

January 31, 2025

Administrative Review – 24-05-003
Served via email: [REDACTED]

Administrative Penalty

MARTIN CHRYSLER LTD.
879 3 STREET W
BROOKS, AB
T1R 0Y6

Attention: Randy Lauber and Jamie Lauber

Dear Randy Lauber and Jamie Lauber:

Re: Martin Chrysler Ltd. – Provincial Automotive Business Licence No. B025755

As the Director of Fair Trading (as delegated) (the “Director”), I am writing to you pursuant to Section 158.1(1) of the *Consumer Protection Act* (“CPA”) to provide you with written notice of the Administrative Penalty issued under that section.

Facts

The evidence before me in relation to this matter consists of the material contained in an Alberta Motor Vehicle Industry Council (“AMVIC”) industry standards department application report (the “Application Report”) prepared by an industry standards officer (“ISO”). A copy of the Application Report is attached as Schedule “A” to this letter. The Supplier provided written representations via email on Jan. 9, 2025 (attached as Schedule “C”), in response to the Proposed Administrative Penalty, which I have also taken into consideration.

Licensee Status

Martin Chrysler Ltd. (the “Supplier”) holds an automotive business licence and is licensed to carry on the designated business activities of new and used sales, garage, leasing, agent or broker, service station, autobody and wholesale sales in the Province of Alberta.

Direct communications with the Supplier and its representatives

1. On Oct. 7, 2015, a routine AMVIC industry standards inspection was completed at the business location of the Supplier. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on Oct. 13, 2015. The Findings Letter outlined some concerns including but not limited to:

- a) Advertising issues contrary to requirements in Section 11 of the Automotive Business Regulation (“ABR”) and Section 6 of the Cost of Credit Disclosure Regulation (“COC”).
 - b) During the inspection, four deals did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
 - c) Various issues with the completion of and/or disclosure of Mechanical Fitness Assessments (“MFAs”) contrary to Sections 15(1) and 16 of the Vehicle Inspection Regulation (“VIR”).
 - d) Discrepancy in information provided by a consumer in comparison to the information relayed to a financial institution in two consumer credit application including mortgage/rent payments, contrary to Section 6 of the CPA.
2. On Feb. 13, 2017, a followup AMVIC industry standards inspection was completed on the Supplier. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on Feb. 22, 2017. The Findings Letter outlined some concerns including but not limited to:
- a) Advertising issues contrary to requirements in Section 11 of the ABR and Section 6 of the COC.
 - b) During the inspection, five deals were reviewed by the ISO and of those five deals, one did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
 - c) Issues with the completion of and/or disclosure of MFAs contrary to Section 15(1) of the VIR.
3. On Sept. 18, 2023, a followup AMVIC industry standards inspection was completed on the Supplier. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on Sept. 19, 2023. The Findings Letter outlined some concerns including but not limited to:
- a) Advertising issues contrary to requirements found in Section 11 of the ABR.
 - b) During the inspection, five deals did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
 - c) Issues with the completion of and/or disclosure of MFAs contrary to Sections 15(1) and 16 of the VIR.
 - d) Some of the bills of sale (“BOS”) that were reviewed in the deal jackets had issues contrary to Section 31.2 of the ABR.
 - e) The Supplier was found to be engaging in unlicensed business activity contrary to Section 104(1) of the CPA and Section 7 of the ABR.
4. On April 8, 2024, a followup AMVIC industry standards inspection was completed on the Supplier. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on April 10, 2024. The Findings Letter outlined some concerns including but not limited to:
- a) Advertising issues contrary to requirements found in Section 11 of the ABR.

- b) During the inspection, four deals were reviewed by the ISO and compared with an advertisement and of those four deals, one did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
 - c) A number of the bills of sale that were reviewed in the deal jackets had issues contrary to Section 31.2 of the ABR.
 - d) Issues with the completion of and/or disclosure of MFAs contrary to Section 15(1) of the VIR.
5. Selling a vehicle over the advertised price was found in three of the four AMVIC inspections, based on the Findings Letters provided to the Supplier following each AMVIC industry standards inspection.
6. The Supplier provided written representations on Jan. 9, 2025, in response to the Proposed Administrative Penalty (see Schedule "C").

Applicable Legislation

Automotive Business Regulation

Records

Section 9

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

Advertising

Section 11

(2) A business operator must ensure that every advertisement for an automotive business that promotes the use or purchase of goods or services

(l) includes in the advertised price for any vehicle the total cost of the vehicle, including, but not limited to, all fees and charges such as the cost of accessories, optional equipment physically attached to the vehicle, transportation charges and any applicable taxes or administration fees, but not including GST or costs and charges associated with financing, and

(n) does not use false, misleading or deceptive statements, and

General codes of conduct

Section 12

Every business operator must comply with section 6 of the Act and in addition must (o) comply with any legislation that may apply to the selling, leasing, consigning, repairing, installing, recycling or dismantling of vehicles.

Bill of sale

Section 31.2

(1) A business operator engaged in automotive sales must use a bill of sale that includes the following:

- (a) the name and address of the consumer;
- (b) the number of the government-issued identification that the business operator uses to confirm the identity of the consumer;
- (c) the name, business address and licence number of the business operator;
- (d) if a salesperson is acting on behalf of the business operator, the name and registration number of the salesperson;
- (e) the make, model and model year of the vehicle;
- (f) the colour and body type of the vehicle;
- (g) the vehicle identification number of the vehicle;
- (h) the date that the bill of sale is entered into;
- (i) the date that the vehicle is to be delivered to the consumer;
- (j) an itemized list of all applicable fees and charges the consumer is to pay, including, without limitation:
 - (i) charges for transportation of the vehicle;
 - (ii) fees for inspections;
 - (iii) fees for licensing;
 - (iv) charges for warranties;
 - (v) taxes or levies, including GST;
- (k) the timing for payment by the consumer of the fees and charges under clause (j);
- (l) an itemized list of the costs of all extra equipment and options sold to the consumer in connection with the vehicle or installed on the vehicle at the time of sale;
- (m) the total cost of the vehicle, which must include the fees, charges and costs listed under clauses (j) and (l);
- (n) the down payment or deposit paid by the consumer, if any, and the balance remaining to be paid;
- (o) if the consumer is trading in another vehicle to the business operator in connection with the purchase of the vehicle,
 - (i) information about the vehicle being traded in, and
 - (ii) the value of the trade-in allowance incorporated into the cost of purchase of the vehicle;
- (p) the balance of any outstanding loan that is incorporated into the cost of purchase of the vehicle;
- (q) if, in connection with the purchase of the vehicle, the business operator enters into a credit agreement with the consumer or arranges a credit agreement for the consumer, the disclosure statement required under Part 9 of the Act;
- (r) an itemized list of any items or inducements the business operator agrees to provide with the vehicle at no extra charge;
- (s) the odometer reading of the vehicle at the time the bill of sale is entered into, if the vehicle has an odometer and the odometer reading is available to the business operator;
- (t) the maximum odometer reading of the vehicle at the time of delivery to the consumer if the vehicle has an odometer and

- (i) the odometer reading is not available to the business operator at the time the bill of sale is entered into, or
- (ii) the vehicle is a new, specifically identified vehicle;
- (u) any mechanical fitness assessment that has been issued under the Vehicle Inspection Regulation (AR 211/2006);
- (v) any disclosure statement or documentation respecting a vehicle's previous use, history or condition, including disclosure statements or documentation required under the laws of another jurisdiction;
- (w) a declaration that the business operator has disclosed to the consumer the information required under section 31.1.

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

Vehicle Inspection Regulation

Sale of used motor vehicle

Section 15

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

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

Expiry of mechanical fitness assessment

Section 16

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

Consumer Protection Act

Interpretation of documents

Section 4

If a consumer and a supplier enter into a consumer transaction, or an individual enters into a contract with a licensee and the licensee agrees to supply something to the individual in the normal course of the licensee's business, and

(a) all or any part of the transaction or contract is evidenced by a document provided by the supplier or licensee, and

(b) a provision of the document is ambiguous,

the provision must be interpreted against the supplier or licensee, as the case may be.

Duty to maintain records

Section 132

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

(a) complete and accurate financial records of its operations in Alberta for at least 3 years after the records are made, and

(b) other records and documents described in the regulations for the period specified in the regulations.

Administrative Penalties

Notice of administrative penalty

Section 158.1

(1) If the Director is of the opinion that a person

(a) has contravened a provision of this Act or the regulations, or

(b) has failed to comply with a term or condition of a licence issued under this Act or the regulations,

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

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

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

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

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

Right to make representations

Section 158.2

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

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

**Vicarious liability
Section 166**

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

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

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

A routine AMVIC industry standards inspection was completed on Oct. 7, 2015. The inspection findings were discussed with the Supplier and a Findings Letter was emailed to the Supplier on Oct. 13, 2015. The Supplier was not found to have sold vehicles over the advertised price.

Two subsequent AMVIC industry standards inspections were completed in 2017 and 2023. As a result of each inspection, a Findings Letter was completed and provided to the Supplier after each inspection providing education to the Supplier. The Findings Letters addressed a number of legislative breaches including the Supplier selling vehicles above the advertised price and compliance issues in relation to the completion and disclosure of MFAs.

On April 8, 2024 a fourth AMVIC industry standards inspection was completed on the Supplier. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on April 10, 2024. Based on the facts outlined in the Application Report and supporting documents (see Schedule "A"), I will be considering the alleged breaches from the 2024 AMVIC industry standards inspection.

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

During the April 8, 2024 inspection, the ISO found one vehicle was sold above the advertised price. Prices advertised must include all fees the seller intends to charge. The only fee that can be added to the advertised price is the goods and services tax ("GST"), and costs associated with financing as per Section 11(2)(l) of the ABR. Pre-installed products such as batteries and anti-theft must be included in the advertised price. Destination fees, documentation fees, the AMVIC levy and tire recycling levy must be included in the advertised price. In this consumer transactions the Supplier derived an economic benefit of **\$955.25** at the cost of the consumers.

- Stock No. TN255B was sold over the advertised price by \$955.25.

The application report on page 2, states 30 retail vehicle sale files were reviewed, four vehicle sale files had an advertisement to compare against the sold vehicle file and one vehicle was sold over the advertised price contrary to Section 11(2)(l) of the ABR.

In their Jan. 9, 2025 written representations the Supplier stated:

“Regarding the advertised vehicle prices, I must respectfully point out that our website is one of a few in Alberta that includes all fees associated with the vehicle, including the AMVIC fee of \$10. This means that the advertised price on our site is inclusive of all applicable costs, leaving no hidden or surprise fees for the consumer. It is common practice for dealerships to add an administrative fee to the vehicle price, which increases the overall price. However, we are fully transparent with our customers about this and ensure they are aware of the total cost before proceeding with any transaction.”

“In our financed deals we have charged a document fee to help pay our accountant, finance manager, and other office staff.”

As previously stated above, the Supplier is required to include all fees they intend to charge except GST and costs associated with financing, this includes administration fees. The evidence currently before the Director demonstrates the Supplier charged the consumer an “ADMIN” of \$699, the AMVIC levy of \$6.25 and a “VEHICLE INSPECTION FEES” of \$250 above the advertised price, for a total amount over the advertised price of \$955.25. A decision by a Service Alberta and Red Tape Reduction Appeal Board (attached as Schedule “D”) in which a business was charging an additional fee when consumers financed a purchase. The decision found that in accordance with the *Interpretation Act* and the preamble in the CPA, the business was found in breach of Section 11(2)(l) of the ABR when adding an additional fee when a consumer financed the purchase of a vehicle. At paragraph 56 the decision states:

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

While the Director commends the Supplier for being transparent with consumers so they are aware of what they will be charged, the Supplier must still comply with the legislation. The spirit and intent of the legislation is to create an even playing field between the consumers and the businesses as well as foster a fair marketplace. In the opinion of the Director, charging a fee to cover the business’ regular cost of operating when other businesses are including those costs in their advertised price does not foster a fair marketplace.

The Supplier was provided the education and the relevant legislation in the Findings Letter following each inspection and has had the opportunity to rectify their business practices, however continue to engage in selling over the advertising price.

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

B. Advertising Concerns (11(2)(n) ABR)

On the Supplier’s Kijiji advertisement, (Schedule “A”; Exhibit 7) in the description it states, “AMVIC inspected” which is misleading.

The Supplier advised in their written representations (see Schedule "C") that they have addressed this issue on Kijiji and their advertisements now state "AMVIC licensed" instead of "AMVIC inspected".

The advertisement (Schedule "A"; Exhibit 6.2) pulled by the ISO and date stamped March 3, 2024 had a disclaimer that stated, "Cash Price + applicable taxes and AMVIC fee of \$6.25. * Financing also requires PPSA and an Admin fee of \$699".

The AMVIC levy and any admin fees need to be included in the advertised price. The disclaimer uses descriptions and promises that are false and misleading contrary to Section 11(2)(n), as the Supplier is required to adhere to all-in pricing legislation in Section 11(2)(l) of the ABR.

As a Supplier, you are vicariously liable for all of your advertising. Using disclaimers do not exempt or absolve the Supplier's responsibility of adhering to legislative requirements.

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

C. Bill of Sale Issues (31.2 ABR)

On Oct. 31, 2018, legislation was put into effect with regards to BOS requirements. Between Sept. 25, 2018 and Nov. 6, 2018, AMVIC sent out a number of industry bulletins, updated the AMVIC website with information regarding the legislative amendments, sent multiple bulletins to inform the industry and the public regarding the changes, updated social media regularly, sent out a special edition of the IMPACT newsletter to the industry regarding the legislative changes and all AMVIC employees had an email signature attached to staff emails regarding the legislative changes. These are just a few of the initiatives that AMVIC took to ensure all licensees were advised of the legislative changes that were coming into effect on Oct. 31, 2018 regarding the BOS.

In reviewing the documentation before me, relating to the most recent inspection conducted on April 8, 2024, it is noted that the Supplier continues to not comply with the rather straightforward legislation when completing their BOS despite having been inspected and educated only one year earlier. Two of the four inspections conducted on the Supplier were after the legislative changes to BOS requirements.

The bills of sale reviewed were found to be incomplete in a number of instances:

- 15 bills of sale (Schedule "A"; Exhibits 14-28) were missing the consumer's government-issued identification number as required by Section 31.2(1)(b) of the ABR.
- Four bills of sale (Schedule "A"; Exhibits 29-32) were missing the salesperson registration number as required by Section 31.2(1)(d) of the ABR.
- One BOS (Schedule "A"; Exhibit 33) failed to list the colour of the vehicle contrary to Section 31.2(1)(f) of the ABR.

In addition, in some instances the Supplier is adding the "registration fee" with the "PPSA fee" together on the BOS. Each charge must be disclosed on their own line item and not combined.

The Supplier stated in their written representations to the Proposed Administrative Penalty (see Schedule "C") that "the Government ID concerns on the bill of sale have been resolved, and we now

ensure that all relevant government identification details are included on every bill of sale.” Additionally, the Supplier advised that they have “since updated our processes to ensure that the salesperson information is properly recorded, including the names and numbers of all owners and managers who engage in sales” and that they “have also made significant strides in ensuring that all paperwork is filled out completely and accurately”.

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

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

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

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.

The Supplier is currently using an MFA that is non-compliant. In addition, the MFA being used by the Supplier contains the AMVIC logo and it should not as the MFA is a requirement under Alberta Transportation. The current MFA that can be used by the automotive industry can be found on both the Government of Alberta’s website and AMVIC’s website for convenience.

The MFAs reviewed identified the following issues/concerns:

- Two MFAs (Schedule “A”; Exhibits 8 and 9) were signed by the consumers after the date the Supplier entered into a contract to sell the vehicles contrary to Section 15 of the VIR. Section 15 of the VIR require the MFA to be provided before entering into a contract to sell a motor vehicle.
- One MFA (Schedule “A”; Exhibit 10) is missing the previous province of registration as required by Section 15(1)(b) of the VIR.
- One MFA (Schedule “A”; Exhibit 11) did not have an odometer reading and is also missing the previous province of registration as required by Section 15(1)(b) of the VIR.
- One used vehicle sale deal jacket did not contain an MFA (Schedule “A”; Exhibit 13). The Supplier is required to provide a consumer an MFA before entering into a contract to sell a motor vehicle in accordance with Section 15(1) of the VIR.
- All the MFAs currently before the Director do not contain a statement that the MFA expires in 120 days as required by Section 15(1)(d) of the VIR.

It is further noted that the MFAs completed in relation to Stock No. JU1639 (Schedule “A”; Exhibit 10) and Stock No. JU1667 (Schedule “A”; Exhibit 11) are signed by the consumers, however the space on the MFA that indicates what day the consumer signed the MFA was not completed. By failing to complete

the MFA in full and include the date the consumer signed the MFA, the Director is unable to determine whether the MFA was given to the consumer prior to entering into a consumer transaction as per legislative requirements and is therefore ambiguous. The legislation is very clear, that being negligent in keeping records is not only an offence under the CPA but in addition, if a provision of the document is ambiguous, the provision must be interpreted against the Supplier in accordance with Section 4 of the CPA.

In their written representations (see Schedule "C") the Supplier advised:

"The reason we encounter some bills of sale that have been signed prior to completing a Mechanical Fitness Assessment (MFA) is that our customers trust us implicitly. They understand that any issues uncovered during the MFA will be promptly addressed and resolved by us. This practice reflects our commitment to upholding the highest standards of customer service and ensuring our customers receive the best value possible. The customers want to take the bill of sale with them so they can get insurance and registration without having to come back to the dealership multiple times."

The Supplier did not address the additional compliance issues with the MFA in their written representations. The Director commends the Supplier for addressing and resolving any issues uncovered when the MFA is completed, however the legislation requires a valid MFA to be provided to a consumer prior to entering into a transaction to sell a motor vehicle. While the Director understands that a consumer may want to reduce the number of times they attend the Supplier or have demands during the process of purchasing a vehicle, the Supplier must still comply with the legislation in the course of the transaction with the consumer.

By failing to provide an MFA prior to entering into a consumer transaction or properly complete the MFA as required, the Supplier has breached the legislative requirements as per Section 15(1) of the VIR and Section 12(o) of the ABR.

E. Maintain Records (132 CPA and 9 ABR)

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

Issues that the Director found in the Application Report in relation to the 2024 inspection findings include compliance issues with the completion of and/or disclosure of MFAs, and compliance issues with the completion of their BOS. The legislation is very clear, that being negligent in keeping records is not only an offence under the CPA but in addition, if a provision of the document is ambiguous, the provision must be interpreted against the Supplier in accordance with Section 4 of the CPA. The Supplier is vicariously liable for all records created and maintained by an employee or agent acting on behalf of the Supplier in the course of completing the Supplier's delegated business activities.

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

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

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

Administrative Penalties (*Consumer Protection Act*) Regulation

Amount of administrative penalty

Section 2

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

Based on the totality of all of the issues and concerns with the Supplier’s paperwork on a balance of probabilities, the Director does find that the Supplier is in contravention of Section 132 of the CPA and Section 9 of the ABR.

F. Other Considerations

In addition to the individual education AMVIC provided the Supplier in the form of the Findings Letters provided after each AMVIC industry standards inspection, AMVIC has issued industry bulletins and newsletters over the past two years explaining advertising regulations to educate the automotive industry as a whole. As a licensed member of the automotive industry, the Supplier would have received the AMVIC industry bulletins and newsletters, and in the opinion of the Director, is expected to have reviewed these education bulletins and newsletters to ensure their business practices are in compliance.

In their written representations to the Proposed Administrative Penalty the Supplier stated “*I respectfully question why we are being penalized when we are, in fact, adhering to the spirit of transparency and fair dealing that AMVIC seeks to promote.*” As stated above, while transparency, good customer service and fair treatment of consumers is important, it does not absolve the Supplier of ensuring they are in compliance with the legislation that governs the automotive industry.

There exists an onus on the Supplier to do their due diligence and ensure they are complying with the legislation that governs the regulated industry they have chosen to be a member of. The Supreme Court of British Columbia in *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers, 2014 BCSC 903* addressed the issue of the onus and responsibility the Supplier has when operating within a regulated industry. The court at paragraph 59 stated:

“In my view, it is incumbent upon a party that operates within a regulated industry to develop at least a basic understanding of the regulatory regime, including its obligations under the regime, as well as the obligations, and the authority, of the regulator.”

Further, a recent Service Alberta Appeal Board decision rendered a decision (attached as Scheduled “E”) and addressed the onus and responsibility of salespeople and Suppliers. The appeal board 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’s business practices discussed above leverages the Supplier’s knowledge and position, and does not foster a level playing field between the consumer and the Supplier, leading to financial harm to consumers. It further concerns the Director that the Supplier has continued to breach rather straightforward legislation, to the financial detriment of consumers, despite the education provided by AMVIC.

The aggravating factors in this matter include the resulting financial impact adversely affecting the consumer due to paying over the advertised price, in one transaction the Supplier derived an economic benefit of **\$955.25** and continued non-compliance with the rather straightforward requirements of the legislation despite education provided to the Supplier. While the Supplier did not provide evidence to support the changes they have made as indicated in their written representations, the Director will take into consideration that the Supplier indicated they have updated their processes to ensure they are completing their paperwork in full and accurately, as well as removing “AMVIC inspected” from their advertisements as mitigating factors in this matter.

This Administrative Penalty is taking into account the number and seriousness of the contraventions of the legislation found during the fourth inspection; and the aggravating and mitigating factors listed above.

The amount of the Administrative Penalty cannot be viewed as a cost of doing business but rather as a deterrent for continuing to engage in non-compliant business practices.

Action

In accordance with Section 158.1(a) of the CPA and based on the above facts, I am requiring that Martin Chrysler Ltd. pay an Administrative Penalty. This is based on my opinion that Martin Chrysler Ltd. has contravened Sections 9, 11(2)(l), 11(2)(n), 12(o) and 31.2 of the ABR, Section 15(1) of the VIR, and Section 132 of the CPA.

Taking into consideration all the representations made by the Supplier and the representations made by AMVIC’s industry standards department, the amount of the Administrative Penalty is **\$7,500**.

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 harm on the persons adversely affected by the contraventions or failure to comply;
2. The economic benefit derived from the contraventions or failure to comply;
3. The maximum penalty under Section 158.1(3) of the CPA of \$100,000; and
4. The deterrent effect of the penalty.

The amount of the Administrative Penalty is \$7,500.

Pursuant to Section 3 of the Administrative Penalties (*Consumer Protection Act*) Regulation, you are required to submit payment within **thirty (30) days** of the date of service of this notice. Failure to pay the Administrative Penalty will result in a review of the licence status. Payment may be made payable to the **“Government of Alberta” and sent to AMVIC** at:

Suite 303, 9945 – 50th Street
Edmonton, AB T6A 0L4.

If payment has not been received in this time period, the Notice may be filed in the Court of King’s Bench and enforced as a judgement of that Court pursuant to Section 158.4 of the CPA and further disciplinary action will be considered.

Section 179 of the CPA allows a person who has been served a notice of Administrative Penalty to appeal the penalty. To appeal the penalty, the person must serve the Minister of Service Alberta and Red Tape Reduction

Minister of Service Alberta and Red Tape Reduction
103 Legislature Building
10800 - 97 Avenue NW
Edmonton, AB
Canada T5K 2B6

with a notice of appeal within **thirty (30) days** after receiving the notice of Administrative Penalty. The appeal notice must contain your name, your address for service, details of the decision being appealed and your reasons for appealing.

Pursuant to Section 180(4) of the CPA, service of a notice of appeal operates to stay the Administrative Penalty until the appeal board renders its decision on the appeal or the appeal is withdrawn.

Under Section 4 of the Administrative Penalties (*Consumer Protection Act*) Regulation, the fee for appealing an Administrative Penalty is the lesser of \$1,000 or half the amount of the penalty. As such, the fee for an appeal of this Administrative Penalty, should you choose to file one, would be \$1,000. Should you choose to appeal this Administrative Penalty, you must send the appeal fee to the Minister of

Service Alberta and Red Tape Reduction at the above noted address, made payable to the "Government of Alberta".

Yours truly,

"original signed by"

Alberta Motor Vehicle Industry Council (AMVIC)
Gerald Gervais, Registrar
Director of Fair Trading (as Delegated)

GG/ks
Encl.

cc: Roxanne S [REDACTED], Manager of Industry Standards, AMVIC