ALBERTA CONSUMER SERVICES APPEAL BOARD

IN THE MATTER OF AN APPEAL BY
1185140 ALBERTA LTD. OPERATING AS SHERWOOD PARK TOYOTA
PURSUANT TO SECTION 179 (1) OF THE
CONSUMER PROTECTION ACT
RSA 2000 c. C-26.3

AND

IN THE MATTER OF THE DECISION BY THE ALBERTA MOTOR VEHICLE INDUSTRY COUNCIL TO ISSUE AN ADMINISTRATIVE PENALTY OF $80,000 TO 1185140 ALBERTA LTD. OPERATING AS SHERWOOD PARK TOYOTA FOR CONTRAVENING SECTIONS 132 OF THE *CONSUMER PROTECTION ACT*, SECTIONS 9, 11(2)(l), 11(2)(m), 11(2)(o), 12(o) AND 31.2(1) OF THE *AUTOMOTIVE BUSINESS REGULATION*, SECTION 15 AND 16 OF THE *VEHICLE INSPECTION REGULATION*.

DECISION OF THE APPEAL BOARD

THE PANEL:

Michael Swanson KC (Chair)
Judy Tran (Panel Member)
Megan Perry (Panel Member)

APPELLANT:
Michael Burokas, legal counsel, 1185140 Alberta Ltd. operating as Sherwood Park Toyota (the "Appellant")
Burokas Law, Toronto, Ontario

RESPONDENT:
Ashley Reid, legal counsel, Alberta Motor Vehicle Industry Council (the "Respondent")
Shores Jardine LLP, Edmonton, Alberta

DATE PRONOUNCED: July 1, 2025

RELEVANT LEGISLATION

Consumer Protection Act, RSA 2000, c C-26.3 ("CPA")
Automotive Business Regulation, Alta Reg 192/1999 ("ABR")
Cost of Credit Disclosure Regulation, Alta Reg 198/1999 ("CDR")
Vehicle Inspection Regulation, Alta Reg 211/2006 ("VIR")
Appeal Board Regulation, Alta Reg 195/1999 ("ABdR")

NATURE OF THE APPEAL

[1] This appeal arises from an administrative penalty in the amount of $80,000 issued by the Director of Fair Trading ("the Director") against the Appellant on March 22, 2024 (the "Penalty").

[2] The Appellant has an automotive business license that specifically permits business activities including new and used sales, garage, leasing, and wholesale sales in the Province of Alberta.

[3] Prior to the Penalty, a total of five industry standards inspections were conducted by the Respondent at the business premises of the Appellant.

[4] The first of these inspections occurred on August 19, 2015. Following the inspection, a Findings Letter outlining the inspection findings was sent to the Appellant. The Findings Letter on this occasion included the following specific concerns:

a) Advertising issues contrary to s. 11 of the ABR and section 6 of the CDR.
b) Mechanical Fitness Assessment ("MFA") issues contrary to s. 15 of the VIR.

[5] On this occasion, there was no indication or specific findings that the Appellant had sold any vehicles above the advertised price.

[6] A follow-up AMVIC industry standards inspection was conducted on March 15, 2017. A Findings Letter outlining the inspection findings was sent to the Appellant on March 27, 2017. The Findings Letter on this occasion included the following specific concerns:

a) Advertising issues contrary to requirements in s. 11 of the ABR.
b) During the inspection, eight transactions or "deals" were reviewed by the industry standards officer ("ISO") and of the eight, two did not reflect all-in pricing contrary to s. 11(2)(l) of the ABR.
c) One salesperson designated to sell vehicles on behalf of SP Toyota had an expired salesperson registration contrary to the ABR.

d) Various issues regarding completion of and/or disclosure of MFAs contrary to s. 15(1) and s. 16 of the VIR.

[7] Another follow-up industry standards inspection was conducted on May 3, 2019. A Findings Letter outlining the inspection findings was sent to the Appellant on June 4, 2019. The Findings Letter on this occasion included the following specific concerns:

a) During the inspection, 17 deals were reviewed by the ISO and of the 17, four did not reflect all-in pricing contrary to s. 11(2)(l) of the ABR.
b) Two salespeople designated to sell vehicles on behalf of SP Toyota had expired salesperson registrations contrary to the ABR.
c) Issues regarding completion of and/or disclosure of MFAs contrary to s. 15(1) and s. 16 of the VIR.

[8] Another follow-up industry standards inspection was conducted by telephone (instead of in-person) on account of the COVID-19 pandemic. A Findings Letter outlining the inspection findings was sent to the Appellant on August 13, 2021. The Findings Letter on this occasion included the following specific concerns:

a) During the inspection, seven deals were reviewed by the ISO and did not reflect all-in pricing contrary to s. 11(2)(l) of the ABR.
b) Advertising issues contrary to s.11 of the ABR.
c) Issues regarding completion of and/or disclosure of MFAs contrary to s. 15(1) of the VIR.
d) Several Bills of Sale ("BOS") had issues contrary to s. 31.2 of the ABR.

[9] The fifth industry standards inspection was conducted on January 17, 2023. A Findings Letter outlining the inspection findings was sent to the Appellant on January 24, 2023. The Findings Letter included the following concerns:

a) During the inspection, 31 deals were reviewed by the ISO and of the 31 deals, 14 did not reflect all-in pricing contrary to s. 11(2)(l) of the ABR.
b) Advertising issues contrary to s. 11 of the ABR.
c) Several of the BOS had issues contrary to s. 31.2 of the ABR.
d) Issues regarding completion of and/or disclosure of MFAs contrary to s. 15(1) and s. 16 of the VIR.

[10] Following the January 2023 inspection and having considered written representations from legal counsel acting for the Appellant, the Director issued the Penalty in the amount of $80,000. In determining this amount, the Director took into consideration:

i) The degree of willfulness or negligence in the contravention or failure to comply,
ii) The financial harm on the persons adversely affected by the contraventions or failure to comply,
iii) The seriousness of the contraventions or failure to comply,
iv) The economic benefit derived from the contraventions or failure to comply,
v) The maximum administrative penalty that may be imposed for the contravention of s. 132 of the CPA,
vi) The maximum penalty under s. 158.1(3) of $100,000, and
vii) The deterrent effect of the penalty.

[11] The Appellant filed a notice of appeal disputing the Penalty on April 18, 2024.

[12] The following grounds were advanced in the notice of appeal and are recited verbatim:

[13] The Decision is based entirely on illegally obtained evidence and cannot be relied on by the Director in the Decision. The relevant AMVIC inspector attended the Appellant's place of business for the purpose of conducting an "inspection" under subsection 147(1) of the *Act*. Inspector was required to first explain to the Appellant's agent that they wished to enter the business premises for the purposes of carrying out an investigation and request permission. The inspector can only enter the business premises and make copies of the Appellant's records with their permission. The inspector failed to comply with these obligations and illegally obtained documents in which the Decision entirely relies on.

[14] The Director was without jurisdiction to impose an administrative penalty under s. 158.1(1) of the Act for alleged contraventions of the *Vehicle Inspection Regulation*, Alta Reg 211/2006 (*VIR*). Section 158.1(1) gives the Director the jurisdiction to impose administrative penalties for alleged contraventions of the *Consumer Protection Act*, RSA 2000, c.C-26.3 (*the Act*) or its regulations. The *VIR* is a regulation under the Traffic Safety Act and therefore not subject to section 158.1(1) of the *Act.*

[15] The Director erred by concluding the Appellants violated the sections of the *Consumer Protection Act*, RSA 2000, c. C-26.3 (the Act), *Automotive Business Regulation*, Alta Reg 192/1999 (*ABR*), and *Vehicle Inspection Regulation*, Alta Reg 211/2006 (VIR), outlined in the Decision, specifically but not exclusively due to the following:

a. With respect to the advertised price:

i. By failing to recognize that sale prices exceeded advertised prices due to accessories and/or work sought by the consumer that was not physically attached to the vehicle at the time of advertising;

ii. By conflating completeness and accuracy of documents pertaining to accessories with the issue of whether they were provided on a vehicle;
iii. By failing to recognize that the sale of a vehicle is not applicable to the subsequent advertisement of the vehicle;
iv. By failing to recognize that an AMVIC employee advised the Appellant they could charge a documentation fee when selling a vehicle for less than advertised, and;
v. By assuming contraventions from incomplete advertisements.

b. With respect to maintaining records:

i. By reading in an accuracy standard into non-financial records of the Appellant, and;
ii. By nevertheless equating ambiguity with incomplete or inaccurate records.

[16] The Director misapplied section 4 of the Act to favour his position in the Decision. Section 4 permits an interpretation against a supplier when there are two competing interpretations of an ambiguous provision-one favoring a consumer and one favoring a supplier. It does grant the Director the authority to automatically dismiss the Appellants documents outright because he finds them ambiguous.

[17] The Administrative Penalty assessed by the Director is unreasonable, excessive, and grossly disproportionate to the Appellant's conduct. The Director further failed to consider, or misapplied, the factors outlined in subsection 2(2) of the Regulation135/2013 related to administrative penalties, specifically but not exclusively whether genuine economic benefit derived from alleged contraventions of the *Act* or *ABR*. The Director further erred in dismissing mitigating factors such as the Appellant's good faith attempt to remedy issues generated by pre-existing practice software and the lack of genuine consumer harm.

[18] The Director erred by not affording the Appellants natural justice and procedural fairness generally.

[19] The Appellant asks the Appeal Board to quash the Penalty.

[20] In an Appeal Brief filed prior to the hearing, the Appellant submits that if the Appellant is "found guilty of violating the Act and its regulations as alleged, an appropriate fine is $5000".

[21] The Director on the other hand, asks the Appeal Board to confirm the Penalty without any variation.

PRELIMINARY MATTERS

[22] During a telephone pre-hearing conference ("PHC") hosted on May 21, 2024, the parties confirmed the Appeal Board's jurisdiction and agreed that the Respondent would provide disclosure not later than June 21, 2024.

[23] In an email dated July 10, 2024, the Appeal Board was advised that the disclosure provided was "potentially deficient" and that the Appellant was seeking additional disclosure.

[24] The request for additional disclosure was opposed on the basis that adequate disclosure had been provided by the Respondent on June 21, 2024.

[25] On July 11, 2024, the Chair directed that the issue of additional disclosure be addressed in the form of a pre-hearing application.

[26] Written submissions concerning the preliminary issue were requested from the parties.

[27] On September 11, 2024, the Appeal Board published its decision dismissing the Appellant's application for additional disclosure.

[28] A second PHC was held on August 8, 2024, whereupon the parties agreed that a four-day hearing would commence on November 19, 2024.

[29] Appeal Briefs were submitted by both parties prior to the hearing. The parties were unable to agree upon sufficient facts or exhibits to compile either an Agreed Statement of Facts or Book of Exhibits.

[30] Subsequently, the appeal of his matter proceeded to a 5-day hearing commencing on November 19, 2024.

[31] Upon conclusion of the evidence portion of the hearing on November 22, 2024, written submissions were requested by the Appeal Board.

[32] Although raised in the Appellant's notice of appeal, ultimately there were no submissions on behalf of the Appellant regarding natural justice and procedural fairness.

[33] There were no submissions on behalf of either party regarding costs.

ISSUES

[34] The issues raised in this appeal are:

i. On January 17, 2023, was AMVIC in fact conducting an "investigation" under the CPA, rather than an "inspection"? Can the documents and records reviewed or copied during the course thereof be relied upon as evidence in this hearing?
ii. Does s. 132 of the CPA apply to the seized documents and if yes, did the Appellant violate s.132?
iii. Did the Appellant violate s.9 of the ABR?
iv. Did the Appellant violate ss. 31.2(1), 11(2)(l), 11(2)(m), 11(2)(o), and 12 (o) of the ABR and s. 15(1) and s. 16 of the VIR?
v. If it is found that the Appellant violated the CPA or the regulations, is a defense of due diligence established?
vi. If it is found that the Appellant violated either the CPA or the ABR is the amount of the Penalty issued by the Director reasonable, or should the Penalty be varied by this Appeal Board?

JURISDICTION AND STANDARD OF REVIEW

[35] An administrative penalty may be issued under s. 158.1(1) of the CPA where the Director is of the opinion that a person has contravened a provision of the CPA or the regulations or has failed to comply with a term or condition of a license issued under the CPA or regulations.

[36] Section 158.1(3) of the CPA specifies that an administrative penalty must not exceed $100,000.

[37] Section 179(1)(e) of the CPA provides that a person to whom an administrative penalty is issued may appeal within 30 days after receiving notice.

[38] The Minister must, within 30 days after being served with a notice of appeal refer the matter to an Appeal Board appointed under s. 179(2) of the CPA.

[39] This Appeal Board was appointed on May 2, 2024, and given statutory jurisdiction to hear this matter pursuant to s. 179(4) of the CPA and s. 3 of the ABdR.

[40] In accordance with s. 179(8) of the CPA, this appeal is a new trial of the allegations raised in the Director's decision. Accordingly, the onus is on the Director to prove the allegations found in the Director's decision. For our purposes the Director's findings are

solely allegations; the Appeal Board is entitled to make findings of fact regarding the breaches alleged based on the evidence presented.

[41] In accordance with s. 179(6) of the CPA, the Appeal Board is entitled to vary, quash, or confirm the Director's decision.

[42] In arriving at a decision, the Appeal Board must consider the totality of the evidence to ultimately determine whether the administrative penalty was properly issued and whether the amount should be varied.

EXHIBITS

[43] The following Exhibits were entered into evidence at the hearing:

Exhibit 1	AMVIC Notice of Administrative Penalty
Exhibit 2	Notice of Appeal
Exhibit 3	AMVIC Book of Documents
Exhibit 4	Appellant Book of Documents
Exhibit 5	Phone Call Recording- AMVIC

THE DECISION

[44] For reasons that follow, the Appeal Board rules that:

i) AMVIC conducted an inspection and not an investigation on the business premises of SP Toyota on January 17, 2023. Accordingly, the Appeal Board does not need to consider whether the documents copied can be relied upon.
ii) Section 132 of the CPA applies to the seized documents; however, the Appellant was not in violation of this provision.
iii) The Appellant did not violate s. 9 of the ABR.
iv) The Appellant violated ss. 31.2(1), 11(2)(l), 11(2)(m), 11(2)(o), and 12 (o) of the ABR and s. 15(1) and s.16 of the VIR.
v) The Administrative Penalty issued on March 22, 2024, is varied to $50,000.
vi) The defense of due diligence has not been established.

THE HEARING

[45] The following witnesses testified:

i) Heather Bettke, AMVIC senior inspector, “Bettke” (Respondent)
ii) Dominic Ammar, SP Toyota employee “Anmar” (Appellant)
iii) Ayman Eldouik, SP Toyota employee, ‘Eldouik” (Appellant)
iv) Blake Hopp, SP Toyota employee, ‘Hopp” (Appellant)
v) Shafik Kassam, SP Toyota employee, “Kassam” (Appellant)
vi) Bo Wang, SP Toyota employee, “Wang” (Appellant)
vii) Chris Kambertz, SP Toyota employee, “Kambertz” (Appellant)
viii) Maulik Domadiya, SP Toyota employee, “Domadiya” (Appellant)
ix) Art Angeleski SP Toyota employee, “Angeleski” (Appellant)

ANALYSIS

Did the Respondent conduct an Investigation rather than an Inspection?

Appellant’s Position

[46] The Appellant argues that AMVIC’s attendance on January 17, 2023, was an investigation rather than an inspection and therefore required permission to copy or remove documents.

[47] Section 147 of the CPA specifically provides that:

> 147(1) An inspector who has reasonable grounds to believe that a person has committed an offence under this Act or the regulations may, after explaining to the person or to the person’s agent that the inspector wishes to enter the person’s business premises for the purpose of carrying out an investigation, request permission to enter the business premises.
>
> (2) If a person permits an inspector to enter business premises for the purposes of an investigation, the inspector may, with the permission of the person, inspect, examine and make copies of or temporarily remove books, records, documents or other things that are relevant to determine if an offence has been committed under this Act or the regulations.
>
> (3) When an inspector removes any books, records, documents or other things under subsection (2), the inspector:
>
> (a) must give a receipt for them to the person from whom they were taken,

(b) may make copies of, take photographs of or otherwise record them,
(c) must, within a reasonable time, return anything that has been copied to the person to whom the receipt was given, and
(d) must return everything else that was removed to the person to whom the receipt the receipt was given within a reasonable time after the investigation and any prosecution resulting from the investigation is concluded.

[48] The Appellant maintains that s. 147(1) of the CPA makes a distinction between the rights and obligations relevant to an "inspection" on the one hand, and the rights and obligations relevant to an "investigation" on the other. Section 145(1) of the CPA authorizes AMVIC inspectors to enter a dealership for the purpose of conducting an inspection in order to determine compliance with the CPA and regulations under the CPA. AMVIC inspectors are given authority to inspect, examine, and make copies of books, records or documents that are relevant to determining compliance under s. 145(4).

[49] The Appellant further contends that the distinction between an inspection and an investigation is articulated in s. 147(1) and means that an inspector who has reasonable grounds to believe that a dealer has committed an offence under the Act or the regulations, is not merely conducting an inspection, but is actually engaged in an investigation.

[50] The Appellant submits that as a consequence, where an inspector is engaged in an investigation, there is an obligation firstly, to explain their wish to enter the dealership and secondly, to request permission before doing so. They further submit that the inspector is then required under the CPA to obtain consent or permission from the dealer before removing or copying documentary or other evidence found on the business premises.

[51] The Appellant argues that on January 17, 2023, Bettke attended at SP Toyota for the specific purpose of conducting an investigation rather than an inspection alone and that she "thought she had reasonable grounds to believe the Appellant had committed an offence." The Appellant further argues that Bettke neglected to both explain that she was there for an investigation and to obtain consent or permission from the dealership before entering the business premises.

[52] The Appellant argues that Bettke thought that she had reasonable grounds to believe that SP Toyota had committed an offence for the following reasons:

1. a pattern of alleged conduct in previous inspections as outlined in the Administrative Penalty;
2. a series of complaints before the visit; and

3. confirmation given by the inspector that she was responding to a consumer complaint.

[53] For this reason, the Appellant argues that in failing to both give a proper explanation and to request permission from the dealership, Bettke had failed to comply with s. 147(1) of the CPA.

[54] The Appellant argues that the CPA "does not limit investigations to specific designated persons" and that the CPA "clearly indicates that an inspector with reasonable grounds is an investigator." The Appellant also submits that the CPA "doesn't limit the purpose of an investigation to charges laid under the Act." Therefore, it "cannot be argued that just because charges were not laid against the Appellant, an investigation did not occur."

[55] In the absence of consent or permission to enter the business premises the Director may apply to the Court of King's Bench for an order under s. 148.

[56] While addressing the distinction between "inspections" and "investigations", the Appellant refers the Appeal Board to the Alberta Court of King's Bench decision in *YTK Management* v. *Director of Fair Trades:*

> If an inspector is granted access to business premises, the inspector may examine the books and records of the business, if granted permission to do so. Inspectors may make copies of, and remove, books or records only *if granted permission* to do so. In other words, when conducting investigations, inspectors cannot compel production of business records and persons under investigation are not obligated to cooperate with inspectors. If a person does not cooperate, the Director may apply to this Court for an order compelling cooperation.

[57] The Appellants argue that the Respondent should not be permitted to rely on any documents examined or copied during Bettke's visit on January 17, 2023. They submit that on this occasion, Bettke attended SP Toyota specifically to conduct an investigation rather than an inspection.

Respondent's Position

[58] The Respondent argues that Bettke did not attend the business premises of the Appellant to conduct an investigation. In her own evidence, Bettke testified that investigations are not part of her job description and that she was only there to complete a follow-up inspection. The Respondent submits that because Bettke was not engaged in an

investigation she was neither required to provide an explanation nor to request permission before entering the business premises.

[59] The sole witness called to testify by the Respondent was Bettke. Bettke testified that she was appointed to the position of inspector under the CPA in November 2019 and was employed at the time of this matter as a senior inspector for the Alberta Motor Vehicle Inspection Council ("AMVIC").

[60] Bettke provided the following information to distinguish between investigators and inspectors. She explained that once appointed, an investigator is also recognized by statute as a peace officer. She advised that if there is a vehicle that has been purchased, the matter goes to an investigator to deal with. If however no vehicle has been purchased, the consumer receives a letter and the complaint is closed. Then the matter goes to the inspections department. Inspectors don't receive documents and are not advised if there has been an offence or not.

[61] Bettke went on to describe in detail what happened during the course of the "inspection" that she conducted (acting alone) at the business premises of the Appellant on January 17, 2023. She testified that on that occasion the purpose of her visit was to follow up regarding a previous visit or inspection that occurred in August 2023 and also because of a complaint that concerned all-in pricing. During her visit, she reviewed records and documents concerning 31 new and used vehicle sales transactions or "deals". She further testified that in the case of most of these transactions, the Appellant had not complied with the provincial consumer protection legislation.

[62] Bettke testified this was a fifth inspection and the four previous ones were also relevant to her inspection on January 17, 2023. She testified that those inspections were conducted by AMVIC inspectors and occurred between August 2015 and August 2021.

[63] Bettke further testified that inspections in general require an in-person visit to the dealership with a purpose both to educate and to ensure compliance with consumer protection legislation.

[64] Bettke testified that the approach taken during inspections is generally "proactive" with three primary purposes which included to ensuring compliance, assisting in terms of changes to business practices, and providing assistance in terms of becoming compliant.

[65] Bettke also explained that a "courtesy inspection notice" was sent by email to the Appellant on January 3, 2023, a full two weeks prior to her visit. She went on to testify that routinely, an inspection would begin with an introduction to provide an explanation or reason for her visit. In most cases this was to conduct an inspection. At the conclusion

of her introduction, she would typically invite questions from the dealership before commencing the inspection.

[66] In light of the complaint on the Appellant's file, the concern on this visit was primarily in regard to "all-in pricing". She also explained that given that this was a fifth inspection, available sanctions would routinely include an administrative penalty.

[67] With respect to available sanctions, Bettke testified that "we don't like to give out administrative penalties", and asked "what was going to make Sherwood Park Toyota comply?" She added "what kind of message are we sending?"

[68] Under cross examination, Bettke testified that she functions as an inspector and does not conduct investigations. Since her appointment in 2019, she has conducted more than 300 inspections involving car dealerships. She also conducted the inspection at the Appellant's place of business in 2021. She testified that in January 2023, the Appellant was already on her list for a follow-up inspection, which was going to happen regardless of the complaint.

Appeal Board's Decision and Reasons

[69] The Appeal Board finds that the Respondent conducted an inspection rather than an investigation. The Appeal Board accepts the testimony of Bettke that her attendance was part of a routine follow up resulting from prior inspections, and would have occurred regardless of whether a complaint had been brought against the Appellant.

[70] The Appeal Board also accepts and considers relevant the testimony of Bettke that while she was aware of a complaint, she did not have a copy of the complaint. In other words, she did not come to the dealership armed with all the specifics for the purposes of investigating it. The Appeal Board acknowledges that the legislation grants the authority to AMVIC to conduct an investigation upon having probably grounds to suspect an offence, but that does not mean all attendances by AMVIC at a dealership will thereafter be construed as an investigation. The Appeal Board finds that the intention of the Respondent in sending Bettke to attend at the Appellant's dealership was to conduct an inspection and not an investigation.

Is Section 132 of the CPA applicable and if so did the Appellant violate this provision?

Appellant's Position

[71] Section 132(1) of the CPA provides that:

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.

[72] The Appellant contends that s. 132 of the CPA targets financial documents and so is not applicable to the subject documents as they are operational rather than financial in nature. They propose the legislation expressly limits the obligation to financial documents, which would encompass records such as bank statements, copies of cheques, financial reports, et. cetera, and not bills of sale ("BOS").

[73] The Appellant acknowledges that there are omissions in their BOS, but do not admit to having unclear or incorrect documents. The Appellant argues that any violation on their part is better dealt with under s. 31.2 of the ABR. They reiterate that breach of s. 31.2 has been admitted to. Put simply, they don't believe their conduct is additionally captured under s. 132 of the CPA.

Respondent's Position

[74] The Respondent submits that the language of s. 132 is not only confined to financial documents as s. 132(1)(b) expands and extends the obligation to create and maintain documents and records to "other records and documents described in the regulations for the period specified in the regulations".

[75] Section 9 of the ABR prescribes a three-year maintenance period for "all records and documents created or received while carrying on activities authorized by the licence…". The Respondent submits that the Appellant's licence allows them to engage in new and used vehicle sales, and so accordingly, records and documents related to such sales would be captured by s. 132(1)(b) of the Act. Other records and documents described in the regulations, the Respondent argues, necessarily includes complete and accurate records of the vehicle sale transactions that were reviewed on January 17, 2023. The Respondent also argues that this should extend to mechanical fitness assessments (MFAs) and BOS's.

Appeal Board's Decision and Reasons

[76] The Appeal Board finds that the Appellant did not violate s. 132 of the CPA. The Respondent is correct that s. 132(1)(b) expands document creation and maintenance obligations beyond financial documents. The Appeal Board agrees with the Respondent

that documents referenced in section 9 of the ABR are captured by s. 132(1)(b) of the CPA, which refers to documents described by the regulations. The Appeal Board also agrees with the Respondents that this would include operational documents, which the Respondent defines the BOS and MFA to be. However, unlike s. 132(1)(a) which obligates a licensee to create and maintain "complete and accurate financial records", s. 132(1)(b) only refers to an obligation to create and maintain "other records and documents…" with no completeness or accuracy obligation. In interpreting this section, we must assume that the words utilized by the legislators carry meaning; where subsection (a) expressly refers to completeness and accuracy, it must be assumed that if the legislators had intended to impose that obligation on the documents described in (b), they would have used those words. To take it upon ourselves as interpreters of the legislation to impose that obligation would be to usurp the authority of the legislators.

[77] The Appeal Board notes that no submissions were made by the Respondent nor did they allege that the subject documents were instead financial documents, such that they could be captured by subsection (a) of s. 132(1). Accordingly, the Appeal Board does not need to and has not considered this.

Did the Appellant Violate Section 9 of the ABR?

Appellant's Position

[78] Section 9 of the ABR specifically provides as follows:

> 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.

[79] The Appellant contends they did not violate s. 9 of the ABR because the crux of s. 9 is the obligation to "maintain" records; it does not impose an accuracy component or an obligation to create. They note that s. 9 of the ABR acknowledges the obligation to create and maintain financial records in s. 132 of the CPA, but then imposes a separate, additional obligation to *"…maintain* all records and documents created or received while carrying on activities…" under a licence for at least three years. The Appellant asserts that the Respondent has not alleged records failed to be maintained for three years, and so the Appellant's conduct is not captured by this provision.

[80] The Appellant previously acknowledged errors in their BOS, and that these errors constitute a violation under s. 31.2(1) of the ABR.

Respondent's Position

[81] The Respondent asserts that s. 9 of the ABR imposes an obligation on the Appellant to maintain records. They contend that this also imposes an obligation that the records be complete and accurate.

Appeal Board's Decision and Reasons

[82] The Appeal Board concludes that there was no breach of s. 9 of the *ABR*. This provision appears to serve a dual purpose. It creates an offence if a licencee fails to maintain certain records for a three-year period. It also serves as a reference point for s. 132(1)(b) of the CPA*,* which is the provision that imposes an obligation to not just maintain but also create these documents. The Appeal Board has already determined there is no breach of s. 132(1)(b) because there is no accuracy obligation for non-financial documents. There has been no allegation that the Appellant failed to maintain any records for less than the requisite three years and there is no evidence before the Appeal Board to otherwise suggest any failure in that regard. The Appeal Board finds there is no breach of s. 9 of the ABR.

Did the Appellant violate sections 31.2(1), 11(2)(l), 11(2)(m), 11(2)(o), and 12(o) of the *ABR,* and section 15(1) and 16 of the *VIR*?

[83] The Appellant submitted sales documents regarding the 14 sales transactions identified by the Respondent to be in violation of the ABR s. 11(2)(l). Appendix A is the indexed list of these transactions.

Section 31.2(1) of the ABR

Appellant's Position

[84] Section 31.2 (1) of the ABR addresses specific information that must be included in a Bill of Sale.

[85] The Appellant admits to violating s. 31.2 (1) of the ABR. The Appellant acknowledges the BOS's did not itemize the add-ons; however they contend the consumers did receive these add-ons as purchased. The Appellant argues that this failure can be deterred by a fine of $5,000.

[86] Several witnesses testified on behalf of the Appellant regarding the sale process with the customer. They explained that the customer is initially greeted by a salesperson or sales manager, and then the salesperson works with the customer to determine the customer's needs. The salesperson fills out the Four Square document (a sales tabling document) and Offer to Purchase (OTP), and adds optional equipment if applicable. The finance department then works with the customer to determine payment terms and offer additional options including warranties and insurance. The sales manager signs off the BOS. In this process, the physical accessories may be documented in the Four Square document and the OTP by the salesperson, but they are not itemized on the BOS. The non-physical options (warranties and insurance) sold by the finance department are on the BOS.

[87] Angeleski testified regarding the BOS. He explained that the Appellant was using dealer management system software that was not able to itemize the accessories on the BOS. The system generated a lump sum that included the price of the base vehicle and accessories together on the BOS. He acknowledges he could have instructed his staff to hand-write the itemization of the accessories on the BOS during this time.

[88] Angeleski further explained that there were difficulties and delays upgrading the software system due to COVID. He presented a BOS under the new dealer management system currently in use, which shows how the price of accessories are itemized.

Respondent's Position

[89] The Appellant violated s.31.2(1) of the ABR. The January 17, 2023, inspection shows the Appellant continues to be non-compliant with straight-forward BOS legislation. Every BOS is missing:

i) the consumer's government issued identification (s. 31.2 (1)(b) of the ABR),
ii) the Supplier's AMVIC license number (s. 31.2 (1)(c) of the ABR),
iii) the required statement that an MFA had been issued under the VIR (s. 31.2 (1)(u) of the ABR),
iv) the declaration that the business operator had disclosed to the consumer the information required under s. 31.1 of the VIR ((s. 31.2 (1)(w) of the ABR).

[90] In reviewing the BOS's submitted with the Application Report, the Respondent finds three BOS's do not include a salesperson registration number in violation of s. 31.2(1)(d) of the ABR.

[91] Four sales transactions in addition to three transactions of the 14 sales transactions (Index 6, 7 and 14) listed in violation of s. 11(2)(l) of the ABR also in violation of s. 31.2(1) of the ABR by not itemizing add-ons.

[92] The deal summary and OTP for these transactions do not demonstrate a consistent connection between the extra equipment and options sold to the consumer and the deal summary and corresponding BOS. The Respondent questions how a consumer can be expected to know what the charges for extra equipment are. The Appellant is required to create accurate records in the course of completing designated activities they hold an AMVIC license for.

[77] The Respondent also notes the Appellant's BOS references the *Highway Traffic Act* which was repealed in 2003 and replaced by the *Traffic Safety Act* and its associated regulations which specifically include the VIR.

[78] The Respondent contends that the Appellant is required to comply with the legislation and explore suitable solutions if their current practices are not in compliance. They assert:

i) The BOS legislated requirements has been in effect since October 31, 2018. The Respondent took several initiatives to inform the industry of the requirements, including sending industry bulletins, updating its website, social media, sending newsletters and emails.
ii) The Respondent provided the Appellant a Findings Letter with legislation they must comply with as a result of their 2019 and 2021 inspection.
iii) The Respondent relies upon *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers, 2014 BCSC 903* that "it is incumbent upon a party that operates within a regulated industry to develop at least a basic understanding of the regulatory regime".
iv) A recent Service Appeal Panel Decision addresses the onus and responsibility of Suppliers: "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."

Appeal Board's Decision and Reasons

[79] The Appeal Board finds that the Appellant failed to comply with s. 31.2(1) of the ABR.

[80] Wherein accessories are sold, each BOS violated s. 31.2(1) of the ABR by failing to itemize the sale of accessories. The Appeal Board further find as follows:

i) The associated sales documents submitted by the Appellant (OTP, Four Square, work orders, warranty agreements, etc.) support that optional accessories were purchased by the consumer, however, these documents also do not show the actual price of the accessories. In addition, the accessories identified on the OTP or Four Square document did not always match the BOS; either the final sale was different than the OTP, or the terminology of the accessories was different from the OTP, and in some cases, the writing is illegible. It is not possible to identify the cost of each optional accessory from the sales documents.

ii) The Appeal Board acknowledges the Appellant's admission of error. However, the Board does not find this violation to be inconsequential. The consumer must be able to make an informed decision when purchasing a vehicle. Itemizing the sale of accessories ensures the consumer is aware of the item and the price of what they are purchasing. The BOS, as a contract, benefits the Appellant because their obligation to provide accessories to the consumer are not documented, whereas the consumer's obligation to pay the higher price (whatever that may be) is documented on the BOS.

iii) The Appeal Board acknowledges the Appellant's dealer management system was inadequate and could not itemize the accessories. However, it is the Appellant's responsibility to comply with legislation and to modify their processes to be compliant. The Appeal Board acknowledges Angeleski's admission that staff should have been instructed to manually itemize the accessories on the BOS. The Appeal Board also notes the OTP and Four Square document also do not itemize the price of accessories; at no point in the Appellant's sale process does the customer have in writing, the price of accessories. The omission of not providing the price of accessories in writing is both a failure of the Appellant's computer system and an intentional business practice. As such and in consideration of the Respondent's numerous and various efforts to educate the Appellant on legislative requirements, the Appeal Board finds the Appellant's continued non-compliance with legislation is especially egregious.

iv) The Appeal Board acknowledges the Appellant's new computer system itemizes the price of accessories; however, there is insufficient evidence this BOS fully complies with s.31.2 (1) of the ABR. The Appellant provided a sample BOS, however, it was not clear if a customer deposit was accounted for in the sample BOS. The Appeal Board also notes on the sample BOS that the GST amount appeared to have calculated from an amount that included the AMVIC and tire levy, which are not taxable.

[81] All BOS's are missing the consumer's government issued identification, the Appellant's AMVIC license number, the required statement that an MFA had been issued under the VIR, and the declaration that the business operator had disclosed to the consumer the information required under s. 31.1 of the VIR.

[82] The Appeal Board also finds that three BOS's do not include a salesperson registration.

[83] In review of the BOS's in Appendix A and the corresponding testimony by the Appellant's witnesses, the Appeal Board also finds it is unclear what items the GST was charged on and in some cases the GST was not itemized at all (Index 1, 2, 14). All BOS's except Index 14 did not account for the customer deposit, even though the OTP had identified a customer deposit.

[84] In summary, the Appeal Board finds the Appellant's violations s.31.2(1) of the ABR to be potentially harmful to the consumer, and a significant penalty is warranted. The Appeal Board also acknowledges the Appellant's admission of error, but concludes it is not minor or administrative in nature for the following reasons:

i) The level of obscurity and omissions in the BOS prevents the consumer's ability to make an informed purchasing decision and harms their ability to ensure they are receiving the goods and services they paid for. Without written record of the accessories and deposit, it is difficult for the consumer to confirm their purchase and payment with the Appellant.
ii) The omissions of other information such as the license number, MFA and VIR declaration also harm the ability of the consumer to make an informed purchasing decision. The disclosure of the Supplier's AMVIC license ensures the consumers are aware of the Appellant's business status. The requirement to state the MFA has been issued and that the Appellant has disclosed all information as required under the s. 31.1 of the VIR ensures consumers are informed of the vehicle's condition.
iii) The requirement to record the consumer's identification is a fraud prevention measure to protect consumers and the industry that should not be overlooked by the Appellant.

[85] A significant penalty is also appropriate considering the Appellant's history of violations. The Appellant was initially notified of potential violations under s.31.2(1) of the ABR on August 13, 2021 and has had ample time to modify their sales practices and documentation to comply with the legislation. The Respondent has provided sufficient educational resources to assist the Appellant in understanding their compliance obligations.

Section 11.2(l) of the ABR

Appellant's Position

[86] Section 11.2(l) of the ABR states that a business operator must ensure that every advertisement for an automotive business that promotes the use or purchase of goods or services 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.

[87] The Appellant argues that s. 11(2)(l) of the ABR ensures that prices in advertisements are accurate, it is a "truth in advertising" requirement. It does not mandate a price ceiling. There is no "bait and switch" if a consumer can purchase the vehicle at the advertised price. The Respondent has expanded the scope and intent of the legislation to dictate what the parties can negotiate. In this way, the Respondent has applied the legislation inconsistently and should find that any sales at prices lower than advertised price are equally in violation because other consumers would be unaware they could purchase the vehicle at a lower price. If the Board accepts the Respondent's position that the legislation imposes a price ceiling, the Appellant is nevertheless compliant on all transactions other than Index 1, 3 and 7.

[88] The Appellant further contends that when a consumer negotiates a price below the advertised price, they therefore did not attend the dealership in reliance on that advertised price, and the consumer protection motivation behind paragraph 11(2)(l) of the ABR is therefore not engaged.

[89] The Appellant has been warned on numerous occasions by AMVIC that if the selling price is less than the advertised price, it is permissible for a dealer to negotiate adding fees resulting in a price that is in excess of the advertised price if that is agreeable to the consumer as the consumer is no longer dealing with the advertised price. Ammar, Hopp and Angeleski testified this was their understanding of "all-in-pricing" as learned through experience and communication with other dealerships and persons in the automotive sales industry. The Appellant submits Exhibit 5, the phone recording between Ammar and an AMVIC call centre representative on March 6, 2024, supporting the same interpretation. It is likely others at AMVIC hold this interpretation and shared with the Appellant and others in the industry. One of AMVIC's bulletin cites that advertising non-compliance was found in 57% of inspections from 2021-22, showing this is a common misperception. The disconnect with AMVIC has apparently caused confusion, and it is reasonable that the Appellant was similarly confused at the time. Regarding due diligence, the Appellant's interpretation is not ignorance of the law, it is more similar to official inducement to breaking the law if AMVIC's interpretation turns out to be false.

[90] The legislation qualifies "optional equipment" as equipment that is physically attached to the vehicle and would not apply to optional equipment not physically attached. A consumer can request non-physical options such warranty and gap insurance when purchasing a vehicle. It is not possible for a dealer to predict this at the time of advertising. Ammar testified that etching is generally applied after customers agree to add this option. The Appellant's witnesses and documentation explains the details of the prices for each of the 14 sales. Each of the documents, aside from the work order and

Four Square agreements are signed by the customer. In totality, the evidence indicates the consumers purchased add-ons.

[91] The BOS, although deficient is not ambiguous in light of other documentation (the OTP, Four Square sheet, invoices charged to the Appellant for installation).

[92] The Appellant denies the Respondent's allegations that the 14 vehicles sold for more than their advertised price. The relevant sale price is higher than the advertised price due to options that were added after the time of advertising. The Appellant further adds that if there is any increase due to a $499 documentation fee, these excesses are relatively nominal. In every instance the consumer got value for the amounts they knowingly chose to expend on their vehicle.

Respondent's Position

[93] The Respondent submits that the Appellant breached the s. 11(2)(l) of the ABR by failing to include all fees and charges in the advertised price, the "all-in-price". The advertised price must include preinstalled products such as anti-theft, documentation fees, the AMVIC levy and tire recycling levy.

[94] The Respondent further submits that out of a small sample size of 31 deal jackets, 14 vehicles were sold above the advertised price. The Director found the documents to be so ambiguous it was not possible to accurately determine how the Appellant charged consumers. The Appellant is not being transparent with consumers; no document that is accessible to the consumer shows the cost of the add-on accessories. The Appellant provided invoices to show their cost of installing the accessories; the Respondent finds the price difference between the cost and sale price of the accessories and the lack of proper record keeping make it impossible to understand what the Appellant was charging consumers. Without transparency, the consumer is not able to make an informed decision to purchase accessories at the inflated price. The Appellant derived a total economic benefit of $61,428.96 from these 14 sales.

[95] The CPA is very clear that if a provision of a document is ambiguous, the provision must be interpreted against the Supplier (Appellant) in accordance with s. 4 of the CPA.

[96] The Appellant has been provided more than ample opportunity and education to rectify its business practice:

i) AMVIC provided letters to the Appellant listing the violations in 2017 (2 out of 8 deals), 2019 (4 out of 17 deals), 2021(7 deals). The Appellant's violations are increasing in number over time.
ii) Bettke testified that AMVIC regularly sends newsletters, bulletins and emails to all licensed businesses and salespersons to ensure industry-wide understanding of

compliance standards. These communications also serve to address recurring compliance issues, such as improper advertisements and pricing violations; the Appellant should be well aware of its legal obligations.

iii) The Respondent provided samples of nine AMVIC bulletins published between October 2021 and October 2022, addressing issues on advertising, "all-in-pricing" and record keeping.

Respondent's Post-Appeal Reply

[95] The Respondent submits that the legislation requires automobile advertisements to include the total cost of the vehicle including all fees and charges with very few exceptions. Broadly, the intention 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 […]."

[96] The Respondent also submits that dealerships cannot waive their obligations, and a consumer cannot waive its consumer protections under this legislation.

Appeal Board's Decision and Reasons

[97] The Appeal Board finds that the Appellant failed to comply with s. 11(2)(l) of the ABR.

[98] The inclusion of fees and charges in the advertised price of a vehicle implies a singular, "all-in price" for that vehicle in its current physical form. The advertised price includes all fees and charges (except GST and financing charges). It follows then, that a discount from the advertised price is a discount off the vehicle *with* these inclusions. It is not consistent for the Appellant to exclude inclusions that were "all-in" the advertised price when a customer negotiates from that price.

[99] The Appeal Board finds the Respondent has reasonably provided resources and communication to the Appellant on s. 11(2)(l) of the ABR. The Respondent's newsletters, bulletins, emails are circulated industry-wide, and cover topic of advertisement and recordkeeping. The Appellant also received findings letters in 2017, 2019 and 2021 addressing the issue, but failed to take corrective action. In determining the appropriate penalty, the Board considers the Appellant's history of increasing violations.

[100] The Appeal Board also acknowledges the phone recording with the AMVIC call centre representative suggests that "all-in-pricing" is not engaged when a customer negotiates a lower price than the advertised price. While this may support why the Appellant's position that there is a common misperception in the industry, it does not support the notion that the Respondent created inducements to violate the legislation. In light of the

Respondent's numerous official publications and findings letters on the subject of pricing, it is not reasonable for the Appellant to rely on discussions with other dealerships for interpretation of the legislation. The Board notes the phone call was made in March 2024, which is at least two months after the January 17 2023, inspection by the Respondent.

[101] The Appellant's sales documentation (the advertisement, the Four Square document, the OTP and BOS) do not show what is already included in the advertised price. The Appeal Board finds it is not possible to be certain the price differences are due to accessories added on the vehicle at the customer's request. The anti-theft and road hazard are pre-filled in the OTP template, suggesting it is the Appellant's standard practice to add these fees on top of the cash sale price.

[102] The sales documentation is ambiguous, considering the OTP, Four square documents, testimony of the sales staff, the evidence of warranty agreements and invoices charged by the Appellant for installation of accessories. The Appeal Board finds however that it is more likely than not that the majority of the difference between the advertised price and the cash sale price on the BOS is due to the options added on to the vehicles at the customer's request. The Appeal Board also finds that the differences between the sale price and advertised price is not as high as the Respondent's total economic benefit of $61,428.96 when the price of accessories and cashback amount (if applicable) are considered.

[103] Overall, in all 14 of the sales identified by the Respondent, the BOS shows the AMVIC levy and documentation fee were added after the cash sale price. The Appeal Board acknowledges Angeleski's forthright admission of this error in his testimony that this was "100% oversight, 100% our fault". The Appellant derived an economic benefit of at least $455.25 ($449.00 document fee + $6.25 AMVIC levy) in all 14 sales. Due to the ambiguity of the documents, the Appeal Board is unable to determine any other economic benefit derived from the sales but is persuaded that the majority of the sale price differences are due to customer-requested add-ons, either additional equipment installed, or warranties/insurance.

[104] Considering the history of violations, the ambiguous sales documentation and the derived economic benefit of at least $455.25 for each of the 14 sales, a significant penalty is warranted. To deter future violations, the penalty must exceed the cost-benefit difference realized when dealerships violate s. 11(2)(l) of the ABR.

Section 11(2)(m), 11(2)(o) and s. 12 of the ABR and s. 15(1) and s.16 of the VIR

Appellant's Position

[105] Section 11.2(m) of the ABR states that a business operator must ensure that every advertisement for an automotive business that promotes the use or purchase of goods or services includes the stock number of the specific vehicle that is advertised as being available for sale at the time the advertisement is placed.

[106] Section 11.2(o) of the ABR states that a business operator must ensure that every advertisement for an automotive business that promotes the use or purchase of goods or services does not advertise a specific vehicle for sale if more than 14 days have elapsed since the vehicle was sold.

[107] Section 15(1) of the VIR outlines information required on an MFA. Section 16 of the VIR states the MFA provided by the dealership expires 120 days after the date on which it was issued.

[108] The Appellant admits that it has contravened the specific sections of the ABR as outlined in the Administrative Penalty and is prepared to be penalized for these omissions. The Appeal Board should treat this admission as a mitigating factor. They further submit as follows:

i) Regarding s. 11(2)(m) of the ABR, Angeleski explained there was low inventory due to COVID and the vehicles were advertised to show customers what was available.
ii) Regarding s. 11(2)(o) of the ABR, Angeleski explained the dealer management system did not update the advertisements when the vehicles were sold.
iii) Regarding 12(o) of the ABR and s. 15(1) of the VIR Angeleski testified that the MFA's are a watered-down assessment and the Appellant performs a more comprehensive inspection of vehicles prior to sale. In some instances, customers wanted paperwork completed so that the vehicle could not be sold to anyone else. If on the day of delivery, the vehicle was not fixed to customer satisfaction, they would have the right to say no. Knowing the vehicle still required inspection, Angeleski admits the vehicle should have been written as a sale subject to inspection. Of the three transactions identified by the Respondent, there were no customer complaints.

Respondent's Position

Section 11(2)(m) of the ABR

[109] The Appellant failed to include stock numbers in nine advertisements for vehicles, contrary to s. 11(2)(m) of the ABR.

[110] The Appellant advertised nine "Factory Order" vehicles for sale. The advertisements did not list a stock number. The word "FactoryOrder[#]" is listed in the space where a stock number would typically be provided.

Section 11(2)(o) of the ABR

[111] The Appellant advertised two vehicles for sale more than 14 days after the vehicle was sold, contrary to s. 11(2)(o) of the ABR:

i) Stock Number TU25192A and H120097A were advertised for sale on January 29, 2023. The vehicles were sold on December 30, 2022, and December 7, 2022, respectively. The sale dates are more than 14 days before January 29, 2023.

Section 12(o) of the ABR and s. 15(1), s.16 of the VIR

[112] The Appellant breached s. 12(o)34 of the ABR and s. 15(1) of the VIR in three different vehicle sale transactions. The Appellant did not provide MFAs in accordance with s. 15(1) of the VIR.

[113] The Appellant failed to provide MFAs or valid MFAs to consumers or prior to the consumers entering a contract to purchase a vehicle contrary to s. 15(1) of the VIR:

ii) Stock no. S138218A was sold on December 5, 2022. The MFA is dated December 8, 2022.
iii) Stock no. TU24304A was sold on September 9, 2022. The MFA is dated September 10., 2022.
iv) Stock no. TU20710A, sold on January 4, 2023 with an expired MFA. The MFA is dated August 8, 2022, or 149 days before the vehicle sale. MFAs are valid for 120 days.
v) The MFAs issued for vehicle stock no. S138218A, TU24304A, and TU20710A do not list the vehicle type as required by s. 15(1)(a) of the VIR.

[114] The MFA is an integral document as it provides the consumer an assessment of the vehicle's condition and assists the consumer in making an informed decision.

[115] MFA violations were found in all five inspections in the Appellant's history. The Appellant has continued to engage in non-compliant business practices.

Appeal Board's Decision and Reasons

Section 11(2)(m) of the ABR

[116] The Appellant violated s. 11(2)(m) of the ABR. The Appeal Board acknowledges the Appellant's admission of this violation. The Appeal Board also acknowledges the violation occurred during COVID and was an exceptional time when inventory was very low, and the Appellant does not have a history of violating ABR s. 11(2)(m). Nonetheless, the advertisement of vehicles not in stock is deceptive and potentially harmful to consumers.

Section 11(2)(o) of the ABR

[117] The Appellant violated s.11(2) (o) of the ABR. The Board acknowledges the Appellant's admission of this violation. The Board acknowledges the Appellant's computer system did not update in a timely manner, however, it is the responsibility of the Appellant to ensure that advertisements are accurate and comply with legislation. The vehicles were advertised nearly one month after they were sold; this is plenty of time to make manual corrections if the computer system could not automatically remove the advertisements. The advertisement of vehicles not in stock is deceptive and harmful to consumers

Section 12(o) of the ABR and s. 15(1) of the VIR

[118] The Appellant violated s.12(o) of the ABR and s. 15(1) and s.16 of the VIR. The Appeal Board acknowledges the Appellant's admission of these violations. For a consumer to make an informed purchasing decision, the MFA is an essential document. Without a valid MFA, the consumer cannot confirm the vehicle's condition or even if the vehicle meets minimum safety standards. The disclosure of the MFA ensures transparency in the purchasing process and protects consumers from buying a vehicle with unknown mechanical issues that could lead to costly repairs. The Appeal Board does not consider

this a minor violation, and it is especially egregious that violations of VIR s. 15 (1) were found in each of the inspections since 2015. A significant penalty is warranted to discourage this violation from occurring again in the future.

Is a due diligence defense established?

Appellant's Position

[119] The Appellant's position is that if it is found they did violate provisions of the Act and the Regulations, a due diligence defense is established on the facts.

[120] The Appellant submits that it was reasonably mistaken concerning the scope of s. 11(2)(l) of the CPA and its application to deals negotiated outside of the advertised price or consumer transactions involving negotiated prices. In support the Appellant refers to the testimony of Ammar and the recording in Exhibit 5 as proof that similar beliefs concerning s. 11(2)(l) are regularly shared with the public on behalf of AMVIC resulting in widespread confusion. The Respondent also relies upon the published statement by AMVIC that "in 2021-2022, it was an issue in 57 per cent of inspections conducted." As a result, the Appellant argues that it is reasonable to conclude that the Appellant's understanding of s. 11(2)(l) might be similarly confused and operates as a valid defense.

Respondent's Position

[121] The Respondent's position is that a due diligence was not established. The Appeal Board heard testimony concerning the Appellant's apparent misunderstanding of s. 11(2)(l) of the CPA. The Respondent brings attention to the notion that it is unlikely that the Appellant knew at the time of posting an advertisement whether it would negotiate the price of a specific vehicle.

[122] The Respondent cautions that the 57 % statistic should not be given significant weight when determining whether the Appellant had a mistaken understanding of the application of s. 11(2)(l). The Respondent argues that even if the mistake of law issue does not preclude a defense of due diligence, the evidence is not sufficient to prove that the Appellant consulted with anyone at AMVIC before January 17, 2023 or for that matter that the Appellant was told by AMVIC that it did not need to include all fees and costs in the advertised price of a vehicle.

Appeal Board's Decision and Reasons

[123] The Appeal Board agrees with the Respondent that a mistaken understanding of the law and of the duties imposed by the law does not establish due diligence. To establish a due diligence defence the Appellant must show that it believed in a mistaken set of facts which if true, would render the act or omission entirely innocent. The Appellant failed to produce convincing evidence in support of its claim that a misunderstanding of s. 11(2)(l) and its application is widely held across the industry.

[124] The Appeal Board finds that the advertisements are subject to s. 11(2)(l) of the CPA and there is insufficient (or no evidence), or proof that the Appellant knew or even believed at the time that the advertisements were posted whether it would negotiate the price of a specific vehicle.

Was the amount of the Administrative Penalty reasonable?

Appellant's Position

[125] The Appellant submits that even if it is found that the Appellant has violated specific provisions of the statute and regulations, the quantum of the Administrative Penalty is unreasonable, excessive and grossly disproportionate to the conduct alleged and should be reduced to $5,000.

[126] The Appellant argues that "a $5,000 fine is appropriate in the circumstances". The Appellant further submits that this is especially the case given the absence of a prior history of noncompliance as well as its willingness to admit to contraventions under s. 11(2)(m), 11(2)(o), 12(o) and 31.2 of the ABR.

Respondent's Position

[127] The Respondent on the other hand submits that the violations warrant a significant administrative penalty especially when it comes to protecting the public and in light of the genuine economic benefit realized by the Appellant. The Respondent further argues that public protection is achieved by deterring the Appellant and other car dealerships from engaging in similar conduct in the future.

Appeal Board's Decision and Reasons

[128] The Appeal Board agrees that a significant administrative penalty is warranted in this particular case, however it finds that a penalty in the amount of $50,000 is sufficient to achieve deterrence. The Appeal Board wishes to emphasize that a reduction in the

amount of the Administrative Penalty should neither be construed nor understood as an indication that this matter is anything but extremely serious.

CONCLUSION

[129] The Appeal Board finds that the Appellant did not violate s. 132 of the CPA or s. 9 of ABR, but did violate ss. 31.2(1), 11(2)(l), 11(2)(m), 11(2)(o), and 12 (o) of the ABR, and s. 15(1) and s. 16 of the VIR. The Administration Penalty is hereby varied to $50,000.

ISSUED AND DATED at the City of Calgary in the Province of Alberta this 01 day of July 2025.

Michael Swanson
_____
Michael Swanson KC, Chair


_____
Judy Tran, Member


_____
Megan Perry, Member

Appendix A – Bills of Sale

Index #	Stock No.	Vehicle
1	TU20710A	2019 Toyota Tundra
2	TU25192A	2019 Toyota Tacoma
3	H120097A	2015 Lexus GS350
4	P2313A	2021 Toyota Highlander
5	TU30487A	2022 Toyota Sienna
6	TA38825	2023 Toyota Tacoma
7	S138218A	2015 Nissan Pathfinder
8	SU34243	2023 Toyota Supra
9	P2317	2021 Toyota Tacoma
10	TU38371	2023 Toyota Tundra
11	CO27964	2022 Toyota Corolla
12	TA24562	2022 Toyota Tacoma
13	TU32022	2023 Toyota Tundra
14	TA38716	2023 Toyota Tacoma