

December 3, 2024

Administrative Review – 24-09-008

Served via email: [REDACTED]

Administrative Penalty

RENFREW CHRYSLER INC.
1920 PUMPHOUSE ROAD SW
CALGARY, AB
T3C 3N4

Attention: David Lamont

Dear David Lamont:

Re: Renfrew Chrysler Inc. – Provincial Automotive Business Licence No. B203506

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”) investigations department application report (the “Application Report”) prepared by the investigator and the senior manager of investigation. A copy of the Application Report is attached as Schedule “A” to this letter. I have also taken into consideration the written representations dated Oct. 8, 2024 received from the Supplier in advance of the scheduled administrative review attached as Schedule “B” and the information exchanged during the administrative review held via teleconference call on Oct. 15, 2024.

Licensee Status

Renfrew Chrysler Inc. (the “Supplier”) holds an automotive business licence and carries on business as an automotive sales business in the province of Alberta. Renfrew Chrysler Inc. operates in Calgary, Alberta and holds a current AMVIC business licence and is authorized for new and used sales, garage, leasing, and wholesale business activity.

Administrative Review

An administrative review was held on Oct. 15, 2024, at approximately 10 a.m., via teleconference call. Participating in the administrative review were David Lamont, director and president for the Supplier; Steven Macdonald, chief financial officer for the Supplier; Shawn Fennell, general manager for the Supplier; Stephanie Christopoulos, assistant general manager for the Supplier; [REDACTED], AMVIC

investigator; [REDACTED], AMVIC manager of investigations south; and G. Gervais, Director of Fair Trading (as delegated) (the "Director").

Preliminary Matters

At the start of the administrative review, neither AMVIC investigation south nor the Supplier had any preliminary issues or concerns. The Director remarked that the relevant legislation listed in the Application Report submitted by AMVIC's investigation department lists similar alleged legislative breaches for potentially the same actions of the Supplier. The Director expressed concerns that this **may** be perceived as an actual or reasonable apprehension of investigator bias towards the Supplier or what the Director describes as "*charge stacking*".

The Director notes that the AMVIC investigator stated in the "*Summary*" on page 16 at paragraph 31(c) under the heading of "*Mitigating factors to be taken into account are:*"

"The investigator acknowledges that several alleged violations are mentioned multiple times in this report under multiple legislative sections. It is not the investigator's intention to amplify the number of violations but simply to point out that some specific instances may fall under different legislative sections."

The clarification by the AMVIC investigator in the "*Summary*" satisfied the Director that there is no actual or reasonable apprehension of investigator bias toward the Supplier. Notwithstanding, as the Supplier was not represented by legal counsel and to ensure procedural fairness toward the Supplier, the Director requested AMVIC investigation south to limit the alleged breaches to one single breach in instances of similar legislative breaches for the same actions of the Supplier. The Director provided AMVIC investigations time to confer briefly prior to presenting their evidence to the Director.

Enforcement History

The below noted enforcement history of the Supplier and educational inspections prior to 2023 conducted by AMVIC on the Supplier were listed in the March 1, 2023 Administrative Penalty decision. The AMVIC investigator did include the April 8, 2020 voluntary Undertaking decision, however copies of the other enforcement decisions and the AMVIC inspection Findings Letter dated Sept. 22, 2020 were not included in the Application Report. The Application Report did include the recent AMVIC investigation Findings Letters dated Feb. 22, 2023 and June 19, 2023.

The Director is satisfied that the Supplier has previously received these decisions as the administrative enforcement history has not been disputed. As the administrative review is a quasi-judicial proceeding and not a court of law, the Director is not bound by the formal rules of evidence and has included the history as noted below:

- A. On May 20, 2014, the Supplier entered into an Undertaking regarding an advertising concern.
- B. On Dec. 5, 2016, an Administrative Penalty of \$1,000 was levied on the Supplier in relation to advertising concerns.

- C. On April 8, 2020, the Supplier entered into a voluntary Undertaking in regards to an investigation where they agreed to comply with the CPA and Automotive Business Regulation ("ABR"), to maintain accurate business records, ensure they do not over charge consumers or make representations or exaggerations of a price benefit or advantage when they do not exist, and to review their current bill of sale ("BOS") form ensuring it is completed to meet the legislative requirements as set out in Section 31.2(1) and (2) of the ABR. As part of the Undertaking the Supplier further agreed to reimburse the consumer the sum of \$13,406.03.
- D. On May 21, 2020, an Administrative Penalty of \$4,500 was levied on the Supplier in relation to unfair practices.
- E. On March 1, 2023, an Administrative Penalty of \$6,000 was levied on the Supplier in relation to unfair practices, a non-compliant BOS, and failing to create and maintain records.

Educational Findings Letters

- F. On Sept. 22, 2020, the Supplier was sent an inspection findings letter as a followup to an industry standards inspection completed on Sept. 14, 2020. This letter provided a summary of the inspection completed by an industry standards officer ("ISO"). The findings letter addressed a number of shortcomings and deficiencies.
- G. On Feb. 22, 2023, the Supplier was issued an investigation findings letter in regards to BOS compliance issues.
- H. On June 19, 2023, the Supplier was issued an investigation findings letter in regards to BOS compliance issues, selling over the advertised price, duty to create and maintain records, and unfair practices.

Complaint History

The Application Report indicated for the time period from the beginning of 2021 to Sept. 16, 2024, the date the Application Report was submitted, AMVIC has received 23 consumer complaints regarding the Supplier, 10 of which are currently open case files.

Summary of Investigation

Case File 23-09-016

1. In September 2023, AMVIC received a complaint in regards to the Supplier allegedly failing to provide a consumer with a Mechanical Fitness Assessment ("MFA") prior to entering into the consumer transaction and for selling a motor vehicle over the advertised price.
2. On Aug. 29, 2023, the consumer ("AA") contacted the Supplier in regards to a 2020 Jeep Grand Cherokee (the "Cherokee") after he saw the vehicle posted and advertised for sale for \$47,000 on the Facebook Marketplace account of one of the Supplier's salespeople.
3. In AA's consumer complaint to AMVIC, he provided a detailed account of his interactions with the Supplier

*"I responded to an ad on Facebook Marketplace posted from G [REDACTED] W [REDACTED]'s private Facebook account. The ad had been up for a week at this point. He was advertising the vehicle for \$47k. I messaged him to inquire about the vehicle. He told me via Facebook messenger that the vehicle has passed inspection and that he worked at Renfrew Chrysler and we arranged a time for my wife and I to see the vehicle. **Since purchasing the vehicle, we have researched advertising regulations and would like to note that the advertisement was missing several required components (name of business not included, no mention of AMVIC or logo, no stock number, etc.). Upon arrival at the dealership, G [REDACTED] was busy so we met with another salesman who took us for a test drive in the vehicle and gathered all of our information. We finally met with G [REDACTED] and were told that he had made a mistake in the pricing, and that the vehicle was actually \$51,743 and that they could not sell it for the advertised price. My wife checked the advertisement while we were at the dealership and G [REDACTED] had already increased the price. We reluctantly decided to still purchase the vehicle as we had brought in our two trade-ins, arranged childcare and driven 45 minutes to the dealership (under the impression it was much cheaper). We then completed the financing portion with S [REDACTED] F [REDACTED]. He told us that we qualified for a program with the bank that would give us a lower interest rate if we purchased comprehensive warranty and that it would only increase our bi-weekly payments by \$20. He did not tell us the cost of the warranty, the interest rates, or who provided the warranty or even ask us if we wanted to purchase the warranty, but just included it in our financing as he made it sound like it was too good to refuse. By the time S [REDACTED] presented us with everything to sign, we had been at the dealership for 5 hours, it was past 9pm and they were technically closed, and we had to rush to get home to our [REDACTED] [REDACTED]. Unfortunately, we did not look over the paperwork very closely, but S [REDACTED] also did not explain any of the paperwork to us. He hi-lighted [sic] each page and had me sign with no discussion about what I was signing. We take responsibility for not taking the time to look over things, but we feel that he should have done his due diligence as Finance Manager to explain to his customers what they were signing. We spoke with G [REDACTED] before we left and he told us he would contact us the following day to come in and have our tires/rims swapped out from our old vehicle to our new vehicle as previously agreed upon. G [REDACTED] contacted me the next day and asked me to come back to get the tires/rims changed over. When I arrived at the dealership G [REDACTED] told me that the inspection (Mechanical Fitness Assessment) had never been done on the vehicle. I spoke with a Service Department (K [REDACTED] R [REDACTED]) who tried to tell me they were doing a "re-inspection", but G [REDACTED] had already told me the truth - that no assessment had ever been done. They took the vehicle in and completed the inspection. They passed everything, but noted on the inspection that the vehicle has illegally tinted windows and taillights and a cracked windshield that was obviously never disclosed as they didn't inspect the vehicle prior to sale. Although the reason that I came in was for the tires/rims, they then told me they didn't have anyone there to switch them out, despite being able to complete the inspection. I was told that G [REDACTED] would deliver the tires/rims to my house the following day (which he did do). Due to the dishonesty we experienced with this dealership/service department, we took the vehicle to a private mechanic for an unbiased inspection on September 7, 2023. He found issues with the emergency brake and brake fluid. In the days following the purchase of the vehicle, we went over all of our paperwork very closely. We found that they charged us GST on our trade-ins (\$11904.76 vs the 12500 that was agreed*

upon). They did not follow all-in pricing (they charged us a \$998 documentation fee, \$495 safety & convenience fee, \$199 etch fee, \$99 fuel fee - the vehicle had an empty tank of gas when we bought it and hadn't been detailed, as well as other smaller fees). S████ did not explain any of these fees to us or tell us they were being added on to the contract. We were charged for 2 different warranty packages (one showing up as an accessories charge of \$2499). We were not given any documentation on our warranty that we purchased. It took several emails to S████ and about a week for him to send us the paperwork on our warranty. Both warranty documents have several errors (S████ entered someone else's address, he marked the vehicle as new when it is used, our lender information is incorrect, and the Road Hazard warranty - which took multiple requests and a very long time for S████ to send us - is dated for the day after we purchased the vehicle)."

4. The AMVIC investigator spoke with AA and learned that:

- On Aug. 30, 2023, AA and his wife attended the Supplier to view the Cherokee.
- They test drove the Cherokee with a different salesperson than they initially contacted.
- They met with a salesperson ("GW") who advised them there had been a mistake on the advertisement and the actual price of the Cherokee was now \$51,743.
- AA's wife immediately checked the advertisement and it had already been changed (see Schedule "A"; Exhibits C and D). In the electronic communication the listing title is, "2020 Jeep Grand Cherokee - Limited." The seller of the advertisement identifies himself as GW and tells the consumer that the vehicle is being sold by Renfrew Chrysler. At the end of the messages, the messaging platform indicates two additional lines. The first indicates the salesperson had changed the listing title of the advertisement and the second indicates the salesperson changed the price.
- AA reluctantly agreed to the increase in price and agreed to meet with the Supplier's finance manager ("SP").
- While negotiating the deal for the Cherokee several salespeople from the Supplier came over to talk to them about their trade-in vehicles. All engaged them in talk about the deal with the underlying theme being that their trade-ins were not worth what they were asking.
- They spent about five hours in total at the Supplier and about two hours with SP.
- The accessory and extended contract charges they were charged are unfair given they were never made aware of what these charges were and were never provided any documentation on these items to review until after the consumer transaction.
- SP told them:
 - They qualified for a lower interest rate program that would only increase their monthly payments by \$20/month.
 - To basically "sign here and sign there" and they were left with the impression that they had only bought one warranty when in fact they bought a warranty (see Schedule "A"; Exhibit G) and a Road Hazard plan (see Schedule "A"; Exhibit F) and it was not clearly explained to them.
 - That GW had actually made a mistake and that they were getting the deal for \$3,000 less than they should have.

- The vehicle was previously owned by a famous hockey player, Patrick Roy.
5. When reviewing documents acquired from the Supplier, the AMVIC investigator identified that:
- The Road Hazard Plan (see Schedule “A”; Exhibit F) listed the wrong address for AA. It is also dated Aug. 31, 2023, which is a day after the consumer transaction.
 - The Coverage One Warranty (see Schedule “A”; Exhibit G), also listed the wrong address for AA and on the form it is indicated that the vehicle purchased as new, when in fact it was a used motor vehicle.
 - The MFA (Schedule “A”; Exhibit J) is dated as completed by the technician on Aug. 31, 2023. It is also signed and dated Aug. 31, 2023 by both the Supplier and AA. This is the day after the transaction to purchase the Cherokee (see Schedule “A”; Exhibit L).
 - The advertisement (see Schedule “A”; Exhibit D) does not name the business operator or trade name, does not contain the AMVIC logo or the words to denote the vehicle is for sale by a AMVIC licenced business, does not state whether the vehicle in the advertisement is or is not the specific vehicle that is for sale, does not provide the stock number of the vehicle and it uses descriptions that are not in accordance with actual conditions, stating the vehicle has no significant damage or problems.
6. On April 24, 2024 the AMVIC investigator interviewed SP, finance manager for the Supplier who stated:
- He has little independent recollection of the event, and has been refreshing his memory of the situation from email messages sent between the Supplier and AA.
 - There was no program to reduce the interest rate by purchasing a warranty, when asked about the specific program AA qualified for. He explained this is his way of telling AA that if he bought an extended warranty he could provide them a better interest rate by “restructuring” the deal. SP commented that it is subjective and that he uses his judgement when to do this and if required, he gets a verbal consent from his manager.
 - As a rule, a consumer would normally walk out of the Supplier after a purchase with a complete package of all documents they signed including warranty, “Road Hazard” and all the additional forms normally used during the course of a consumer transaction. SP could not provide an explanation as to why AA was not given these documents.
 - He could not explain why the Road Hazard Plan was dated the day after the sale.
 - He had no explanation for the addresses being entirely inaccurate on the warranty and Road Hazard Plan documents.
 - He has no recollection of telling AA that the salesperson made a \$3,000 mistake on the deal and cannot substantiate that claim in any manner. He does agree that if that was said it would be an unfair thing to say to a consumer, as it could lead them to believe they were getting a better deal than they actually were.
 - He had no explanation as to why the advertised price would have been changed after AA and his wife arrived at the dealership.

- He had no explanation as to why the MFA was completed the day after the sale. SP was aware of the legislative requirement for the MFA to be completed and shown to a consumer prior to entering into a contract.
 - It is normal practice to offer extended warranty to consumers even if factory warranty exists. This is due to the fact that the extended warranty covers the consumer for a longer period of time and may offer things like a loaner vehicle which the factory warranty may not.
 - GW no longer works for the Supplier.
7. On April 26, 2024 the AMVIC investigator interviewed GW, who was involved in the consumer transaction and he stated:
- He remembers AA and the consumer transaction rather well.
 - His initial comments were that AA did not have a clue what he had bought or what happened during the sale mainly regarding the warranty and protection he was buying.
 - He recalls first communicating with AA over “*Messenger*” and recalls that he listed the Cherokee at the incorrect price, though he does not recall the amount. He thought it was a difference of a couple grand.
 - The Supplier instructed salespeople to go on the Supplier’s website and then put up advertisements on their personal Facebook accounts of vehicles that were for sale by the Supplier.
 - He does not recall when he changed the price of the Cherokee and does not recall the event that made him realize the price was incorrect.
 - It was common knowledge that some of SP’s tactics are to keep people at the Supplier for long periods of time to wear them out and make them agree to things they perhaps did not understand, to tell consumers they would not be approved for financing unless they purchased add-on items such as warranty, 3M protection, etc.
 - SP would purposely speak in a vague or confusing manner with the intent of confusing the consumer so they would not know exactly what they bought or the cost of it.
 - When asked about the communication with the consumer about the Cherokee having been “*inspected*” and that it passed he said to the best of his knowledge that information was accurate.
 - When asked what made him think that the Cherokee had been inspected and that it had passed he stated he recalls that one of the sales managers told him that, but he could not recall which one.
 - He does not recall being told that he made any mistakes in regards to pricing (the \$3,000 mistake that SP told AA).
 - He believes this was perhaps a sales tactic by SP to make AA think they got a better deal than they did. He recalled AA having to return back to the Supplier the day after the sale and that he drove out to ██████, Alberta to deliver tires to AA.
 - He did not sell the warranty or extras to AA as that is responsibility of the finance manager and he does not recall speaking to AA about any Road Hazard Plan or warranties.

8. On June 13, 2024, the AMVIC investigator located an advertisement for the Cherokee on a website showing that another salesperson ("TC") for the Supplier had listed the Cherokee for sale multiple times on TC's personal platform and with multiple different prices ranging from \$47,823 to \$51,998 (see Schedule "A"; Exhibit T). The Supplier is also listed to have advertised the vehicles on different dates and with multiple prices. One of the listings on Aug. 14, 2023 shows TC advertised the Cherokee for \$47,823 and with mileage of 52,439 miles. The Supplier had it listed the day before on Aug. 13, 2023 for \$49,999 and lists the mileage as 52,439 kilometres.
9. The AMVIC investigation determined that the Supplier did not comply with all-in pricing legislation as per Section 11(2)(l) of the ABR. AA stated the initial advertised price for the Cherokee was \$47,000. The BOS has the cash price listed as \$51,743. This price is shown on what AA referred to as "*the updated advertisement*" (see Schedule "A"; Exhibit D). The BOS (Schedule "A"; Exhibit L) lists the following line items:
 - Documentation fee of \$998
 - AMVIC of \$6.25
 - Safety and convenience fee of \$495
 - ETCH fee of \$199
 - Fuel fee of \$99
 - Accessories charge of \$2,499
 - Extended service contract charge of \$5,186

Even if the second listed price of \$51,743 were to be used the consumer was still over charged the additional fees including the documentation fee, AMVIC fee, safety and convenience fee, ETCH, and fuel fee which add up to \$1,797.25. The difference between \$51,743 and \$47,000 is \$4,743 and when added to the extra charges listed on the BOS, the amount the consumer was charged over the advertised price totals \$6,540.25. AA stated that the accessory and extended contract charges are unfair as they feel they were never fully aware of what that were buying and were not provided any documentation on these items to review until after the sale.

10. The AMVIC investigation determined that the Supplier's BOS is not compliant with Section 31.2 of the ABR:
 - An itemized list of all applicable fees and charges that AA was required to pay, including the cost of the "Road Hazard" which is listed on the left column with no price associated to it.
 - The colour of the trade-in is listed as "193894".
 - It does not list any and all promises offered to the consumer at no extra charge. There was an agreement for the dealership to change over the tires from the traded in vehicle to the Cherokee, which was not listed on the BOS.

The trade-in value on the BOS is listed as \$11,904.76. AA states that the agreed upon value of the trade-in was \$12,500. This figure is supported by the "*four square*" document dated Aug. 30, 2023

(see Schedule "A"; Exhibit M). This would amount to an additional overcharge to the consumer of **\$595.24**.

11. The AMVIC investigation identified other breaches of legislation not limited to unfair practices, code of conduct concerns, a failure to maintain accurate business records and breaching their agreed upon voluntary Undertaking.
12. Email communication between AA and the Supplier (see Schedule "A"; Exhibit R) provides evidence that further supports the alleged breaches put forward by AA. In the email string, on Sept. 5, 2023, AA seeks clarification from SP in regards to the "\$2499 'accessories' charge" on the BOS and that he did not know what this charge was and that it had not been explained to him at the time of sale. On Sept. 6, 2023, SP replied back to AA in regards to his question stating:

"The \$2499 is the road hazard rider on the vehicle that goes along with the warranty. It covers rock chips, windshield replacement, Flat tires, lost/broken key fobs, Dents, dings, scratches, Broken headlights, fog lights, tears to the interior, rim damage or replacement due to tire blowout, road debris, parking scuffs, etc..."

13. The Supplier offered to unwind the deal with AA, however AA was not agreeable because they were not comfortable with the Supplier's staff.
14. During the administrative review, the AMVIC investigator further advised that the Supplier offered to reimburse AA \$595.24 when the discrepancy between the trade-in value and the "four square" document was brought to their attention.

Supplier's Representations in relation to 23-09-016

15. After the AMVIC investigator presented the evidence, the Supplier did not have questions for the AMVIC investigator, however the Supplier did want to inform the Director that they do keep all of their records. The Supplier further advised that an MFA had been completed on the Cherokee however was expired and a new MFA needed to be performed. The Supplier did not provide any evidence to support this claim. Notwithstanding, AA was not presented with an MFA prior to entering into a consumer transaction. The Supplier advised they have limitations with itemizing options and line items on their BOS, however are working to have this rectified. The Supplier indicated that AMVIC advised them they could print it off and attach as part of the BOS. The Director did not confirm or deny if this business practice was acceptable but commented that the Supplier needs to conform to BOS legislative requirements as per Section 31.2 of the ABR.
16. After the AMVIC investigator put forward the evidence in relation to AMVIC Investigation case file 23-09-016 and the alleged breaches, the Director sought some clarification from the Supplier and they advised the following:
 - They employ approximately 100 employees, of which approximately 30 are salespeople.
 - Their volume of sales annually last year was approximately 2,000 vehicles.

- The Supplier does allow some of their salespeople to advertise on their own personal platforms but in order to be eligible they have to follow guidelines.
- The Supplier did not deny the pricing change for the Cherokee. This occurred prior to changes they have implemented and changing the price by salespeople is no longer allowed.
- The Supplier confirmed that GW is no longer an employee.
- The Supplier takes the legislative breaches seriously and have a willingness to work with the regulator to conform with the legislation.
- It is not common for a consumer to leave the Supplier after a vehicle purchase with no paperwork.
- The Supplier could not speak to a number of the actions of their employees, or provide an explanation or comment.

Case File 23-06-119

17. In June 2023, AMVIC received a complaint in regards to alleged misrepresentations by the Supplier in relation to a used 2022 Dodge Ram (the "Ram") that was purchased by a consumer ("JB"). The Ram was represented to have a "blacked out package". JB further alleged the Ram was sold over the advertised price in addition to other allegations.

18. In JB's consumer complaint to AMVIC, he provided a detailed account of his interactions with the Supplier:

"Traded in a 2015 Ram was tom[d] [sic] the trade in was worth 51,000. Truck I bought was 97,000. Put \$5000 down and was upside down on trade in by 10,000. Financing [sic] approved signed paperwork Was td [sic] track [sic] was factory blacked out. Went through car wash and so called paint was perling [sic] off everywhere. Call dealership back and was told that they had a lot of the truck wrapped. I asked for disclosure on everything that was wrapped on this truck that needed to be fixed and made right and was never given anything. They took it to the body shop and had the body shop start painting pieces. Steering wheel control stopped working as well as the horn one week after I purchased it truck has been to the body shop and the dealership three times and was told that the clockspring was fixed but now it's the steering wheel buttons I still have no horn. Also, the financing numbers do not make sense. I was charged for things that I was not aware of. I paid twice for extended warranty also paid for auto protection program that I was told I was given Trade in price was not what I was at agreed to on paper truck has been to the body shop and dealership for a month since I've owned it and nobody's answering my questions. How's the truck down on the bill of sale at \$114,134.50, the truck was listed at \$97,000. All these extras were added on. I wasn't given no paperwork till after the purchase was completed and the documents were signed. They were shoved in the glove box at the body shop was never given full disclosure on what was wrapped on the truck was never given paperwork on what was fixed as far as the clockspring or what the real problem is with the steering wheel, this dealership is extremely crooked I've tried several meetings with a general manager. I've been turned down the dealership is not addressing any of these concerns. I have text messages about

the issues I've went into the dealership specifically to talk to the manager. He will not see me. I want my money back or I want a new truck".

19. On April 29, 2023, the AMVIC investigator spoke with JB who stated that his main concerns were:

- He thought he was purchasing an official factory *"blacked out"* truck and feels the Supplier represented the vehicle as such (see Schedule "A"; Exhibit G) when it was an aftermarket paint job.
- He was concerned about the figures in the transaction as he does not understand them. He stated he was not provided any paperwork when he left the Supplier after purchasing the Ram.
- His mortgage payment is listed as \$800 on the credit application, when it was closer to \$1,500 (see Schedule "A"; Exhibit H).
- When questioned by the AMVIC investigator about a document provided by the Supplier called *"financial loss membership"* (see Schedule "A"; Exhibit I) he had no idea what it was and it was the first he had heard of it.

20. On June 5, 2024, the AMVIC investigator spoke with the finance manager for the Supplier, SP who advised that:

- He stands by the comment that he made during a previous meeting that normal operations would have the consumer walk out of the Supplier with all the documents after they have made a purchase. He has no explanation as to why JB did not have the paperwork for this transaction after he purchased the Ram.
- That the trim description for this vehicle is a *"RAM 3500 Limited"*. The Ram is not listed as the *"blacked out"* or *"Night"* version that it was represented to JB by the salesperson. SP provided the AMVIC investigator with the window sticker of the Ram (see Schedule "A"; Exhibit J) and the window sticker of a *"blacked out"* version for comparison (see Schedule "A"; Exhibit K). The second is clearly marked as the *"Night"* edition. SP advised that it was possible for the Ram to come in the *"blacked out"* version but it would be specifically noted on the VIN decoder as a *"blacked out"* or *"Night"* model. The Ram was not marked as such.
- SP agreed that when the AMVIC investigator showed him the text message between the Supplier's salesperson and JB where he called it the *"blacked out package"* that a reasonable person, himself included, would think that they are getting a factory *"blacked out"* vehicle and not a *"Chrome deleted"* aftermarket job (see Schedule "A"; Exhibit G).
- The cost of accessories of \$11,985.03 on the BOS were explained as the *"Gap Insurance, rate buy down, and the road hazard plan"*. The math confirms this. However, the charge for the warranty transfer, \$1,947.50 does not appear anywhere on the BOS.
- When questioned why the amounts were not on the BOS, SP said he used an addendum and placed them on it. That document lists everything above except the warranty transfer (see Schedule "A"; Exhibit L). When the Supplier was asked to clarify this point,

they forwarded a similar screen shot that included the warranty transfer and the amount it cost (see Schedule "A"; Exhibit L).

- When asked why JB thinks or was told the Road Hazard plan (see Schedule "A"; Exhibit M) was free, SP stated the deal can be manipulated so some costs are "*absorbed*" and can be affectively "*paid for*" by different scenarios. For example, if the consumer does a rate buy down, that could save \$4,000 off the cost of financing which would allow the consumer to get the road hazard and still be "*saving*" money.
- When asked about the BOS fees, SP agreed that since the Ram was advertised at \$97,998 (see Schedule "A"; Exhibit N) the fees for documentation \$698, AMVIC \$6.25, Etch \$199, and Fuel \$99, totaling \$1,002.25, were over the advertised price and contrary to legislation. Additionally, when asked about the differences between the trade-in values on the "*four square*" (see Schedule "A"; Exhibit D) and the BOS (see Schedule "A"; Exhibit C), he further acknowledged that they used the price with the goods and services tax ("GST") on the "*four square*" and then subtracted it out on the BOS. The trade in value on the "*four square*" sheet is \$50,400 while the trade in value on BOS is \$48,000, which is a difference of \$2,400.
- When questioned about the warranty SP stated that because JB transferred the warranty there is no paperwork, brochure, or anything that the consumer gets in order to see or know what the warranty is on, the terms and even who it is with. SP was unable to advise who the warranty was with other than he thought it was likely with Chrysler.
- SP agreed with the AMVIC investigator that even if the warranty was verbally explained as JB claims it was, it would be difficult for a consumer to remember everything about it on top of "*GAP insurance, buy down figures, fees, options, and everything else that happens when buying a vehicle*".
- When asked about the financial loss membership at a cost of \$4,925.91 (see Schedule "A"; Exhibit I), SP stated it is GAP insurance for the loan on the vehicle.
- When questioned about the mortgage amount of \$800 listed for JB in the credit application, when JB advises the true value is \$1,500, SP advised that the credit application is sometimes done by the salesperson and sometimes by the finance manager. SP provided a possible explanation that perhaps the consumer had a roommate and thus his portion of the mortgage was actually only \$800.

21. The AMVIC investigation identified BOS compliance issues including but not limited to:

- The number of the government-issued identification that the business operator used to confirm the identity of the consumer is not listed.
- There is no itemized list of all applicable fees and charges including the charge for the warranty.
- The extended warranty contract was left unchecked whether it was accepted or refused.

22. The AMVIC investigation further identified unfair practices in that:

- \$48,000 is listed as the trade-in value on the BOS rather than the agreed upon \$50,400 as per the *"four square"* document.
- JB was misled regarding the trim level of the Ram. The salesperson for the Supplier in a text message stated *"Full load limited, black out package"*.
- JB was further misled as to the *"financial loss membership"* as when questioned by the AMVIC investigator could not provide an explanation on what it was yet paid \$4,925.91 for this insurance.
- JB was not informed on the cost of the warranty transfer of \$1,947.50, which is not listed on the BOS.

23. That in engaging in unfair practices, having a non-compliant BOS and failing to create accurate business records the Supplier breached their voluntary Undertaking.

24. When the AMVIC investigator advised the Supplier of the discrepancy between the *"four square"* document and the BOS that were provided to AMVIC by the Supplier, the Supplier offered to reimburse JB the difference of \$3,402.02, which was accepted by JB.

Supplier's Representations in relation to 23-06-119

25. After the AMVIC investigator presented his evidence, the Supplier did not have questions for the AMVIC investigator, however the Supplier did want to inform the Director that the Ram was a vinyl wrapped vehicle and that it was a *"black out"* package but not factory *"blacked out"*. The Director commented that if that information had been properly communicated to JB then that may not have been an issue but that is not what the Supplier's salesperson told JB prior to entering into a consumer transaction.

26. After the AMVIC investigator put forward the evidence in relation to AMVIC investigation case file 23-06-119 and the alleged breaches, the Director sought some clarification from the Supplier and they advised the following:

- The Supplier, specifically the general manager, spoke with JB and believed everything was fine despite JB stating otherwise to the AMVIC investigator.
- The Supplier could not provide an explanation or comment in regards to some of the actions of their staff in the course of this consumer transaction.

27. On Oct. 8, 2024, in advance of the scheduled administrative review, the Supplier provided written representations (see Schedule **"B"**). The Supplier's representations can be summarized and quoted as follows:

- The Supplier is *"concerned with the below information provided on the two cases mentioned (23-09-016, 23-06-119)"*
 - *Not maintaining accurate records*

- *We have kept all records*
- *Bill of sale not itemized*
 - *We are limited with our system and have discussed this with AMVIC. We print out the screen with all the information and have this signed off on.*
- *Statements to mislead and verbal representations*
 - *There was never a representation this vehicle was blacked out from Factory as it does not exist and multitude of character issues with both files.*
 - *The email correspondence shows the rash change in behavior, allegations, requests, answers to questions that claim went unanswered in great detail and never was a statement this came from Factory.*
- *Failure to provide bill of sale*
 - *We have always provided the documents, including Bill of Sale.*

Although the dealership is currently in an undertaking;

Both of these files are from March and August of 2023. I, Stephanie Christopoulos joined the team at Renfrew Chrysler in September of 2023. I was not here at the time of both car deals. Since then, we have made several adjustments to business practices, education and processes.”

- The Supplier listed AMVIC case file numbers for five Findings Letters that had been issued to them and advised that they have been resolved and closed.
- The Supplier listed eight other AMVIC case file numbers which were resolved and closed with consumers and no further action was needed, therefore the case files never made it to AMVIC investigation.
 - The Supplier made reference to one AMVIC case file No. 24-05-374 in particular in which the consumer transaction was not finalized and was posted with their accounting department. The Supplier stated that they refunded the consumer and the consumer’s financing had fallen through. The Supplier was advised by AMVIC that this would be resolved on AMVIC’s end but received an investigation on this case file.
- In regards to not providing paperwork, the Supplier asserted that they have had three different cases with an AMVIC consumer services officer (“CSO”) where the CSO had stated that a response was not received but the Supplier was able to show they sent the documents prior to the deadline given.
- The Supplier asserted they have made the below changes since these cases and issues:
 - “AMVIC/CPA/ABR Compliance Training across all departments
 - Advertising
 - Facebook Advertising
 - Reconditioning
 - Financing
 - Paperwork”

- The Supplier further asserted
 - *“We have changed and updated our policies:*
 - *For paperwork required on each sale*
 - *Inspection must be signed before the transaction*
 - *Added the Vehicle History Report to all files*
 - *All MFA must pass*
 - *Changed wording on our website with MFA*
 - *Completing an 80 point inspection in addition to the MFA*
 - *All promises must be written down*
 - *All clients must be contacted back*
 - *Trade in Allowance is always broken out properly*
 - *Insurance is mandatory on every file”*
- The Supplier has worked with their staff to ensure deals are transparent.
- The Supplier stated they *“have removed staff who do not align with our policies and actively watch for any issues, in which case is followed up by a write up as we have a zero tolerance policy for violations or selfish behavior that affects Renfrew Chrysler negatively.”*
- That the management team for the Supplier is committed to transparent business and understand their obligations to a consumer.
- The Supplier cooperated fully with AMVIC, provided anything they can and always agreed to meet and often called AMVIC to ask questions if they are unsure.
- The Supplier is educated and committed to adhering to a proper code of conduct, and operating successfully while maintaining compliance. The Supplier has and will continue to adjust what is needed.

28. On Oct. 29, 2024, the proposed Administrative Penalty was sent to the Supplier. The proposed Administrative Penalty provided the Supplier an opportunity to make written representations with respect to the matter by 12:00 p.m. noon on Nov. 29, 2024. The Supplier did not submit any written representations in response to the proposed Administrative Penalty.

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,

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.

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.

(4) Without limiting subsections (2) and (3), the following are unfair practices if they are directed at one or more consumers or potential consumers:

- (a) a supplier's doing or saying anything that might reasonably deceive or mislead a consumer;

Duty to maintain records

Section 132

(1) Every licensee and former licensee must create and maintain

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

(2) Every licensee and former licensee must make the records referred to in subsection (1) available for inspection by an inspector at a place in Alberta and at a time specified by the inspector.

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.

Non-compliance with orders, etc.

Section 163

Any person who

- (d) fails to comply with an undertaking under this Act contravenes this Act and is guilty of an offence.

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?

The material which formed the Application Report was the result of two consumer complaints received by AMVIC, case files 23-09-016 and 23-06-119.

As noted in the “*Preliminary Matters*”, the Director will not be addressing all listed relevant legislation from the Application Report submitted to the Director in instances of similar legislative breaches for the same actions of the Supplier to be procedurally fair.

A. Mislead and Deceive (CPA Section 6(4)(a))

Case file 23-09-016

AA was misled by GW that the Cherokee, “*Comes fully inspected and passed*” as no inspection or MFA had been completed on the Cherokee and the MFA was completed the day after the consumer transaction. AA was further misled regarding the advertised price of the Cherokee, which was changed while AA was at the Supplier’s business. The Supplier’s finance manager, SP, told AA that he qualified for a lower interest rate by purchasing a warranty which was not true. The financing documents provided by the Supplier provide no evidence of a lower rate and show that AA was given a rate of 8.99% (see Schedule “A”; Exhibit E).

AA was further told that the Cherokee used to belong to a famous National Hockey League goaltender, which was not true. A [REDACTED] query show the previous owner as Patrick [REDACTED] (see Schedule “A”; Exhibit H). Wikipedia lists the famous Montreal Canadiens goalie as Patrick Jacques Roy (see Schedule “A”; Exhibit I).

The trade-in value listed on the BOS is not what was told to AA and listed on the “*four square*” document. In addition, AA further did not understand the “*accessories charge*” of \$2,499 which turned out to be a road hazard rider that accompanied his extended service contract, which was sold to AA at a price of \$5,186. In addition, the BOS in relation to the consumer transaction as noted below was not properly completed, further leading to the Supplier doing or saying anything that might reasonably deceive or mislead the consumer. On a balance of probabilities, the Director finds that the Supplier misled AA in multiple instances in the transaction to purchase the Cherokee.

Case file 23-06-119

The salesperson texted JB and stated “*Full load limited, black out package*”. JB took this information to be the trim level for the Ram when instead the “*black out package*” was that the Ram had a “*chrome delete wrap*” installed and not a black out package from the factory. JB was misled regarding the trade-in value he was given for the vehicle he traded in. The Supplier had the “*chrome delete wrap*” installed on the Ram by an unrelated business (see Schedule “A”; Exhibit U) before the sale to JB.

In the opinion of the Director, JB was further misled on what he was sold with respect to protection plans, rate buy down costs, warranty transfer costs, GAP insurance costs and road hazard costs as the

costs associated were not properly listed on the BOS. When JB spoke to the AMVIC investigator he did not know what some of those plans were.

On a balance of probabilities, the Director finds that the Supplier misled JB in multiple instances.

As per Section 4 of the CPA, if a provision of a document is ambiguous in a consumer transaction, the provision must be interpreted against the Supplier. The Supplier's words and actions reasonably misled both consumers during the course of the consumer transactions and therefore, the Supplier did contravene Section 6(4)(a) of the CPA.

B. Selling over the Advertised Price (ABR Section 11(2)(l))

Prices advertised must include all fees the seller intends to charge. The only fee that can be added to the advertised price is the 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.

Case file 23-09-016

The messages between GW and AA show the salesperson for the Supplier changed the price of the Cherokee while AA was at the Supplier's business location. At the end of the messages between the two parties, the messaging platform indicates two additional lines which demonstrate that GW changed both the listing title of the advertisement as well as the price of the Cherokee. In addition, the assistant manager for the Supplier stated in an email to AA that *"the advertised price again I had been under the impression it had been dealt with before the sale continued, but I am happy to speak with you and S█████ about that, as it is him that would make the call on that. All in pricing would be the price +fees so the GST would be the only thing added, but as we all talked about it was incorrect and on the wrong vehicle and that was handled and agreed to prior to the sale being completed"* (see Schedule "A"; Exhibit R).

AA stated the initial advertised price for the Cherokee was \$47,000. The BOS has the cash price listed as \$51,743. This price is shown on what AA refers to as the *"updated advertisement"* (see Schedule "A"; Exhibit D). The BOS (see Schedule "A"; Exhibit L) also lists the following line items:

- Documentation fee of \$998
- AMVIC of \$6.25
- Safety and convenience fee of \$495
- ETCH fee of \$199
- Fuel fee of \$99
- Accessories charge of \$2,499
- Extended service contract charge of \$5,186

Even if the second listed price of \$51,743 were to be used AA was still over charged the additional fees including the documentation fee, AMVIC levy, safety and convenience fee, ETCH, and fuel fee, which add up to **\$1,797.25**. In addition, the Supplier charged AA a fuel fee and the consumer indicated the Cherokee was at or near empty when they drove home with it from the Supplier. The difference between \$51,743 and \$47,000 is \$4,743 and when added to the extra charges listed on the BOS of \$1,797.25, AA was charged an extra **\$6,540.25**.

There is also the **\$595.24** discrepancy between the trade-in value and the “four square” document which the Supplier agreed to reimburse to AA when the AMVIC investigator brought it to their attention. There is no evidence before the Director whether the Supplier did reimburse AA.

AA stated that the accessory and extended contract charges are unfair as they were never fully aware of what that were buying and were not provided any documentation on these items to review until after the sale.

Based on the evidence, on a balance of probabilities, the Director finds the Supplier failed to comply with all-in pricing legislation and therefore breached Section 11(2)(l) of the ABR.

Although notice to the Supplier was only given specific to selling over the advertised price, Section 11(2)(l) of the ABR, the AMVIC investigation identified other advertising issues as per Section 11 of the ABR. Specifically the advertisement of the Cherokee (see Schedule “A”; Exhibit D) does not name the business operator or trade name, does not contain the AMVIC logo or the words to indicate the vehicle is being sold by an AMVIC licensed business, does not state whether the vehicle in the advertisement is or is not the specific vehicle that is for sale, does not provide the stock number of the vehicle and it uses descriptions that are not in accordance with actual conditions by stating the vehicle has no significant damage or problems. The Administrative Penalty being assessed does not take into account these additional breaches, however these advertisement issues were brought to the attention of the Supplier during the administrative review.

Case file 23-06-119

There was no advertisement received from JB in relation to this consumer transaction or contained in the Application Report, therefore the Director is unable to determine what the advertised price was for the Ram. The Supplier added numerous line items to the BOS, however without an advertisement, the Director is unable to determine whether or not the Supplier sold over the advertised price in this consumer transaction.

C. Non-compliant BOS (ABR Section 31.2(1)(2))

On Oct. 31, 2018, amended 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 amended legislation, sent multiple bulletins to inform the industry and the public regarding the changes, updated social media regularly, sent out a special edition of the IMPACT newsletter to the industry regarding the legislative changes and all AMVIC employees had

an email signature attached to staff emails regarding the legislative changes. These are just a few of the initiatives that AMVIC took to ensure all licensees were advised of the legislative changes that were coming into effect on Oct. 31, 2018 regarding the BOS.

The Supplier's BOS and the fact they were not maintaining accurate business records was discussed during the administrative review held on Jan. 8, 2020, addressed in the Supplier's voluntary Undertaking dated April 8, 2020 and in the Administrative Penalty assessed against the Supplier dated May 21, 2020.

On Sept. 22, 2020 the Supplier was sent an inspection Findings Letter based on an inspection that took place on Sept. 14, 2020. The Findings Letter addressed a number of shortcomings and deficiencies including the Supplier's BOS. As per paragraph 7 of the Findings Letter, the Supplier was directed to update their BOS immediately to disclose the government issued identification, as well as a declaration that all vehicle history information required by Section 31.1 of the ABR was provided to the consumer. The Findings Letter included the entire legislative section in relation to the BOS requirements for the Supplier's reference.

On Feb. 22, 2023, an investigation Findings Letter was sent to the Supplier in relation to case file 22-06-030 relating to BOS issues and appropriate legislation was provided. On June 19, 2023, an investigation Findings Letter was sent to the Supplier in relation to case file 23-02-351 that addressed BOS concerns.

Case file 23-09-016

The BOS in relation to the sale of the Cherokee is not compliant with Section 31.2 of the ABR. The BOS does not contain the total cost of the vehicle listing all fees, charges and costs including the cost of road hazard which is listed on the left column with no price associated to it. The colour of one of the trade-in vehicles is listed as "193894." The BOS does not contain an itemized list of any items or inducements the business operator agreed to provide with the vehicle at no extra charge. There was an agreement for the Supplier to change over the tires from one of the trade-in vehicles to the Cherokee. The BOS further does not contain any declaration that an MFA had been issued under the VIR.

The trade-in value on the BOS is listed as \$11,904.76. AA states that the agreed upon value of the trade-in was \$12,500. This figure is supported by the "four square" document dated Aug. 30, 2023 (see Schedule "A"; Exhibit M). Which amounts to the consumer being overcharged an additional \$595.24.

On a balance of probabilities, the Director finds that the Supplier did not comply with BOS legislation in relation to AA's consumer transaction in the purchase of the Cherokee.

Case file 23-06-119

In the sale of the Ram to JB, the Supplier failed to list the number of the government-issued identification that the business operator used to confirm the identity of the consumer on the BOS as required by Section 31.2 of the ABR.

In reviewing the BOS, the Director cannot determine what protections or warranties JB accepted or refused, or what he paid for and the associated costs. In the left hand column of the BOS, the boxes are unchecked whether or not JB accepted and refused an extended service contract but it is checked off that he accepted credit insurance. On the right hand side of the BOS it states “DECLINED” for credit insurance extended, service contract and protection package. The provisions of this document are ambiguous. As per Section 4 of the CPA, if a provision of a document is ambiguous in a consumer transaction, the provision must be interpreted against the Supplier.

On the left hand side of the BOS, the Supplier lists “GAP, RATE BUY DOWN, ROAD HAZARD” but there is no associated prices listed. Instead the Supplier lists on the right hand side an “Accessories” charge of **\$11,985.03**. It is not until the Supplier’s finance manager is interviewed by the AMVIC investigator, where clarification was sought from the Supplier that the AMVIC investigator was able to determine that the \$11,985.03, when added up is: Gap insurance \$4,925.91, rate buy down \$4,210.12 and Road Hazard \$2,849. The BOS further fails to list a cost for the warranty transfer of \$1,947.50 which does not appear on the BOS.

The BOS does not contain any declaration that an MFA had been issued under the VIR. The Director is unable to determine whether JB was ever provided with an MFA in relation to this transaction as there is no MFA provided as part of the Application Report submitted by AMVIC investigations department (see Schedule “A”) or the Supplier in their written representations (see Schedule “B”).

The “four square” document (see Schedule “A”; Exhibit D) states, “Install 5th wheel prep” yet this condition of sale is not listed anywhere on the BOS. The “four square” document lists “trade-in \$50,400” yet the BOS lists the trade in value as \$48,000. SP stated to the AMVIC investigator that the difference in the trade-in value on the “four square” document and the BOS is due to the price on the “four square” document included the GST, which was subtracted from the value on the BOS.

During the scheduled administrative review, the Supplier either had no comments or explanation for the actions of their employees or had difficulty explaining the various line items and costs. As such, the Director finds that the Supplier has not made it clear with respect to all of the restrictions, limitations and conditions imposed on the consumer as per the BOS agreement in a clear and comprehensible manner, as per Section 31.2(2) of the ABR.

Based on the evidence before me, on a balance of probabilities, the Director finds the Supplier contravened Section 31.2 of the ABR.

D. Failure to Maintain Records (CPA Section 132(1))

Section 132(1) of the CPA sets out the requirement for all business operators to create and maintain complete and accurate records. This includes both financial records and all records created or received while carrying on the business activities they are authorized to engage in.

In reviewing the evidence, the issues found with the Supplier’s records show that they have failed to maintain **accurate** records. The BOS issues identified above in relation to the sale of the Cherokee show

the Supplier is not creating and maintaining accurate records. In addition the road hazard plan and warranty plan have the wrong address listed for AA, and state the Cherokee is a new vehicle, when it was in fact a used vehicle.

As noted above, the BOS with respect to the sale of the Ram is confusing, inaccurate and incomplete. Without clarification from the Supplier the Director would be unable to determine the details of the consumer transaction.

The Director does not question the fact that the Supplier is maintaining records, but simply they are not **accurate**. There is a pattern of behaviour in relation to the Supplier's records being accurate which was previously identified in previous administration reviews, Findings Letters and administrative enforcement actions.

The Supplier provided written representations in regards to changes and policies they have implemented, however did not provide evidence to the Director to support their claims. Based on the Supplier's comments the changes were not implemented immediately following the administrative enforcement actions, such as the voluntary Undertaking entered into by the Supplier in 2020. The Supplier only recently, in September 2023, implemented changes to bring their business practices into compliance with the legislation and its associated regulations.

Record keeping is an incredibly important part of running a business within a regulated industry. Failure to keep proper records is an "*extremely serious contravention*" of the CPA. A recent Service Alberta Appeal Board rendered a decision (attached as Schedule "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. The sanction must be sufficient to communicate this seriousness to the industry at large.

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.

Accurate record keeping is the best way for the Supplier to evince that they have complied with the legislation in the course of a transaction or potential transaction. On a balance of probabilities, the Director finds that the Supplier failed to maintain accurate records and has contravened Section 132(1) of the CPA.

E. MFA Compliance Issues (15(1) VIR)/General Code of Conduct (12(o) ABR)

Case file 23-09-016

In the sale of the Cherokee to AA the AMVIC investigation revealed that the MFA was not provided to AA prior to entering into a consumer transaction. The Supplier asserts an MFA had been completed but was expired. The Supplier did not comment whether AA was shown the expired MFA and there is no evidence to support he was. The Supplier is required to provide the consumer a valid MFA prior to entering into a consumer transaction, which would not have been the case had the Supplier provided AA with an expired MFA. The BOS is dated Aug. 30, 2023 and the MFA is dated Aug. 31, 2023, a day after the consumer transaction. GW told AA that the Cherokee *"Comes fully inspected and passed"*. An MFA is not an inspection and is not as comprehensive as an inspection. Telling a consumer an MFA is an inspection is misleading.

The MFA is required as per Section 15(1) of the VIR. The VIR is a regulation under the *Traffic Safety Act* ("TSA"). The requirement to provide an MFA is required under the TSA and is therefore in the jurisdiction of Alberta Transportation. Although the MFA falls under the requirement of Alberta Transportation, it comes into AMVIC's purview in the course of our mandated duties as per a number of legislated sections that apply to following all legislation applicable to the sale of motor vehicles such as Section 12(o) of the ABR and Section 127(b)(v.1) of the CPA.

Having a consumer sign and date the MFA is the best way to document that a consumer was shown the MFA prior to entering into a transaction. By failing to give AA an MFA for the Cherokee before entering into a contract to sell him the vehicle, the Supplier has breached Section 15(1) of the VIR and Section 12(o) of the ABR.

F. Breach of Undertaking

On April 8, 2020, the Supplier voluntarily agreed to enter into an Undertaking . The Supplier agreed to

- “1. *The Supplier acknowledges that it failed to comply with certain provisions of the CPA and ABR, and undertakes to the Director that the Supplier will make every effort to ensure that all future transactions are completed in accordance with the CPA and its related regulations.*
2. *The Supplier undertakes to maintain accurate business records and ensure they do not over charge consumers or make representations or exaggerations of a price benefit or advantage when they do not exist, which is misleading to the consumer.*

3. *The Supplier will review their current BOS and ensure their form as well as the completion of the form meet the legislative requirements as set out in Section 31.2 (1) and (2) of the ABR.*
4. *To ensure that the Supplier is in full compliance with the CPA and its related regulations, the Supplier agrees to assist AMVIC with an inspection to take place between May 1, 2020 and Aug. 31, 2020.*
5. *The Supplier has agreed to reimburse the complainant the sum of \$13,406.03, which represents restitution amounts to remedy the anomalies in the sales transaction (\$9,566.46 the amount of discount misrepresented to the consumer; \$1,725 the difference for the trade in value, \$1,000 the difference in the higher amount charged for the documentation fee; \$500 to replace or reimburse the running boards and rubber floor mats that were not transitioned over; and \$614.57 the additional GST cost savings). Such payment can be made by cheque or money order made payable to Lawson, Glod, Mahoney in trust to the complainant within 30 days of entering into this Undertaking. Lawson, Glod, Mahoney will facilitate the transaction and provide AMVIC with confirmation that complainant has received the restitution payment.”*

Upon reviewing paragraph 5 of the above noted agreed upon Undertaking, the Director notes that the Supplier was offering an amount for a trade-in and then subtracted the GST off that offer on the BOS.

In relation to the sale of the Cherokee, the Supplier did not comply with provisions of the CPA, misled AA, had a non-compliant BOS, did not provide AA with an MFA prior to entering into a transaction, did not create and maintain accurate records, and overcharged AA. In relation to the sale of the Ram, the Supplier did not comply with the provisions of the CPA, misled JB, had a non-compliant BOS, and did not create and maintain accurate records.

In both the sale of the Cherokee and Ram, the Supplier misrepresented the trade-in value on the “four square” document as a higher amount, then subtracted the GST from the amount and placed the lower value on the BOS. This demonstrates the Supplier has continued to engage in business practices to what is outlined in paragraph 5 of the voluntary Undertaking.

In the Supplier’s written representations received on Oct. 8, 2024 the assistant general manager stated:

*“Although the dealership is currently in an undertaking;
Both of these files are from March and August of 2023. I, Stephanie Christopoulos joined the team at Renfrew Chrysler in September of 2023. I was not here at the time of both car deals.”*

The Supplier is vicariously liable as per Section 166 of the CPA regardless of when a member of the Supplier’s management team is hired. The Supplier voluntarily agreed to abide by the conditions of the Undertaking yet has failed to change their business practices.

On a balance of probabilities, the Director finds that the Supplier has breached their agreed upon voluntary Undertaking and has contravened Section 163(d) of the CPA.

G. Other Considerations

AMVIC follows a progressive enforcement model when enforcing consumer protection laws. Administrative action may include a written warning, condition(s) added to the licence, charges under the legislation, Administrative Penalty, Director's Order, Undertaking and suspension or cancellation of a licence as outlined in the CPA. When determining an appropriate enforcement measure, the Director will consider several factors before making his decision to ensure what level of enforcement is appropriate to the contravention.

The Supplier has been subject to the following enforcement actions:

- 2014 – Undertaking for advertising issues.
- 2016 – Administrative Penalty for advertising issues in the amount of \$1,000.
- 2020 – Undertaking in which Supplier agreed to comply with the CPA and ABR, maintain accurate business records and ensure their BOS meets legislative requirements.
- 2020 – Administrative Penalty in the amount of \$4,500 for unfair practices.
- 2023 – Administrative Penalty in the amount of \$6,000 for unfair practices, a non-compliant BOS, and failing to create and maintain records.

The Director considered other enforcement actions. The Director cannot consider entering into an Undertaking as the Director previously entered into a voluntary Undertaking with the Supplier for similar breaches. In the opinion of the Director, the Supplier has not ceased the contraventions as per Section 152(1)(b) of the CPA. Further, the Director does not feel an Undertaking would adequately protect consumers due to the Supplier's continued breaches of the legislative requirements.

The Supplier has been provided education in the form of an industry standards inspection Findings Letter, investigation Findings Letters, previous administrative reviews held and has been subject to multiple administrative enforcement actions however, they continue to engage in non-compliant business practices.

The Director acknowledges the willingness of the Supplier to work with the regulator and their commitment to adhere to the legislative requirements, as stated in their written representations dated Oct. 8, 2024, however the Supplier has not provided any evidence to support their claims with respect to changes to their policies and business practices. During the administrative review, the Supplier indicated the changes were put in place in September 2023, over three years after the Supplier undertook to change their business practices and comply with the legislation. The Supplier stated in their written representations that:

"We are limited with our system and have discussed this with AMVIC. We print out the screen with all of the information and have this signed off on."

It is the Supplier's responsibility to ensure their paperwork conforms with the legislation that governs the automotive industry, it is the Supplier's responsibility to ensure the systems they use allow them to

comply with the legislation; it is not a valid reason to continue to allow their documentation to be non-compliant.

Based on the education previously provided to the Supplier, the administrative enforcement history of the Supplier and the evidence regarding the current matter, in the opinion of the Director, the previous education and enforcement have not resulted in the Supplier bringing their business practices into compliance with the legislation that governs the automotive industry. 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.

There exists an onus on the Supplier to do their due diligence and ensure they are complying with the law. As stated in 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 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.

A recent Service Alberta and Red Tape Reduction Appeal Board rendered a decision (attached as Schedule “D”) regarding the importance of the legislation that regulates the automotive industry as well as the importance of the members within the regulated industry to operate within the regulatory framework. Paragraph 39 of the Service Alberta and Red Tape Reduction Appeal Board decision states:

“Regulations are not merely a formality. They exist to protect consumers and fulfil the mandate of the CPA as described in its preamble.” [Paragraph 39.b.]

“...it is [the Supplier’s] responsibility to be compliant with regulations at all times.” [Paragraph 39.c.]

“...regulations are not optional, they serve an important social purpose”. [Paragraph 39.d.]

Further, the Service Alberta and Red Tape Reduction Appeal Board decision (see Schedule “D”) comments on the importance for members of automotive industry to comply with all-in pricing legislation, and at paragraphs 65 and 81 respectively state:

“...the Board agrees with the Director in that selling above advertised prices affects the public’s perception of the industry and AMVIC’s ability to regulate it. It is inherently a serious breach.” [Paragraph 65]

“The Board finds that there is a considerable need for general deterrence as well, such that other members of the industry will understand that they must take a proactive approach to ensure they are following all-in pricing...Consumers must have confidence that the prices they see in advertisements are accurate and include all relevant charges. The Board agrees with the

Director's submission that the penalty must be sufficient to deter, and cannot be seen simply as a cost of doing business." [Paragraph 81]

In reviewing all the evidence and determining the contraventions of the legislation, in the opinion of the Director, the Supplier's business practices have continued to fall short of what is expected of a business in the automotive industry. A recent Service Alberta Appeal Board rendered a decision (attached as Schedule "E") and addressed the onus and responsibility of salespeople and suppliers. The appeal panel at paragraph 91 stated:

"At the same time, we recognize that AMVIC is not there to hold a party's hand through the administrative process. Nor is it there to train applicants in terms of being administratively efficient. AMVIC is there to protect the public. The onus is on salespersons and car dealerships to remain current with AMVIC and to comply with the regulatory framework in place at any given time."

The Supplier misled both consumers through their actions and words in multiple instances, failed to maintain proper records, used a non-compliant BOS in both transactions, failed to disclose the cost of all products to consumers, failed to provide an MFA prior to entering into a consumer transaction and breached their agreed upon voluntary Undertaking. The Supplier's actions as outlined above leverages the Supplier's knowledge, and does not foster a level playing field between the consumer and the Supplier which eliminates the consumer's ability to make an informed purchasing decision. It further concerns the Director that the Supplier, despite the education and administrative enforcement actions, is continuing to breach the legislation, to the detriment of consumers.

The aggravating factors in this matter include the resulting impact adversely affecting the consumers, the continued non-compliance with the rather straightforward requirements of the legislation despite multiple attempts to educate the Supplier, the previous administrative enforcement actions and breaching the agreed upon voluntary Undertaking.

The mitigating factor with respect to both transactions were the monies offered to the consumers to reimburse them for some of the overcharging, as well as the Supplier offering to unwind the deal in relation to the Cherokee. In the opinion of the Director, unwinding consumer transactions or reimbursing consumers for over charges once the regulator becomes involved, while is a mitigating factor, does not absolve the Supplier for breaching legislation.

This Administrative Penalty is taking into account the number and seriousness of the contraventions of the legislation found during the two investigations; the cost of investigating the Supplier's activities; the aggravating and mitigating factors listed above; and the continued non-compliant business practices despite education and enforcement.

Action

In accordance with Section 158.1(a) of the CPA and based on the above facts, I am requiring that Renfrew Chrysler Inc. pay an Administrative Penalty. This is based on my opinion that Renfrew Chrysler

Inc. has contravened Sections 6(4)(a), 132(1) and 163(d) of the CPA, Sections 11(2)(l), 12(o), 31.2 of the ABR and Section 15(1) of the VIR.

Taking into consideration all the representations made by the Supplier and the representations made by AMVIC's investigations department, the amount of the Administrative Penalty is **\$30,000**.

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 Supplier's history of non-compliance;
3. The degree of willfulness or negligence in the contravention or failure to comply;
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 \$30,000.

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
Director of Fair Trading (as Delegated)

GG/ks
Encl.

cc: [REDACTED], Senior Manager of Investigations, AMVIC