

ALBERTA CONSUMER SERVICES APPEAL BOARD

**IN THE MATTER OF AN APPEAL BY
SPV MOTORS GP INC. operating as SHERWOOD PARK VOLKSWAGEN
PURSUANT TO SECTION 179(1) OF THE *CONSUMER PROTECTION ACT*, RSA 2000, c.26.3 (“the
CPA”)**

and

**IN THE MATTER OF AN ADMINISTRATIVE PENALTY ISSUED BY
THE ALBERTA MOTOR VEHICLE INDUSTRY COUNCIL (“AMVIC”)
PURSUANT TO SECTION 158.1(1) OF THE CPA**

DECISION of the APPEAL BOARD

DECISION ISSUED

11 March 2024

APPEAL BOARD

Lorenz Berner (Chair)

PARTIES’ REPRESENTATIVES

Luke Young (Weir Bowen LLP) for SPV Motors GP Inc., Appellant

Ashley Reid and Aman Costigan (Shores Jardine LLP) for the Director of Fair Trading, Alberta,
Respondent

SUMMARY

1. The core of this appeal turns on the interpretation of section 11(2)(l) of the *Automotive Business Regulation*, Alta Reg 192/1999 (**ABR**). This provision is aimed at requiring automobile dealers to provide what is commonly known as “all-in pricing”, so that customers who see an automobile advertised at a particular price are not subsequently met with unexpected additional costs when a sale is completed. Some additional costs – such as

the federal Goods and Services Tax – are permitted. Others are not. This case focuses on whether a dealer’s additional charges for a “Finance Placement Fee” are permitted or not.

2. Section 11(2)(l) of the ABR requires the advertised price of a vehicle to include all fees and charges *except* “...GST or costs and charges associated with financing”. The Appellant SPV Motors GP Inc. (**SPV**) views its Finance Placement Fee as fitting within the exception for “*costs and charges associated with financing*”. The Director of Fair Trading (**the Director**) considers SPV’s Finance Placement Fee as a dealer-created administration charge and not being a “cost [or] charge associated with financing” within the meaning of these words in s.11(2)(l) of the ABR.
3. For the reasons set out below, I find that the Finance Placement Fee charged by SPV in relation to the sale transactions in issue in this appeal does not fall within the meaning of “costs and charges associated with financing” as used in s.11(2)(l) of the ABR. I affirm the decision of the Director both in determining that SPV breached s.11(2)(l) in the course of six sale transactions in January, 2023, and in assessing a \$9,000.00 administrative penalty against SPV for these breaches.

JURISDICTION AND STANDARD OF REVIEW

4. The Director Fair Trading (as delegated to the Registrar of the Alberta Motor Vehicle Industry Council (**AMVIC**)) issued a Notice of Administrative Penalty against SPV on June 1, 2023. The Director found that SPV sold six vehicles over their respective advertised prices in early 2023, and assessed an administrative penalty of \$9,000.00 pursuant to s.158.1(a) of the *Consumer Protection Act*, RSA 2000, C-26.3 (**CPA**).
5. On June 29, 2023, SPV appealed the Director’s Administrative Penalty decision to the Minister of Service Alberta and Red Tape Reduction, pursuant to section 179(1) of the CPA.
6. On July 19, 2023, I was appointed as the Appeal Board to hear this appeal. Through correspondence and a videoconference pre-hearing conference between counsel for the Appellant and Respondent and me, a streamlined and simplified process for the appeal was agreed upon:
 - a. The appeal would proceed by way of a “remote” hearing, by videoconference.
 - b. The parties would tender an agreed statement of facts and agreed exhibits, but that evidence would be supplemented by oral testimony on behalf of each party.
 - c. Although the appeal is a “new trial” of the violations alleged against SPV, as prescribed by s.179 of the CPA (and so the onus of proof remains on the

Director), the focus of the appeal would be upon the interpretation of the provisions of s.11(2)(l) of the ABR and specifically upon whether SPV's use of "finance placement fees" was prohibited under this section. Non-contentious issues would be addressed by the agreed statement of facts and admissions.

7. A Notice of Appeal Hearing was issued to the parties and the videoconference appeal hearing was held on January 26, 2024.
8. Pursuant to s.179(6) of the Consumer Protection Act, as an Appeal Board I have the authority to confirm, vary or quash the administrative penalty that is under appeal.

RELEVANT LEGISLATION

9. Pursuant to section 108.3 of the *CPA*, the Minister is authorized to make regulations respecting the practices of automotive business operators. The ABR falls under this authority, and prescribes numerous rules relating to automotive business licensing, standards, registration, a regulatory board (AMVIC), sales and repairs, consignment sales and other matters.
10. Section 11(2)(l) of the ABR is at the center of this appeal; it reads as follows:

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.

AGREED FACTS AND ADMISSIONS

11. At the hearing, the parties jointly tendered a document titled Agreed Statement of Facts and Admissions (which I designated "Exhibit A" to this appeal), and appended a digital binder of Exhibits 1 through 15 (Exhibits A1-A15 for the Appeal Record). Exhibits A1 through A15

included copies of documents relating to the advertisement and sale by SPV of six vehicles (including advertisements, bills of sales, deal recap documents, and finance packages (where applicable) for each one). Also included were copies of relevant communication between AMVIC and SPV, the Director's June 1, 2023 decision, and other relevant documents.

12. The following provides a distilled summary of the key agreed facts included in Exhibit A:

- a. At all relevant times SPV was licenced to carry on automotive business activities including but not limited to the sale of new and used vehicles in Alberta.
- b. In February 2023, an AMVIC Industry Standards Officer conducted an inspection of SPV, focusing on whether SPV was complying with the "all in pricing" requirements of the ABR. From the sample of sales that were reviewed, the Officer determined that SPV had sold seven of the vehicles over the advertised price.
- c. The Manager, Industry Standards at AMVIC recommended that the Director of Fair Trading issue an administrative penalty against SPV; the Director of Fair Trading in turn provided SPV with notice of his intention to impose such a penalty and invited submissions from SPV. SPV provided written submissions through counsel.
- d. The Director found that six of the vehicles in question had been sold over their advertised price.
- e. In five of these six cases, SPV charged a fee of either \$495 or \$595 as a Finance Placement Fee, which was not included in the advertised price of the respective vehicles. In the sixth case, the purchaser paid for the vehicle in full and no finance placement fee was charged.
- f. SPV admits that, with respect to all six of the vehicles in question, the advertised price did not include *all* fees and charges. Further, SPV admits that in five of these six cases, the actual sale price was greater than the advertised price, even if no Finance Placement Fee had been charged. It admits to a breach of s.11(2)(l) of the ABR with respect to these five vehicles.
- g. SPV does *not* admit that adding its Finance Placement Fee to the advertised price of a vehicle is by itself a contravention of s.11(2)(l) of the ABR. As such, it does not admit to a breach of s.11(2)(l) of the ABR regarding the sixth vehicle, since

that vehicle was sold for less than the advertised price of the vehicle if the Finance Placement Fee is ignored.

13. The parties also tendered a Joint Supplemental Book of Exhibits containing six AMVIC Industry Bulletins issued during 2022 (and which I designated Exhibits B1 through B6, respectively, for the Appeal Record. Reference was made to these bulletins during the oral evidence and submissions portions of the appeal hearing.

ORAL EVIDENCE IN THE APPEAL HEARING

14. Counsel for the Director called one witness – “RS” – to testify at the appeal hearing, supplementing the agreed facts and exhibits. RS solemnly affirmed to testify truthfully, was examined by Ms. Reid on behalf of the Director, and was cross-examined by Mr. Young on behalf of SPV.
15. RS, a Manager of Industry Standards with AMVIC, provided evidence regarding AMVIC’s industry inspection process, compliance expectations, and education programs, along with how AMVIC interpreted the sale-related documentation relating to the six vehicle sales in issue in this case. While RS was not directly involved either as the inspector who reviewed these sales or as the manager who recommended the Director issue an administrative penalty against SPV, her many years of experience as an inspector and more recently as manager provided her with the ability to speak to the context and documentation issues that were not otherwise agreed upon through the agreed statement of facts and admissions.
16. RS provided evidence regarding a 2021 inspection of SPV which resulted in a report to SPV outlining various compliance deficiencies including “all-in pricing” deficiencies. The 2021 inspection report did not identify or take issue with any sales in which a Finance Placement Fee was levied, nor did it expressly indicate whether such a fee was prohibited or permitted pursuant to s.11(2)(l) of the ABR.
17. RS testified that the January 2023 inspection of SPV was focused on investigating whether the “all-in pricing” requirement was being observed. She explained the findings outlined in the inspector’s report and recommendation to impose an administrative penalty, and then walked through in more detail the documentation behind each of the six sale transactions that underlie this appeal.
18. Of particular significance to RS were the following:
 - a. For five of the six sale transactions, the “price information” listed in the bill of sale included a “Finance Placement” fee in the amount of either \$495 or \$595.

- b. Such Finance Placement Fee was not included in the associated advertised price for these vehicles.
- c. In each of the “Deal Recap” documents internally generated by SPV, SPV’s “cost” associated with the Finance Placement Fee was \$0.00.
- d. Other “hard costs” such as AMVIC levies and PPSA (Personal Property Security Act) registration fees were specifically identified in the Deal Recap documents (separate from the Finance Placement Fee), where applicable.
- e. In the sale transactions where financing was arranged with a third party lender through SPV, Deal Management confirmations between the third party lender and SPV indicated that SPV was eligible for “bonuses” or other “incentive” payments from the third party lender (based on various factors such as amount financed, credit risk, overall financing volume, etc.)

19. Under cross-examination by Mr. Young, RS conceded the following:

- a. RS was not herself involved in the January 2023 AMVIC inspection of SPV;
- b. The sale transactions at issue in this appeal were not the subject of consumer complaints.
- c. The January 2023 AMVIC inspection of SPV was not a comprehensive inspection, but rather was focused only on compliance with s.11(2) of the ABR;
- d. Some AMVIC industry bulletins issued in relation to “all-in pricing” in 2022 stated that “the only fee that can be added to the advertised price is GST and any costs associated with financing (if applicable)”, which is different than the “but not including GST or costs and charges associated with financing” language used in s.11(2)(l) of the ABR.
- e. AMVIC has not issued a bulletin defining “costs and charges associated with financing”.

20. RS was also forced to acknowledge that AMVIC did not fully follow some of its usual practices and procedures in relation to the January 2023 inspection of SPV and the inspector’s recommendation of an administrative penalty. However, this evidence fell far short of suggesting any administrative unfairness against SPV, and ultimately has no impact on my decision.

21. Counsel for SPV also called one witness to provide evidence. “RK”, the Senior Regional Controller for SPV, solemnly affirmed to testify truthfully, outlined his background, education and experience, and testified to the following effect:

- a. He is a key contact for SPV, receives AMVIC industry bulletins, and is well aware of the “all-in pricing” requirement under the ABR.
- b. He role includes ensuring that employees of SPV are aware of AMVIC bulletins.
- c. He was in the position of Controller at SPV in 2021, and at the time of the AMVIC inspection in 2021 SPV was not charging a Finance Placement Fee.
- d. In 2023, SPV charged a Finance Placement Fee only in connection with vehicle sales where SPV arranged financing for the purchaser. Financing through SPV is not mandatory.
- e. SPV views the Finance Placement Fee as an effort to recoup costs to obtain financing for customers. These costs include such items as courier charges for sending documents to third party lenders, costs of pulling credit, and the staffing costs for two employees dedicated to arranging financing. Where a customer has existing financing on a trade-in vehicle, there is also the staff time, expense and interest fee risk relating to discharging such financing.
- f. The \$495 or \$595 Finance Placement Fee is not calculated based on the actual individual costs relating to each sale transaction, as this would not be practical.
- g. SPV’s work to arrange financing benefits customers, particularly in terms of convenience, and sometimes in terms of obtaining access to improved financing terms for customers.
- h. With respect to the “Deal Recap” documents entered in evidence, these are system-generated documents primarily used to ensure that SPV’s inventory is “in compliance”, but they are not accurate in terms of reflecting costs associated with sales.
- i. SPV’s staff would look very different if SPV did not arrange financing for purchasers.

22. In cross-examination by Ms. Reid, RK acknowledged that:

- a. When SPV arranges financing through a third party lender, SPV receives payment from the lender (if financing goes through).
 - b. In one of the sale transactions in issue, the third party lender paid \$1240.93 to SPV in connection with the financing.
 - c. SPV's costs for credit checks average out to less than \$5.00 per credit check.
 - d. The amount SPV charges as a Finance Placement Fee (\$495 or \$595) is based on the amount SPV pays its Finance Directors, recognizing they can't track it on a case-by-case basis, and assessing what is fair both to SPV and the customers.
 - e. The amounts received by SPV from third party lenders are not factored into calculating the Finance Placement Fee amount (because, as reiterated by RK, the Finance Placement Fee is aimed at recouping costs).
23. I find that the oral evidence provided by RS and RK was helpful primarily in terms of providing context around how financing is arranged through SPV, why SPV charges a Finance Placement Fee, and how the amount of the Finance Placement Fee is determined.

ISSUES FOR DECISION

24. As noted above, section 179 of the CPA provides that an appeal from a Notice of Administrative Penalty is a "new trial". This means that the Director must prove in full any alleged breaches of the law (in this case, of s.11(2)(l) of the ABR) through the current appeal hearing process, and cannot simply argue that the Director was correct in the initial decision.
25. In this appeal, the formal issue for determination can be divided into two questions:
- a. did SPV breach s.11(2)(l) of the ABR with respect to some or all of six vehicle sales between January 5 and 16, 2023 (Stock Numbers ending in 136, 923, 27A, 314, 509, and 801A); and
 - b. if one or more breaches are established, should the \$9,000 administrative penalty assessed by the Director be confirmed, varied, or quashed?
26. Here, SPV and its legal counsel have been pragmatic, helpful, and efficient. Having considered the evidence overall, SPV does not ultimately contest that it breached s.11(2)(l)

of the ABR with respect to five of the six vehicle sales in question, and it does not even focus on whether the overall penalty was appropriate.

27. SPV's focus is mostly upon the "why" rather than the "what": while it admits that the sale of five vehicles breached s.11(2)(l) of the ABR, it denies that this was due to its Finance Placement Fee. Rather, SPV says that its Finance Placement Fee falls clearly under the exemption that permits the addition of "costs and charges associated with financing".
28. The nuanced focus on the Finance Placement Fee is important not just because the determination of one of the six alleged breaches turns on this point; much more significantly, SPV's ability to charge this fee in the future (without including it in advertised pricing) depends on a finding that the Finance Placement Fee falls within the meaning of "costs and charges associated with financing" in s.11(2)(l) of the ABR.
29. In short, the *underlying* issue (as distinct from what I have called the "formal" issue) in this appeal is whether SPV's Finance Placement Fee is a "cost [or] charge associated with financing" within the meaning of s.11(2)(l) of the ABR.

SUBMISSIONS

Submissions on behalf of the Director

30. With respect to the question of whether SPV's Finance Placement Fee is a "cost or charge associated with financing" within the meaning of s.11(2)(l) of the ABR, counsel for the Director argued that:
 - a. The phrase "costs and charges associated with financing" used in s.11(2)(l) of the ABR refers to something that is variable, dependent on the individual circumstances of the sale (like GST is variable, based on the vehicle cost).
 - b. The words in section 11(2)(l) of the ABR should be interpreted with regard to the preamble and overall thrust of the CPA, which aims at identifying and prohibiting unfair practices, informing consumers about products and transactions, and providing appropriate remedies.
 - c. The words in section 11(2)(l) of the ABR should be considered in this consumer protection-focused context so that they may "be tested against the other indicators of legislative meaning", in accordance with the guidance of the Supreme Court of Canada in *La Presse inc. v. Quebec* 2023 SCC 22 (at para 23).

- d. The flat \$495 or \$595 fee that SPV charged and named a Finance Placement Fee is “pure profit” and is not substantially connected to actual costs or charges faced by SPV.
 - e. Examples of appropriate costs or charges associated with financing could include actual Personal Property Registry registration fees or credit check fees.
 - f. The intent of s.11(2)(l) of the ABR cannot be avoided simply by a dealer levying an arbitrary fee, determined solely by the dealer, whenever financing is arranged and naming it a Finance Placement Fee. Rather, there must be evidence of a clear connection between the amount of the cost or charge, and the financing.
 - g. The only evidence here is from the “Deal Recap” documents, which showed no dealer costs associated with the Finance Placement Fees. While RK testified that these Deal Recap documents were not accurate, there is no other evidence of actual costs or charges underlying the Finance Placement Fees.
 - h. If the purpose of SPV’s Finance Placement Fee is primarily to recover such expenses as staff wages, the appropriate interpretation is to require the fee to be included in the advertised price of the vehicle.
31. Accordingly, counsel for the Director submits that SPV’s Finance Placement Fee is *not* a “cost [or] charge associated with financing” within the meaning of s.11(2)(l) of the ABR.
32. With respect to what I have called above the “formal issue” in this appeal, counsel for the Director submitted that, based on the evidence (which includes the admissions of SPV), I should find that SPV breached s.11(2)(l) of the ABR with respect to six vehicle sales in January, 2023, and that an administrative penalty of \$9,000 is appropriate.

Submissions on behalf of SPV

33. On the question of whether SPV’s Finance Placement Fee falls within the meaning of “costs and charges associated with financing” for the purpose of s.11(2)(l) of the ABR, counsel for SPV argued that:
- a. The language in s.11(2)(l) of the ABR regarding “costs and charges associated with financing” is unambiguous.

- b. It is not open to the Director or AMVIC to disregard or rewrite the regulation to suit their purposes, nor to “reverse-engineer” a desired outcome – see *Canada (Minister of Citizenship and Immigration) v. Vavilov* 2019 SCC 65 at paras 108, 121.
 - c. The Director’s approach, based on the evidence of the witness RS, means “costs and charges associated with financing” would be limited to third-party charges (ie. financial institutions) – but this is not what the regulation says.
 - d. The evidence in this case is clear that the Finance Placement Fee charged by SPV was limited to automobile sales where SPV in fact arranged financing for a vehicle purchase. If a purchaser paid the full price without financing or arranged their own financing, SPV did not add a Finance Placement Fee.
 - e. This distinguishes SPV’s situation from the decision of the Alberta Consumer Protection Act Appeal Board in *Re Precision Motors Ltd. o/a Precision Hyundai*, issued December 14, 2023. In the *Precision Motors* case, a so-called “finance displacement fee” was levied even in relation to sales where no financing was arranged.
 - f. Further, evidence was provided that SPV incurred costs for salaries for employees who were involved in administering financing applications with third party financial institutions (as well as “hard” costs such as couriers or postage in some cases).
34. In sum, counsel for SPV submitted that I should find that the Finance Placement Fee charged in five of the sale transactions in issue amounts to a “cost or charge associated with financing” under s.11(2)(l) of the ABR, and as such that this fee should not be included in determining whether the provision was breached.
35. However, as noted above, SPV concedes that, for five of the sale transactions in issue, a breach of s.11(2)(l) of the ABR was established by the evidence even without including the Finance Placement Fee.
36. In accordance with SPV’s admissions, counsel for SPV therefore submits that I may find five breaches of s.11(2)(l) of the ABR – specifically in relation to the sale of stock numbers ending in 136, 923, 27A, 314, 509, but *not* including 801A.
37. Finally, counsel for SPV took no issue with the figure of \$9,000.00 being an appropriate administrative penalty in the circumstances, regardless of my determination on the Finance Placement Fee issue.

ANALYSIS AND REASONS

38. Section 10 of Alberta's *Interpretation Act*, RSA 2000 c I-8, provides that "[a]n enactment shall be construed as being remedial, and shall be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects." Section 12 adds that "[t]he preamble of an enactment is part of the enactment intended to assist in explaining the enactment."
39. The *Consumer Protection Act*, which provides the governing legislative framework for the ABR, includes this preamble:

Preamble

WHEREAS all consumers have the right to be safe from unfair business practices, the right to be properly informed about products and transactions, and the right to reasonable access to redress when they have been harmed;

WHEREAS businesses thrive when a balanced marketplace is promoted and when consumers have confidence that they will be treated fairly and ethically by members of an industry;

WHEREAS businesses that comply with legal rules should not be disadvantaged by competing against those that do not; and

WHEREAS the Government of Alberta is committed to protecting consumers and businesses from unfair practices to support a prosperous and vibrant economy;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows...

40. The ABR itself does not include express interpretive provisions; however, as a regulation created under the authority of the *Consumer Protection Act*, the interpretive guidance provided by the preamble of the Consumer Protection Act applies equally to the ABR. I must, in other words, interpret s.11(2)(l) in a "fair, large and liberal" manner that "best ensures the attainment of its objects", which includes "protecting consumers and businesses from unfair practices".
41. This approach is also required by virtue of the governing case law. In *Latrace v Warkentin Building Movers Virden Inc*, 2021 ABQB 297, at para 20, Justice Lema affirmed the

importance of construing consumer protection legislation generously, in favour of consumers:

[20] ... I note the following binding approach to interpreting the *Consumer Protection Act*, buttressing these conclusions:

... it is incumbent on the courts to give effect to the legislative choice. In assessing statutory purpose, mindful that the *Fair Trading Act* [precursor to the *Consumer Protection Act*] is all about consumer protection, its terms should be interpreted generously in favour of consumers: *Smith v. Co-operators General Insurance Co.*, 2002 SCC 30, [2002] 2 S.C.R. 129 and *ACS Public Sector Solutions Inc. v. Courthouse Technologies Ltd.*, 2005 BCCA 605, 48 B.C.L.R. (4th) 328 (B.C.C.A.). [*Young v National Money Mart Company*, 2013 ABCA 264 at para 19; SCC leave denied 2014 CanLII 3508 (SCC)] [emphasis added]

42. On appeal, the Alberta Court of Appeal considered this point “noncontroversial”: *Warkentin Building Movers Virden Inc v LaTrace*, 2021 ABCA 333, at para 23.
43. This required approach does not, however, provide licence to interpret the words of an enactment without regard for their plain and ordinary meaning. Just because I am mandated to take a “large and liberal” interpretation, or one that is “generously in favour of consumers”, this does not mean I must therefore adopt an interpretation proposed by the advocates for consumer protection. “Generous” interpretations must still be appropriate interpretations, reasonably suited to the language of the enactment.
44. The correct approach to interpreting provisions in legislation has been consistently affirmed for many years by Canadian courts, including by the Supreme Court of Canada in *Telus Communications Inc. v. Wellman*, 2019 SCC 19, at para 47:

[47] The proper interpretation ... falls to be determined by applying the modern approach to statutory interpretation: “. . . the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of the Parliament” (E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 26).

45. That the approach is settled does not mean its application is easy. The different conclusions reached by the majority and dissenting decisions in *Wellman* provide just one example of

how different decision makers applying the same approach to the same provisions, can come to different conclusions.

46. Counsel for the Director referred to the following paragraph from *La Presse inc. v. Quebec* 2023 SCC 22 – which are intended to help clarify Driedger’s “modern approach” to statutory interpretation – in her submissions:

[23] First, the plain meaning of the text is not in itself determinative and *must be tested against the other indicators of legislative meaning – context, purpose, and relevant legal norms* (*R. v. Alex*, 2017 SCC 37, [2017] 1 S.C.R. 967, at para. 31). The apparent clarity of the words taken separately does not suffice because they “may in fact prove to be ambiguous once placed in their context. The possibility of the context revealing a latent ambiguity such as this is a logical result of the modern approach to interpretation” (*Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62, [2005] 3 S.C.R. 141, at para. 10). [Emphasis added]

47. In the present case, SPV would like me to interpret the words “costs and charges associated with financing” in s.11(2)(l) of the ABR in a strict “plain meaning” sense, while the Director urges me to look for context, purpose and relevant legal norms – to discern other indicators of legal meaning.
48. SPV suggests there is nothing in the provision that would restrict the meaning of “costs and charges associated with financing” to costs borne by a third party or to “hard” costs (like credit check fees) that are individually attributable to each financing transaction. On this basis, a fee for providing the service of arranging financing for a purchaser should be captured within this phrase.
49. To use the language of Wagner, C.J. in the *La Presse* decision, are “other indicators of legislative meaning – context, purpose, and relevant legal norms” available against which I can test this apparent plain meaning proposed by SPV? I conclude that there are, and that they weigh convincingly against the narrow or strict interpretation.
50. First, the rest of the words of s.11(2)(l) of the ABR cannot be ignored. The provision requires automobile advertisements to include “... 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.”

51. The section mandates overall inclusion, with very few exceptions. The words “including, but not limited to” indicate that that succeeding list provides examples only, not an exhaustive list. In contrast, the exceptions to the list are expressly limited, suggesting a legislative intent that these “carve outs” are meant to be narrow.
52. The list of costs that must be included in an advertisement also include “administration fees”. While the term “administration fee” is not defined in the ABR or the CPA, it is exactly the kind of broad term that can reasonably be intended to cover fees for arranging, doing “paperwork”, facilitating, or administering a process. Surely the activities undertaken by SPV’s Finance Directors in seeking and arranging financing for purchasers could reasonably be considered “administration” of financing. The evidence demonstrated that the service for which SPV levied a Finance Placement Fee related mainly to such actions such obtaining relevant information and consents from purchasers, communicating with third party lenders and others such as credit agencies, and handling and sending documentation.
53. Counsel for the Director argued that SPV’s own “Deal Recap” documents demonstrated that SPV incurred *no* actual costs or charges in connection with the supposed Finance Placement Fee that it charged to customers when financing was arranged. I am mindful that RK, SPV’s Senior Regional Controller, testified that the Deal Recap documents were not reliable or accurate for identifying costs or charges in relation to amounts set out in a bill of sale. Even accepting RK’s evidence that the Deal Recap documents are not accurate, however, the evidence that was tendered regarding the basis for the Finance Placement Fee highlighted the administrative and even arbitrary nature of the fee.
54. While counsel for SPV is certainly correct that an administrative body such as AMVIC (and an administrative decision-maker such as me) may not disregard clear language or “reverse-engineer” a desired outcome, the context here means that the language in question is simply not as “clear” as SPV asserts. Section 11(2)(l) requires that administration fees must be included in advertised prices, while costs and charges associated with financing may be excluded. If a fee has hallmarks of an administration fee but is called a Finance Placement Fee, the clear language answer does not apply and I am required to apply other interpretive principles and guidance.
55. This, at a minimum, pushes us to look more broadly at the context of the ABR and the CPA – and in particular at the over-arching purposes of the legislation as well as express interpretive guidance. The CPA’s preamble expressly notes the objectives of combatting unfair practices and ensuring that consumers are informed about products and transactions, and both the *Interpretation Act* and settled case authority make clear that consumer protection legislation is to be interpreted generously in favour of consumers.

56. A generous interpretation in favour of consumers cannot support the interpretation of s.11(2)(l) that SPV proposes. If the broad intention of s.11(2)(l) is to ensure that consumers who see an advertised price for a vehicle are not subsequently faced with a wide range of add-on charges, then preserving a narrow interpretation of “costs and charges associated with financing” is necessary.

CONCLUSIONS

57. I find that based on the evidence before me and taking into account the rules and principles of statutory interpretation, the \$495 and \$595 charges that SPV levied as a Finance Placement Fee do not fall within the exception for “costs and charges associated with financing” in s.11(2)(l) of the ABR.

58. With respect to what I have called the “formal” issue in this case (i.e. the Director’s allegations of breach against SPV), based on both the Agreed Statement of Facts and Admissions and the oral evidence provided, I conclude that SPV breached s.11(2)(l) of the ABR in relation to six sale transactions in January, 2023. That is, I affirm the Director’s determination on this issue.

59. I also affirm the amount of the administrative penalty assessed by the Director, being \$9,000.00 in total for the six breaches.

60. I make no order as to costs for this appeal.

61. Finally, I want to expressly commend the parties and their counsel for their reasonableness in focusing on core issues, admitting non-contentious facts, and effectively addressing an issue of importance both to the immediate parties and to the industry.

"original signed by"

Issued in Alberta this 11th day of March, 2024

Lorenz Berner, Chair of the Appeal Board