

In the Matter of an Appeal by Precision Motors Ltd. operating as Precision Hyundai pursuant to Section 179 of the *Consumer Protection Act*, RSA 2000, c C-26.3

AND

In the Matter the Decision by the Alberta Motor Vehicle Industry Council to Issue an Administrative Penalty of \$6000 to Precision Motors Ltd. operating as Precision Hyundai For Contravening Section 132(1) of the *Consumer Protection Act*, RSA 2000, c C-26.3 and section 9 and 11(2)(l) of the *Automotive Business Regulation*, Alta Reg 192/1999.

DECISION OF THE APPEAL BOARD

Appeal Board: Christopher Davison (Chair)

Counsel: Andrew Robinson: For the Appellant Precision Motors Ltd. operating as Precision Hyundai

Aman Costigan and Tracy Zimmer: For the Respondent, the Director of Fair Trading (as delegated) (“the Director”)

NATURE OF APPEAL

1. On March 27, 2023, the Registrar of Alberta Motor Vehicle Industry Council (“AMVIC”), acting as the Director, rendered a decision to impose a \$6000 administrative penalty (“AP”) on Precision Motors Ltd. operating as Precision Hyundai (“Precision”) pursuant to s. 158.1(1) of the *Consumer Protection Act*, RSA 2000, c C-26.3 (“CPA”).
2. In summary, the Director found that Precision had violated the advertised pricing requirements found in s. 11(2)(l) of the *Automotive Business Regulation*, Alta Reg 192/1999 (“ABR”) regarding the sale of five vehicles with the following stock numbers: P22959, P22977, P22976, P23005 and 20001. The Director found that Precision has violated their duty to maintain accurate records found in section 132(1) of the CPA and s. 9 of the ABR regarding stock number 19961. The Director therefore imposed a penalty of \$6000.
3. Precision has appealed the Director’s decision.

DECISION

4. For the following reasons, the Appeal Board (“Board”) finds:
 - a. The breach of s. 11(2)(l) of the *ABR* is established on a balance of probabilities;
 - b. The breaches of s. 132(1) of the *CPA* and s. 9 of the *ABR* are established on a balance of probabilities;
 - c. In consideration of the breaches that have been established, the Board varies the Director’s March 27, 2023 decision and imposes an administrative penalty of \$16,000.
 - d. No decision is made as to costs.

JURISDICTION AND STANDARD OF REVIEW

5. On March 27, 2023, the Registrar of AMVIC acting as the Director imposed an AP on Precision under s. 158.1(1) of the *CPA*.
6. On April 25, 2023, Precision appealed this decision pursuant to s. 179(1)(e) of the *CPA*. They provided a letter to the director which we consider a Notice of Appeal as required under s. 4 of the *Appeal Board Regulation, Alta Reg 195/1999 (“APBR”)*.
7. On May 15, 2023, this Board was appointed pursuant to s. 179(2) of the *CPA*. Only one board member was appointed, pursuant to s. 5 of the *Administrative Penalties (Consumer Protection Act) Regulation, Alta Reg 135/2013 (“APR”)*.
8. On August 10, 2023, the Board provided a Notice of Hearing to the parties, pursuant to s. 6 of the *APBR*.
9. This appeal is a new trial of the allegations raised in the Director’s decision (s. 179(8) of the *CPA*). This means, at all times, the onus is on the Director to prove the allegations found in the Director’s decision. The Board will make all findings of fact regarding these breaches based on the evidence before us; for our purposes, the Director’s findings are nothing more than allegations.
10. The Board may vary, quash, or confirm the Director’s decision (s. 179(6) of the *CPA*).

HEARING PROCEDURE AND PROCEDURAL FAIRNESS

11. The hearing occurred October 30 and 31, 2023 over Zoom videoconferencing.
12. As Precision's representative was an employee of Precision and not a legal professional, Precision was effectively self-represented. The Board therefore took extra care to ensure Precision was provided a high degree of procedural fairness by doing the following:
 - a. We verified that they had been provided with disclosure of the investigation well in advance of the hearing, on June 20, 2023.
 - b. We provided a detailed summary of the Chair's role and the hearing procedure well in advance of the hearing on July 22, 2023. When we realized the procedure had to be slightly modified, we advised the parties in advance of the hearing, on October 22, 2023.
 - c. We verified that evidentiary documents had been exchanged between parties at least 10 days in advance of the hearing date, by October 20, 2021.
 - d. We sent case law to the parties regarding intent and due diligence as it appeared from the Notice of Appeal intent may be an issue. We invited the parties to make submission during closing argument at the hearing regarding the applicability of such case law.
 - e. On the first hearing date October 30, 2021, we asked Mr. Robinson if he and Precision understood that they had the right to be represented by counsel. He said yes. We asked if he still wanted to proceed without counsel. He said yes.
 - f. Mr. Robinson's business advisor, Mr. Lavery, was permitted to attend and consult with Mr. Robison during the hearing as needed (with audio disabled so no other participant could hear their discussions). Mr. Lavery was given the status of an observer at the hearing and was not permitted to participate directly in the hearing whatsoever.
 - g. We asked Mr. Robinson if he objected to the Board member deciding this case. He stated no.

- h. During the hearing, we again explained the procedure of the hearing in detail. We described various parts of the hearing to Mr. Robinson, such as opening remarks, re-direct and closing argument.
- i. We ensured Mr. Robinson was able to properly cross examine the Director's witness, and properly examine/re-direct his own witnesses. Mr. Robinson was given great latitude in his questioning, and the Board only interfered when questioning became clearly irrelevant.
- j. We very clearly explained that Mr. Robinson had the option to testify if he so chose. We allowed him to choose whether or not to testify after Precision's other witnesses were called. After Precision's witnesses testified, Mr. Robinson chose to not testify.
- k. We asked Mr. Robinson if he had any objection in each instance where exhibits were admitted.
- l. We considered Precision's status as a self-represented party when it was relevant to our decision.

PRELIMINARY MATTERS

- 13. The Director provided evidence of breaches of all-in pricing regarding seven stock numbers. However, they have only asked for a finding of a breach in relation to five stock numbers. This was confusing for both the Board and Precision. This confusion is evident in that Precision provided argument regarding all stock numbers.
- 14. To be clear, the Board will only consider the breaches sought by the Director, i.e. s. 11(2)(l) *ABR* regarding stock numbers P22959, P22977, P22976, P23005 and 20001, and s. 132(1) *CBA/s. 9 ABR* regarding stock number 19961.
- 15. We will not consider the breach of s. 11(2)(l) regarding stock numbers P22994 and 19961. Accordingly, we will not review any evidence or argument regarding those breaches below.

ISSUES

- 16. Issue (1) Does the evidence establish a breach of s. 11(2)(l) of the *ABR* regarding stock numbers P22959, P22977, P22976, P23005 and 20001?

17. Issue (2) Does the evidence establish a breach of s. 132(1) of the *CPA* and s. 9 of the *ABR*?
18. Issue (3) Given the breaches established, should the Board confirm, vary or quash the administrative penalty of \$6000?

ANALYSIS

Issue (1) Does the evidence establish a breach of S. 11(2)(l) of the *ABR* regarding stock numbers P22959, P22977, P22976, P23005 and 20001?

Relevant Legislation

19. *ABR* s. 11(2) A business operator must ensure that every advertisement for an automotive business that promotes the use or purchase of goods or services (l) includes in the advertised price for any vehicle the total cost of the vehicle, including, but not limited to, all fees and charges such as the cost of accessories, optional equipment physically attached to the vehicle, transportation charges and any applicable taxes or administration fees, but not including GST or costs and charges associated with financing.

Director's Evidence

20. The Director entered the following relevant documentary evidence in regard to this issue:
 - a. An industry standards application report written by inspector Roxanne Speiss ("RS") which stated:
 - i. Precision was inspected by AMVIC in March of 2017 and May of 2018. In both instances a findings letter was mailed to Mr. Robinson. In both instances, the inspections found evidence of breaches of all-in pricing requirements contrary to s. 11(2)(l).
 - ii. RS conducted an inspection once again on January 24, 2023. 14 vehicle sales were reviewed. The following stock numbers were found to be sold over the advertised price: P22959, P22977, P22976, P23005 and 20001.

- iii. The *ABR* section 11(2)(l) has been in force since 1999. There have been 18 industry bulletins and newsletters regarding all-in pricing sent to employers since March 1, 2021.
- b. A letter to Mr. Robinson at Precision dated March 21, 2017 which stated:
 - i. The findings regarding the March 2017 inspection. The inspector has concerns Precision is not complying with all-in pricing.
 - ii. Education to Precision on all-in pricing.
 - 1. For example, it explains that advertised prices need to include all fees the seller intends to charge. The only fees that can be added to an advertised price are GST and costs associated with financing.
 - 2. Fees that cannot be added to the advertised price include freight, pre-delivery inspection (“PDI”), administration/documentation fees, levy recoveries (such as AMVIC levy, air conditioning levy, tire levy, etc.), and pre-installed products and services.
- c. A letter to Mr. Robinson at Precision dated May 16, 2018 which stated:
 - i. The findings regarding the March 2017 inspection. The inspector has concerns Precision is not complying with all-in pricing.
 - ii. Education to Precision on all-in pricing, similar to the March 2017 letter.
- d. A letter to Mr. Robinson at Precision dated January 31, 2023 which stated the findings of the January inspection.
- e. A summary sheet showing the advertised price as compared to the sold price, a breakdown of all the fees that should have been included in the price, and the amount of total extra fees charged.
- f. Documents relating to stock P22959: online advertising, bill of sale, Scotiabank credit agreement, deal summary accounting document, and offer to purchase.
- g. Documents relating to stock P22977: online advertising, bill of sale, TD Bank Finance Contract, deal summary accounting document, and offer to purchase.
- h. Documents relating to stock P22976: online advertising, bill of sale, CIBC credit agreement, deal summary accounting document, and offer to purchase.

- i. Documents relating to stock P23005: online advertising, bill of sale, TD Bank Finance Contract, deal summary accounting document, and offer to purchase.
- j. Documents relating to stock 20001: online advertising, bill of sale, deal summary accounting document, deal summary document marked up with handwriting, offer to purchase.
- k. A letter from Mr. Robinson to the Director of Fair trading, dated March 14, 2023, which provides Precision's response regarding each stock number and alleged all-in breaches.

21. The Director called one witness – RS. She provided the following evidence in regard to this issue:

- a. RS is the manager of industry standards for AMVIC. She has been in this position since August 1, 2023. Prior to that, she was an inspector for AMVIC for seven to eight years.
- b. An industry standards officer conducts inspections of regulated businesses to ensure they are compliant with regulations. They provide education when problems are identified.
- c. After each inspection, the inspector will go through each compliance concern with the manager of the business, and review legislation with them. They are provided with documents, examples and guidance. The business is then provided a findings letter, outlining AMVIC's findings.
- d. Precision was inspected in March 2017 then May 2018. In both instances, concerns were raised as Precision was selling vehicles over the advertised price. Both times the findings were shared with Mr. Robinson. They reviewed the appropriate legislation and provided education regarding all-in pricing.
- e. RS inspected Precision in January 2023. The inspection was completed on January 24, 2023. Breaches of all-in pricing were again found.
- f. AMVIC has a three-strikes policy, where the first failed inspection is educational, the second is to ensure compliance, and on the third if there are still the same concerns, they will recommend an AP be issued by the Director.

- g. This is why on the third failed inspection, RS recommended to the Director that Precision have an AP imposed on them.
- h. Precision was originally inspected due to public complaints.
- i. The documents submitted regarding P22959, P22977, P22976, P23005 and 20001 were all obtained during the inspection. They show that in each case, the customers were inappropriately charged over the all-in price.
- j. In four of five cases, a finance displacement fee was charged. From the offer to purchase document in each of these cases, the finance displacement fee was never disclosed to the customer until the customer finalized the purchase with the Bill of Sale. These fees are “tacked on.”
- k. From the deal summary accounting documents for each stock number, the finance displacement fee has no cost to it and is therefore pure profit. Moreover, the fee is accounted for as “protections” and lumped in with other random charges such as rust protection. There is no consistency as to what this charge actually is. Actual costs related to financing are otherwise charged to the customer on the Bill of Sale.
- l. The Director put the definition of finance displacement to RS (see Precision’s documents, below) and she made the following comments:
 - i. The amount of the finance displacement fee varies from deal to deal in a way that does not make sense.
 - ii. Very little labour is put into processing paperwork for these financing applications.
 - iii. There are no alternate lenders other than banks. There are few banks.
 - iv. The fee being charged as “finance displacement” varies in the deals reviewed. It changes even when the same lender is used.
 - v. The fee was charged on one deal that was cash and had no financing.
- m. During cross examination, RS stated:
 - i. AMVIC’s mandate includes both consumer protection and education.
 - ii. For stock P23005, the date of the advertisement was January 17. The date of the offer to purchase was January 16. The bill of sale was January 20. Only

the bill of sale is required to complete the sale, not the offer to purchase. The date on the bill of sale is the date of sale. Therefore, the January advertisement should show all-in pricing applicable to the purchase on January 20.

- iii. For stock P23005, the intent of the customer to purchase before the advertisement date is not relevant to the breach.
- n. During questions from the Board, RS stated:
 - i. There would be no problem for a business to charge a documentation or other fee related to financing. The problem with the finance displacement fee is that there is no evidence it is a charge to the consumer for anything at all. It is inconsistent.

Precision's Evidence

22. On our own motion and without objection from the parties, the Board entered into evidence a letter from Mr. Robinson to the Honorable Dale Nally, dated April 25, 2023, requesting this appeal. In this letter Mr. Robinson provided the following evidence:
- a. Precision admits they have made process and documentation errors, but never has engaged in a practice designed to “dupe” their customers.
 - b. Precision acted expediently to take appropriate corrective actions after the 2017 and 2018 inspections.
 - c. Regarding stock P22959 – the final sale price is appropriate if you properly account customer requested options.
 - d. Regarding stock P22977 – Precision admits there was an \$824.25 discrepancy between the price charged and the all-in advertised price. This was an honest mistake by an employee, and human error.
 - e. Regarding stock P22976 – there was no overcharge. The amount AMVIC considers an overcharge was a financing fee, which is not required to be included in all-in pricing.

- f. Regarding stock P23005 – the advertising occurred after the customer purchased the vehicle. The offer to purchase shows the vehicle was purchased on January 16. The advertisement shows a date of January 17. The vehicle was inappropriately on the website due to an automated computer system. The vehicle was never actually advertised to the public.
- g. Regarding stock 20001 – Precision admits the customer was incorrectly charged a \$6.25 AMVIC levy that should have been included in the all-in pricing. Any additional alleged overcharge was a financing fee, which does not have to be included.

23. Precision entered the following documentary evidence in regard to this issue:

- a. A series of emails from February 15, 2023 to February 28, 2023 showing Matt Campbell's ("MC") efforts to have their computer system changed such that vehicles received in stock are not automatically advertised without a chance for MC to ensure the vehicles are appropriately priced.
- b. A document with the definition of "finance displacement" which states as follows:
 - i. "The Finance Displacement is an amount applied to customers sales contracts who finance their purchase. In many ways we act as a broker for our customer. The Finance Displacement is associated with the time and effort invested by Precision Hyundai employees to:
 1. Prepare all necessary documents and paperwork to sum it [sp] a credit application;
 2. Shop the credit application to various lenders to qualify the customers application;
 3. Review the lender's terms and conditions to ensure our customer is receiving the best rate possible and the terms and conditions are fair and equitable from our customer's perspective.
 - ii. The time consumed by this process will vary from customer to customer. It is not unusual for a customer to be denied by the initial lender to whom the application is submitted. This then requires our team to spend incremental time to secure financing for our customer from alternative lenders.

iii. The amount charged to a customer for this service will vary based on the time spent on a file and it's [sp] complexity."

24. Precision called two witnesses - MC and Omar Taha ("OT").

25. MC provided the following evidence in regard to this issue:

- a. MC has been the new car manger at Precision for 10 years. In that role he deals with salespeople, customers, and the new car department. In the past 10 year he has seen a large change in the industry, from walk in traffic to sales being based on the internet.
- b. Demand is very high and stock is low since the pandemic.
- c. Many customers are put on lists, awaiting supply of the vehicle they are wanting to purchase. The list is held by management i.e. MC himself.
- d. Precision's vehicles are advertised on their website.
- e. Once stock is received, an advertisement is auto generated by their computer system within 24 hours. The computer system does not recognize vehicles that are sold vs. unsold. There is no opportunity to change the price until 24 to 48 hours after the vehicle is received.
- f. MC has never purposefully advertised a vehicle for less than it was sold for.
- g. Once the inspector found problems with advertised prices, MC went to those in charge of Precision's computer systems and had the system changed. Now MC has to approve an advertisement before it shows up online. He is now able to manually change the prices before any vehicle is advertised to the public.
- h. Precision had their computer system changed in a unique way that no dealership has ever done before. The auto generation of advertisements is an industry standard. The computer system they used is used by all Hyundai dealerships nationally.
- i. All-in pricing is not a deterrent to making a sale if everyone in the industry has to do it. A lot of other dealerships do not. In 2017 and 2018 it would have been a disadvantage to the dealership to follow all-in pricing because other dealerships did not follow it.

- j. There were never customer complaints about how they advertised before the computer change.
- k. AMVIC provided emails as education. He may have received bulletins but did not read them. He was educated in person by the inspector as a result of the inspections.
- l. MC believes all pricing on the website is correct now. He checks all the prices and corrects mistakes.
- m. Regarding stock P23005, the original customer backed out on purchasing this vehicle. The offer to purchase in evidence is an agreement with a new customer. This vehicle was never made available to the public. The customer was from the customer list awaiting supply. The customer never looked on the website advertisement for the vehicle. The deal was made with the customer as of the date of the offer to purchase.
- n. During cross examination, MC stated:
 - i. He was employed during the 2017 and 2018 inspection. Both times, he was made aware of the all-in pricing problems and provided education.
 - ii. He cannot say if he has ever seen the 18 bulletins on all-in pricing provided by AMVIC to Precision since 2001.
 - iii. He was made aware of the all-in pricing legislation.
 - iv. As a manager, it is his responsibility to educate staff and ensure that all-in pricing was being followed.
 - v. When he previously testified that Precision was unaware of all-in pricing requirements until 2023, he meant that they had made some changes to all-in pricing as a result of the prior inspections. They were not aware that the auto-generated advertisements by the computer system were an issue until 2023.
 - vi. Regarding stock P23005, MC agrees that all-in pricing was not followed but the vehicle was never made available to the public. The offer to purchase is shows this.

- vii. Regarding stock P22977, this transaction resulted in the customer being overcharged. It was due to human error. He took corrective action by speaking to employees and changing his own practices.
- viii. Corrective action did not involve alerting the customer of the overcharge, and did not involve providing refunds to the customer for the overcharge. The overcharge was \$824.25. This was an economic benefit to Precision.
- o. During questions from the Board, MC stated:
 - i. Precision began fixing their computer system in a way that would allow them to ensure proper all-in pricing after the 2023 inspection.

26. OT provided the following evidence in regard to this issue:

- a. OT has been the used car manager at Precision for almost 15 years. He essentially runs the used car department. Prior to this role, he was a salesman for 5 years.
- b. He recalls the 2017 and 2018 inspections. One of the issues was all-in pricing. All of the issues identified by the inspections were fixed.
- c. At the time of the inspections no one in the industry was doing-all in pricing. No one was doing it because no one knew about it. The inspection was the first education he ever received regarding all-in pricing.
- d. It would have been a detriment to do all-in pricing. These days, 90% of customers check prices on the internet. The websites customers use provide a “good” or “bad” rating to price based on how it compares to various other sellers of similar vehicles. If all suppliers are not following all-in pricing, then it puts Precision at a disadvantage.
- e. He is aware of the bulletins AMVIC provides for education, but they are not really training or teaching so much as news.

Director’s and Precision’s Argument

27. The Director provided the following key submissions regarding the s. 11(2)(l) ABR breach:

- a. The documents submitted and the testimony of RS establishes the breach relating to advertising stock numbers P22959, P22977, P22976, P23005 and 20001.

- b. The breach was discovered by the Director during an inspection. Precision had been subject to two prior inspections in March 2017 and May 2018. In those prior inspections all-in pricing breaches were discovered, and as a result precision was provided with education and an opportunity to fix their practices.
- c. The finance displacement fee that has been charged to the customer on each stock number should have been included in the all-in pricing. That is because the fee is not a real financial fee and does not fall under any exemption. In particular:
 - i. The fee is accounted for without cost, and included under “protections” along with rust coating, etc.
 - ii. The fee varies substantially. There is no evidence why it would vary so much.
 - iii. For P23005, there is no finance displacement fee charged despite it being a financed deal.
 - iv. For 20001, there is a finance displacement fee charged despite it being a cash deal i.e. not a financed deal.
 - v. The fee does not appear to reflect the complexity of the deal either. Financing from the same lender has different fees.
 - vi. The evidence does not provide a clear picture as to what the fee is, or if it is cost or charge associated with financing. Simply calling it a financing fee is not enough.
 - vii. Actual costs of financing are separately changed on the bill of sale.
- d. At best the finance displacement fee is ambiguous, in which case it should be interpreted against Precision as per s. 4 of the *CPA*.
- e. For all stock numbers, the defence of due diligence is not made out because any reasonable steps Precision made to avoid future breaches were taken after the 2023 inspection. In order for due diligence to be a valid defence under *R. v. Sault Ste. Marie*, 1978 CanLII 11 (SCC), [1978] 2 SCR 1299, action has to be taken before the alleged breaches.

- f. Regarding stock P22959, Precision has not really refuted the Director's claim there was a breach. If you consider all the charges that should have been included, Precision breached s. 11(2)(l).
- g. Regarding stock P22977, Precision has admitted the advertising violated the regulations as a result of human error. Human error or mistake is not a valid defence. See *R v Mooney*, 2023 ABCA 144 at para. 26-27. Precision is vicariously responsible for its employees' actions as per s. 166 of the CPA.
- h. Regarding stock P22976, the customer was overcharged based on the finance displacement fee which should have been included in the all-in pricing.
- i. Regarding stock P23005, the customer was charged \$625.25 over the all-in pricing. According to the evidence of MC, the original deal fell through. Based on the bill of sale, the vehicle was purchased after the vehicle was advertised on line.
- j. Regarding stock 20001, the customer was overcharged based on the finance displacement fee which should have been included in the all-in pricing.

28. Precision provided the following key submissions regarding the s. 11(2)(l) ABR breach:

- a. Mr. Robinson is the general manger of Precision since 1999. He has had many positive interactions with AMVIC over those years. Precision has an excellent reputation. Part of their success is how they treat their customers.
- b. These breaches are not based on complaints from any actual customers. Precision takes actual customer complaints very seriously.
- c. They know this decision will be published and need to present their side of the allegations. They do not consider any penalty a cost of doing business. Their reputation is everything to them.
- d. They are recognized as being a dealership of excellence.
- e. The evidence shows they had no intent to breach the legislation. The evidence shows they have no intent or active goal to dupe their customers with false advertising.

- f. *R. v. Sault Ste. Marie*, 1978 CanLII 11 (SCC), [1978] 2 SCR 1299 states that they have to have a guilty mind to be held liable for noncompliance. The evidence does not show they have a guilty mind.
- g. Finance charges do not need to be included in advertising. That is why they did not include it. The finance displacement fee may vary, but the director's witnesses did not establish how much time it took to secure financing on the various deals. Precision is permitted to recover the cost of employee time as they act as a broker on behalf of customers to obtain financing.
- h. AMVIC education is not effective. They are not doing their part to assist the industry. They are not fulfilling their mandate. They also should be providing alternatives for resolution for customer complaints.
- i. Regarding stock P22977, this was human error, and corrective action was taken with the employee responsible. A penalty for this breach is too heavy handed.
- j. Regarding stock P23005 they should be found not guilty. The vehicle was never made available to the general public. It was sold prior to being advertised.

Board's Decision

29. In summary, the Board finds that, on a balance of probabilities, Precision has breached s. 11(2)(l) of the *ABR* regarding all five stock numbers. P22959, P22977, P22976, P23005 and 20001. Precision did not establish any valid defences in regard to any stock number.
30. Before addressing the particulars of the s. 11(2)(l) *ABR* breach for each stock number individually, the Board must address two issues that practically apply to every stock number: the finance displacement fee, and the intent required to be established for this breach.
31. The Board finds the "finance displacement" fee is not an actual cost or fee associated with finance. The Board finds that Precision intentionally mislabelled this fee. We base these findings on the following evidence and reasoning:
 - a. The evidence before us regarding this fee is almost exclusively from the Director. Precision adduced a word document (reproduced above) describing what the fee

should be i.e. time and effort of staff associated with brokering the financing of vehicles. However, there was no evidence provided by Precision beyond this document, despite Precision calling two witnesses who could have testified to their experience billing these fees to customers. While the Board is not drawing an adverse inference against Precision for failing to call this evidence as they are self-represented, we are left with only the word document to support their arguments regarding this fee. We find the word document is not persuasive in the face of the Director's evidence which shows how this fee actually works in accounting and how this fee works with reference to actual documents and actual deals.

- b. The Director's evidence shows that the "finance displacement" fee was charged for financed sales (see P22959 bill of sale and Scotiabank document, P22977 bill of sale and TD bank document, P22976 bill of sale and CIBC document). However, it was also absent from a financed deal (see P230005 bill of sale and TD Bank document) and it was also charged for cash deal that had no financing (see 20001 bill of sale).
- c. The deal summary document from each stock number also shows the finance displacement fee was accounted for as an uncoded entry under "protections." Protections sometimes included other items such as 3M bumper or rust protection. However, on two deals, finance displacement was the only item that was accounted as protections (see deal summary document P22976 and 20001). On the financed deal where a finance displacement fee was not charged, the protections entry was zero dollars (see deal summary document for P23005).
- d. The bill of sale and bank document for each financed deal also shows that charges directly related to financing, imposed by the financial institution, were charged to the customer directly.
- e. Considering the totality of the evidence, the Board finds it is more likely than not the "finance displacement" fee is not a cost or charge associated with financing. As it is uncoded, we find this is a pure profit fee for Precision not associated with financing. The fee is not connected to anything of value provided to consumers.

- f. The Board recognizes that Precision is empowered by s. 11(2)(l) *ABR* to charge the customer for costs and fees associated with financing. However, the evidence has established the fee labelled “finance displacement” is not that. It is not a cost or fee that is exempted from the requirements of s. 11(2)(l). The fee should therefore be included in the advertised price.
 - g. As the “finance displacement” fee is not a fee related to financing, the panel finds that Precision mislabelled it. As it is not logically possible to accidentally mislabel a fee on this volume of documentation, the Board finds Precision has intentionally mislabelled it. This is not a finding required to establish the elements of a breach of s. 11(2)(l) *ABR*, however it will become relevant in our analysis regarding due diligence and regarding sanction, below.
32. The Board finds that s. 11(2)(l) *ABR* is a strict liability offence. Accordingly, intent does not need to be proven in order to establish the breach. The defence of due diligence is available to Precision. However, Precision has not established a defence of due diligence for this breach. We base these findings on the following evidence and reasoning:
- a. In *R. v. Sault Ste. Marie*, 1978 CanLII 11 (SCC), [1978] 2 SCR 1299 (“*SSM*”), the Supreme Court states that there is a class of offences (regulatory, for example) that are not criminal in the strictest sense, but rather are concerned with public welfare. These are civil in nature and are a branch of administrative law (p. 1302-1303).
 - b. The Supreme Court created three kinds of regulatory offences: true crimes, strict liability offences, and absolute liability offences. For an offence to be a true crime the legislation will use words that indicate a guilty mind requirement to be proven such as “intent” or knowingly” or “wilfully.” Offences of absolute liability will also be explicitly designated as such in the legislation. Regulatory offences are *prima facie* strict liability offences, or in other words unless there is some indication in the legislation that it is otherwise, regulatory offences should be considered strict liability offences. For strict liability offences, intent does not need to be proven (*SSM* at p. 1325-1326).

- c. In consideration of the wording of the s. 11(2)(l) *ABR* in the context of the *ABR* and the *CPA*, the Board finds s. 11(2)(l) a strict liability offence. As such, the Director does not need to prove intent in order to establish the breach.
- d. However, for strict liability offences the Supreme Court also created a defence of due diligence. The burden of proving this defence is on the defending party i.e. Precision. If Precision can show they reasonably believed in a mistaken set of facts which, if true, would have rendered their actions innocent, or if they took all reasonable steps to avoid the breach, then they cannot be found guilty of the breach. Whether all steps were reasonable is to be determined relative to the standard of what a reasonable person would have done in these circumstances (*SSM* at p. 1326)
- e. The Board finds the evidence does not establish a due diligence defence for Precision's breach of s.11(2)(l). From the testimony of all three witnesses, Precision was inspected in 2017 and 2018. They were provided with education regarding the all-in pricing requirements and made aware of the requirements of s. 11(2)(l) after each inspection. The same managers that were present for the inspection and then were educated after the inspection were present for the 2023 inspection. After the 2017 and 2018 inspections, Precision took some steps to comply with the legislation, however these steps were not sufficient. They did not address, for example, the fact that there was a 24 to 48-hour period where the computer system was automatically creating advertisements posted to the public which had incorrect pricing. MC testified during cross examination that he, prior to the 2023 inspection, had adjusted online advertising prices after that 24 to 48-hour period. Therefore, contrary to other evidence provided by MC and OT, Precision knew of this automated system, knew advertisements were possibly incorrect for 24 to 48-hours, and knew this prior to the 2023 inspection. They then took no steps to fix it until after the 2023 inspection. This is not due diligence. Due diligence would be Precision taking reasonable steps to address this noncompliant automated system prior to the inspection. In addition, as found above, Precision intentionally

mislabeled “finance displacement” fees and then did not include them in all-in pricing. There is no evidence they took steps to avoid this practice. There is otherwise insufficient evidence to establish that Precision took steps that would be considered “reasonable steps” for the purpose of a due diligence defence. The Board finds the evidence therefore does not establish that Precision believed a set of facts that would have rendered the breach innocent or took all reasonable steps to avoid a breach of s. 11(2)(l). A defence of due diligence is therefore not established regarding the breach of s. 11(2)(l).

33. Regarding stock number P22959, the Board finds that Precision breached s. 11(2)(l) *ABR*.

The customer was charged \$1024.25 over the advertised price. We base these findings on the following evidence and reasoning:

- a. The advertisement shows the advertised price was \$26,151.00.
- b. The bill of sale shows the customer was charged \$27,175.00. This amount was calculated and does not include GST, or costs and charges associated with the financing. This amount does include the base cost for the vehicle, PDI, finance displacement, freight, excise tax, AMVIC levy, and tire levy.
- c. The customer was therefore charged \$1024.25 over the all-in advertised price. \$399.00 of the overcharge was the finance displacement fee.
- d. Precision therefore breached s. 11(2)(l) of the *ABR* regarding stock P22959.

34. Regarding stock number P22977, the Board finds that Precision breached s. 11(2)(l) *ABR*.

The customer was charged \$824.25 over the advertised price. We base these findings on the following evidence and reasoning:

- a. The advertisement shows the advertised price was \$35,816.00.
- b. The bill of sale shows the customer was charged \$36,640.00. This amount was calculated and does not include GST, or costs and charges associated with the financing. This amount does include the base cost for the vehicle, PDI, finance displacement, freight, excise tax, AMVIC levy, and tire levy.
- c. The customer was therefore charged \$824.25 over the all-in advertised price. \$199.00 of the overcharge was the finance displacement fee.

- d. In cross examination, MC agreed that Precision had overcharged on this sale by \$824.25.
 - e. Precision argued that the s. 11(2)(l) breach regarding this stock number was human error. They essentially argue a defence of mistake. However, mistake is not an available defence. In *R v Mooney*, 2023 ABCA 144 at para. 27, the Alberta Court of Appeal clearly adopts the statement, for strict liability offences “a defence of ‘human error’ or honest but not necessarily reasonable mistake will not suffice.”
 - f. The panel also finds that Precision is responsible for breaches committed by its employees, as per s. 166 of the *CPA*. In this case, they are responsible for the breach committed by MC when he mistakenly violated the all-in pricing requirement.
 - g. Precision therefore breached s. 11(2)(l) of the *ABR* regarding stock P22977.
35. Regarding stock number P22976, the Board finds that Precision breached s. 11(2)(l) *ABR*. The customer was charged \$341.25 over the advertised price. We base these findings on the following evidence and reasoning:
- a. The advertisement shows the advertised price was \$35,816.00.
 - b. The bill of sale shows the customer was charged \$36,157.25. This amount was calculated and does not include GST, or costs and charges associated with the financing. This amount does include the base cost for the vehicle, PDI, finance displacement, freight, excise tax, AMVIC levy, tire levy, and optional equipment physically attached to the vehicle.
 - c. The customer was therefore charged \$341.25 over the all-in advertised price. The entirety of this overcharge was the finance displacement fee. The finance displacement fee charged was \$804.00.
 - d. Precision has argued they are permitted to not include finance fees in the advertised price. However, as the Board found above, the finance displacement fee charged is not a finance fee, and therefore must be included in the advertised price.
 - e. Precision therefore breached s. 11(2)(l) of the *ABR* regarding stock P22976.

36. Regarding stock number P23005, the Board finds that Precision breached s. 11(2)(l) *ABR*.

The customer was charged \$625.25 over the advertised price. We base these findings on the following evidence and reasoning:

- a. The advertisement shows the advertised price was \$32,774.00.
- b. The bill of sale shows the customer was charged \$33,399.25.00. This amount was calculated and does not include GST, or costs and charges associated with the financing. This amount does include the base cost for the vehicle, PDI, freight, excise tax, AMVIC levy, and tire levy.
- c. The customer was therefore charged \$625.25 over the all-in advertised price.
- d. Precision and the Director have argued about the date of the advertisement compared to the date of the offer to purchase compared to the bill of sale. In effect, Precision argues the advertisement was not a real advertisement and should not be subject to the same regulations. The Board finds that the advertisement in evidence is dated January 17, 2023. The vehicle was finally sold on January 20, 2023 as per the bill of sale. Therefore, the advertisement is a real advertisement. That the advertisement was created by an automated system is a business practice and choice of Precision. Their business decisions do not affect their obligation to comply with the regulation. That they had entered into negotiations with the customer prior to January 17, 2023 is not relevant. The wording of s. 11(2)(l) states that “every advertisement for an automotive business that promotes the use or purchase of goods or services...” The regulation does not apply differently based on whether any particular customer saw any particular advertisement, or what stage prior to the final sale the supplier and customer are in.
- e. Precision therefore breached s. 11(2)(l) of the *ABR* regarding stock P23005.

37. Regarding stock number 20001, the Board finds that Precision breached s. 11(2)(l) *ABR*. The customer was charged \$205.25 over the advertised price. We base these findings on the following evidence and reasoning:

- a. The advertisement shows the advertised price was \$43,990.00.

- b. The bill of sale shows the customer was charged \$44,195.25. This amount was calculated and does not include GST, or costs and charges associated with the financing. This amount does include the base cost for the vehicle, finance displacement, and AMVIC levy.
 - c. The customer was therefore charged \$205.45 over the all-in advertised price. The finance displacement fee charged was \$199.00.
 - d. Precision has argued this customer was only overcharged a \$6.25 AMVIC levy as they are permitted to not include finance fees in the advertised price. However, as the Board found above, the finance displacement fee charged is not a finance fee, and therefore must be included in the advertised price.
 - e. Precision therefore breached s. 11(2)(l) of the *ABR* regarding stock 20001.
38. Accordingly, the Board finds that the evidence establishes a breach of S. 11(2)(l) of the *ABR* regarding stock numbers P22959, P22977, P22976, P23005 and 20001.
39. The Board has the following comments to make regarding some of Precision's arguments and evidence in relation to this breach:
- a. Precision adduced evidence that they were insufficiently educated by AMVIC. The Board finds this to be factually inaccurate. Not only were they educated with reference to their specific practices in 2017 but then again in 2018. The Board finds AMVIC's efforts to educate in 2017 and 2018 to be a generous practice that allows Precision years to align its business practices to the regulations. AMVIC in this regard is fulfilling the portion of its mandate that includes education.
 - b. The Board finds the testimony of both MC and OT that they do not read the bulletins provided by AMVIC to be a concerning business practice. These witnesses in testimony, and Mr. Robinson in argument, do not appear to realize it is their obligation to not only diligently read and apply those bulletins, but to also comply with all regulations. Regulations are not merely a formality. They exist to protect consumers and fulfil the mandate of the *CPA* as described in its preamble.
 - c. The Board finds the argument that this breach did not come from a customer complaint to be concerning. Whatever the source of discovering Precision's

noncompliance, it is the case that they were being noncompliant. And again, it is their responsibility to be compliant with regulations at all times.

- d. The Board finds it highly concerning that Precision called evidence from both MC and OT regarding the competitive disadvantage they would have been in if they had followed the all-in pricing regulation. Precision appears to not only take no responsibility for their own business practices and misconduct, but imply it is a justified practice. Again, regulations are not optional, they serve an important social purpose, and Precision is defeating those purposes with their noncompliance. If Precision found its competitors to be noncompliant, they should have made a complaint to AMVIC so that investigation and enforcement could begin against those competitors.

Issue (2) Does the evidence establish a breach of s. 132(1) of the CPA and s. 9 of the ABR?

Relevant Legislation

40. CPA s. 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.
41. ABR s. 9 In addition to the requirement to create and maintain financial records in accordance with section 132(1) of the CPA, 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.

Director's Evidence

42. The Board considered all previously mentioned documents and testimony in regard to this issue.
43. The following additional documents were provided in regard to this issue:

- a. Documents relating to stock 19961 e.g. online advertising, bill of sale, Scotiabank financing contract, deal summary accounting document, and offer to purchase.
- b. A letter from Mr. Robinson to the Director of Fair trading, dated March 14, 2023, which provides Precision's response regarding each stock number and alleged all-in breaches. Appended to the letter, relevant to stock number 19961, were the following key documents:
 - i. A revised deal summary that includes include \$5000 cash back/referral fee and a \$1892.44 transportation charge to Quebec. Written on this deal summary in handwriting is "Revised to include transport to Quebec."
 - ii. A transportation invoice dated January 20, 2023, billed to Precision, that shows a vehicle being transported from Precision to Quebec for a charge of \$1892.44.
 - iii. A \$1000 invoice, dated December 29, 2022, payable by Precision to a party for customer referral.

44. RS provided the following additional testimony evidence in regard to this issue:

- a. During the inspection, Precision only provided the online advertising, bill of sale, Scotiabank financing contract, deal summary accounting document, and offer to purchase.
- b. The Bill of sale states "\$4000 cash back" in handwriting but this is not appropriately part of the totals of the bill of sale. The \$4000 cash back is accounted for in the deal summary.
- c. If you use the documents provided during the inspection, this deal is a breach of s. 11(2)(l) of the *ABR*.
- d. However, after being presented with the findings of the inspection but before the Director imposed an AP, precision provided a revised deal summary. This shows the cash back was actually \$5000 and the customer was charged a substantial freight charge to Quebec.

- e. Even if you account for the additional charges, RS states Precision is running afoul of the all-in pricing requirements. The Director chose to impose an AP for s. 132 CPA and s. 9 ABR.
- f. RS cannot say when these new documents were created, but she can say they were not in Precision's file at the time of inspection.
- g. In the letter from Mr. Robinson to the Director of Fair trading, dated March 14, 2023, Precision admits that the transport charge and \$5000 cash back should have been properly recorded on the bill of sale.

Precision's Evidence

- 45. The Board considered all previously mentioned documents and testimony in regard to this issue.
- 46. On our own motion and without objection from the parties, the Board entered into evidence a letter from Mr. Robinson to the Honorable Daly Nally, dated April 25, 2023, requesting this appeal. In this letter Mr. Robinson provided the following evidence:
 - a. This was a single transaction where recordkeeping could have been better. This specific transaction was an anomaly. They agree to take corrective action so it is not repeated.
- 47. OT provided the following additional testimony evidence in regard to this issue:
 - a. They acknowledge there are paperwork issues with this deal.
 - b. This was an end of month deal, as it shows on the deal summary document given to the inspector. It is stamped as "posted" on December 31, 2022.
 - c. He told the inspector that a customer has brought them referrals over the years. The customer that brought the referral was provided a \$1000 referral fee on this deal. There was also cash back, and the vehicle had to be shipped to Quebec.
 - d. That it was an end of month deal is important because the freight amount to charge the customer was not available until two to three weeks later when the vehicle arrived in Quebec.
 - e. It was a very uncommon deal that they will never do again.

- f. The deal was for the benefit of the customer. There was no opportunity for repeat deals or service with the individual who ended up with the vehicle. Ideally, sales should be ne done in their market. It was not a deal worth chasing.

Director's and Precision's Argument

- 48. The Director argued that there were numerous issues with paperwork, not just the bill of sale. OT admitted the breach. The importance of maintaining records is that it is the best way for the supplier and the consumer to be aware of all the details of the transaction; it is also the best way for a supplier to demonstrate they are complying with the legislation. It creates accountability for what is being charged to a consumer.
- 49. The Director provided the prior decision of the Consumer Services Appeal Board ("CSAB") named *Arza Ltd.* At para. 152, the Board highlights the need for general deterrence and states that failure to keep records is an extremely serious contravention that puts the public at risk. Precision similarly put the public at risk with this contravention.
- 50. Precision argues that this is a deal that should not be considered because it is the only deal found by the inspection to have paperwork problems. It is an anomaly. It is also a red herring because the customer was put at zero disadvantage by the deal. In fact, the deal was constructed to the advantage of the customer.

Board's Decision

- 51. Section 132(1) of the *CPA* and s. 9 of the *ABR* require that Precision create and maintain accurate financial records for at least 3 years after the records are made. The Board finds the evidence establishes on a balance of probabilities that Precision has breached both sections.
- 52. Precision admitted in correspondence with the Director and their witness OT testified that there was inaccurate paperwork regarding stock number 19961.
- 53. In evidence is a deal summary document that was provided by Precision, to the inspector, at the time of inspection on January 24, 2023. Also in evidence is a revised deal summary that was provided by Precision, to the Director of Fair Trading, on March 14, 2023. Neither is

dated. The Board finds on a balance of probabilities that the deal summary was created at the time of the sale, and the revised deal summary was created after the inspection.

54. The deal summary refers to \$4000 cash back, however the revised deal summary refers to \$5000 for cash back and referral fee. The testimony of OT and \$1000 invoice show that the purchasing customer was referred to Precision by another customer, who was to be paid \$1000 for the referral. The Board finds that Precision knew about the requirement to pay the \$1000 referral fee at the time of the sale. As such, the omission to record that information on the deal summary is a failure by Precision to create an accurate financial record.
55. The Board recognizes that the inaccuracy of the deal summary was eventually fixed via the revised deal summary. While it is appropriate that Precision fixed their mistake, it is still a breach in that the deal summary was inaccurate when they created it.
56. Before the Board is also a bill of sale for stock 19961. This bill of sale refers to the \$4000 cash back. However, it does not refer to the \$1000 referral fee or any freight amount charged for the vehicle. The freight invoice and revised deal summary show that \$1892.44 was charged for transporting this vehicle. In the March 14, 2023 letter from Precision to the Director of Fair Trading, Precision admits they should have properly recorded the \$1000 fee and transportation charge on the bill of sale. As such, the omission to record that information on the bill of sale is a failure by Precision to create an accurate financial record.
57. The Board therefore finds that the evidence establishes both the deal summary and the bill of sale documents regarding stock number 19961 were inaccurate financial records created by Precision. As such, Precision breached s. 132(1) *CPA* and s. 9 *ABR*.
58. The Board does not find Precision's arguments regarding this breach persuasive. While we accept this was a single instance of inaccurate paperwork found in the inspection, and while we accept that this was a unique and confusing deal which Precision does not intend to repeat, these arguments do not affect that Precision breached the *CPA* and *ABR*. That this is only one instance is not a reason for Precision to escape sanction for their misconduct. The Board is not persuaded that this breach is a red herring; Precision is at all times required to

comply with the law and regulations regarding every deal. The fact that this was a single instance and a first offence for these breaches will be addressed in sanction below.

Issue (3) Given the breaches established, should the Board confirm, vary or quash the administrative penalty of \$6000?

Director's and Precision's Argument

59. The Director argues that the \$6000 AP should be confirmed. \$6000 is appropriate with reference to the *APR* and APs imposed on other suppliers for similar breaches. The sanction should be calculated with reference to s 2(2) of the *APR*. Each factor should be considered as follows:

- a. Seriousness of contravention – the goal of the *CPA* and *ABR* is to protect consumers from unfair practices. It is to promote trust and confidence in the motor vehicle industry through positive interactions. Precision's misconduct of selling above advertised prices affects the public's perception of the industry and AMVIC's ability to regulate it. It would tarnish the reputation of the industry for these breaches to go unpunished. Failure to maintain records puts the public at risk. The allegations are serious in nature.
- b. Degree of wilfulness or negligence – These breaches were a result of a third inspection of the employer's practices. AMVIC provided 18 notices in the two years prior to the breaches to the whole industry. Precision received these and is expected to review them. They were given chances, and they failed to take appropriate action. Precision knowingly continued to fail to comply with the regulations and derive economic benefit at the cost of consumers.
- c. Impact on persons adversely affected – these breaches were to the financial detriment of consumers. This breeds mistrust towards industry and tarnishes the reputation of the industry.
- d. History of non-compliance – there were similar contraventions found during 2017 and 2018 inspections. AMVIC uses progressive discipline therefore Precision was

not given an AP until the pattern of repeated behaviour became a concern to the Director.

- e. Mitigating factors – Precision rectified their issues by talking to their employees, fixing their forms and changing their computer system.
- f. Economic benefit derived – Precision derived an economic benefit of \$3020.25 from consumers. Precision is a high-volume dealer and only a small sample size of their operation was inspected. The actual economic benefit is much higher.
- g. Other factors – There has been discussion from Precision as to whether their education was sufficient. From *Windmill Auto Sales & Detailing v. Registrar of Motor Dealers*, 2014 BCSC 903 at para. 59, it is incumbent on a party which operates in a regulatory regime to develop at least a basic understanding of the regulatory regime and their obligations. Given Precision is a high-volume dealer and a sophisticated licensee of 40 years, they should be expected to know the regulation. Failure to penalize Precision would harm the reputation of industry. The penalty must be sufficient to deter, and cannot be seen simply as a cost of doing business.

60. Precision argues that a zero-tolerance approach to noncompliance is heavy handed and punitive. They argue that if all the alleged breaches are found, then they have derived an economic benefit of approximately \$3020. However, if the Board accepts their defence to stock number P23005 that this vehicle was never made available to the public, and if the Board accepts their defence of human error on P22977, then the actual benefit is closer to \$1570. In that light, the AP should be much lower, and less than \$3000.

Board's Decision

61. The Board accepts the Director's suggestion that the factors to consider in regard to sanction are found in *APR* at s. 2(2). Those factors are:
- a. the seriousness of the contravention;
 - b. the degree of wilfulness or negligence in the contravention;
 - c. the impact on any person adversely affected by the contravention;
 - d. whether or not the person ... has a history of non-compliance;

- e. whether or not there were any mitigating factors relating to the contravention;
- f. whether or not the person ... has derived any economic benefit from the contravention;
- g. any other factors that, in the opinion of the [Board], are relevant.

The Seriousness of the contravention - s. 11(2)(l) ABR

- 62. The Board finds the breach of s. 11(2)(l) ABR to be very serious. Not only did Precision in five instances charge more to consumers than the advertised price despite being thoroughly educated and warned by AMVIC, they did so in large part by intentionally mislabelling a “finance displacement” fee.
- 63. The effect of intentionally mislabelling this fee is that it deceives consumers and AMVIC. It has the effect of appearing to be an exemption to the all-in pricing requirements when it is not. This is totally unacceptable.
- 64. The fact that this fee also gives nothing of value to the consumer increases the seriousness of the s. 11(2)(l) breach.
- 65. Apart from the finance displacement fee, the Board agrees with the Director in that selling above advertised prices affects the public’s perception of the industry and AMVIC’s ability to regulate it. It is inherently a serious breach.
- 66. This factor is very aggravating towards sanction.

The Degree of negligence in the contravention - s. 11(2)(l) ABR

- 67. The Board finds that Precision was very negligent in the breach of s. 11(2)(l). They had been inspected in 2017 and 2018, and the results of those inspections showing their deficient practices regarding all-in pricing had been brought to their attention. They had been provided with education specifically tailored to their practices, and yet by 2023 had not fixed their practices. They had also been provided with multiple industry-wide bulletins containing further education on all-in pricing.
- 68. As noted in the decision above, the Board finds it concerning that Precision adduced evidence and made argument that they had not been provided with sufficient education.

They had been provided ample education. We find that these arguments from Precision demonstrate the level of negligence involved in these breaches and reflect a lack of care towards their responsibility to educate themselves, and to follow every regulation relevant to every transition, every time.

69. This factor is aggravating towards sanction.

The Impact on any person adversely affected by the contravention and economic benefit derived - s. 11(2)(l) ABR

70. The Board finds that the breach of s. 11(2)(l) resulted in consumers being inappropriately overcharged \$3020.25. This was to their detriment.

71. The Board finds that this overcharge resulted in \$3020.25 of economic benefit for Precision. We find it significant that the benefit was at the cost of consumer directly.

72. The Board places no weight on any evidence from the Director's witness that this breach is indicative of a larger pattern of misconduct as this is speculation. The Board rejects the argument by the Director that the actual economic benefit to Precision was larger than what was proven. The Board will not consider unproven allegations regarding sanction or otherwise.

73. This factor is aggravating towards sanction.

Whether or not the person ... has a history of non-compliance - s. 11(2)(l) ABR

74. Precision does not have a history of non-compliance.

75. While the Board found the 2017 and 2018 inspections relevant to our consideration of the degree of negligence involved in this breach, we do not find it appropriate to consider in the context of a history of non-compliance.

76. The Board finds the argument of the Director unpersuasive that the 2017 and 2018 inspections establish a history of non-compliance. Those inspections did not result in APs or any adjudicative decision. Precision was unable to ever dispute the findings of these inspections formally. Also, little specific evidence was adduced about this alleged history of misconduct. In effect, the previous inspections are unproven allegations. The Board finds it

would be procedurally unfair to consider unproven allegations a “history of misconduct” for the purposes of aggravating sanction.

77. As we have found Precision has no history of non-compliance, this is a “first offence” for Precision. This is mitigating towards sanction.

Whether or not there were any mitigating factors relating to the contravention - s. 11(2)(l) ABR

78. Precision fixed the issue with their computer system auto-creating advertisements. This is mitigating. However, they have not addressed nor acknowledged their inappropriate use of “finance displacement” fees. They have not fully addressed their practices to ensure future compliance.

79. The Board finds Precision’s efforts to address their computer system, and thus partially ensure future compliance, to be somewhat mitigating.

Any other Factors that, in the opinion of the [Board], are relevant - s. 11(2)(l) ABR

80. The Board finds that there is a need for specific deterrence in this case. It must be clearly communicated to Precision that they must comply with regulation for every transaction. It must be communicated that education and compliance are their responsibility. Further, Precision’s use of “finance displacement” fees, or the mislabelling of any fee, must be strongly deterred.

81. The Board finds that there is a considerable need for general deterrence as well, such that other members of the industry will understand that they must take a proactive approach to ensure they are following all-in pricing. They must be deterred from intentionally mislabelling fees and doing anything that has the effect of defeating consumer protections. Consumers must have confidence that the prices they see in advertisements are accurate and include all relevant charges. The Board agrees with the Director’s submission that the penalty must be sufficient to deter, and cannot be seen simply as a cost of doing business.

82. The Board finds that specific deterrence and general deterrence are both aggravating towards sanction.

83. The Board notes that we were provided with a variety of sanction precedents to consider. In particular, the Director provided a chart of 22 prior APs that the Director has imposed regarding s. 11(2)(l) ABR breaches. The APs were imposed for situations where suppliers breached s. 11(2)(l) by charging more than advertised price on 2 to 17 transactions. These APs show a range of fines from \$2000 to \$75,000. They generally appear to increase based on the economic benefit to the supplier, which ranges from approximately \$1500 to \$52,000. The Director provided full copies of four of those APs.
84. The Board appreciates that these materials show a possible range of sanctions. However, we note that these are APs are not appeal level decisions, and as such are only somewhat persuasive authorities. We note that for a breach where prices were charged more than advertised on 5 to 6 transactions, the range of sanction was still quite broad, from \$3500 to \$15,000. We also note, as stated by the Director, that none of these precedents involve the intentional mislabelling of fees.
85. The Director provided to us one appeal level sanction precedent to consider, that being the case of *City Ford*. In that case, the supplier was sanctioned \$10,000 for a variety of breaches including s. 11(2)(l) ABR where they sold four vehicles for more than the advertised price. We do not find this case to be sufficiently similar to provide much assistance in our analysis.

Conclusion on Sanction - s. 11(2)(l) ABR

86. In consideration of the factors reviewed above, the Board finds that Precision should be fined \$15,000 for their contravention of s. 11(2)(l). By way of aggravation of sanction, we considered the aggravating nature of the inherent seriousness of five instances of charging more than the advertised price, the unacceptability of Precision intentionally mislabelling a fee, Precision's degree of negligence including failure to take responsibility for their own education and lack of care to follow regulation in every instance, the \$3020.25 economic benefit derived at the cost of consumers, and the need for specific and general deterrence away from such misconduct. By way of mitigation, we considered the significant mitigating effect of this being a first offence for Precision and the efforts they have made to partially fix their procedures. Furthermore, we considered all of these factors within the precedent

range provided. We therefore find \$15,000 to be a just and appropriate sanction for their breach of s. 11(2)(l)

Factors and Conclusion on Sanction – s. 132(1) CPA and s. 9 ABR

87. The Board acknowledges that keeping accurate financial records is vitally important to enable the industry to be investigated and regulated. Widespread failure to create and maintain accurate financial records puts the public at risk. That being said, Precision's failure to keep accurate records is not one of those cases. We accept Precision's submission that this was a single instance from a unique transaction where they sold a vehicle to a customer out of province. We accept that they do not intend to repeat this conduct. We accept that no one was harmed by this misconduct.
88. However, the Board also recognizes that Precision's inaccurately created paperwork had the exact impact s. 132(1) CPA and s. 9 ABR were created to avoid – the inspector looked at the paperwork and, since it was inaccurate, concluded that Precision has breached s. 11(2)(l) for stock number 19961. It was only once Precision admitted their mistake and provided revised paperwork that the confusion was cleared up. In that way, Precision's inaccurate paperwork interfered with the proper regulation of the industry. There is a need for specific and general deterrence from such misconduct. A clear message must be sent to Precision and the industry that compliance is not optional, even on two documents.
89. The Board therefore finds that Precision should be fined \$1000 for a breach of s. 132(1) CPA and s. 9 ABR.

Total Sanction

90. Including all breaches, the total sanction that will be imposed on Precision is therefore \$16,000.

CONCLUSION AND ORDER

91. In accordance with the reasons above, the Board varies the Director's March 27, 2023 decision and imposes an administrative penalty of \$16,000.

92. No decision is made as to costs.

ISSUED AND DATED at the City of Calgary in the Province of Alberta this 14 day of December, 2023



Christopher Davison, Chair