by \$1,093.19;
- Stock No. 23AX6923 was sold over the advertised price by \$2,721.25;
- Stock No. PW3327A was sold over the advertised price by \$501.25;
- Stock No. PW3314 was sold over the advertised price by \$501.25;
- Stock No. PW3509 was sold over the advertised price by \$501.25; and
- Stock No. 23TO1801A was sold over the advertised price by \$201.25.

The Supplier, in their written representations in response to the Proposed Administrative Penalty (see Schedule “B”), state they “dispute that the finance placement fee is akin to an administration fee” and this fee covers the business’ cost of doing business by having finance managers to complete the work to secure financing for a consumer. The Supplier has not provided adequate evidence to demonstrate how the amounts of the “Finance Placement Fee” is determined nor did they provide any evidence to demonstrate the costs the business is incurring in completing their regular business duties in obtaining financing for their customers. A Supplier cannot charge a consumer a fee, name that fee to make it appear to be a cost associated with financing, which is the only allowable fee, other than GST, that can be added to the advertised price, without documentation supporting how that fee is a cost associated with the financing. The Supplier is not required to offer financing and could choose to have their consumers obtain financing elsewhere to complete their purchase. Moreover, the Supplier can and should appropriately advertise the vehicles at a price to cover the regular costs of doing business.

The spirit and intent of the legislation is to create an even playing field between the consumers and the businesses as well as foster a fair marketplace. Charging a fee to cover the business’ regular cost of operating when other businesses are including those costs in their advertised price does not foster a fair marketplace. The costs associated with financing that a third party lender is charging such as a registration fee, is a fee the third party lenders control and should not greatly differ depending on the automotive business completing the conditional sales contract. Whereas an ambiguous fee added on top of the advertised price does not create fair marketplace advertising. In the opinion of the Director, the true nature of this fee is ambiguous. Due to the ambiguity of this fee, Section 4 of the CPA states the provision must be interpreted against the Supplier.

In the written representations, the Supplier addressed each vehicle that was alleged to be sold over the advertised price during the 2023 AMVIC industry standards inspection. In order to fulsomely address the written representations, the Director will also address each vehicle in detail.

Stock No. 23GF0592

In the Application Report and Proposed Administrative Penalty it was alleged Stock No. 23GF0592 was sold over the advertised price by \$2,271.25. In the Supplier’s April 14, 2023 written representations (See Schedule “B”) they indicated Stock No. 23GF0592 was sold over the advertised price by \$1,650 and provided an explanation that the purchase price had been inflated in order to hide negative equity. In support of this claim, the Supplier provided two documents, the BOS and the initial purchase agreement.

In review of the documentation provided by the Supplier in their written representations (see Schedule “B”), the two line items that demonstrate the Supplier’s claim that the purchase price of Stock No. 23GF0592 was inflated to hide the negative equity are the “Adjustment” line and the “Trade-In Allowance” line. These two line items offset each other overall in the transaction. In the Director’s opinion, these documents do not provide the necessary evidence to demonstrate that the change in the amounts indicated in the “Adjustment” line and the “Trade-In Allowance” line on BOS is actually due to the lien payout for the trade-in being higher than the amount the Supplier provided for the trade-in. No documentation relating to the amount owing on the trade-in was provided. While the documentation does not fully support the Supplier’s claim, the Director accepts the Supplier’s explanation regarding the purchase price of Stock No. 23GF0592 being inflated to hide negative equity. However, the Director is

unable to determine how the Supplier concluded Stock No. 23GF0592 was sold over the advertised price by \$1,650.

In addition, it is the Supplier's position that charging consumers the AMVIC levy and tire levy above the advertised price does not economically benefit the Supplier and the Supplier charging the Finance Placement Fee falls within the legislation. The Director's position on the Supplier charging the consumer the AMVIC levy and the Finance Placement Fee above the advertised price is detailed both above and below. The price breakdown regarding Stock No. 23GF0592, without the inflation to hide negative equity is as follows:

Vehicle Price		\$37,095.00
Finance Placement Fee	+	595.00
Tire Levy	+	20.00
AMVIC Levy	+	6.25
Sale Price		<u>\$37,716.25</u>
Advertised Price		\$40,495.00
Sale Price	-	<u>37,716.25</u>
Under Advertised Price		\$2,778.75

Based on the evidence in relation to this deal jacket, I find that Stock No. 23GF0592 was not sold over the advertised price.

It is imperative that the Supplier creates and maintains accurate records. Creating and maintaining accurate records is the best way for the Supplier to ensure the consumer is fully aware of all the details and required information during their transaction and is also the best way for the Supplier to demonstrate they are complying with legislative requirements. Section 132 of the CPA is very clear that the Supplier is required to maintain accurate financial records, which is not the case in relation to Stock No. 23GF0592.

The Supplier stated they chose to hide the negative equity in the sale price as some of the lenders the Supplier works with require the contract to show there is no negative equity on the BOS. The Director notes that it is fraudulent in nature to hide negative equity and to not list true values on a BOS that is being submitted to the lending institutions. Further, it is not the lending institutions that must adhere to the CPA and its associated regulations, it is the Supplier, as a member of a regulated industry that must adhere to the legislation governing the automotive industry. The business cannot breach the legislation that governs the automotive industry in order to meet lender requirements.

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

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

Stock No. 22TG2136

In the Application Report and Proposed Administrative Penalty it was alleged Stock No. 22TG2136 was sold over the advertised price by \$1,093.19. In the Supplier's April 14, 2023 written representations in response to the Proposed Administrative Penalty, they stated they were offering a two year maintenance plan to consumers at no cost as a promotion. However, in this transaction the consumer requested a four year maintenance plan which was not itemized on the BOS, but instead added to the price of the vehicle. The Supplier provided two documents to support this claim, the BOS and a "PREPAID MAINTENANCE Service Contract Registration Page". While the "PREPAID MAINTENANCE Service Contract Registration Page" does show the consumer received a four year maintenance plan, the "SERVICE CONTRACT PRICE INFORMATION" lists the cost of the four year maintenance plan as \$0. This documentation does not demonstrate the additional amount Stock No. 22TG2136 was sold over the advertised price is based on the four year maintenance plan.

In review of the documentation before me, the cost of the four year maintenance plan is listed as \$0 and therefore does not demonstrate the difference in the advertised price of the vehicle and the amount the Supplier charged the consumer. The Director must make a determination based on the documentation currently available and the current documentation is ambiguous in regards to the cost of the four year maintenance plan. Due to the ambiguity of the documents in regards to the four year maintenance plan and the associated cost, Section 4 of the CPA states the provision must be interpreted against the Supplier.

In addition, the Supplier's position in regards to the AMVIC levy and tire levy charged above the advertised price in relation to Stock No. 22TG2136 is that they do not lead to any economic benefit to the Supplier. The Director's position on the Supplier charging the consumer the AMVIC levy and tire levy above the advertised price is detailed both above and below. The price breakdown used to determine the sale over the advertised price is as follows:

Vehicle Price		\$49,106.94
Tire Levy	+	20.00
AMVIC Levy	+	<u>6.25</u>
Sale Price		\$49,133.19
Advertised Price	-	<u>48,040.00</u>
Over Advertised Price		\$1,093.19

Based on the documentation before me, I find that Stock No. 22TG2136 was sold over the advertised price by \$1,093.19.

Stock No. 23AX6923

In the Application Report and Proposed Administrative Penalty it was alleged Stock No. 23AX6923 was sold over the advertised price by \$2,721.25. In the Supplier's written representations, they have taken the position that Stock No. 23AX6923 was sold over the advertised price however, they indicate they believe they sold Stock No. 23AX6923 over the advertised price by \$2,100 as they do not believe the AMVIC levy and tire levy do not economically benefit them and that the Supplier charging the Finance Placement Fee falls within the legislation. The Director's position on the Supplier charging the consumer

the AMVIC levy, tire levy and the Finance Placement Fee above the advertised price is detailed both above and below. In their written representations (see Schedule "B") the Supplier indicated "Regarding stock no. 23AX6923, I understand that the Dealership sells quite a few vehicles and unfortunately it has not been able to determine why the sales price for this particular vehicle was above the advertised price." The price breakdown used to determine the sale over the advertised price is as follows:

Vehicle Price		\$63,345.00
Finance Placement Fee	+	595.00
Tire Levy	+	20.00
AMVIC Levy	+	<u>6.25</u>
Sale Price		\$63,966.25
Advertised Price	-	<u>61,245.00</u>
Over Advertised Price		\$2,721.25

Based on the evidence before me, I find that Stock No. 23AX6923 was sold over the advertised price by \$2,721.25.

Stock No. PW3327A

In the Application Report and Proposed Administrative Penalty it was alleged Stock No. PW3327A was sold over the advertised price by \$501.25. Similarly to the above stock numbers, the Supplier's position is that Stock No. PW3327A was not sold over the advertised price claiming the AMVIC levy does not economically benefit the Supplier and that the Supplier charging the Finance Placement Fee falls within the legislation. The Director's position on the Supplier charging the consumer the AMVIC levy and the Finance Placement Fee above the advertised price is detailed both above and below. The price breakdown used to determine the sale over the advertised price is as follows:

Vehicle Price		\$16,907.00
Finance Placement Fee	+	495.00
AMVIC Levy	+	<u>6.25</u>
Sale Price		\$17,408.25
Advertised Price	-	<u>16,907.00</u>
Over Advertised Price		\$501.25

Based on the documentation before me, I find that Stock No. PW3327A was sold over the advertised price by \$501.25.

Stock No. PW3314

In the Application Report and Proposed Administrative Penalty it was alleged Stock No. PW3314 was sold over the advertised price by \$501.25. Similarly to the above stock numbers, the Supplier's position is that Stock No. PW3314 was not sold over the advertised price claiming the AMVIC levy does not economically benefit the Supplier and that the Supplier charging the Finance Placement Fee falls within the legislation. The Director's position on the Supplier charging the consumer the AMVIC levy and the

Finance Placement Fee above the advertised price is detailed both above and below. The price breakdown used to determine the sale over the advertised price is as follows:

Vehicle Price		\$18,307.00
Finance Placement Fee	+	495.00
AMVIC Levy	+	<u>6.25</u>
Sale Price		\$18,808.25
Advertised Price	-	<u>18,307.00</u>
Over Advertised Price		\$501.25

Based on the evidence before me, I find that Stock No. PW3314 was sold over the advertised price by \$501.25.

Stock No. PW3509

In the Application Report and Proposed Administrative Penalty it was alleged Stock No. PW3509 was sold over the advertised price by \$501.25. Similarly to the above stock numbers, the Supplier's position is that Stock No. PW3509 was not sold over the advertised price claiming the AMVIC levy does not economically benefit the Supplier and that the Supplier charging the Finance Placement Fee falls within the legislation. The Director's position on the Supplier charging the consumer the AMVIC levy and the Finance Placement Fee above the advertised price is detailed both above and below. The price breakdown used to determine the sale over the advertised price is as follows:

Vehicle Price		\$19,907.00
Finance Placement Fee	+	495.00
AMVIC Levy	+	<u>6.25</u>
Sale Price		\$20,408.25
Advertised Price	-	<u>19,907.00</u>
Over Advertised Price		\$501.25

Based on the documentation before me, I find that Stock No. PW3509 was sold over the advertised price by \$501.25.

Stock No. 23TO1801A

In the Application Report and Proposed Administrative Penalty it was alleged Stock No. 23TO1801A was sold over the advertised price by \$201.25. Similarly to the above stock numbers, the Supplier's position is that Stock No. 23TO1801A was not sold over the advertised price claiming the AMVIC levy does not economically benefit the Supplier and that the Supplier charging the Finance Placement Fee falls within the legislation. The Director's position on the Supplier charging the consumer the AMVIC levy and the Finance Placement Fee is noted both above and below. The price breakdown used to determine the sale over the advertised price is as follows:

Vehicle Price		\$29,507.00
Finance Placement Fee	+	595.00
AMVIC Levy	+	<u>6.25</u>
Sale Price		\$30,108.25
Advertised Price	-	<u>29,907.00</u>
Over Advertised Price		\$201.25

Based on the evidence before me, I find that Stock No. 23TO1801A was sold over the advertised price by \$201.25.

After reviewing the documents provided by the Supplier, the Supplier sold over the advertised price in six consumer transactions and derived an economic benefit of **\$5,519.44** at the cost of the consumers.

- Stock No. 22TG2136 was sold over the advertised price by \$1,093.19;
- Stock No. 23AX6923 was sold over the advertised price by \$2,721.25;
- Stock No. PW3327A was sold over the advertised price by \$501.25;
- Stock No. PW3314 was sold over the advertised price by \$501.25;
- Stock No. PW3509 was sold over the advertised price by \$501.25; and
- Stock No. 23TO1801A was sold over the advertised price by \$201.25.

In 2022, the Supplier submitted the required sales levies to AMVIC showing they sold 1,535 vehicles over the course of the year. Based on the sample size of 27 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 the 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. 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 industry bulletins and newsletters over the past two years explaining advertising regulations to educate 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 their April 14, 2023 written representations in response to the Proposed Administrative Penalty, the Supplier indicated the AMVIC levy and tire levy were charged to the consumer above the advertised price but contends that this isn’t a profit to the Supplier. The Supplier is required to include these levies in their advertised price as they are not specific exclusions in the legislation. While the amount of consumer harm in regards to these two specific levies is minor, there is still financial harm to consumers as they paid for something they shouldn’t have. Additionally, the Supplier then benefits economically from the additional amounts paid by the consumer for items that should have been included.

In addition, in their written representations (see Schedule “B”) the Supplier stated that *“To ensure the issue does not occur in the future, I have been advised that the Dealership will be removing the AMVIC levy and tire levy from its form of bill of sale going forward and intends to remit the levies without identifying them as levies passed on to the consumer.”* This statement causes the Director concern. If the Supplier chooses to omit these items from their form of bill of sale, the bill of sale will no longer be in compliance with Section 31.2(1)(j)(v) of the ABR. Businesses are required to be transparent with consumers in regards to what they are paying for and how much they are paying. The answer to the issue is not to stop being transparent with consumers but rather itemizing the AMVIC levy and tire levy on the BOS and include these items in the advertised price of the vehicle as required by the legislation.

The aggravating factors in this matter include the resulting financial impact adversely affecting the consumers due to paying over the advertised price, in six transactions the Supplier derived an economic benefit of **\$5,519.44** 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 second 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 SPV Motors GP Inc. operating as Sherwood Park Volkswagen pay an Administrative Penalty. This is based on my opinion that SPV Motors GP Inc. operating as Sherwood Park Volkswagen contravened Section 11(2)(l) of the ABR.

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 **\$9,000**.

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 person 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 Administrative Penalties issued in similar circumstances;
6. The maximum penalty under Section 158.1(3) of the CPA of \$100,000; and
7. The deterrent effect of the penalty.

The amount of the Administrative Penalty is \$9,000.

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: Evelyn L-J., Manager of Industry Standards, AMVIC