

December 9, 2024

Administrative Review – 24-05-002  
Served Personally

### **Administrative Penalty**

LSP AUTO LTD.  
o/a LEXUS SOUTH POINTE  
830 100 STREET SW  
EDMONTON, AB  
T6X 0S8

### **Attention: Naushad Jiwani**

Dear Naushad Jiwani:

**Re: LSP Auto Ltd. operating as Lexus South Pointe  
– Provincial Automotive Business Licence No. B1039997**

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”). A copy of the Application Report is attached as Schedule “A” to this letter. The Supplier provided written representations via email on Nov. 25, 2024 (attached as Schedule “C”), in response to the Proposed Administrative Penalty, which I have also taken into consideration.

### ***Licensee Status***

LSP Auto Ltd. operating as Lexus South Pointe (the “Supplier”) holds an automotive business licence and is licensed to carry on the designated business activities of new and used sales, garage, leasing, mobile, specialty service, service station and wholesale sales in the Province of Alberta.

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

1. On Aug. 26, 2015, 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. The Findings Letter outlined some concerns including but not limited to:

- a) Advertising issues contrary to requirements in Section 11 of the Automotive Business Regulation (“ABR”) and Section 6 of the Cost of Credit Disclosure Regulation (“COC”).
- b) One salesperson designated to act on behalf of the Supplier to sell vehicles had an expired salesperson registration contrary to the ABR.

The Supplier was not found to have sold vehicles over the advertised price during this inspection.

2. On Jan. 27, 2017, 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 Jan. 31, 2017. The Findings Letter outlined some concerns including but not limited to:
  - a) Advertising issues contrary to requirements in Section 11 of the ABR and Section 6 of the COC.
  - b) During the inspection, eight deals were reviewed by the ISO and of those eight deals, three did not reflect all-in pricing contrary to Section 11(2)(I) of the ABR.
  - c) Issues with the completion of and/or disclosure of Mechanical Fitness Assessments (“MFAs”) contrary to Sections 15 and 16 of the Vehicle Inspection Regulation (“VIR”).
3. On Jan. 24, 2019, a followup AMVIC industry standards inspection was completed on the Supplier. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on Feb. 7, 2019. The Findings Letter outlined some concerns including but not limited to:
  - a) Advertising issues contrary to requirements found in Section 11 of the ABR.
  - b) During the inspection, 18 deals were reviewed by the ISO and of those 18 deals, five did not reflect all-in pricing contrary to Section 11(2)(I) of the ABR.
  - c) One salesperson designated to act on behalf of the Supplier to sell vehicles had an expired salesperson registration contrary to the ABR.
  - d) Issues with the completion of and/or disclosure of MFAs contrary to Sections 15 and 16 of the VIR.
  - e) A number of the bills of sale (“BOS”) that were reviewed in the deal jackets had issues contrary to Section 31.2 of the ABR.
  - f) Discrepancies were identified in information provided by the consumer in comparison to the information relayed to financial institutions in consumer credit applications including but not limited to salary information, contrary to Section 6 of the CPA.
4. On Feb. 8, 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. 8, 2023 was therefore not comprehensive in nature and as such, not all documentation or business practices were reviewed. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on Feb. 23, 2023. The Findings Letter outlined the following concerns:

- a) During the inspection, 18 deals were reviewed by the ISO and of those 18 deals, seven did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
  - b) During the inspection, two vehicles that had been sold were still being advertised for sale on the Supplier's website after more than 14 days had elapsed contrary to Section 11(2)(o) of the ABR.
5. As a result of the Feb. 8, 2023 inspection, an Administrative Penalty of \$6,000 was assessed on the Supplier on July 17, 2023.
6. On March 20, 2024, a followup AMVIC industry standards inspection was completed on the Supplier. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on April 12, 2024. The Findings Letter outlined some concerns including but not limited to:
- a) Advertising issues contrary to requirements found in Section 11 of the ABR.
  - b) During the inspection, 30 deals were reviewed by the ISO and of those 30 deals, six deal jackets had an advertisement to compare against the vehicle that was sold; one of the six did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
  - c) Issues with the completion of and/or disclosure of MFAs contrary to Sections 15 and 16 of the VIR.
  - d) A number of the BOS that were reviewed in the deal jackets had issues contrary to Section 31.2 of the ABR.
  - e) Discrepancies were identified in information provided by a consumer in comparison to the information relayed to a financial institution in one consumer credit application regarding the salary information, contrary to Section 6 of the CPA.
7. In review of the Findings Letters, the Supplier has been found to have sold vehicles over the advertised price in four of the five AMVIC inspections.
8. The Supplier provided written representations on Nov. 25, 2024, in response to the Proposed Administrative Penalty. The Supplier provided a document dated March 2024 that was sent to the attention of the Supplier's sales department to address deficiencies identified in the Findings Letter provided to the Supplier as a result of the March 20, 2024 AMVIC industry standards inspection (see Schedule "C").

### **Applicable Legislation**

#### **Automotive Business Regulation**

#### **Records**

#### **Section 9**

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

## Advertising

### Section 11

- (2) A business operator must ensure that every advertisement for an automotive business that promotes the use or purchase of goods or services
- (l) includes in the advertised price for any vehicle the total cost of the vehicle, including, but not limited to, all fees and charges such as the cost of accessories, optional equipment physically attached to the vehicle, transportation charges and any applicable taxes or administration fees, but not including GST or costs and charges associated with financing, and
  - (m) includes the stock number of the specific vehicle that is advertised as being available for sale at the time the advertisement is placed,

## 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.

## Bill of sale

### Section 31.2

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

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

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

### **Vehicle Inspection Regulation**

#### **Sale of used motor vehicle**

##### **Section 15**

**(1)** Subject to subsection (2), a dealer in used motor vehicles shall, before entering into a contract to sell a motor vehicle, give to the buyer a used motor vehicle mechanical fitness assessment that contains the following:

- (a) a statement identifying the type of motor vehicle as a truck, motorcycle, bus, van, light truck, automobile or other type of motor vehicle;

- (b) a statement showing the make, model, year, vehicle identification number, odometer reading in kilometres or miles, licence plate number and province of registration of the vehicle;
- (c) the name and address of the dealer selling the vehicle and the name of the technician who issued the mechanical fitness assessment;
- (d) a statement that the mechanical fitness assessment expires 120 days after the date on which it was issued;
- (e) a statement certifying that at the time of sale the motor vehicle
  - (i) complies with the Vehicle Equipment Regulation (AR 122/2009), or
  - (ii) does not comply with the Vehicle Equipment Regulation (AR 122/2009) and containing a description of the items of equipment that are missing or do not comply with the Vehicle Equipment Regulation (AR 122/2009);
- (f) the signature of the technician who conducted the mechanical fitness assessment;
- (g) the date the mechanical fitness assessment was issued.

#### **Expiry of mechanical fitness assessment**

##### **Section 16**

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

#### ***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.

##### **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;

## **Duty to maintain records**

### **Section 132**

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

## **Administrative Penalties**

### **Notice of administrative penalty**

#### **Section 158.1**

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

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

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

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

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

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

### **Right to make representations**

#### **Section 158.2**

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

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

## Vicarious liability

### Section 166

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

- (a) in the course of the employee's employment with the person, or
- (b) in the course of the agent's exercising the powers or performing the duties on behalf of the person under their agency relationship.

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

A routine AMVIC industry standards inspection was completed on Aug. 26, 2015. The inspection findings were discussed with the Supplier and a Findings Letter was emailed to the Supplier on Aug. 27, 2015. The Supplier was not found to have sold vehicles over the advertised price.

Two subsequent AMVIC industry standards inspections were completed in 2017 and 2019. As a result of each inspection, a Findings Letter was completed and provided to the Supplier after each inspection providing education to the Supplier. In two of the three inspections, the Findings Letters addressed a number of legislative breaches including the Supplier selling vehicles above the advertised price.

On Feb. 8, 2023 a fourth 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. 8, 2023 was therefore not comprehensive in nature and as such, not all documentation or business practices were reviewed in comparison to the previous comprehensive inspections conducted in 2015, 2017 and 2019. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on Feb. 23, 2023. It was determined that the Supplier continued to sell vehicles over the advertised price contrary to Section 11(2)(l) of the ABR and an Administrative Penalty of \$6,000 was levied on the Supplier on July 17, 2023.

On March 20, 2024, a fifth AMVIC industry standards inspection was completed on the Supplier. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on April 12, 2024. Based on the facts outlined in the Application Report and supporting documents (see Schedule "A"), I will be considering the alleged breaches from the AMVIC industry standards inspection completed on March 20, 2024.

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

During the March 20, 2024 inspection, the ISO reviewed six deal jackets which included advertisements and found that one vehicle had been sold above 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 this consumer transaction the Supplier derived an economic benefit of **\$901.25** at the cost of the consumers.

- Stock No. L240244A was sold over the advertised price by \$901.25.

The Findings Letter dated April 12, 2024 states 30 retail vehicle deal jackets were reviewed and six vehicle sale files had an advertisement to compare against the sold vehicle. Of those six deal jackets, one vehicle was sold over the advertised price contrary to Section 11(2)(l) of the ABR. The Supplier has been provided the opportunity and education to rectify their business practices, however continue to engage in selling over the advertising price which is concerning.

In addition to the above, on the Supplier's website (see Schedule "A"; Exhibit 9) the first part of their disclaimer states:

*"Please contact the dealership for verification of any information listed herein. Due to human error and other possible complications, we cannot guarantee the accuracy of the information included herein, despite all reasonable attempts being made to ensure its accuracy. The information may differ in specification, price, or any other listed characteristic herein".*

The second part of the disclaimer states:

*"Prices for the provinces of Ontario, Alberta and British Columbia include dealer-installed accessories, optional equipment physically attached to the vehicle, transportation charges and any other applicable administrations fees, but do not include taxes, insurance, licensing fees. For all other provinces (excluding Quebec), prices exclude taxes, insurance, licensing and other applicable fees. Price may not include dealer installed options, accessories, administration fees and other dealer charges".*

The disclaimers used descriptions and promises that are false and misleading as the Supplier is required to adhere to all-in pricing legislation in Section 11(2)(l) of the ABR. The Supplier is vicariously liable for all of their advertising. Using fine print or disclaimers do not exempt or absolve the Supplier's responsibility of adhering to legislative requirements.

In the Supplier's written representations (see Schedule "C") they stated *"Bottom line, the customer understands what they paid, they understand the paperwork and are happy with their purchase."* While the Director agrees it is important that consumers understand the paperwork in relation to their transaction, it is a requirement of the Supplier to ensure they are adhering to the legislation. The Supplier charged one consumer over the advertised price and had disclaimers on their website that are false and misleading in relation in the Supplier's requirement to adhere to the advertised price.

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

## B. Advertisements Missing Stock Numbers (11(2)(m) ABR)

The Supplier's Facebook, X (formerly known as Twitter) and Instagram advertisements (see Schedule "A"; Exhibits 10, 11 and 12) were reviewed by the ISO and found the Supplier to be advertising vehicles without including the stock number as required by Section 11(2)(m) of the ABR.

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

## C. 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.

In reviewing the documentation before me, relating to the most recent inspection conducted on March 20, 2024, it is noted that the Supplier continues to not comply with the rather straightforward legislation when completing their BOS despite previous inspections and education. During the inspection in 2019, which was the first inspection of the Supplier after the BOS amendments to the legislation, the Findings Letter identified compliance concerns with the Supplier's BOS and educated the Supplier by providing the applicable legislation.

The Supplier is using two different versions of a BOS. One BOS is missing the BOS date and the other BOS is missing the delivery date. The bills of sale reviewed were found to be incomplete in a number of instances:

- All 15 of the new vehicle deal jackets reviewed (see Schedule "A"; Exhibit 14) listed 90 kilometres for the odometer reading. There is no evidence to support the odometer readings to the contrary, however in the opinion of the Director it seems unlikely that all 15 new vehicles sold would all have the exact same mileage.
- Five bills of sale (see Schedule "A"; Exhibit 15) were missing the delivery date as required by Section 31.2(1)(i) of the ABR.
- Twenty-two bills of sale (see Schedule "A"; Exhibit 17) were missing the consumer's government-issued identification number as required by Section 31.2(1)(b) of the ABR.
- Twenty-three bills of sale (see Schedule "A"; Exhibit 18) were missing the date that the BOS was entered into as per Section 31.2(1)(h) of the ABR.
- Stock #L240492 and Stock #L240526 (see Schedule "A"; Exhibit 19) had the tire levy and air conditioning tax combined on one line item, when the levy and tax should be separately itemized as per Section 31.2(1)(j) of the ABR.

- Stock #L240526 (see Schedule “A”; Exhibit 20) was missing the itemization of the cargo liner and block heater as required by Section 31.2(1)(l) of the ABR.
- Stock #L240492 (see Schedule “A”; Exhibit 21) was missing the itemization of the platinum membership program, 3M package, dash cam and winter tires on the BOS as per Section 31.2(1)(l) of the ABR. The BOS lists under the heading Terms of Settlement “*ADDL AFTS*” at a cost of \$5,365.16. Upon review of the Supplier’s internal “*Deal Summary*” document, which lists the “*platinum membership program*” at a cost of \$995, “*3M Package 2-24*” at a cost of \$2,100, “*Dash Cam*” at a cost of \$607.01 and “*Winter Tires*” at a cost of \$1,663.15, the total of these items together add up to the “*ADDL AFTS*” cost of \$5,365.16.
- Stock #L230559A, Stock #L240318 and Stock #L240418 (see Schedule “A”; Exhibit 22) were missing the salesperson registration number as required by Section 31.2(1)(d) of the ABR.
- Stock #L240306A (see Schedule “A”; Exhibit 23) the BOS lists under “*Terms of Settlement*” a line item of “*Other AFT(S)*” in the amount of \$7,200. It was only by reviewing the Supplier’s internal “*Dealer Recap*” document that the Director was able to determine that the \$7,200 is in fact negative equity.
- Stock #L240198A (see Schedule “A”; Exhibit 24) the BOS lists under “*Terms of Settlement*” a line item of “*Other AFT(S)*” in the amount of \$9,000. It was only by reviewing the Supplier’s internal “*Dealer Recap*” document and a copy of a cheque requisition payable to the consumer that the Director was able to determine the \$9,000 was in fact cash back given to the consumer. A Supplier must properly list inducements on the BOS as per Section 31.2(1)(r) of the ABR.
- In four bills of sale (see Schedule “A”; Exhibits 35, 36, 37 and 38) the Supplier was found to have been adding the finance registration fee with the Personal Property Security Registration (“PPSA”) fee and/or the administration fee on the Bank Registration Fee line item on the BOS. Therefore not separating and listing the cost of each fee as required by Section 31.2(1)(j) of the ABR.

In addition, as discussed above, the Supplier is listing on their BOS, “*ADDL AFTS*” or “*Other AFT(S)*” which is ambiguous to a consumer. In three bills of sale reviewed this line item is either in reference to the cost of items charged to the consumer, cash back given back to a consumer or negative equity but it is not clearly differentiated until the Supplier’s internal documents such as a “*Dealer Recap*” or “*Dealer Summary*” documents are reviewed in combination with the bills of sale. The name of “*ADDL AFTS*” associated with a platinum membership program, 3M package, a dash cam and winter tires does not give the consumer any indication of what the cost is for each specific item. This lack of transparency places the consumer at a disadvantage and removes the consumer’s ability to make an informed decision whether they want to pay for these items at the cost the Supplier is charging.

In addition, as per Section 31.2(1)(p) of the ABR the BOS must include the balance of any outstanding loan that is incorporated into the cost of purchase of the vehicle. This cannot be done in an ambiguous way to hide this amount, the BOS must be clear to the consumer and the regulator, which was not the case in relation to Stock #L240306A (see Schedule “A”; Exhibit 23). The consumer does not have access to documents such as the “*Dealer Recap*” or “*Dealer Summary*” to demonstrate the details of their transaction and the regulator should not have to review additional internal documents to determine the details of the transaction.

In accordance with Section 166 of the CPA, the Supplier is vicariously liable for all records created and maintained by an employee or agent acting on behalf of the Supplier in the course of completing the Supplier's delegated business activities.

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

D. MFA Issues (15 and 16 VIR)/ General Code of Conduct (12(o) ABR)

The MFA is required as per Section 15 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.

The MFAs reviewed identified the following concerns:

- Six bills of sale do not have a date that the BOS was entered into as required by Section 31.2(1)(h) of the ABR, they only list a delivery date (see Schedule "A"; Exhibits 25, 26, 27, 28, 29 and 30). The MFAs in relation to these six transactions were signed by the consumer after the delivery dates.
- The MFA in relation to Stock #L230536A was issued by the technician on July 24, 2023. The MFA was provided to the consumer on Jan. 27, 2024, 67 days after the MFA expired (see Schedule "A"; Exhibit 32).
- The MFA in relation to Stock #L200246C was issued by the technician on Feb. 12, 2024. The BOS did not have a date the BOS was entered into however, lists the delivery date as Feb. 10, 2024. Therefore the MFA was completed after the vehicle had been delivered to the consumer. In addition, the MFA was not signed by the consumer until Feb. 22, 2024 (see Schedule "A"; Exhibit 34).

By failing to provide an MFA prior to entering into a consumer transaction or providing an expired MFA to a consumer the Supplier has breached the legislative requirements as per Section 15 and 16 of the VIR, and Section 12(o) of the ABR.

E. Unfair Practices - Use Exaggeration, Innuendo or Ambiguity (6(2)(c) CPA)

In reviewing the credit application for Stock #L240213 (see Schedule "A"; Exhibit 39), the type written credit application sent to the financial institution showed that the consumer's income was inflated from \$60,000 to \$69,500, when compared to the hand written credit application.

When a Supplier is inflating income and providing inaccurate credit application details to lending institutions, they are putting consumers at risk financially as they could be getting approved for a loan they cannot reasonably afford. If a consumer is unable to obtain financing with the accurate financial

information it is not within the legislative guidelines governing the automotive industry for the Supplier to fabricate the financial information to obtain financing for the consumer. The consumer must qualify based on the accurate facts, including their employment, salary, time at a residence, negative equity of a trade-in, or the amount of a down payment or deposit they are providing. Section 132 is very clear that the financial documents must be **accurate**. The lending intuitions approve financing based on the facts that are submitted which are in place to ensure the consumer is purchasing a vehicle they can reasonably afford, Section 6(3)(b) of the CPA states:

**Consumer Protection Act**

**Unfair practices**

**Section 6**

**(3)** It is an unfair practice for a supplier

(b) to enter into a consumer transaction if the supplier knows or ought to know that there is no reasonable probability that the consumer is able to pay the full price for the goods or services;

By inflating the consumer's salary as listed above, the Supplier is using exaggeration as to a material fact with respect to the consumer transaction, breaching Section 6(2)(c) of the CPA.

**F. Maintain Records (132 CPA and 9 ABR)**

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

Issues that the Director found in the Findings Letter dated March 20, 2024, included the completion of and/or disclosure of MFAs, issues with the completion of the BOS and a discrepancy in a credit application. The legislation is very clear, that being negligent in keeping records is not only an offence under the CPA but in addition, if a provision of the document is ambiguous, the provision must be interpreted against the Supplier in accordance with Section 4 of the CPA. The Supplier is vicariously liable for all records created and maintained by an employee or agent acting on behalf of the Supplier in the course of completing the Supplier's delegated business activities.

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

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

The seriousness of the contravention is further supported in the Administrative Penalties (*Consumer Protection Act*) Regulation, in which Section 2(5) of the regulation states the contravention of the record keeping legislation in the CPA (Section 132) has a maximum penalty amount of \$25,000 per contravention. This is the highest amount indicated for a contravention in the Administrative Penalties (*Consumer Protection Act*) Regulation.

### **Administrative Penalties (*Consumer Protection Act*) Regulation**

#### **Amount of administrative penalty**

#### **Section 2**

**(5)** The maximum administrative penalty that may be imposed for a contravention of section 132 of the Act is \$25 000 for each contravention.

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

#### **G. 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 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.

The aggravating factors in this matter include the resulting financial impact adversely affecting the consumer due to paying over the advertised price, in one transaction the Supplier derived an economic benefit of **\$901.25**, the Supplier's previous administrative enforcement history outlined below and

continued non-compliance with the rather straightforward requirements of the legislation despite education provided to the Supplier.

The Supplier was recently subject to the below administrative enforcement action:

- Administrative Penalty of \$6,000 on July 17, 2023 for selling seven vehicles over the advertised price and advertising two vehicles for sale after more than 14 days had elapsed since the vehicles had been sold.

This Administrative Penalty is taking into account the number and seriousness of the contraventions of the legislation found during the fifth inspection; and the aggravating factors listed above. The amount of the Administrative Penalty cannot be viewed as a cost of doing business but rather as a deterrent for continuing to engage in non-compliant business practices.

### Action

In accordance with Section 158.1(a) of the CPA and based on the above facts, I am requiring that LSP Auto Ltd. o/a Lexus South Pointe pay an Administrative Penalty. This is based on my opinion that LSP Auto Ltd. o/a Lexus South Pointe has contravened Sections 9, 11(2)(l), 11(2)(m), 12(o) and 31.2 of the ABR, Sections 15 and 16 of the VIR and Sections 6(2)(c) and 132 of the CPA.

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 **\$12,000**.

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

1. The financial harm on the persons adversely affected by the contraventions or failure to comply;
2. The economic benefit derived from the contraventions or failure to comply;
3. The Supplier's history of non-compliance;
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 \$12,000.

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/ks  
Encl.

cc: [REDACTED] Manager of Industry Standards, AMVIC