

---

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

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

**BY: HENINGER MOTORS GP INC.**  
**o/a HENINGER TOYOTA**  
in the city of Calgary, in the Province of Alberta  
(hereinafter called the "Supplier")

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

**WHEREAS:**

- A. At the time of the complaint, the Supplier was licensed by the Alberta Motor Vehicle Industry Council ("AMVIC") to carry on the automotive business activity of retail sales, leasing and wholesale sales in the Province of Alberta.
- B. An administrative review was held on Jan. 14, 2025 at approximately 1 p.m. via teleconference call. Participating in the administrative review were Mr. Mitch Massey, director and general manager for the Supplier; Mr. Mark Rathwell, legal counsel for the Supplier; [REDACTED], AMVIC investigator; [REDACTED], manager of investigations south; and G. Gervais, Director of Fair Trading (as delegated).
- C. AMVIC received a consumer complaint in May 2024 (case file 24-05-119) relating to the purchase of a 2021 Toyota Highlander (the "Highlander") from the Supplier on Jan. 27, 2022 by a consumer ("MB"). On May 1, 2024, MB attended another Supplier ("GT") for vehicle service and an oil leak concern. MB was informed by GT that the Highlander's engine had been previously repaired for a check engine light problem, where it was found to have a bent intake valve on cylinder number two and misfires. Subsequently, the engine had been removed, disassembled and repaired under warranty for the previous owner. MB was unaware there had been a previous owner and that the Highlander had previous engine issues as she purchased the Highlander as a new vehicle from the Supplier.
- D. The AMVIC investigation revealed that the Highlander was originally sold to another consumer ("PF") on Nov. 22, 2021. The Highlander developed mechanical issues shortly after delivery and PF contacted the Supplier and the consumer transaction was unwound. The Supplier sold PF a different vehicle and the Highlander was repaired under the manufacturer's warranty listed under PF and placed back in the Supplier's inventory.
- E. A repair invoice in the amount of \$4,432.47 shows the engine was repaired and had to be removed from the Highlander, the cylinder head removed and the valve replaced. The Supplier had failed to correctly identify this vehicle being returned to inventory as being used and not new. The Supplier then sold the Highlander to MB on Jan. 27, 2022 with the odometer reading of 201 kilometres

("kms") and being listed as "new" on the bill of sale ("BOS"). The Highlander's history was not disclosed to MB.

- F. As per Section 166 of the CPA, the Supplier is vicariously liable for the representations made to consumers by their employees or designated agents. By representing the Highlander to MB as a new vehicle when it was in fact a used vehicle and failing to disclose the previous history, MB could not make an informed purchasing decision. The evidence supports that there has been a breach of Section 6(4)(a) of the CPA.

### **Consumer Protection Act**

#### **Unfair practices**

##### **Section 6**

(1) In this section, "material fact" means any information that would reasonably be expected to affect the decision of a consumer to enter into a consumer transaction.

(1.1) It is an offence for a supplier to engage in an unfair practice.

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

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

#### **Vicarious liability**

##### **Section 166**

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

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

- G. The AMVIC investigation identified further the completion of the BOS to MB is not compliant with Section 31.2 of the ABR. The BOS fails to include all of the BOS requirements and disclosures, not limited to: the number of the government-issued identification that the business operator uses to confirm the identity of the consumer; an itemized list of all 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; the declaration indicating that the vehicle history was disclosed in accordance with Section 31.1 of the ABR; a disclosure statement or documentation respecting the Highlander's previous use, history or condition and that a Mechanical Fitness Assessment ("MFA") was issued to the consumer. Based on the evidence before me, the Supplier has breached Sections 31.2 of the ABR.

### **Automotive Business Regulation**

#### **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.

- H. During the administrative review, the AMVIC investigator remarked the Supplier was cooperative and has no previous enforcement history.
- I. In advance of the administrative review, the Supplier forwarded to the Director representations acknowledging and taking responsibility for the mistakes that were made in the transaction; and admitting that the issue could have been handled better, including their communication with MB.
- J. The Supplier took immediate action when this matter was brought to their attention, reviewed the circumstances with the general manager and staff, and implemented processes to ensure compliance and to prevent it from re-occurring. The Supplier provided a copy of their policy to the Director as well as a copy of an apology letter that was sent to MB demonstrating they take these complaints and shortcomings seriously.
- K. MB was seeking compensation from the Supplier as well as an extended warranty on her Highlander. The Supplier was eventually able to reach a mutual resolution with MB which was accepted by MB on Jan. 12, 2025 in advance of the scheduled administrative review.
- L. The Supplier acknowledged the general conduct described in the AMVIC investigation and regrets engaging in the aforementioned activity.

**NOW THEREFORE THIS UNDERTAKING WITNESSES THAT:**

1. The Supplier acknowledges and admits that it failed to comply with the provisions of the CPA and ABR, and undertakes to the Director that the Supplier will make every effort to ensure that it does not engage in acts or practices similar to those described above.
2. The Supplier will undertake to ensure that they do not mislead or deceive a consumer as per Section 6(4)(a) of the CPA.
3. The Supplier will undertake to ensure their BOS is completed in full and properly itemizes the accurate details of the transaction in accordance with the requirements of Section 31.2 of the ABR.
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 industry standards inspection which will take place before **Sept. 30, 2025**.
5. The investigation costs in completing this investigation will be waived.

6. This Undertaking will remain in force,

Unless:

- a. Terminated by the Director or varied with the consent of the Supplier;
- b. Varied by an Order of the Judge of the Court of King's Bench where the Judge is satisfied that the circumstances warrant varying the provisions of the Undertaking; or
- c. Terminated by an Order of the Judge of the Court of King's Bench where the Judge is satisfied that the act or practice that the Supplier has undertaken to refrain from engaging in was not unfair; however, in any such case, the termination or variance does not invalidate anything done under this Undertaking prior to termination or variance.

7. The Supplier acknowledges the Director may, upon breach of any term of the Undertaking, institute such proceedings and take such action under the *Consumer Protection Act* as they may consider necessary.

8. The Supplier acknowledges this Undertaking is a public document and will be maintained in the public record by the Director of Fair Trading (as delegated) as required by Section 157.1 of the *Consumer Protection Act*.

9. The Supplier acknowledges that they were advised by AMVIC and are aware that they are entitled to seek independent professional advice regarding the signing of this Undertaking, and the Supplier acknowledges they are entering into this Undertaking voluntarily.

IN WITNESS WHEREOF the Supplier, has on the 27 day of January, 2025.

**Heninger Motors GP Inc.  
o/a Heninger Toyota**

PER: "original signed by"  
Mitch Massey  
Director

ACCEPTED by the Director of Fair Trading on the 28 day of January, 2025

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