

In the Matter of an Appeal by 2189596 Alberta Ltd. Operating as Calgary Hyundai pursuant to Section 179 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 \$20,000 to Calgary Hyundai For Contravening Section 6(4)(a) of the *Consumer Protection Act*, RSA 2000, c C-26.3 and Section 11(2)(l) of the *Automotive Business Regulations*, Alta Reg 192/1999.

DECISION OF THE APPEAL BOARD

Appeal Board: Christopher Davison (Chair)

Dierdre Mullen (Board Member)

Kent Pallister (Board Member)

Counsel: Erin Oor: for the Appellant, 2189596 Alberta Ltd. Operating as
Calgary Hyundai

Aman Costigan: for the Respondent, the Director of Fair Trading (as
delegated) ("the Director")

OVERVIEW

1. The facts of this case are agreed to by the Director and the Appellant. In short, Calgary Hyundai has failed to include all applicable fees and charges in the advertised price of a vehicle and has taken actions that might have reasonably deceived a customer by advertising a vehicle for substantially less than they intended to sell it for. The Appellant has pleaded guilty to breaches of s. 11(2)(l) of the *Automotive Business Regulation*, Alta Reg 192/1999 ("ABR") and s. 6(4)(a) of the *Consumer Protection Act*, RSA 2000, c C-26.3 ("CPA"). The parties have jointly submitted that the Appellant should be fined \$15,000.

DECISION

2. For the following reasons, the Appeal Board ("the Board") accepts the guilty plea and sanction proposed, and makes the order requested.

JURISDICTION

3. On February 28, 2023, the Registrar of the Alberta Motor Vehicle Industry Council (“AMVIC”), acting as the Director, rendered a decision to impose a \$20,000 administrative penalty (“AP”) on the Appellant pursuant to s. 158.1(1)(a) of the *CPA*.
4. The Director’s decision found that the Appellant had violated the following sections of the following legislation:
 - a. S. 11(2)(l) of the *ABR*; and
 - b. S. 6(4)(a) of the *CPA*.
5. On March 9, 2023, the Appellant appealed the AP pursuant to s. 179 of the *CPA*.
6. On April 4, 2023, the Board was appointed and given jurisdiction over this appeal, pursuant to s. 179(4) of the *CPA* and s. 3 of the *Appeal Board Regulation, Alta Reg 195/1999* (“*APB*”).
7. Upon appeal, the findings described on the AP became allegations for the Board to determine in the context of a new trial (s. 179(8) of the *CPA*). A trial date was set for December 8, 2023.
8. Prior to the trial date, the parties indicated they would like to proceed by way of written joint submission.
9. The Director and the Appellant provided complete joint submissions on December 6, 2023.
10. This matter therefore proceeded in writing, without the need for a trial, pursuant to s. 13 of the *APB*.

FACTS

11. The Board accepts the jointly submitted facts. The jointly submitted facts are appended to this decision at Appendix A.
12. The joint submission contains the following key facts:
 - a. On July 19, 2022, a potential customer BB was quoted \$79,897.90 cash price for a 2022 Hyundai Ioniq 5 (“the vehicle”).

- b. At that time, the vehicle was advertised on Calgary Hyundai's website and Autotrader's website for approximately \$62,024.00. That is \$17,873.90 more than the advertised price.
- c. On July 19, 2022, the same potential customer BB was quoted \$78,000.00 with trade in for the vehicle. That is \$15,976.00 more than the advertised price.
- d. On July 21, 2022, Calgary Hyundai actually sold the vehicle to customer RW for \$82,860. At this time the vehicle was still being advertised on both websites for approximately \$62,024.00. That is approximately \$20,936.00 more than the advertised price.
- e. The vehicle was being advertised this lower rate because Calgary Hyundai's computer system auto-generated advertisements as soon as a vehicle was stocked into their computer system. Calgary Hyundai knew of these problems in early 2022 however did not fix the problem by installing a new computer system until September 15, 2022.
- f. Calgary Hyundai was aware or ought to have been aware of their obligation to ensure the advertised price included the total cost of the vehicle. As a result of being inspected by AMVIC, Calgary Hyundai had previously received letters from AMVIC on May 7, 2021 and July 6, 2022. These letters identified issues with Calgary Hyundai's compliance with all in pricing. The letters also reproduced sections 11(2)(l) of the *ABR* and s. 6(4)(a) of the *CPA*.
- g. Calgary Hyundai admits their actions might have reasonably deceived a consumer. Specifically, their actions of advertising a vehicle at substantially lower than they intended to sell the vehicle and their actions of adding an \$18,637.00 "market adjustment" charge to RW's bill of sale.

THE GUILTY PLEA IS ACCEPTED

13. S. 11(2)(l) *ABR* requires that a business operator ensure that every advertisement includes in the advertised price the total cost of the vehicle, not including GST or other costs associated with financing.

14. The Board finds that the agreed facts establish that the Appellant has committed the essential elements of this offence. The vehicle was sold to RW for more than \$20,000 over the advertised price. The amount paid over the advertised price was not GST or a cost associated with financing, so it should have been included in the advertised price. The guilty plea to s. 11(2)(l) *ABR* is accepted.
15. S. 6(4)(a) *CPA* states that it is an unfair business practice for a supplier to do or say anything that might reasonably deceive or mislead a consumer.
16. The Board finds that the agreed facts establish that the Appellant has committed the essential elements of this offence. Calgary Hyundai intended to sell the vehicle for considerably more than the advertised price, and therefore the advertisement might reasonably mislead or deceive a consumer. Calgary Hyundai's intent to sell for more than advertised price is demonstrated by the practice of adding a more than \$18,000 "market adjustment" fee to the bill of sale. The guilty plea to s. 6(4)(a) *CPA* is accepted.

THE PROPOSED SANCTION IS ACCEPTED

17. In accepting or rejecting a joint submission on sanction, the only test the Board must apply is whether the proposed sanction would bring the administration of justice into disrepute or is otherwise contrary to the public interest. This means that we must avoid "rendering a decision that causes an informed and reasonable public to lose confidence in the institution of the courts" (*R. v. Anthony-Cook*, 2016 SCC 43 (CanLII) at paras. 32, 33 and 34; *Timothy Edward Bradley v. Ontario College of Teachers*, 2021 ONSC 2303 at para. 14).
18. The joint submission on sanction is appended to this decision at Appendix B.
19. The Board finds the joint submission has been made with due consideration to the relatively high seriousness of the misconduct, Calgary Hyundai's negligence in not addressing their computer system despite having ample education and opportunity to do so, the impact on the victim, the fact Calgary Hyundai profited more than \$20,000 from their misconduct, and Calgary Hyundai's history of being warned, balanced against Calgary Hyundai taking responsibility for their misconduct, their efforts to change their business practices going forward, and the fact that this is the first time they have faced sanction for misconduct. The

proposed sanction also appears to be within the range of sanctions for similar offences, as described in the case law jointly provided.

20. The Board therefore finds the jointly proposed sanction would not cause an informed and reasonable public to lose confidence in the institution of the Consumer Services Appeal Board. While this is not the sanction the Board would have imposed, the Board does not find that the joint submission is contrary to the public interest.
21. In accepting this jointly proposed sanction, the Board recognizes the vital importance of the joint submission to the well-being of the administration of justice. We recognize joint submissions are commonplace and should be treated with due deference.
22. Accordingly, the Board accepts the sanction as jointly proposed, and imposes a \$15,000 fine.

CONCLUSION AND ORDER

23. In accordance with the reasons above, the Appeal Board orders as follows:
 - a. The Director's February 28, 2023 administrative penalty is varied.
 - b. 2189596 Alberta Ltd. operating as Calgary Hyundai is ordered to pay \$15,000 for breaches of s. 11(2)(l) of the *Automotive Business Regulation*, Alta Reg 192/1999 and s. 6(4)(a) of the *Consumer Protection Act*, RSA 2000, c C-26.3.
 - c. No decision is made as to costs.

ISSUED AND DATED at the City of Calgary in the Province of Alberta this 17 day of December, 2023



Christopher Davison, Chair
(on behalf of the Appeal Board)

APPENDIX A

IN THE MATTER OF AN APPEAL BY 2189596 ALBERTA LTD. OPERATING AS
CALGARY HYUNDAI PURSUANT TO SECTION 179(1) OF THE *CONSUMER
PROTECTION ACT*, BEING CHAPTER C-26.3 OF THE REVISED STATUTES OF ALBERTA

AND IN THE MATTER OF AN ADMINISTRATIVE PENALTY ISSUED BY THE DIRECTOR OF FAIR
TRADING (AS DELEGATED) ON FEBRUARY 28, 2023

AGREED STATEMENT OF FACTS AND ADMISSION

INTRODUCTION

1. At all relevant times, 2189596 Alberta Ltd. operating as Calgary Hyundai (the "Appellant") held Provincial Automotive Business Licence No. B2028251 issued by the Alberta Motor Vehicle Industry Council ("AMVIC").
2. Lief Sorensen is the sole director of the Appellant and the current dealer principal. Mr. Sorensen took ownership of the corporate Appellant on July 2, 2019.
3. The Appellant is licenced to carry on automotive business activities of new sales, used sales, retail sales, leasing, garage, agent or broker, and wholesale sales in the Province of Alberta. The Appellant has been in business since 1997 and sells approximately 1,200 vehicles annually.
4. On February 28, 2023, the Registrar of AMVIC, acting as the Director of Fair Trading (as Delegated) (the "Director"), issued a \$20,000 Administrative Penalty against the Appellant pursuant to section 158.1(1) of the *Consumer Protection Act* (the "Decision"). **[EXHIBIT 1]** The Director formed the opinion that the Appellant contravened
 - section 6(4)(a) of the *Consumer Protection Act*; and
 - section 11(2)(l) of the *Automotive Business Regulation*.
5. On March 10, 2023, the Appellant submitted a notice of appeal under section 179(1) of the *Consumer Protection Act*. **[EXHIBIT 2]**

BRIEF CHRONOLOGY

6. On July 26, 2022, AMVIC received a complaint from BB regarding the Appellant's advertisement of and pricing for a 2022 Hyundai Ioniq 5 (the "Vehicle"). **[EXHIBIT 3A]**
7. An AMVIC investigator investigated the complaint. The investigator and senior manager of investigations prepared an Application Report dated November 29, 2022, which described the

results of the investigation. The Application Report recommended that the Director issue an Administrative Penalty. [EXHIBIT 3]

8. The Director sent a letter to the Appellant dated November 30, 2022. The letter advised the Appellant of their opportunity to provide submissions about potential contraventions of the *Consumer Protection Act* and the *Automotive Business Regulation* at a future administrative review. The administrative review was held on January 31, 2023.
9. After the administrative review, the Director sent a letter to the Appellant dated February 6, 2023 advising of their intention to impose an Administrative Penalty. The letter informed the Appellant of a further opportunity to provide any information before the Director made a final decision. The Appellant provided written submissions dated February 20, 2023 for the Director's consideration. [EXHIBIT 4]
10. On February 28, 2023, the Director issued the Decision and ordered an Administrative Penalty of \$20,000.00 under section 158.1(1) of the *Consumer Protection Act*.

LEGISLATIVE FRAMEWORK

11. Advertisements for the purchase of new and used vehicles in Alberta must comply with the *Consumer Protection Act* and the *Automotive Business Regulation*.
12. Section 11(2)(l) of the *Automotive Business Regulation*¹ requires the advertised price of a vehicle be the total cost of a vehicle, including all fees and charges. The only items that are not required to be accounted for in the advertised price of a vehicle are GST or costs and charges associated with financing.
13. Section 6(4)(a) of the *Consumer Protection Act*² states it is an "unfair practice" for a supplier to do or say anything that might reasonably deceive or mislead a consumer. A reasonable

¹ *Automotive Business Regulation*, section 11(2)(l):

(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,

² *Consumer Protection Act*, section 6(4)(a) (continued on next page):

(4) Without limiting subsections (2) and (3), the following are unfair practices if they are directed at one or more consumers or potential consumers:
(a) a supplier's doing or saying anything that might reasonably deceive or mislead a consumer;"

consumer would expect the advertised price of a vehicle to be the total cost of the vehicle, excepting GST or charges associated with financing. A reasonable consumer could be deceived or misled by an advertised price or price quote that did not include applicable fees and charges.

AGREED FACTS SUPPORTING PROOF OF THE CONTRAVENTIONS

(i) Vehicle Price Quotes

14. On July 16, 2022, BB, a potential consumer, attended the Appellant’s dealership to negotiate a possible purchase of the Vehicle. The sales manager valued a trade-in of BB’s current vehicle at \$25,000. The sales manager wrote price quotes in BB’s notebook as follows: **[EXHIBIT 3G]**

Date	Cash Price Quote	Price Quote with Trade-In
July 16, 2022	\$80,000	\$58,000.00 + (\$25,000.00 trade-in) ³

15. On July 19, 2022, BB contacted the Appellant’s sales manager to inquire about a perceived discrepancy between the cash price quote and the trade-in price quote. The sales manager explained that the quote for the trade-in price did not include an IZEV rebate. **[EXHIBIT 3J]** The sales manager then provided updated price quotes:

Date	Cash Price Quote	Price Quote with Trade-In
July 19, 2022	\$79,897.90	\$53,000.00 + (\$25,000 trade-in) ⁴

16. The cash price quote provided July 19, 2022 was based on the following: **[EXHIBIT 3L]**

MSRP/Retail	\$62,523.00
Selling Price	\$62,523.00
Rebate	\$5,000.00
Total Savings + Rebate	\$5,000.00
Government Fee	\$126.25

³ The note written in BB’s notebook at Exhibit 3G does not contain the exact statement “\$58,000 + (\$25,000.00 trade-in)”. However, the parties agree that the charts in paragraphs 14, 15 and 21, and Tables 2 and 4 accurately reflect the quote that the sales manager provided in BB’s notebook.

⁴ Though the sales manager quoted the all-in trade-in price to be \$53,647.90, they indicated they could adjust the trade-in price to \$53,000.00.

Proc/Doc Fee	\$895.00
Accessories	\$17,555.00
Total Taxes	\$3,798.65
Amount Financed	\$79,897.90

17. The accessories fee of \$17,555.00 included the following items:

Alberta PDI	\$1,899.00
Paint Charge	\$200.00
Market Adjustment 25%	\$15,456.00

18. Following receipt of the quote on July 19, 2022, BB declined to purchase the Vehicle.

19. On July 21, 2022, the Appellant sold the Vehicle to RW. The Bill of Sale stated the cash price of the Vehicle was \$82,860.00, which included the following items: **[EXHIBIT 3M]**

Basic Vehicle	\$62,124.00
Alberta PDI	\$1,899.00
Paint charge	\$200.00
Market Adjustment	\$18,637.00

20. The difference between the market adjustment charge provided for in the quote on July 19, 2022 and the Bill of Sale dated July 21, 2022 is \$3,181.00

(ii) The Advertised Price

21. As shown in the above paragraphs 14 and 15, the Appellant's sales manager provided quotes to BB for the Vehicle on July 16, 2022 and July 19, 2022:

Date	Cash Price Quote	Price Quote with Trade-In
July 16, 2022	\$80,000.00	\$58,000.00 + (\$25,000.00 trade-in)
July 19, 2022	\$79,897.90	\$53,000.00 + (\$25,000.00 trade-in)

22. On July 18, 2022, BB reviewed advertisements on the Appellant's website and Autotrader's website for the same Vehicle model and trim level **[EXHIBITS 3H and 3I]**. The price listed in the advertisements differed from the prices quoted to BB by the amounts below:

Table 1: July 16, 2022 Cash Price Quote Comparison

Advertisement on the Appellant's Website	
Cash Price	\$80,000.00
Advertised Price	\$62,024.00
Total Difference	\$17,976.00
Advertisement on Autotrader's Website	
Cash Price	\$80,000.00
Advertised Price	\$61,924.00
Total Difference	\$18,076.00

Table 2: July 16, 2022 Price with Trade-In Quote Comparison

Advertisement on the Appellant's Website	
Price with Trade-In	\$83,000.00 (\$58,000.00 + \$25,000.00 trade-in)
Advertised Price	\$62,024.00
Total Difference	\$20,976.00
Advertisement on Autotrader's Website	
Price with Trade-In	\$83,000.00 (\$58,000.00 + \$25,000.00 trade-in)
Advertised Price	\$61,924.00
Total Difference	\$21,076.00

Table 3: July 19, 2022 Cash Price Quote Comparison

Advertisement on the Appellant's Website	
Cash Price	\$79,897.90
Advertised Price	\$62,024.00
Total Difference	\$17,873.90
Advertisement on Autotrader's Website	
Cash Price	\$79,897.90
Advertised Price	\$61,924.00
Total Difference	\$17,973.90

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Table 4: July 19, 2022 Price with Trade-In Quote Comparison

Advertisement on the Appellant's Website	
Price with Trade-In	\$78,000.00 (\$53,000.00 + \$25,000.00 trade-in)
Advertised Price	\$62,024.00
Total Difference	\$15,976.00
Advertisement on Autotrader's Website	
Price with Trade-In	\$78,000.00 (\$53,000.00 + \$25,000.00 trade-in)
Advertised Price	\$61,924.00
Total Difference	\$16,076.00

23. Three days after BB viewed the advertisements, the Appellant sold the Vehicle to RW at a price above that listed in the advertisements.

Table 5: July 21, 2022 Bill of Sale Cash Price Comparison

Advertisement on the Appellant's Website	
Cash Price of Vehicle (on Bill of Sale)*	\$82,860.00
Advertised Price	\$62,024.00
Total Difference	\$20,836.00
Advertisement on Autotrader's Website	
Cash Price of Vehicle (on Bill of Sale)	\$82,860.00
Advertised Price	\$61,924.00
Total Difference	\$20,936.00

*Note that the Bill of Sale includes charges in addition to the cash price of the Vehicle.

24. The Appellant acknowledges that the advertisements listed the Vehicle's price at the manufacturer's suggested retail price ("MSRP") and did not include all fees and charges.
25. At the relevant time, the Appellant used a computer system that generated advertisements. When a vehicle was stocked in the system as inventory, the system generated advertisements on various websites, listing the vehicles' price at MSRP.
26. The Appellant knew in early 2022 that their computer system generated advertisements that listed vehicles at MSRP. **[EXHIBIT 4]** The Appellant continued to use the computer system, despite knowing that the vehicles would be sold for a price above MSRP. The Appellant did not install a new computer system until September 15, 2022.
27. The Appellant was also aware or ought to have been aware of their obligation to ensure the advertised price of a vehicle included the total cost of the vehicle. The Appellants had previously received letters from AMVIC dated May 7, 2021 and July 6, 2022. **[EXHIBIT 3N]**.

28. The letter dated May 7, 2021 reproduced section 11(2)(l) of the *Automotive Business Regulation* and section 6(4)(a) of the *Consumer Protection Act*. The letter also noted several issues that were identified during AMVIC's investigation, including the following:

An archived advertisement from January 10, 2021 was located for the 2021 Hyundai Tuscon stating the advertised price was MSRP + fees. The advertised price must include all fees and charges the dealer intends to charge as well as any preinstalled products and services.

29. The letter dated July 6, 2022 reproduced section 11(2)(l) of the *Automotive Business Regulation*. The letter also noted several issues that were identified during AMVIC's investigation, including the following:

The vehicle was advertised for \$23,298. The advertised price must include all fees and charges the dealer intends to charge as well as any preinstalled products and services. Calgary Hyundai failed to adhere to the all in pricing requirement.

30. Further, on June 14, 2022 and July 18, 2022, AMVIC issued industry bulletins that discussed the all-in pricing requirement for advertisements. A reasonable business operator would read bulletins issued by their regulator, be aware of their obligations, and adhere to the all-in pricing advertising requirement. [EXHIBITS 5 – 6] Days after the July 18, 2022 bulletin, the Appellant's advertisements continued to list the Vehicle's price at MSRP.

ADMISSION

31. The Appellant acknowledges and admits that they contravened section 11(2)(l) of the *Automotive Business Regulation* by:

- a. Failing to include all fees and charges in the advertised price of the Vehicle on the Appellant's own website; and
- b. Failing to include all fees and charges in the advertised price of the Vehicle on AutoTrader's website.

32. The Appellant also admits that the following actions might have reasonably deceived or misled a consumer, such that the Appellant contravened section 6(4)(a) of the *Consumer Protection Act*:

- a. The Appellant advertised a sale price for the Vehicle that was substantially lower than the price at which they intended to sell the Vehicle; and

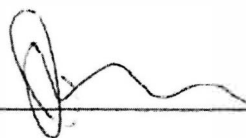
b. The Appellant added substantial market adjustment charges of \$15,456.00 (as quoted to BB as a potential consumer on July 19, 2022) and \$18,637.00 (as included on RW's Bill of Sale on July 21, 2022) within days of advertising the Vehicle's price at MSRP.

33. 2189596 Alberta Ltd. and Lief Sorensen each acknowledge that they have each obtained legal advice that is independent of AMVIC, of the Director of Fair Trading, and of any other employee, officer or agent of AMVIC with respect to signing this Agreed Statement of Facts and Admission.

Dated at City of Calgary, Alberta, this 28th day of November, 2023.



L. SORENSEN, DIRECTOR OF 2189596
ALBERTA LTD.



Lief Sorensen

WITNESS
PRINT NAME

APPENDIX B

IN THE MATTER OF AN APPEAL BY 2189596 ALBERTA LTD. OPERATING AS
CALGARY HYUNDAI PURSUANT TO SECTION 179(1) OF THE *CONSUMER
PROTECTION ACT*, BEING CHAPTER C-26.3 OF THE REVISED STATUTES OF
ALBERTA

AND IN THE MATTER OF AN ADMINISTRATIVE PENALTY ISSUED BY THE
DIRECTOR OF FAIR TRADING (AS DELEGATED) ON FEBRUARY 28, 2023

JOINT SUBMISSION ON PENALTY

PROPOSED PENALTY

1. The Appellant and the Director of Fair Trading (as Delegated) jointly recommend that the Appeal Board make the following order under section 179(6) of the *Consumer Protection Act*:

The February 28, 2023 decision of the Director of Fair Trading (as Delegated) to issue a \$20,000 Administrative Penalty against 2189596 Alberta Ltd. operating as Calgary Hyundai is hereby varied by substituting an Administrative Penalty of \$15,000 in place of the Administrative Penalty previously issued.

RELEVANT FACTORS

2. The amount of the jointly proposed administrative penalty is appropriate in light of the factors listed in section 2(2) of the *Administrative Penalties (Consumer Protection Act) Regulation*. The parties' submissions on the factors are as follows:
 - a. Seriousness of the contravention or failure to comply: The Appellant's contraventions of section 11(2)(l) of the *Automotive Business Regulation* and section 6(4)(a) of the *Consumer Protection Act* are significant. The Appellant added substantial market adjustment charges of \$15,456.00 (as quoted to BB on July 19, 2022) and \$18,637.00 (as included on RW's Bill of Sale on July 21, 2022) within days of advertising the Vehicle's price at MSRP. The Appellant submits that the advertisement was in error due to the automated systems in the dealership's computer-generated advertisements and was taken down within days of posting.
 - b. Degree of wilfulness or negligence: The Appellant knew that their computer system generated advertisements listing the Vehicle's price at MSRP months before their interactions with BB. The Appellant was aware or ought to have been aware of their obligation to ensure the advertised price of a vehicle as early as May 7, 2021, when AMVIC brought section 11(2)(l) of the *Automotive Business Regulation* to the Appellant's attention. The Appellant had an appropriate opportunity to correct their advertisements. The Appellant's automated system was replaced in September 2022.

- c. Impact on any person adversely affected: BB did not purchase the Vehicle. However, RW purchased the vehicle at a price significantly above the advertised price of MSRP.
- d. Whether or not the person who receives the notice of administrative penalty has a history of non-compliance: The Appellant received two findings letters from AMVIC on May 7, 2021 and July 6, 2022, in which AMVIC advised that the Appellant failed to comply with the all-in pricing requirements. The Appellant's actions described in the Agreed Statement of Facts, Admission and Joint Submission on Penalty are not a "one off" but reflect a lack of due diligence in respect of their automated advertising processes.
- e. Whether or not there were any mitigating factors relating to the contravention or failure to comply: The Appellant installed a new computer system to be used for vehicle advertisements on September 15, 2022.
- f. Whether or not the person who receives the notice of administrative penalty has derived any economic benefit from the contravention or failure to comply: The Appellant sold the Vehicle to RW at a price substantially higher than that listed in the advertisements.
- g. Any other factors that are relevant:

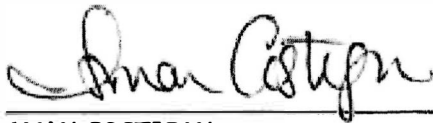
The Appellant admitted to the contraventions and took responsibility for their actions.

LAW ON JOINT SUBMISSIONS

3. Considering the circumstances listed above, the Director and the Appellant submit that the Administrative Penalty proposed is reasonable and should be accepted by the Appeal Board.
4. When considering the Joint Submission on Penalty, the Appeal Board should consider legal principles from the case of *R v Anthony-Cook*, 2016 SCC 43. Generally, joint submissions should be treated with deference in recognition that they are commonplace and vitally important to the well-being of the administration of justice.
5. When a joint submission is contentious and raises concerns, the following procedures apply:
 - a. A decision-maker should approach joint submissions on an "as-is" basis. If the parties have not asked for a particular order, the decision-maker should assume that it was considered and excluded from the submission.
 - b. If the decision-maker is considering whether to reject a joint submission, the public interest test should be applied. The public interest test has a high threshold. Under the test, a joint submission should only be rejected where acceptance of the proposed penalty would lead "reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down."

- c. The decision-maker may inquire about the circumstances leading to the joint submission, including any benefits obtained by the Director or concessions by the Appellant.
 - d. The decision-maker should notify counsel of concerns and invite further submissions on those concerns. If the decision-maker's concerns are not met, the Appeal Board may allow the Appellant to withdraw their admission.
 - e. The Appeal Board should provide clear and cogent reasons for departing from the Joint Submission on Penalty, if they choose to do so.
6. The Director and the Appellant submit that the proposed penalty will not cause an informed and reasonable public to lose confidence in the Consumer Service Appeal Board. Though the breaches are serious, the proposed administrative penalty is significant. It will demonstrate to the public that the Director and AMVIC treat the Appellant's contraventions seriously.

Dated at Edmonton, Alberta, this 6th day of December, 2023.



AMAN COSTIGAN
COUNSEL FOR THE DIRECTOR OF FAIR
TRADING



ERIN OOR
COUNSEL FOR THE APPELLANT