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Alberta Motor Vehicle Industry Council

Report on Governance and Operations

December 2016

Report on the Review of the Alberta Motor Vehicle Industry Council

December 2nd 2016

The Honourable Stephanie MacLean

Minister, Service Alberta

103 Legislature Building, 10800 - 97 Avenue NW

Edmonton, AB Canada T5K 2B6

Dear Minister:

Re: Review of the Alberta Motor Vehicle Industry Council

We are pleased to provide our Report of the Governance and Operations Review of the Alberta Motor Vehicle Industry Council (“AMVIC”). This Review was commissioned by Service Alberta in August 2016.

Our Report concludes a comprehensive process of interviews, research, verification and analysis on the matters assigned to us through the terms of reference. We have reviewed all of the inputs received as a result of our extensive round of interviews within AMVIC, Society and Board members, Service Alberta, the public, members of the industry groups and various others who have had experience in dealing with AMVIC (and who contacted us of their own volition).

We have appreciated the input of all those who have been interviewed (either in person or by e-mail or telephone) and who have contributed in some way to our Review.

The observations, findings and recommendations are ours, however, in accordance with our independent assessment as professional management consultants and members of the Canadian Association of Management Consultants. We stand behind all of the comments contained herein. This represents our view of what the current status is and what changes we believe would best serve AMVIC as it moves forward in seeking to conduct its affairs within the scope of its mandate.

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We were pleased with the cooperation we received from the administration of AMVIC, the Department (Service Alberta), members of the AMVIC Society and Board, members of the public and all who provided us with their input.

Thank you for this opportunity to assist the Ministry. We recommend that the Minister share this Report or an Executive Summary with those impacted by the matters reviewed herein.

Respectfully submitted,



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1.0 Executive Summary

Based on our comprehensive Review of the Alberta Motor Vehicle Industry Council, it is our belief and finding that there continues to be a need to regulate the automobile industry in the interests of it and the general public. The impetus for an organization like AMVIC is as clear today as it appears to have been when it was first considered in the mid-90's and constituted in 1999. AMVIC regulates a large and important industry: it has over 7000 licenced businesses and 10,000 registered salespersons; the businesses involved are reported to impact the Alberta economy to the tune of \$30 billion per annum.

We note that this is a relatively “new” organization with an impressive list of accomplishments in its resume. The fact that it has a number of challenges as identified in this Report is not surprising given its varied objectives and audiences; the fact that it requires a “mandate refresh” is apparent to the Government (on behalf of the public) and to the industry.

Our Report points to certain key observations:

- There have been considerable challenges along the way
- AMVIC's evolution as an organization has been fraught with various mis-steps and negative media coverage
- Its roles and responsibilities are significant, multi-faceted and challenging
- Regulation of any kind runs the risk of naysayers (often those in the industry) based in part on the view that the “good guys” are being regulated whereas the “bad guys” are getting away with poor performance
- AMVIC is slowly gaining more widespread recognition as a result of its communications initiatives which is good for the industry and public alike
- Its governance system is somewhat convoluted and needs to be streamlined.

1. Purpose

Our advice is to **begin at the beginning**: to examine the basic purpose of AMVIC and declare it to be what society needs and will support; or to re-position it in some other iteration.

While this comprehensive Report has focused largely on issues which were brought to our attention in the course of our study, we would be remiss if we did not point to a very important “bottom line”: there is a need for regulatory functioning on behalf of the Government, consumers and industry alike. The fact that it has this audience means that it will always experience some degree of friction and perhaps strife. Very few people appreciate being regulated by someone else or something else. And yet, this regulation is needed so that society is afforded protection from abuses by those who have difficulty living up to an acceptable standard.

Having conducted this comprehensive review, it is our judgment that there continues to be an obvious role to be played by such an agency.

2. Governance Model

There are options. At the request of the Government we considered them: we started essentially with “begin again” and then examined whether the system and structure works or whether it would be better to design an entity closer to the current “ABC” (agencies, boards and commissions) model reflected in numerous current Government entities or as some other iteration. While the ABC model has a number of advantages to the Government, recent discussions and decisions would augur against the creation of a new one if the advantages are not overly significant. As we indicate in the full body of the Report, we reviewed four options before determining which one in our opinion would “work best”. These four options simply listed are as follows:

Option “A”: Create an Alberta Auto Industry Regulator

Option “B”: Return the administration aspects of AMVIC to Service Alberta

Option C - Retain AMVIC/the current model

Option D - Retain a Refreshed/Revised AMVIC

We recommend “Option D - Retain a Refreshed/Revised AMVIC” as the basis for moving forward.

As this option requires change to the structure and role of AMVIC, the recommended changes are outlined as being:

- Negotiate changes to the Society bylaw in order to strike a balance in its governance structure (i.e. industry/public representation) which reflects its duty to enforce the Fair Trading Act (and other statutes) on behalf of the Government. (We note that it has moved towards this position over the years by increasing the number of public representative positions on the Board).
- The Society, Board and Government should be deemed to be partners in the design through:
 - Melding the Society with its governing board
 - Reducing industry membership and industry-at-large positions by one thereby creating a balance of industry/public positions in its membership (6 industry/industry at large; 6 public)
 - Industry members of the Board would include one representative of each of the current Society members as nominated by the current Society members and approved by the Board; consideration must be given to those who would plan to remain on the Board for the full term(s)
 - Allocating the authority to the Minister to appoint someone to the position of chair of the Board
 - Elevate Chair of the Board to a part-time position; such a person would be identified through the Government’s own model (i.e. the Alberta Public Governance Agencies recommended approach) which should result in a qualified and independent person being appointed by the Minister.

Other recommended changes would include:

- Increase terms of every member to three years

- Change the term limits for members on the revised Board to reflect a maximum length of service of 4 terms (12 years) (which will be deemed to include any years spent as Chair or past-Chair)
- Enable any member having been appointed part way through a term (due to the retirement or resignation of a current member) to serve his/her full term allowance of 12 years
- Follow the public agency appointment process recently established by the Government relative to current public members seeking to complete their term allocation
- All appointments (other than the Chair) once made will be subject to the Board's own policies with respect to their reappointment
- Industry and industry at large appointments will be recommended to the Board by members of the Society; public-at-large appointees will be appointed as a result of the Alberta Public Agencies Governance regulations
- Reduce the Board committees to four (4); Executive (includes HR and Audit), Consumer Concerns; Investigations & Enforcement, Communications & Education
- Rotate their membership at minimum every two years; ensure an equal number of industry and public representatives on each committee; require written reports circulated to all committee members within 48 hours of a meeting; provide all Board members a written report from each committee in the agenda package for each Board meeting.

3. Legislation

The legislation is the basis on which decisions made by AMVIC rest. Such a framework is fundamental to a healthy industry and a protected public/consumer. Where legislation is broadly written or unclear, regulations clarify expectations and fill in the picture.

Our Report has identified the legislative basis for what and how AMVIC is established to do. Much of that base is derived from the Fair Trading Act and a

Delegation Agreement. The Fair Trading Act was last substantively amended in 2006, seven years after it first came into effect. The Government has indicated that it does not plan to re-open the Fair Trading Act for review prior to 2017. That calendar may not need to be adjusted as there are steps that AMVIC can take as a Society, Board and administration irrespective of legislative amendments. It is not surprising that there are efforts to have it reviewed now to determine if certain legislative changes might improve its effectiveness.

However, we believe that much of what ails the auto industry can be tackled through enhanced public awareness provided that the legislative, governance and administrative frameworks are functioning as they should. This requires ongoing monitoring and making adjustments as necessary.

The changes to legislation when that does come needs to include a fulsome review by a panel (**Auto Regulatory Legislative Review Panel**) of those representing: AMVIC, the consumer, industry, legal, governance, regulatory organizations and Government of Alberta. Such a panel should be constituted now and empowered to assess the requests for legislative change made by AMVIC and the responses to date by Service Alberta.

4. Role of the Public

A review of the membership of the Society and Board provide clear indication that some changes are required. The Society membership is a function of the five Associations who hold membership and who nominate their choice of member to the Society; together with four public members selected from and by the Public-at-Large Members of the Board. As long as there is a Society under the present terms and conditions that is likely to remain as it is.

The composition of the Board needs to be re-thought and recast. This assessment also points to the obvious: those who are being protected from industry malpractice (the public) are the least observable (nearly absent) in any governance role. While there are a number of good reasons for their absence at any decision-making table, the public (consumer) needs to be involved at the senior most levels. The Board must include balanced membership to ensure that

both the public and industry have a seat at the table where consumer redress (remedy and compensation) is being discussed. Further, public members should have complementary board governance skills (do not require an industry background) to understand, consider and decide on the issues. Presumably, there would be many potential candidates from a broad swath of public roles who would add a voice of reason, careful thought and independence to governance discussions. Equally though, the Minister needs to recognize the need for these people in a timely manner (given the current recruitment process).

Public presence could be achieved through:

- Ensuring that the APAG recruitment process and template is followed
- Ensuring that the current members of the Board have been consulted with respect to the type (qualifications and experience) of prospective members is ascertained
- Utilizing an external source to actually find the right candidates and recommending these as is laid out in the APAG information

The second mechanism for ensuring “public presence” is to request through a change to the Society bylaw that the **Minister make the appointment of chair** of the Society/Board. This again would follow the APAG process in terms of the search process and would be up to the Minister to select from a short-list of qualified candidates.

5. Role of Government

During the course of this review, we were presented with two very different portrayals of the role and influence of Government (as represented by Service Alberta). The one was as a result of the interviews we conducted with AMVIC Board, Society, management and staff and it was generally negative; that is, Service Alberta was often portrayed as the oversight body who would not be pleased with the efforts of AMVIC regardless of what the latter felt was being achieved. The second experience was our own wherein we were well-received and professionally treated. The staff were courteous to a fault and helpful on a

wide number of inquiries and requests for assistance. The former seemed to us to be more institutional; the latter collegial.

In order for both the Government and AMVIC to be well-served, AMVIC needs to be recognized as a necessary service delivery system which functions in the best interests of the industry, but which also is essential to the confidence of Albertans in this particularly important and well-utilized sector. In order for that to occur, we believe that the role of Service Alberta needs to be understood as both the keeper of the legislation/regulations but also the enabler of good governance and management practices by AMVIC.

Service Alberta also needs to consider how it will change. Its *modus operandi* ought to reflect a traditional style of “we are here to assist you fulfill your roles” as opposed to “we are here to catch you when you do not”. Oversight is as much about facilitating to a commonly-desired endpoint as it is about correction.

The model of industry self-regulation (with public representation and Government oversight) is a proven one for other Alberta sectors and professions. Like others which are self-regulated, the onus should be placed on the leadership/ governance group to ensure that it is helping to develop a business environment where it can thrive and the public can be assured of fairness and prompt resolution of glaring deficiencies.

Having the industry “pay” for the privilege of being regulated actually makes a good degree of sense. Sound and effective regulation is “their” financial and business safety net. Having the consuming public contribute to that through a very minor charge/levy on a vehicle purchase justifies the provision of a “compensation fund” set aside for those who have been egregiously aggrieved through shoddy or illegal practices. This role issue is critical and needs a strong linkage (and legislation) to make it work well.

6. Separation of Roles

Currently, the CEO is expected to be the senior manager of the entity (AMVIC) and thus responsible for providing direction and oversight to the day-to-day activities and decisions of the management (and organization) while also

assigned as the arbiter on appeals. This is an almost contradictory role and certainly one with built in conflict. One cannot be responsible for guiding investigations (or at least the investigators) and then being in a position to rule on the disposition of the investigative charges.

The need to separate the roles has been recognized previously by both AMVIC and Service Alberta but has yet to find its way to resolution. The arbiter of the system and the decisions it makes impacting dealers, salespersons, business owners and consumers should be the charge of a Registrar supported by an independent appeal panel.

The CEO should manage and provide oversight to the administrative system. He should be aware of what is happening at all times and able to guide workloads and assignments as needed. He should also be aware of what his investigators are doing and ensuring that proper protocols are being followed. He cannot do that and maintain any neutrality in his current role as he acts as the “registrar” at the end of the process.

The appointment of a Registrar would require a careful recruitment process with the focus being on someone with suitable experience, maturity and judgment. While this might be someone internal to AMVIC, their present duties would likely have to be reconstructed to afford both the time and space to serve in an impartial role.

The Registrar would need to:

- Have a thorough understanding of the Fair Trading Act and its regulations to ensure that his/her findings are within his/her regulatory authority
- Have the capability to carry out Administrative Actions
 - Signing Director’s Orders (eg: telling a business that they must stop selling vehicles if not licenced)
 - Reviewing, approving/rejecting Application Reports wherein an Administrative Penalty or Undertaking and/or face to face reviews are recommended

- Determining the dollar value of an Administrative Penalty and Undertaking based on precedence/case law and/or severity of the infraction
- Negotiating Administrative Penalties and/or undertakings
- Sit as an impartial mind during Administrative Reviews to hear the arguments of AMVIC and the stakeholder as it relates to if an AMVIC licence/registration will be;
 - Refused
 - Cancelled
 - Suspended
 - Granted with conditions
- Obtain further information regarding the applicant as required
- Be the author of letters from the Registrar's desk that report his/her findings.

7. The Role of Chair

The current design includes a traditional and minimal role for the Chair of the Board. That person coordinates the Board's "voice"; he (in this case) speaks on the Board's behalf; chairs meetings of the Board and of the Society; speaks at various industry events; is asked to meet on occasion with the Minister, Deputy Minister and other Service Alberta officials.

With direction from the Board, the chair represents the Board and its interests in dealing with the minister, department, stakeholders and community. The chair is responsible for providing leadership for the Board in facilitating its work.

If the model were to be strengthened as we have proposed, the role of Chair would be enhanced as the head of a balanced board (six members drawn from the industries represented; six members from the public-at-large). The position of Chair should, in our opinion, be appointed by the Minister after a comprehensive search has taken place.

The role would include responsibility for chairing the Compensation Fund panel; recommend policy changes to aid the Board in its direction to the CEO; advise

the Minister (through the Deputy Minister) as to what changes the Board has been making in its structure/organization and approach to issues; report on the overall performance of the Board in delivering its mandate and business plan; ensure proper separation of the quasi-judicial review process from other Board operations; approve and submit accountability documents required by the Minister such as business plans, financial documents, reports, performance standards; and build understanding and trust through policies, multi-stakeholder consultations and clear communication.

8. Tone at the Top

One of the most critical aspects of any organization is the sense of trust and confidence displayed at the top of the organization in terms of the style, capability and capacity for leadership. Organizations like AMVIC are complex both in terms of its governance and its service delivery. It is not a simple, straight-forward system and thus functions well only to the extent that it is confident that its leaders are guiding appropriately and ethically. This leadership begins, in our opinion with the Board Chair and his Board colleagues with respect to the policy, governance tone which they illustrate through their decisions, decorum and sense of “doing what is right”.

The tone is also established by the Chief Executive Officer who has a critical connecting role between those governing and those managing the organization. This tone is reflected in a whole series of interdependent management functions (i.e. team meetings, performance reviews, encouragement, discipline, etc.) and attitudes and will in turn be reflected outwardly by how managers liaise with each other and with the audiences being served. The CEO will either be supportive or critical, trusting or suspicious, calm in the face of upsetting circumstances or flustered and anxious.

As well, the relationship between the Board as a whole and its CEO will be a key determinant in how well AMVIC as a total system functions. The Board is dependent on receiving quality and timely information from its chief policy advisor; that is how it makes decisions in which the Board places its confidence.

This is why it is essential that the Board conduct regular performance reviews of its CEO and why the CEO needs to be an active participant in the process. If candour is the order of the day then issues can be identified and dealt with in a professional and timely manner.

We are concerned that the significant changes we have recommended will require a new style of administrative leadership. The organization should be more focused on how to enable the industry to be in compliance with the regulations as opposed to being more focused on enforcement and discipline after the fact. While the efforts of the communications function have been useful in this regard, more of the attention and focus of senior management needs to be aligned with “customer” interest and resolution of complaints on a proactive basis wherever possible.

Part One: Background

2.0 Background, Purpose and Terms of Reference

2.1 Background

This Governance and Operations Review was commissioned by the Minister of Service Alberta on the authority of the Fair Trading Act (Review respecting regulatory board 137.1).

- (1) The Minister may, whenever the Minister considers it necessary, review or appoint a person to review (a) the conduct of a regulatory board, (b) any matter relating to a fund created by a regulatory board under section 137, or (c) any matters relating to the operations, powers, duties or functions of a regulatory board.*
- (2) The Minister or other person conducting a review under subsection (1) (a) may require the attendance of any members, directors, officers, employees or agents of the regulatory board or of any other person whose presence is considered necessary during the course of the review, and (b) has the same powers, privileges and immunities as a commissioner under the Public Inquiries Act.*
- (3) When required to do so by the Minister or other person conducting a review, a person referred to in subsection (2)(a) must produce for review all books and records that are in that person's possession or under that person's control that are relevant to the subject-matter of the review.*
- (4) A person, other than the Minister, who conducts a review must forthwith on concluding the review report in writing to the Minister.*

For the most part, AMVIC's work flies under the radar as its employees carry out the principal mandate assigned to it by Government and as overseen by its Society and Board. This *mandate is to provide consumer protection in Alberta's motor vehicle industry through mandatory licensing for motor vehicle businesses and salespeople as required by the Fair Trading Act of Alberta and to provide a*

fair marketplace for automotive consumers and businesses. (AMVIC Business Plan 2016-19)

AMVIC has a Delegation Agreement with the Minister of Service Alberta that empowers the organization to enforce and administer the requirements of the *Fair Trading Act* for Alberta's automotive industry. AMVIC is responsible to administer the *Fair Trading Act*; the *Automotive Business Regulation*; the *Cost of Credit Disclosure Regulation*, and the *Internet Sales Contract Regulation*.

The *Automotive Business Regulation* is enacted under the *Fair Trading Act*. This legislation establishes the requirements for licensing and registration; delineates codes of conduct; describes requirements about the compensation fund; defines requirements related to consignment sales; and provides information and authorities related to offences. Through the Delegated Agreement, the Minister responsible for the Act has assigned these responsibilities to AMVIC.

2.1.1 Observations

It is fair to say that AMVIC has had a checkered background. It has been subject to seven reviews since its inception along with the normal annual external audits. Since 2009 four major reviews have been carried out by Service Alberta (its "parent" Ministry) and three have received both public and industry attention due to the findings and to the "leaked" 2014 report which spoke to the internal culture of the organization. The fourth is a recent (2015/2016) Peace Officer Review conducted by Alberta Justice and Solicitor General in which AMVIC was directed to address a number of policy issues.

In recent times, a number of concerns have been raised by the public, industry and the media respecting AMVIC and its effectiveness in protecting consumers. As a result, public and industry confidence in government regulation of the automotive industry has reportedly decreased.

The AMVIC Board believes that it has responded appropriately to the challenges and observations posed by the prior reports and that its commissioning of an external audit firm was done so in good faith to show that it was serious about

changing the perception of the Government. Having said that, there is also recognition by Board members that the relationship is still flawed and tentative and that other changes would likely have to be made.

We were also advised that the Government (Service Alberta) believes that it has been actively supporting actions the Board is taking to improve governance. Meetings between the Board and senior officials have been well-received and most believe that some progress was made in making sure that this regulatory agency was on the right path.

It is our understanding that in requesting this Review, the Government was intent on ensuring that AMVIC is on the right path; that its governance and management are aligned; that its systems and practices support what would generally be described as good practice; and that the public can have confidence in this regulatory body which has been empowered to provide assurances that consumer protection and industry regulation both matter.

2.2 Purpose

In its assignment to this firm to undertake this Governance and Operations Review the Ministry indicated that its purpose was

“to provide additional assistance to the Board by conducting a fair and complete assessment of the current state of AMVIC. This will support the Board’s efforts to ensure good governance and public accountability for AMVIC...Appointment of a reviewer will allow Service Alberta to determine if the recommendations have been adopted and whether the AMVIC Board has adopted robust governance and oversight practices in response to the previous reviews. It will also result in information and recommendations that Service Alberta can provide the AMVIC Board to allow it to make improvement in AMVIC performance and oversight. Finally, conducting the review will also give the Minister the ability to issue an order under the Fair Trading Act, if required, to address any identified shortcomings.”

2.3 Terms of Reference

The objectives (or terms of reference) of the review are set out in the following prioritized list:

1. Determine whether board governance and operations are ensuring appropriate oversight of AMVIC.
2. Assess the organization's human resources strategy, processes and issues.
3. Assess the effectiveness of the management and general administration of AMVIC.
4. Evaluate roles, responsibilities and relationships between the board and senior management, as well as the board's and senior management's understanding of roles and responsibilities.
5. Assess whether AMVIC is implementing recommendations to address concerns raised from prior reviews, such as those pertaining to investigative and enforcement practices.
6. Determine whether AMVIC's protocols, policies and procedures adequately protect consumers.
7. Evaluate the compensation fund, including whether current limits on payments to consumers provide appropriate redress, if the current funding formula enables ongoing maintenance of the fund, and any relevant comparisons to other consumer protection funds.
8. Determine whether the current funding formula achieves the right balance of revenue sources between licensing fees and the industry levy to ensure the proportion of AMVIC's revenue funding operations and the compensation fund is fair to industry members.
9. Determine whether AMVIC is appropriately sized and skilled to carry out its delegated functions, duties and powers and if AMVIC is carrying out activities that are not within its mandate. *(Our edit: this point previously a part of objective #8).*

10. Assess whether the current revenue generated provides a sufficient budget for an organization with an appropriate size to deliver AMVIC's delegated functions, duties and powers.
11. Evaluate the extent to which AMVIC has established structures and processes that enable organizational learning and continuous improvement.

3.0 Study Methodology

In conducting this engagement we have undertaken the following steps:

1. We met on July 19th 2016 with senior management of Service Alberta to discuss the assignment.
2. At a subsequent meeting on August 8th-- 9th we received a more in-depth overview of the review from senior staff of Service Alberta. At these meetings we received a briefing as to the background of AMVIC and the issues leading to this request.
3. On August 10th the Minister advised the Board Chair of its intent to call for this review and on the 11th she briefed the media.
4. We contacted AMVIC and made arrangements to see the senior management the next day (August 12th 2016). At this meeting we covered the objectives, our background in similar assignments, the consulting team, our approach, our expectations of the management and staff during this engagement and our commitment to professionalism and fairness.
5. Subsequent to the announcement we began developing our interview guidelines for the Board, management and staff of AMVIC.
6. We developed a list of requested documentation and submitted it to the Board secretary of AMVIC.
7. The Board secretary assisted us in developing an interview schedule including our initial meeting with the CEO of AMVIC on August 15th 2016. We have subsequently held several interviews with the CEO to ensure we understand the background and issues from his perspective.
8. Our interviews began the week of August 15th and continued through to early September so as to accommodate any participants in this review who were not available at the outset due to holidays and other personal commitments.

9. We made arrangements to meet with the personnel of Service Alberta who have been involved with this organization and received their cooperation in assisting us to understand the issues from their perspective.
10. We also met with a variety of individuals external to AMVIC and the Government who have had a connection to the Council as an investigator, member of the public, representative of the automotive industry or in some other capacity.
11. We reviewed all documentation and the observations we recorded as a result of our interviews and developed the framework for our report.
12. We prepared the Report and submitted to the Minister of Service Alberta.

Part Two: Setting the Stage

4.0 A Brief Summary of Respondent Views/Issues

In our approach to this Review, we interviewed over sixty (60) people. All were connected in some way to the subject of our Report either as members of the Society and Board, employees of AMVIC, of Service Alberta, or prior employees/members of the Board and Society. Still others e-mailed or telephoned in to voice their complaints which had been previously directed to AMVIC. While these interviews do not drive all that we report on, they do inform the study in terms of what those who are perhaps the closest to the issues think and the basis on which their decisions have been made and their impressions garnered.

The reader is advised to consider this section as a **general reflection of “what we heard”** not what we have verified in terms of the full scope of this Review. We compiled what we heard under various headings where we felt they were best suited. We have also edited the wording so as to preserve the confidentiality which we agreed to respect when we commenced each interview. We of course heard much more but provide this summary to enable the reader to catch a glimpse of how AMVIC is viewed by those within the organization and those who are quite directly tied to it.

History/Background/Purpose

- Many of those interviewed were only partially aware of the history of AMVIC and why it is structured as it is
- The relationship between the Society and Board has evolved over time; not clear to most members and staff
- The purpose of AMVIC as it was originally constituted is not well known or understood; progress on this front is being made through enhanced communication
- The changes in senior leadership and the turnover of employees is of concern

- Some stated that AMVIC's role is to protect the consumer and level the playing field for industry; others suggested that the mandate is to improve the auto industry image; still others wondered if the role of AMVIC is to change behaviour of industry; or is it to educate both the industry and consumer
- Some believe that AMVIC exists to ensure the industry complies with FTA
- Questions as to whether or not consumer is being protected or at least in a balanced way
- Suggestion from some that AMVIC is seen to be punitive oriented and less education oriented
- A suggested weakness is that AMVIC is complaint driven and lacks resources or know how to build awareness and be proactive
- Some noted that the objectives are unclear or unattainable; for example how does AMVIC encourage compliance
- Some feel that AMVIC is there to protect the auto industry through quasi-regulation and sporadic enforcement; "catch the "curbers" and "leave licensed dealers alone" syndrome
- Value of current corporate "Society" configuration unclear and suspected to be biased in favour of the industry
- Some suggest AMVIC as anti-industry; it has an "out to get you" mentality

Society Involvement

- Society meets 3-4 times annually
- Society concerned that it is frequently left out of important decisions
- Society feels that AMVIC has outgrown its original purpose and has become too unwieldy/top-heavy
- Society has expressed its concerns to the Board about the growth of AMVIC's hierarchy and therefore costs; feels that this is excessive

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- Unclear of the value or role of the Society in relation to the board of AMVIC; is the Society to be representative of the industry
- Auctioneers Association is an agent and does not pay the \$6.25; has 450 Association members and only about 5 (the bigger ones) are AMVIC members

Board Governance

- Board governance practices are evolving: governance training has been sought; changes have been made; Board recognizes that it once was seen as a mere extension of the Executive Director/CEO
- Board committees are utilized and appear active; some belief that they are operating as a “hands on board”
- Board believes that it is prepared for meetings; express appreciation for background materials and reports
- Lack of clarity as to role; poor orientation process; not clear on fiduciary duties
- Concerns with the relationship between Service Alberta and AMVIC
- Board composition has been lacking public members for some time as there is currently only industry members involved
- Strategic planning approach very good
- Board meets regularly and generally 8-10 times annually
- Members generally pleased that a review is taking place to clear the air and re-focus its purpose

Board Members

- Board members try to take the role as public members; not trying to simply reflect the industry point of view
- Need someone with a strong CA and legal background
- Board members have greater loyalty to their Association than to AMVIC
- Orientation process not very thorough; need to enhance education

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- Concerned that AMVIC no longer helping the industry but sees itself as the policeman

Board-CEO Relationship

- Some concern that CEO only seeks Board input as necessary; Boards have been viewed as either weak or disinterested; CEO seen as very strong and therefore guides the Board
- CEO regularly sends updates to Board members
- CEO made decisions to remove senior people on his own; no interference by or reference to the Board
- Performance reviews have generally been positive
- Relationship between the Board and CEO generally seen as healthy; Board recognizes that CEO has to make decisions
- Management style a frequent focus of staff commentary

AMVIC-Government Relationship

- Relationship strained almost from the outset; management pushed back against any suggestions from Service Alberta
- Board members express uncertainty as to why; most feel that positive results are more likely provided that they have regular meetings
- Reporting and liaising with the GoA is expressed as less than optimal in regard to expectations, issues management, consumer calls
- A leaked GoA report on AMIC was the focus of a W5 story which further aggravated the relationship
- Meetings are described as cordial and productive for the most part
- What is expectation of AMVIC: enforcement or consumer remedy
- Looking forward to an improved relationship; we need Government to be active members

AMVIC Management; Understanding of Roles

- Management appear to be generally equipped for their roles as currently described

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- Managers come from a variety of backgrounds; current managers viewed as somewhat better equipped; degree of related experience causes questions
- Relationship of Society to Board not always supportive; some concerned that their members targeted

Approach to Human Resources & Morale

- Staff express support for a separate HR presence as a distinct entity
- Morale has been seen as gradually improving since last investigation
- Staff social committee reports general involvement in summer and Christmas socials; funds gathered voluntarily from each staff member
- Management salaries should be clear to the Board and not simply reported as lumped together
- Overall salary review was seen as one-sided in favour of management
- Priority of health, safety and training seen as weak

AMVIC's Response to Prior Investigations

- AMVIC has undertaken a range of substantive changes to improve their consumer and licensee outreach efforts and service levels
- General belief that the response to prior investigations has been improving
- More confidence now by Service Alberta in the reporting of changes being made; questions regarding what the Board knew and when underscores need for transparent reporting

Orientation

- Limited orientation being provided to Board members but belief that this has improved; generally handled at least initially by the CEO; some involvement by Board Chair
- Binder of background information made available to new Board members; Chair available to consult; members expected to pick up on their roles as they attend meetings

- Society appointments receive, for the most part, sufficient orientation

AMVIC Policies & Procedures

- Useful policies being developed; a strong policy framework exists
- Concern expressed that investigators not provided clear direction in the exercise of their duties; results in an overly aggressive style
- Belief that senior management not prepared to back up the work and findings of their investigative staff
- The uncertainty expressed by investigators speaks to the lack of clarity in understanding what the expected protocols are; this lack of clarity can sometimes be expressed as perceived interference in their work
- Many employees lack understanding and in some cases knowledge about what policies say or require

Investigations

- A lack of respect for senior staff is prevalent amongst some of the investigators in particular; the lack of trust (which seems to flow both directions) results in a sense of being undermined
- The degree of respect and maturity one would expect to find is often not evident
- File documentation needs to be standardized and then monitored
- IT systems seen to lack appropriate data; are seen to be cumbersome, inefficient and ineffective; security of IT system as well as ongoing cost is a concern
- Training and ongoing professional development of Peace Officers is weak; need work around investigative requirements for Crown to proceed with charge
- File loads are considered too big for each officer; (20-35)
- Number of files increasing substantially due to current economy

Consumer Protection

- General sense that consumer protection has been improving

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- Clear focus on “how can we resolve this issue?”
- Consumers have several remedies available to them; from a complaint about 50% proceed to an action; often complaints may be outside the AMVIC mandate or not valid
- Policies being reviewed to address operational gaps

Compensation Fund

- The Alberta Fund is currently about \$4 million after being started in 2012
- The process of instituting a vehicle sales levy to collect sufficient revenue for the Compensation Fund seems to be an ongoing issue of debate
- The fund is framed as a policy of a last resort assurance program
- Concern exists in that AMVIC is building a fund but not using it
- A committee of the AMVIC board is reviewing the compensation fund

AMVIC Size, Budget & Resources

- AMVIC’s size a question of purpose; purpose needs to be clarified first
- Current office space is quite tight requiring some staff to function out of their residences; this needs to be addressed
- Specific areas of concern noted are the need for more investigators in the north and south regions (to regularly cover other Alberta main centres for education, inspection and investigations)
- A concern exists in the ownership of the IT system given it is customized for AMVIC and is now a significant operational asset
- IT (information technology) area has no strategic plan/performance measures; a draft has been prepared internally but not yet accepted or utilized; use of three outside suppliers, data which is resident outside the province

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- Specific area of concern is the strategic importance of the CRM (customer relation management) IT system which is core to the accurate and timely operations of AMVIC
- It was thought the organization is compliant with all GoA practices but no internal review has been completed on records management/ IT/ due to a lack of staff

AMVIC Learning Culture

- AMVIC has a culture that is not well integrated; with many new people hired it appears that experience and learning on the job are a main component for all units
- It appears to be “silo” oriented” because of the work functions; CSO and Industry Standards work together on complaints and license issues; Investigations by its nature is more independent and closed as compared with communications or the consumer services area
- Senior management needs to be seen as collegial, mutually supportive

Communication/Education

- Web site interactive and working reasonably well
- Improvements being made in getting AMVIC message out
- Guidance needed to clarify primary role: is it to protect image of AMVIC or to educate stakeholders about rights and responsibilities
- A written communication protocol exists between Minister and AMVIC
- Stakeholder confidence in AMVIC is an ongoing issue; appears to be strengthening.

Again, to be clear, the foregoing are a snapshot of comments received. They are not necessarily representative of the full suite of commentary but do provide a brief summary of what we heard.

5.0 The Organization

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In the following sections of this Review we will provide information on the structure and processes that provide regulation to the motor vehicle industry in Alberta. The following is an outline of the current structure and processes (in Section 5.1 below we will go back to the beginning of the processes that established the present system):

a) Fair Trading Act (FTA)

- i) proclaimed on September 1st 1999, and currently the responsibility of Service Alberta
- ii) s. 136 provides for delegation to a regulatory board
- iii) s. 174 provides for a Director of Fair Trading appointed by the Minister
- iv) s. 105, 136, 137, 139, 140, 183 provides that the Minister may make regulations

b) Fair Trading Act - Automotive Business Regulation (ABR)

- i) proclaimed on September 1st 1999 provides for licensing, codes of conduct, registration of salespersons, a regulatory board, and a compensation fund
- ii) s. 24 names the Alberta Motor Vehicle Industry Council (AMVIC), as a regulatory board under s. 136 of the Fair Trading Act

c) Alberta Motor Vehicles Industry Council (AMVIC) Society

- i) was incorporated on February 12th 1999 under the Alberta Societies Act as a separate and independent corporate body by the motor vehicle industry
- ii) membership is made of motor vehicle industry representatives, and the membership elects the Board of Directors except for the public-at-large Directors appointed by the Minister

d) Automotive Business Regulatory Services Delegation Agreement (“Delegation Agreement”)

- i) an agreement between the Minister and AMVIC Society, was first entered into on March 30th 1999, with the agreement updated every three years, and last signed in 2012

- ii) agreement outlines the respective legal roles and responsibilities of the Minister and AMVIC
 - iii) also delegates responsibilities under the FTA Cost of Credit Disclosure Regulation, and the FTA Internet Sales Contract Regulation
 - iv) provides that AMVIC in its regulatory role operates independently from the government, and is intended to be an impartial body
 - v) provides that AMVIC is responsible and accountable to the Minister, the government and thereby the public, for appropriate regulatory decision-making
 - vi) delegates the administration of licensing and registration including vehicle sales, leasing, consignment, repair, installation, and dismantling of motor vehicles under the Automotive Business Regulation;
 - vii) delegates powers to investigate, respond to claims, and handle enforcement under the Fair Trading Act and its regulations
 - viii) delegates responsibility to establish and administer a compensation fund
 - ix) delegates responsibility to establish educational programs for consumers and industry members
- e) Director's Delegation Document
- i) delegates the powers of the Director of Fair Trading as provided in the FTA

5.1 Genesis

The genesis of AMVIC began in the mid-90s through discussions regarding how improvements needed to be made to the regulation of the automotive industry by its own membership so that consumers would be afforded better protection. The purchase of a car was noted as being very significant based on the cost and likely second only in importance to the purchase of a home. These discussions took on more meaning as a result of the Government of Alberta proposing to deregulate the automotive industry in Alberta (1997).

5.2 Early History

After objections from both industry and consumer stakeholders, the decision was made to establish a self-regulatory industry body that would oversee the automotive industry. The role of government was to be minimized. There was an initial meeting of stakeholders and the Minister of Municipal Affairs on October 23rd 1997 which resulted in a body being formed which was known as the “Automotive Advisory Working Committee” whose mandate was to look into establishing an industry council. Its mandate included looking at the current regulations with a view to making recommendations for change. This group of industry stakeholders determined to solicit the input of a broad cross-section of industry members through a questionnaire.

This was distributed in July 1998 to licensed automotive businesses, municipalities, law enforcement agencies and other interested parties. The responses (which had a 15% reply rate) pointed to agreement that regulation was necessary and that industry could and should take a lead role. (Prior to this time the regulation of the industry fell to the consumer protection staff in Alberta Municipal Affairs). The recommendations of the AWC were presented to a standing policy committee on June 24th 1998.

On October 15th 1998 the recommendations were presented to the standing policy committee with the request to establish the “automotive industry council”. This was to be funded by increased licensing fees and the requested start-up funds. The recommendation was approved by Government on October 20th 1998.

5.3 Creation of AMVIC

The Alberta Motor Vehicle Industry Council (AMVIC) was created (1999) to regulate the automotive industry in Alberta and ensure a fair marketplace for consumers and businesses. It was established as a non-profit society so that it would be able to begin operations immediately upon proclamation of the Fair Trading Act (FTA). As a result, AMVIC is not a creation of the legislation, but a

separate legal entity that operates under the rules and requirements of the *Societies Act*.

AMVIC's inaugural meeting was held on March 8th 1999. The original documentation (March 18th 1999) at the time indicates that Government was asked to:

- Create AMVIC as a not-for-profit organization
- Appoint two public members to the council as a provision of incorporation
- Indemnify the members of AMVIC (which at that time, 1999, would have required under existing legislation, the right of Government to appoint a majority of the members)
- Provide funding for AMVIC out of current operating budgets (which was authorized by Alberta Regulation 309/75).

The original bylaws, filed February 12th 1999 made provision for:

- (Sec.2.1, 2.2) Members of the Society were the applicants for incorporation and those individuals or corporate or unincorporated organizations who subsequently become members...
- Member could appoint an alternate member; the Board was to consist of nine (9) members; two members appointed from the public-at-large by the Minister; one each appointed by the Motor Dealers' Association of Alberta; Recreation Vehicle Dealers Association, Automotive Service and Repair Association; Auctioneers Association of Alberta; three members nominated by motor dealers that are not members of the foregoing associations; two members appointed from persons nominated by owners of automotive businesses in Alberta.
- The term of a Board member was two years with a second term permitted
- A Board was to be established "to manage and direct the affairs of the Society"; the Board could "enact and enforce policies regarding the

direction and management and operation of the Society...consistent with these bylaws.”

In response to a question from a Government member a response was sent (February 4th 1999) from a member of departmental staff outlining some of the rationale that led to the formation of AMVIC. These included: “unpaid liens; lost deposits; misrepresentation; consignment fraud; unlicensed businesses (curbing); no compensation fund.” The benefits to consumers were identified as having a council which would have:

- “Greater enforcement powers
- Sales-staff training requirements
- A disciplinary process
- A compensation fund...
- Public representation ...by Ministerial appointment.”

The benefits to businesses were viewed as:

- “Fair and firm enforcement of automotive standards that would result in a level playing field for all businesses
- Automotive revenue would be dedicated to improving the standards in this industry”.

The benefit to Government was similarly expressed:

- “An Automotive Council with greater enforcement and regulatory powers would be paid for and supported by the automotive industry”.

Start-up funds were requested and negotiated and resulted in \$768,000 being made available to AMVIC for that purpose. (It was expected that the business assessments collected by AMVIC would be sufficient in the following year to cover its operating expenses). In addition the Department (Municipal Affairs) continued to assist in the early set-up of the organization. The first AMVIC Executive Director was hired on May 1st 1999 with three additional staff retained on June 1st.

While the initial request was for an increase in licensing fees, it was subsequently learned that AMVIC would have to be created as a not-for-profit society to enable its Board members to be indemnified. As a result, the licensing fee was changed to an assessment fee in the automotive regulations. It was recommended that this fee be based on a minimum of \$150 per type of license per location and that salespersons would be assessed \$75-100 (later approved at \$75)(September 17th 1998).

5.3.1 *Some Rationale*

The Alberta Motor Vehicle Industry Council (AMVIC) was initiated in response to concerns that the industry had very little regulation and thus the public was left with inadequate protection. The Council was established as a body external to the normal “agency, board and commission” model more commonly utilized by Government ministries. It was set up as a “Society” under the Societies Act which in turn created a “board of directors” to govern the affairs of the society in accordance with society-approved bylaws.

It held its inaugural meeting held on March 8th 1999. An agreement was signed between AMVIC and Alberta Municipal Affairs on March 30th 1999 which permitted AMVIC to take over administration of licensing of automotive businesses and the investigation of complaints on September 1st 1999.

The Fair Trading Act was proclaimed on September 1st 1999 along with the supporting “Automotive Business Regulation” (ABR). On that date the Government of Alberta delegated its authority to AMVIC through the Automotive Business Regulatory Services Delegation Agreement as outlined above in Section 5.0. Changes to those regulations were very quickly proposed by AMVIC wherein businesses were to support AMVIC through increased fees; salespeople were to be licensed and pass an examination; consignment sales agreements would be required; and a compensation fund would be established and supported by industry for consumer protection.

The Government and AMVIC have maintained a “delegation agreement” since AMVIC was formed in 1999. The Agreement has traditionally been set for three years. This agreement (The Automotive Business Regulatory Services Delegation Agreement) (ABR) was first entered into by the Government of Alberta and AMVIC on March 30th 1999. Its purpose was to establish the respective roles of the Minister and AMVIC relative to the FTA and how the latter was to fulfill its obligations as an effective agency.

5.3.2 Requirements

Due to its establishment under the Societies Act of Alberta, AMVIC had certain requirements to fulfill. These included having members (a society) and a board of directors. The society was initially composed of the Motor Dealers’ Association of Alberta; Recreation Vehicle Dealers Association, Automotive Service and Repair Association; Auctioneers Association of Alberta; and a consumers representative. The society was to have final authority over the bylaws and industry at large board appointments.

The original Board was composed of nine members, including representatives of five industry associations and four representatives of the public. The industry association members include the MDA, RVDA, CIAA, the Alberta Automotive Recyclers and Dismantlers Association, and the Auctioneers' Association of Alberta. The AMVIC Board of Directors, a separate body from the Society, is responsible for setting organizational priorities, ensuring financial and operational viability, providing direction to and oversight for administration and communicating benefits to all stakeholders. AMVIC’s then Executive Director (now CEO) was to report directly to the board of directors. AMVIC was delegated responsibility for licensing, enforcement, and education related to the consumer automotive sector, including sales, leasing, consignment, repair and installation, and recycling and dismantling.

5.3.3 Society Role

The Society was created as an independent and impartial organization for the Government to utilize in delegating the responsibility for administering the Fair Trading Act and associated regulations. The Society meets about 3-4 times annually including once for an Annual General Meeting. The Society has a mandate of approving any recommended bylaw changes; controlling the limits on the compensation fund; and recommending the names of the industry at large positions on the AMVIC governing board.

While the Society plays a very limited role in the affairs of AMVIC it does have a controlling interest in what AMVIC does and how it does it. The Society can influence Board policy through its appointed members and through its dialogue with the AMVIC Board. In some ways, the Society acts as an oversight board while delegating the actual delivery on its objects to the AMVIC Board.

Based on what we found in the historical literature regarding the establishment of AMVIC, a “society” was perceived as a useful mechanism for establishing this separate body because:

- It allowed for the indemnification of its members (which would provide protection for members against the costs and charges including judgments reasonably incurred by a board member acting in good faith)
- It was less complicated than a regulatory board which is unincorporated to transfer funds to and from the Provincial treasury
- It was available as a “vehicle” for setting up AMVIC with little downside and could receive Provincial authority to administer and enforce specific statutes and regulations.

The objects of the Society are summarized as follows:

- Act pursuant to legislation or regulations

- Establish, maintain and administer policy and programs to enhance highway safety and a fair and informed marketplace in the motor vehicle industry
- Enhance consumer protection and confidence
- Promote consumer education, information and awareness in the industry
- Promote education, certification and licensing of industry members
- Develop codes, principles, frameworks and practices in order to foster high ethical standards and professionalism in the industry
- Promote alternatives to litigation for the resolution of disputes between consumers and industry members
- Establish and collect fees, charges, levies or assessments
- Engage in other activities in order to fulfill any mandate assigned or delegated pursuant to any legislation or regulation
- Receive, sell, manage, invest, lease, mortgage, dispose or property of the Society.

5.3.4 Role of the AMVIC Board

The AMVIC Board provides oversight and direction for AMVIC's President and Chief Executive Officer and for AMVIC employees. The board is responsible for:

- Strategic planning, determining priorities and setting policy guidelines.
- Ensuring financial and operational viability by exercising fiscal oversight.
- Ensuring that operational and financial controls are functioning properly.
- Communicating AMVIC's benefits to consumers, businesses, government and other stakeholders. (AMVIC Business Plan 2016-19)

The Board was to be the engine which drove the organization forward. It was the “operational” arm of the Society and expected to be far more involved in what AMVIC was doing on a daily, weekly, monthly basis.

5.3.5 Mandate and Mission

The mandate and mission which follow are as set out by the Board of AMVIC. These are separate from that which is stated in Schedule A of the Administrative Agreement.

Mandate

The mandate of the organization is to provide consumer protection in Alberta’s motor vehicle industry through mandatory licensing for motor vehicle businesses and salespeople as required by the Fair Trading Act of Alberta and to provide a fair marketplace for automotive consumers and businesses. (AMVIC Business Plan 2016-19)

Mission

AMVIC’s mission is to protect the public interest and promote trust and confidence in the motor vehicle industry through heightened awareness and the fostering of a positive exchange of information among industry stakeholders. (AMVIC Business Plan 2016-19)

5.4 Legislation Impacting AMVIC

We have identified in this Section of the Report several pieces of legislation which directly impact AMVIC. There are others and indeed we may have overlooked some section of an Act or regulation which has some impact on what follows in this Report. We would refer the reader to appropriate experienced legal counsel or a Clerk’s office for further insights.

5.4.1 Societies Act of Alberta

According to the information contained on the Service Alberta site, we find that:

“What is the purpose for incorporating a society?

- *Incorporation is not mandatory; the decision up to each group. There are several advantages to incorporating a group.*

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- *Members of societies may not be held responsible for the debts of the society.*
- *Societies may own property and may enter into contracts under the society's name, as opposed to its individual members entering into a contract.*
- *The public's perception of a society is that an incorporated group has a more formal, permanent status than an unincorporated group.*
- *Note: Societies may not incorporate primarily to carry on a trade or business*

A society is an independent legal entity, a corporate 'person' that exists separate and apart from its members. Because of this, the members cannot be held personally responsible for the debts of the society. Societies are similar to non-profit companies, and must direct any profits back into fulfilling the objectives of the organization.

When to form a society - Five or more people can form a society for purposes such as: social activities, recreation, culture, charity. You can't form a society to carry out trade or business.

Societies can:

- *buy, sell and own property, including land; enter into contracts; sue others; be sued*

Societies can't

- *issue shares; declare dividends for members; distribute property among the members during the lifetime of the society."*

This Review

Relative to our Review of AMVIC, the Societies Act makes reference to (amongst many other topics):

Sec.3 Incorporation

3(1) Five or more persons may become incorporated under this Act for any benevolent, philanthropic, charitable, provident, scientific, artistic,

literary, social, educational, agricultural, sporting or other useful purpose, but not for the purpose of carrying on a trade or business.

Sec. 15 Rescission, etc. of bylaws

15(1) The bylaws of a society shall not be rescinded, altered or added to except by special resolution of the society.

Sec. 17 Powers of society

17(1) A society may acquire and take by purchase, donation, devise or otherwise all kinds of real estate and personal property, and may sell, exchange, mortgage, lease, let, improve and develop it, and may erect and maintain any necessary buildings. (2) The funds and property of the society shall be used and dealt with for its legitimate objects only and in accordance with its bylaws.

Sec. 25 Annual general meeting

25 A society shall hold an annual general meeting in Alberta and shall present at that meeting a financial statement setting out its income, disbursements, assets and liabilities, audited and signed by the society's auditor.

Sec. 27 Officers and directors

27 A society shall, on request of the Registrar, furnish the Registrar with particulars of its officers and directors.

Sec. 33 Dissolution

33(1) In this section, "society" includes a society or club that is incorporated by a private Act of the Legislature and that has for its object the provision of facilities for the social intercourse and recreation of its members. (2) On sufficient cause being shown to the Registrar, the Registrar may issue to the Lieutenant Governor in Council a certificate under the Registrar's seal of office declaring that the Registrar is satisfied that the incorporation of a society should be revoked and cancelled.

5.4.2 *Freedom of Information and Protection of Privacy Act (FOIP)*

AMVIC is impacted by FOIP legislation based on its delegated regulatory status under the Fair Trading Act, the Director's Delegation Document and the Delegation Agreement. This impacts:

- The collection, use and disclosure of information regarding individuals
- The need to ensure that personal information being collected is complete and accurate
- The protection of personal information which is in the custody of AMVIC
- The management of any records and personal information banks
- The duty to report any breach or suspected breach of FOIP
- The need to refer any FOIP requests to the Minister

5.4.3 *Fair Trading Act*

The *Fair Trading Act* (FTA) is the key piece of legislation which gives purpose and meaning to the creation of AMVIC and to the impact which it has in the automotive industry. It was initially created in 1999.

The FTA combined seven former Acts into one: Collection Practices Act, Consumer Credit Transactions Act, Direct Sales Cancellation Act, Licensing of Trades and Businesses Act, Public Auctions Act, Unfair Trade Practices Act, Wage Assignments Act. The Fair Trading Act allowed for the recognition of the Alberta Motor Vehicle Industry Council (AMVIC) and allowed it to take responsibility for automotive business licensing and regulation.

In September and October 2003, Alberta Government Services surveyed organizations, businesses and the public on their views regarding 52 proposed amendments that were designed to update and clarify the legislation. As a result of the consultation, the Act was amended and received Royal Assent in May 2005. The most recent changes to the FTA relate to the amendments passed in Spring Session 2016 in response to a number of serious concerns raised by government,

media, the public, and industry with regard to the Alberta Motor Vehicle Industry Council's (AMVIC) conduct, including inadequate investigations and enforcement actions under the FTA. Those amendments allow the Minister to:

- order a review;
- order an employee, member or board member of a delegated regulatory organization to take specific actions after a review;
- take remedial action where an order is not complied with; and
- make any of these orders without a review where, in the opinion of the Minister, it is in the public interest.

The additional ministerial authority now included in the FTA reflects the powers already included in most other legislation that allows for the creation of delegated bodies, including the *Real Estate Act*, *Health Professions Act*, and *Municipal Government Act*. The Minister now has the ability to respond to operational or governance issues at any delegated regulatory organization established under the legislation, where appropriate.

Both AMVIC and the Province maintain an ongoing list of concerns with the FTA which would be addressed whenever the FTA is slated for a full review by the Legislature at a future date.

The FTA “enhances consumer protection through remedies, enforcement tools and tougher penalties intended to discourage unfair practices in the marketplace. The FTA simplifies procedures for business, providing clearer standards to ensure a more level playing field”.

The key sections of the FTA which are of seemingly greatest importance due to impact on AMVIC are as follows:

Section 6 - Unfair Practices

- Impacts AMVIC as it deals with such matters as it outlines what might constitute an offence relative to a business or person engaging in an unfair practice which impairs the fairness of a business decision through such means as exerting undue pressure or influence; preying

on another person's lack of understanding of the language used in the transaction; misrepresenting the price of the goods or services

Section 104 - (1)(2) License Required

- Impacts AMVIC through the requirement of a business license; and the permission to require by regulation that a person operating out of more than one location may require a separate licence for each location

Section 105 - Regulations

- Impacts AMVIC in that the Minister may make regulations specifying what constitutes a business; what duties and obligations; what fees are payable; etc.

Section 127 - Refusal, Suspension, Cancellation

- Impacts AMVIC by empowering the Director to refuse a license or suspend or cancel a license and to impose terms based on a set of reasons

Section 136 - Delegation to regulatory board

- Impacts AMVIC as the Minister may make regulations “(a) providing for the establishment of regulatory boards to exercise the powers and perform the duties and functions delegated to them under subsection (5); (b) providing for the appointment of the members of a regulatory board, including, without limitation, providing for the number of members, the method of appointment of members, the terms of office of members and the filling of vacancies.” This section also provides for the collection of fees and assessments on licences; and indemnifies the Board and its agents/employees for performing its duties in good faith.

Section 137 - Establishment of Compensation Fund by Regulatory Board

- Impacts AMVIC by setting the regulation making authority and legislative standards for compensation funds established by a regulatory board, including limitations on use of income of investment,

collection of levies or assessments, and the purposes of compensation funds established under this section.

Section 137.1 - 137.7 - Review Respecting Regulatory Board

- Impacts AMVIC (and this study) in that the Minister is empowered to: *“appoint a person to review (a) the conduct of a regulatory board, (b) any matter relating to a fund created by a regulatory board under section 137, or (c) any matters relating to the operations, powers, duties or functions of a regulatory board. (2) The Minister or other person conducting a review under subsection (1) (a) may require the attendance of any members, directors, officers, employees or agents of the regulatory board or of any other person whose presence is considered necessary during the course of the review, and (b) has the same powers, privileges and immunities as a commissioner under the Public Inquiries Act. (3) When required to do so by the Minister or other person conducting a review, a person referred to in subsection (2)(a) must produce for review all books and records that are in that person’s possession or under that person’s control that are relevant to the subject-matter of the review. (4) A person, other than the Minister, who conducts a review must forthwith on concluding the review report in writing to the Minister.”*

Section 140 - Registration of Salespeople

- Impacts AMVIC by establishing the regulation making power that lets the ABR require salespeople to be registered before acting on behalf of automotive sales businesses.

Section 152 - Suppliers Undertakings

- Impacts AMVIC in that the Director may enter into an undertaking with the person contravening the Act to take specified steps to cease the objectionable behaviour or stop engaging in the practice to the

satisfaction of the Director; enables the Director to publicize the activity in question; and to levy costs associated with the undertaking

Section 157 - 158 Public Record and Enforcement of Director's Order

- Impacts AMVIC in that it empowers the Director to cause a person who is contravening the Act or regulations to stop doing so; to take whatever steps are required by the Director and in the time specified; to maintain a public record of any undertakings, Director's orders, court orders and injunctions; and if these conditions are not being met the Director has the authority to apply to the Court of Queen's Bench to have the order enforced.

Section 161 - 168 Non-compliance with Act

- Impacts AMVIC as it sets out the provisions for those found guilty of an offence

Section 173 - 174 Director and inspectors

- Impacts AMVIC in that the Minister can appoint someone as Director of Fair Trading who may in turn appoint inspectors; the Director may delegate that appointment which may be further delegated
- Sections 136 & 174 are significant as they enable AMVIC to:
- Administer licensing and registration under ABR
- Investigate, respond to claims, and handle enforcement
- Establish and administer a compensation fund
- Establish educational programs for consumers and industry members.

There are 23 regulations under the Act with 4 of those applying to AMVIC. These include:

- Automotive Business Regulation
- Internet Sales Contract
- Designation of Trades and Businesses
- Cost of Credit Disclosure Regulation

5.4.4 Memorandum of Understanding

AMVIC has entered into a “Memorandum of Understanding” with Alberta Infrastructure and Transportation (2009) (Transportation Safety Services Division)(TSSD) which addresses the fact that AMVIC has been mandated “by the Minister of Service Alberta to regulate the automotive and recreational vehicle industries within the Province of Alberta and enforce the provisions of the Criminal Code of Canada, the Fair Trading Act of Alberta, the Provincial Offences Procedure Act and the Traffic Safety Act of Alberta through the employment of Peace Officers. TSSD has been mandated by the Minister of Transportation to regulate the Motor Vehicle Inspection Program and Vehicle Safety & Carrier Services in the Province of Alberta including the issuance of dealer plates.

The MOU addresses the desire to “participate with TSSD in an integrated and cooperative environment such that a coordinated and effective level of service to Albertans is provided for the purposes of the authorities, duties and responsibilities of both agencies. As a result, the MOU identifies the “Obligations” of each agency by the following:

- 3.1 Odometer Program. AMVIC will investigate odometer rollbacks. TSSD will provide AMVIC with a monthly computer report on all suspected rollbacks.*
- 3.2 TSSD will provide AMVIC access to Out of Province and Salvage Inspection Reports.*
- 3.3 AMVIC will notify TSSD of Administrative Actions in relation to Provincial Inspection Stations.*
- 3.4 TSSD will notify AMVIC of any Administrative action taken against Provincial Inspection Stations.*
- 3.5 AMVIC will aid in the qualification for dealer plates by posting via www.amvic.org all currently licensed businesses in Alberta.*

5.4.5 Automotive Business Regulation

Of these regulations likely the one which has the most impact based on the discussions which we have had with the industry and consumers and AMVIC is the Automotive Business Regulation (ABR). The ABR covers a wide range of matters which directly apply such as: maintenance of a licence; term of a licence; codes of conduct; registration of salespersons; education requirements; regulatory boards; insurance; purposes, use and reimbursement of a compensation fund; consignment agreements; and offences.

The ABR is enacted under the *Fair Trading Act* (FTA). This legislation establishes the requirements for licensing and registration, delineates codes of conduct, describes requirements about the compensation fund, defines requirements related to consignment sales, and provides information and authorities related to offences. Through the Delegated Agreement, the minister responsible for the FTA has assigned these responsibilities to AMVIC.

Automotive Business Licensing

- Licensing falls under the ABR/Designation of Trades and Businesses Regulation; this includes automotive sales (retail, wholesale, broker); automotive leasing; automotive consignment; automotive repair
- Director can set forms, set security, and require additional information, including criminal record check (s. 126); any levy on licensees must be set by AMVIC and approved by Minister (s. 136); Director can refuse, suspend, cancel or impose conditions on licensees (s. 127); Licensees can appeal any decision by the Director to an appeal board appointed by the Minister (AMVIC pays costs of appeal board) (s. 179)

Automotive Salesperson Registration

- Registration of “persons” is allowed under FTA (s. 140); requirements are set out in ABR (s. 16); Director establishes application

requirements (s. 17); Appeals are handled by AMVIC under a process set by the Director (s. 22)

Key Protections - FTA

- Consumers cannot waive or release their rights under the FTA or regulations except by way of a release signed in the settlement of a dispute. (s. 2)
- A court or appeal board must consider the real substance of an entity or transaction and in doing so may disregard the outward form.
- If a term of a transaction or contract is ambiguous, the provision must be interpreted *against* the supplier.
- Unfair practices (s. 6)

Advertising - FTA

- No advertiser may print, publish, distribute, broadcast or telecast a supplier's advertisement for goods or a service if the advertisement contains an unfair practice; does not apply where the advertisement is issued in good faith and in the ordinary course of business;; only applies to advertisements that contain an unfair practice.

Key Protections - ABR

- Advertising Code of Conduct (s. 11 ABR); General Code of Conduct (s. 12 ABR); Duty to create and maintain records (s. 9 ABR); Duty to produce licence (s. 10 ABR); Consignment sales (s. 55 FTA, s. 32 - 33.3 ABR)
- Compensation Fund (s. 137 FTA); deemed to be held in trust; income must be re-invested in fund except for administrative costs; with approval of Director (SA), monies over \$1.5 million can be used for investigations or education; compensation fund rules set in Bylaws

Key Protections--Internet Sales Contracts

- Establishes requirements for online contracts over \$25; requires that a copy of a contract be made available within 15 days; allows for

cancellation of an internet sales contracts where the regulatory requirements are not met or the terms of the contract is not met

FTA Enforcement

- inspections (s. 145 & s. 146); investigations (s. 147 & s. 148); injunctions (s. 156); property freeze orders (s. 151); and legal action (s. 13 & s. 15), though they are less strictly enforcement actions.; Director's Orders (s. 157); Undertakings (s. 152); Licence actions (s. 127); Administrative penalties (s. 158.1); Prosecution (s. 161, s. 162, s. 163, Criminal Code)

5.4.6 Cost of Credit Disclosure Regulation (for credit transactions by automotive businesses) Proclaimed 1999.

- Cost of Credit Disclosure Regulation: Establishes the specific disclosure requirements for any business entering into or advertising credit in Alberta, including fixed credit, open credit, and leases. Businesses are required to provide cost of credit disclosure to a consumer prior to entering into a credit transaction.

5.4.7 Internet Sales Contract Regulation (for internet sales contracts by automotive businesses) Proclaimed 2001.

- Internet Sales Contract Regulation: Establishes contract requirements that must be met for any supplier offering to enter into a contract with a value over \$50 by electronic means with a consumer in Alberta. Grants consumers cancellation rights where the requirements have not been met.

5.4.8 Delegation Agreement

The purpose of the Delegation Agreement and Director's Delegation Agreement were to establish the respective roles of the Minister and AMVIC relative to the FTA and how the latter was to fulfill its obligations as an effective agency. AMVIC was delegated to enforce and administer the FTA, the ABR, the Cost of Credit Disclosure Regulation and the Internet Sales Contract Regulation.

Delegated Activities

The *FTA* delineates the role for AMVIC and the responsibilities formally assigned to its Director (identified in the Act and Regulations) and delegated under the Director's Delegation Document. With respect to the automotive business the Director's powers duties and functions under the Act include: licensing and registration; investigations, claims and enforcement; the compensation fund; educational programs.

The current **Delegation Agreement** identifies four categories of delegated activities. The AMVIC business plan is organized and aligned with those four categories and adds governance as a fifth and separate strategic responsibility. The Delegation Agreement is expected to be reviewed in 2017. Governance or other organization functions may be considered for inclusion in an updated delegation agreement (AMVIC Business Plan 2016-19).

The Agreement acknowledges the responsibilities, authority and power of the Minister, Director of Fair Trading, and Legislature to:

- amend or repeal legislation related to AMVIC
- rescind any delegation
- require an annual report of AMVIC activities
- receive an annual audited statement
- conduct an operational review every three years;
- review and approve bylaw amendments;
- conduct any other review of operations at any time.

AMVIC agrees that it will:

- respond to the recommendations
- remain a duly incorporated society
- submit any proposed bylaw amendments to the Director for approval
- maintain codes of conduct, policies, procedures and any requirements: for board members, officers, employees and agents

- sustain standards sufficient that it can act as an employer of peace officers and notify the Minister if it cannot
- ensure that the bylaws and members are acceptable to the Minister
- assure that it has the corporate power, authority and capacity to enter into the Agreement
- has the necessary skill, experience and expertise to carry out the ABR services
- will consult with the Minister prior to releasing any public announcements, press or new releases
- keep confidential matters between the two parties confidential
- comply with the provision of all laws
- maintain records in accordance with FOIP
- consult/inform SA on any external communications/media
- hold the Minister harmless from any third party claims.

AMVIC also agrees that it will not make any bylaw changes, transfer any membership, approve new members, provide financial assistance to third parties, engage in new activities in conflict with those in the Delegation Agreement or invite the public to subscribe to the securities of AMVIC.

5.4.9 Peace Officer Act

(Sets out the responsibilities of the employer s.5 Alberta Peace Officer Act):

A Public Security Peace Officer (PSPO) is a person who works to uphold and enforce certain laws and regulations in Alberta. A PSPO is given limited powers and authority, under the current Alberta Peace Officer Act (May, 2007). They are not to be confused with Police Officers, who have a much wider range of authority. The Alberta Peace Officer Act establishes the requirements, standards, and powers around the employment, authorizations, and powers of peace officers.

Employer's authorization

- 5(1) No person shall employ or engage the services of a person as a peace officer unless that person is an authorized employer.*
- (2) A person applying to the Minister for an employer's authorization to employ or engage the services of one or more peace officers must provide the information and comply with any other conditions provided for in the regulations.*
- (3) The Minister may issue an employer's authorization to an applicant and may impose any terms and conditions on the employer's authorization that the Minister considers appropriate, which may include requiring the authorized employer to implement or comply with policies, standards of conduct, practices, procedures, protocols or rules provided for in the regulations.*
- (4) At any time after issuing an employer's authorization the Minister may impose new terms and conditions or vary any existing terms and conditions in the employer's authorization and must inform the authorized employer in writing of the addition or variation.*
- (5) An authorized employer must, in accordance with the regulations, notify the Minister of any changes in the information provided or requirements met under subsection (2).*

In addition the *Peace Officer Act* describes a number of actions that the employer must take or be aware of:

- Suspension or cancellation of employer's authorization
- Application for appointment as peace officer
- Suspension or cancellation of peace officer's appointment
- Peace officer's appointment ceases to be in effect
- Authorized employer liable
- Use of titles
- Restrictions re uniform, weapons, etc.
- Peace officers providing emergency services

- Complaints
- Investigation and disposition of complaints
- Duty of employer to investigate
- Investigation by Director
- Notification of complaints
- Duty to report to Director
- Appeal
- Conduct of appeal
- Results of appeal
- Inspection and investigation
- Director's directions

5.4.10 Traffic Safety Act

- In addition, Alberta Transportation has delegated some authority to AMVIC under the Vehicle Inspection Regulation of the *Traffic Safety Act* (in relation to Mechanical Fitness Assessments issued by dealers and the like) and requires authorized vehicle inspection locations to be licensed by AMVIC. These requirements are set out in a separate process and agreement that Service Alberta was not involved in or substantially consulted on.

5.4.11 Other

AMVIC is also subject to the requirements of the *Freedom of Information and Protection of Privacy Act* (and Records Management Regulation of the *Government Organization Act*), and the *Societies Act*.

5.5 Policy Development

To its credit AMVIC has made a serious effort to develop and enforce what it perceives are required policies. The framework which has been developed is quite good and is well-known to the governors (i.e. Board members), management and staff.

Principles

The following principles provide the framework for all policies and procedures developed at AMVIC and help the organization successfully deliver its delegated activities and mandate:

- Protect Alberta consumers from unfair business practices and work towards building trust and confidence in the motor vehicle industry.
- Self-manage an effective mandatory motor vehicle industry licensing program.
- Foster open and clear communication in the motor vehicle industry and support an honest exchange of information among industry, government and consumers.
- Assist the motor vehicle industry to build best business practices upon the framework of the *Fair Trading Act* through education, compliance and enforcement of legislation.
- Provide an alternative to litigation through alternative dispute resolution of consumer complaints. (*AMVIC Business Plan 2016-19*)

A comprehensive array of policies have been developed which address:

- Acceptable Use of AMVIC Electronic Information Resources
- Accounting Policy and Banking Resolution
- Administrative Actions Policy
- AMVIC Bylaws
- Audit Policy
- Board Governance Policy
- Board Remuneration and Expense Policy
- Cellular and Mobile Device Policy
- Compensation Fund Policy
- Confidentiality Policy
- Conflict of Interest Policy
- Consumer Services Policy

- Director Code of Conduct Policy
- Education Policy
- Employee Policy and Guidebook
- Ethics Policy
- Executive Committee Nomination Policy
- Export Policy
- FOIP Policy
- General Complaints Policy
- Home Office Policy
- Hosting Policy
- Industry Standards Policy
- Investigation Services Policy
- Investment Policy
- Licensing Policy
- Organizational Structure Policy
- Peace Officer Policy
- Restricted Fund Policy
- Salesperson Appeal Committee Policy
- Social Media Policy
- Vehicle Policy
- Video Recording Policy
- Website Policy

5.6 AMVIC Achievements

We wanted to ensure that the reader had some balance in understanding the messages of this Report and therefore asked the executive of AMVIC to provide us with an outline of what they see as “achievements” over the past few years. What follows is a purposely condensed version of those accomplishments while a more comprehensive listing is available from AMVIC.

AMVIC Milestones and accomplishments—2012-2016

- **Mandatory salesperson course moves online, available 7 days a week.**
- As of January 1, 2015, AMVIC stopped issuing conditional salesperson registrations.
- New salesperson course retake requirement for salespeople out of the industry for more than three years.
- Introduced e-bulletins to consumers and industry and uses social media to share information and tips.
- Launched a new AMVIC website that is easier for consumers and industry to navigate.
- Increased traffic to amvic.org -- AMVIC exceeded its 2015/16 strategic target by 47 per cent.
- AMVIC launched a web and television advertising campaign in the third quarter of the 2015-16 fiscal year.
- Produced an award winning educational video: "In the Driver's Seat".
- AMVIC launched a new, voluntary, online course for people who work in service and repair.
- AMVIC created translated tip cards in Amharic, Arabic and Somali.
- Earned coverage in mainstream and niche television, print, online, magazine and radio stories.
- Recording function added to telephone system to act as a learning and quality assurance tool.
- An AMVIC tip card placed in Learner's Licence Prep Kits available for purchase at Alberta registries.
- AMVIC offers advertising compliance presentations and webinars for licensees and registrants.
- Annual participation in a local charity event such as volunteering at Ronald McDonald House.
- Educational booths at trades shows.

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- AMVIC created an online portal for licensees, registrants and consumers.
- AMVIC launched a consumer compensation fund. It is at its cap of \$4 million. Board is reviewing fund.
- AMVIC investigators, industry standards and consumer services training sessions.
- Executive director earned Tribunal Administrative Justice certificate (Foundation of Administrative Justice).
- Communications officer earned a certificate in digital media and graphics from MacEwan University.
- Employees received FOIP training and must complete AMVIC's salesperson *Fair Trading Act* course.
- AMVIC board expands structure to add more public representation
- The AMVIC board completed a self-evaluation in 2015 which included feedback and coaching.
- A board governance training session was held on Sept. 22, 2015. Joan Hertz, Q.C., ICD. D. led the session.
- AMVIC offers orientation packages to new board directors.
- Largest conviction in AMVIC's history: a former RV dealer was convicted of 31 counts of fraud over \$5,000.
- AMVIC obtained a court order directing an Edmonton used car dealer to immediately stop selling vehicles.
- AMVIC's two largest administrative penalties upheld by independent appeal panels.
- During the 2012-2016 time period, AMVIC has updated or created more than 30 policies.
- The AMVIC bylaws have been updated twice, with another amendment currently waiting on approval.
- Internal whistleblower policy introduced and approved.

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- Introduced a consumer service team responding to consumer calls within 2 hours
- Creation of industry standards (inspections) which allows AMVIC to be more proactive in encouraging businesses to be complaint.
- Increased screening of licence and registration applicants.
- Introduced a \$50,000 security requirement for new wholesale businesses and raised consignment security.
- Introduced formal employee recruitment process which includes open competitions and panel interviews.
- An independent review was done to ensure the council's employees are fairly compensated.
- Independent survey found most employees engaged, high morale & aligned with AMVIC's strategic plan.
- Investigators & inspectors use "Safety Link", an app monitored 24/7 by the Provincial Radio Control Centre.
- Added investigators, legal position, inspectors IT and business analyst. Show growth in positions.

6.0 A Template of What We Expect to Find

We were asked to outline what we would expect to find in any organization insofar as “good governance” and “effective management” were concerned. This, regardless of how challenging for any organization to fully implement, is a useful starting point in order to frame what follows. What we describe are not necessarily unreachable ideals but rather simply “good practice”. While others might be able to define “best practice” in assessing this organization, developing a well-reasoned understanding of what “generally accepted practice” would look like would be a useful starting point.

We begin with the principles which we believe should underlie similar organizations. These principles speak to how a healthy system functions and in what manner it delivers on its mandate. These descriptors reflect our collective experience in working with a broad cross-section of agencies, boards, committees and councils over the past approximately four decades.

6.1 Principles

-
- **Purpose:** is the mandate clear? Do those involved understand why this organization was established in the first instance and is that reasoning still applicable today?
 - **Endorsement:** as a body endorsed by or established by Government, does this entity still hold the support of Government? Is there a sufficiently strong rationale for changing the model and if so, how?
 - **Adherence to decision-making protocols:** does the Board generally adhere to a reasonable process of decision-making? Is the necessary information in its hands prior to a Board meeting? Are all members informed on a concurrent basis?
 - **Primacy of the Board Table:** are decisions of the Board determined in advance of the actual meetings of the Board? Do members of the Board get together to pre-determine how certain issues will be decided? Do

Board members support the decision-making primacy of the Board table?

- **Planned meetings:** are the Board meetings well-planned in advance? Do the agendas support good decision-making?
- **Regular and transparent reporting:** do the senior management ensure that all Board members are adequately advised? Are Board minutes posted as soon after the meeting as might be deemed possible?
- **Apolitical management:** is there any attempt to guide the report writing of the CEO and his senior staff such that the reports to the Board are representative of a particular member or group of members? Do Board members show respect for their management at the Board table and between meetings?
- **Balanced Interests:** are the interests of both the industry and the public consumer being considered by the Board in its decision-making?
- **Oversight:** does the Board respect the responsibility it has to ensure adequate oversight of the actions of its CEO? Does it confer sufficiently with its CEO so as to gain a full and unfettered understanding of the issues at hand? Does the Board meet with its external auditor and pursue any issues which the auditor has identified as being a questionable practice(s)?
- **Participation:** are all members of the Board actively involved in Board decision-making? Do they willingly serve on Board committees and make a fair contribution?
- **The Chair as Spokesman:** is it clear to all that the Chair is or ought to be the chief spokesperson for the Board? Is the Chair properly briefed to undertake that role?
- **Ethical Government:** does the Board act in a manner which is fitting for a regulatory body? Is there any evidence that its members are

involved in behaviours which would undermine the credibility of the Board?

- **Self-Regulating:** Has the Board established rules for its conduct at meetings, identifying conflict of interests, and governance practices? Is the Board following these rules and assessing its performance against these rules? Is the Board mindful of the need to continuously evaluate its own behaviours and performance against some standard which would guide such a practice?
- **Accountability:** Does the Board recognize that it is accountable for the decisions being made at its table and for the decisions being made by its executive? Does it use its annual general meeting and annual report to “report out” on its decisions and activities?

6.2 Good Governance

6.2.1 Legislative Framework

In the instance of a Government mandated agency, board, committee or council (referred to hereafter as an agency) or a not-for-profit which has been established like AMVIC to carry out some aspect of Government’s responsibilities, “good governance” would suggest that the legislative framework achieves the following:

- **Purpose:** *It speaks very clearly to why (the purpose): why was this established; what did it hope to achieve?*
- **Accountability:** *who does this body report to; who is accountable at the end of the day for its actions?*
- **Reporting:** *how frequently will this agency report; and to whom?*
- **Finances:** *how is this agency financed; how often will it report on those finances; to whom?*
- **Dissolution:** *what would cause this agency to be wrapped up; who “owns” the assets; who is accountable for any debts?*

6.2.2 Governance Bylaw

The governance bylaw is a mechanism which takes the legislated authority and mandate of the ABC a step further and spells out in considerably more detail how this agency will function. While each governance bylaw is somewhat different depending upon the purpose, degree of flexibility, type of organization, etc., it ought to at a minimum cover the following (these are not expected to address every potential matter but will address the basics):

- **Type of Board:** *is this agency to be a layperson body, an expert body, or a representative body; what impact does that have on how its members are to treat their attendance at these meetings?*
- **Ownership of the Bylaw:** *who holds the ownership rights to this bylaw; who created it; how can it be changed?*
- **Membership:** *who is eligible to be appointed as members; for what reason; for what term?*
- **Officers:** *which officer positions have been created; for what purpose; for what term?*
- **Meetings:** *how often will this body meet (generally defined by a minimum number); who has the authority to determine when and where; can a portion of the membership demand to have a meeting held; what percentage of members can trigger a special meeting?*
- **AGM:** *is an Annual General Meeting held wherein the governing board reports out to its membership and possibly to the public?*
- **Agenda:** *who sets the agenda for each meeting; do the members have a say on what is discussed; is this to be simply a reporting by management or does it reflect the input of the Board members?*
- **Meeting Procedures:** *what governs the meetings; how detailed and stringent are these procedures; do they fit the nature of this body; do these procedures change when an annual general meeting is being*

held; who is allowed to move a motion; who can speak; for how long; who is authorized to manage the behaviour of those in attendance?

- **Committees:** *what committees will be created; who decides; are they standing committees or ad hoc; do they have a “committee charter”?; how are members appointed; must the members be from the Board or can they be appointed as external to the board; for what term; are all members rotated; what minutes are recorded; by who; to whom are these circulated?*
- **Minutes and Records:** *who takes the minutes; who reviews these for accuracy and signs off; when are these circulated to the members; are these posted publicly on the website?*
- **Visitors/Delegations/Presentations:** *does the board encourage presentations to be made to the board; who is allowed to do so; who authorizes the invitations; what is the purpose of such attendance?*
- **Meeting Evaluation:** *does the board conduct its own meeting evaluation at the close of each meeting; who is assigned to do so?*
- **Consent Agenda:** *does the board use a “consent agenda” to handle a number of minor issues (minutes etc.) in one motion?*
- **Pecuniary Interest:** *are the members required to advise the Board secretary in advance of the meeting if they have any financial interest in any of the matters under discussion that would not be shared with all members? (presumably legal counsel would be sought on this issue)*
- **Conflict of Interest:** *are board members required to advise the Board secretary in advance of the meeting if they have any conflict of interest with regard to any item on the agenda (i.e. their family is involved in the issue under review, etc)? (presumably legal counsel would be sought on this issue)*

6.2.3 Governance Model

Good governance implies that the board has a clear understanding as to how it will discharge its decision-making functions. As a result, a board will discuss and determine whether it will:

- rely solely on reports from management
- refer the matter to a committee for input
- move each matter from the desk of the CEO to the Board table.

If the board believes that a committee review will add value, it may establish a suite of committees, each with a specified purpose and may refer matters for their review (either by a decision of the CEO or board secretary to do so or a decision of the Chair or the board).

Governance also consists of not only the decision-making processes but also the instruments of decision-making including policies and plans. It is incumbent on a board to assess whether or not these instruments are functioning as intended and enabling the board to make decisions that are within its mandate and aimed at “adding value”.

6.2.4 Strategic/Corporate Business Plan

An effective governance system ensures that the governing body is actively engaged in strategic planning and not simply the recipient of an administratively driven and engineered plan. A plan that the board can “own” is one in which the board members were fully engaged and at the table as it was being constructed. Such a plan needs to reflect the underlying purpose of the organization and the priorities as seen and articulated by the board in concert with the administration.

6.2.5 Role Clarity

Effective governance will ensure that the key roles of the organization are clearly defined and fully communicated. That is, there ought to be a full and complete understanding of the roles of the chair, the board officers, the board as a whole, the CEO and senior management. (In this instance, all members should also be

fully briefed on the role and purpose of the Society). The board training materials and briefing during an orientation process should be able to make reference to comprehensive role statements on what the chair is to focus his/her energies on; what the executive roles are to include (i.e. where their authority begins and ends); what the CEO is accountable for and who he/she reports to (we will detail more of that later in the Report).

6.2.6 Orientation

An effective board is one which is fully engaged in the business of the board and which understands its role and that of the administration. Good governance suggests that the board will have a solid understanding of the key challenges facing the organization so that its members are not subservient to the CEO and reliant on the CEO for all the answers. A good board will be quite willing to engage the CEO in questions on the key issues and one that will challenge assumptions. All of this requires solid orientation that is time-sensitive and comprehensive. Any new member should be fully oriented by the CEO, senior management and the chair so that little time is wasted on bringing a new member “up to speed”.

6.2.7 Policy Focus

Boards are responsible for determining the “what” of any organization. The CEO and senior staff are accountable for the “how”. The “what” is defined by policy: what do we do in this instance? What is our policy on this major topic or question? What are we prepared to take to the Minister for resolution? “How” the policy is carried out should be of interest to board members but is not their responsibility. This is what the CEO and staff are paid to accomplish. We also note that the administration will obviously be engaged with the board in discussing the “what”. At the end of the day, however, that is not the mandate of the administration: policy is determined and approved by the board.

6.2.8 Meeting Procedures

In our view (and based on experience) an effective governance model will ensure:

- adherence to the procedural policy/model and agreed upon ‘rules of engagement’
- an openness to debate and to other points of view
- respect for those presenting reports, whether they be members of the administration or members of committees
- administrative reports that have been approved for presentation by the CEO
- adherence to the procedural etiquette (for the board and committees) that ensures that the meetings are conducted in a manner that is sensitive to the opinions of others
- protocols which ensure that members can voice their opinions without fear of any personal attacks or demeaning commentary
- a relaxed approach to the rules of discussion in committee so the members are free to discuss policy options, seek the opinion of others without declaring a position, and think through what others are saying while resisting the urge to jump into the fray as though the matter was being discussed for the last time.
- respect for the Chair
- important matters dealt with early on
- board questions through the Chair and if applicable to the CEO
- administrative comments through the CEO
- a willingness to refer the matter back to the CEO or a committee when it is apparent that there are more questions than answers

6.2.9 Sound Reporting

Meetings are successful and fulfilling to the extent that quality and timely decisions are being made after a wide-ranging discussion which elicits the input

of all members (although not necessarily on every topic). Good decisions generally reflect a solid background report from the CEO (on behalf of the management)(or at least signed off by the CEO); committee advice where that is sought; discussion at the table; and a clear motion on which all members vote. Critical to this is the quality of the report which outlines the background, the options, cost implications, policy impacts, and a clear recommendation to proceed on one of those options. Such a report should be the guiding piece in any discussion on agenda matters and should have been thoroughly digested by board members some time before the meeting.

6.2.10 Preparation

Board meetings are generally fruitful and interesting to the extent that its members have actually spent the time necessary to prepare for each meeting. This requires sufficient time to review the agenda and the attached reports; to pick up a phone or prepare an e-mail to request an explanation from management on any outstanding questions; and to prepare any questions for the actual meeting.

6.2.11 Board-CEO/President Interface and Relationship

Critical to “good governance” is the relationship between a board and its CEO. This must be founded on a high degree of respect and trust or it will not last. Particularly important is the relationship between the chair and the CEO as those two leaders must work far more closely together than anyone else in the organization. This ought not to be a friendship; it is to be a close and respectful professional relationship.

6.2.12 CEO Performance Assessment & Succession Planning

Every board which is interested in seeking the higher ground in its own performance will ensure that it has a clearly-defined process/format for evaluating its CEO. Because this relationship is so critical to the future of the overall system, the board should be in a state of continual evaluation and feedback so that any issues are addressed as they occur and do not wait for the

“magical” performance assessment date. This takes the guesswork out of the process and ensures that both parties (i.e. the board and CEO) understand what is being assessed and for what purpose. Such an assessment should include both performance metrics and the more subjective but equally (if not more) important factors in such a relationship. Further, the board needs to develop a succession planning policy (and plan) vis-à-vis the CEO so that there is no uncertainty when the CEO leaves and for whatever reason.

6.2.13 Board Assessment

Similar to the foregoing, the board needs to be in a continual process of improvement in an attempt to always improve and to set the right tone at the top. This can include an assessment at the end of each meeting; a one on one peer assessment; a chair-led assessment of all members with the chair providing each with their performance feedback: all of which are or should be designed to seek the best for the Board and organization.

6.2.14 Respect for Parameters

Good governance is based on respect for roles: the “who does what” is critical to organizational performance. This requires clear understanding of roles and their boundaries. Authority limitations have to be made clear and they need to be monitored. Who develops suggested bylaw changes? Generally speaking, senior management. Who reviews and recommends that these be approved (or not)? The board (or in this instance, the Society). Who provides oversight? The Government (in the form of Service Alberta). That is how a system works and maintains clarity and separation of powers/authority. It may at times seem cumbersome but it is based on a simple “one over” principle.

6.3 Indicators of Effective Management

Similarly, we review the AMVIC system based in part on our assessment of how the management functions according to certain basic criteria of effective management. Some of these criteria follow:

6.3.1 Strategic Framework

Senior management has a responsibility to assist the board in developing an overall strategic framework which guides how the management carries out its functions and delivers the expected results. This participation with the board ought to result in a clear set of corporate priorities based on board vision and values together with management input.

Such a process, preferably facilitated independently, should be used in guiding the development of the business plan, the annual budget and in establishing performance targets. Further, this strategic planning should result in a reassessment of the services being offered and the cost of those services.

6.3.2 Responsiveness to Clientele

The delivery of services is the mandate of the administration and management of AMVIC. They are accountable for getting the job done effectively and efficiently. At the same time, part and parcel of being effective stems from keeping a clear focus on the needs and expectations of the clientele. Are they being served? Are their concerns treated fairly and where appropriately, compassionately? Management is expected to continually monitor their service delivery in order to see that it is not only meeting targets of productivity but also the expectations of the consumer and the industry.

6.3.3 Direction and Supervision

Senior staff has an obligation to provide effective direction and supervision such that employees understand their roles and carry them out effectively. This requires managers to identify those tasks that need to be done and completed in a timely manner; to ensure that all positions are clearly described and positioned on the organization structure; to supervise the day-to-day activities of each department, staff position; and to encourage employees to follow safety procedures and to be courteous to any members of the public with whom they have contact.

6.3.4 *Ensure Adequate Staffing*

Part of the task of the CEO and senior management is to ensure that the organization is appropriately staffed to meet the objectives and needs of the Board and the legislation. One of the mandates of a CEO is to assess, on an ongoing basis, current resources and determine whether or not the mandate can be achieved with the resources currently in the organization. If not, the CEO is obligated to prioritize resources and tasks and advise the board as to which duties may need to be relegated or deferred.

Given the significant impact that employees have on the costs of any organization, the board needs to be made aware of any proposed change to the number of full-time employees and the incremental costs involved.

6.3.5 *Assessment and Training*

Part of the mandate of a CEO is to ensure that the board and its clientele are receiving value for money from their staff. We do not know how this can possibly be done without a formalized approach to performance evaluations. Such a process needs to be interactive such that all staff members have the opportunity to receive feedback and provide their input on their own performance.

Senior management is also required to assess the training and development needs of their direct reports and make adequate provision in budgets for training dollars to support the planned development of staff into more senior positions.

6.3.6 *Orientation of Staff*

A well-functioning organization will recognize the importance of ongoing orientation for any new staffing and planned improvements to the orientation program based on the suggestions of those who have been exposed to that process. Orientation is essential if staff are to be up-to-speed quickly once they have been hired. The program should be thorough recognizing the value of every new person and how important it is for each to comprehend what it is we do and why.

6.3.7 Work Standards

In order for staff to be reasonably evaluated, management must be able to articulate the key performance factors, the expected results and possibly the deadlines associated with their work. This, then, forms the basis of an evaluation. Staff members, including management, need to know the performance norms of the organization and the standard expected of their work. These standards should be established for the organization as a whole and for each organizational unit.

6.3.8 Managing the Policy Framework

Senior management is expected to maintain an awareness of current policy issues and recommend changes as needed. As well, management through the CEO should see as one of its related objectives, the need to identify with the board upcoming policy issues and draft statements of new policy.

Where staff is involved in developing policies, they are more likely to both understand them and to recognize the importance of adhering to them.

6.3.9 Ensuring Communication

Employees depend upon their senior managers to ensure that all staff has access to information impacting their work responsibilities. This requires that management hold focused, useful and regular meetings with all staff to ensure that they are apprised of any organizational issues. All staff members ought to be aware of board decisions and the issues considered to be significant by management. A part of the task is for the senior management team to ensure that it has a communications strategy and policies that support the provision of information to the public and that enable the public to gain a feel for what AMVIC is prepared to help them with in the purchase of a new vehicle or its repair or the purchase of a second hand vehicle.

6.3.10 Senior Staff Modelling

Whether management recognizes it or not, they are looked to for guidance as to appropriate behaviour in the workplace. We find support staff often identify

with a particular manager as a mentor - and try to pattern their behaviour after such a person. This requires that senior staff:

- be ethical in all of their dealings
- use public resources carefully given their stewardship position
- communicate issues and concerns fully and promptly to staff so that they find out such things from their supervisor
- refrain from any sexual innuendo or inappropriate contact
- refrain from the consumption of alcohol/drugs on public premises
- treat their employees with respect
- treat their employer with respect.

6.3.11 *Departmental Integration*

As we have stated previously, an effective organization is premised on the degree of synergy between the component parts and the desire of the leadership to work in a strong, inter-related collegial fashion. The literature on effective management has often spoken to the importance of creating work teams that transcend departmental structures and that are created as recognition that many issues are not rigid nor owned by only one segment of the organization. Most issues are multi-faceted in nature. They may easily involve several departments or sections.

6.3.12 *Employee Morale*

Organizations do not function very well if those employed are not working relatively harmoniously with those who manage their functions. Members of administration respond to their leaders if they perceive those in authority to be supported by the level above them (and so on). Leadership and the moral authority to act do not arise simply because of position. There must be evidence of organizational commitment, loyalty, ethical foundation and the ability to move the agenda forward in order for those within the organization to feel that their support is justified. While having a good relationship to the person in charge

is useful to overall morale, respect for the integrity of the individual is far more important.

6.3.13 Controls (*Checks and Balances*)

An often overlooked aspect of good management is the requirement of senior staff members to ensure that the system has the appropriate checks and balances. Included in this expectation is the importance of management meeting with the external auditor to discuss his/her perceptions on the need for ongoing improvements to fiscal controls; and to ensure that independent audits are performed on key functions/processes. Follow-up on any recommendations in the annual management letter is an essential component of a sound system of checks and balances.

Part Three: Themes and Observations

7.0 Key Themes

AMVIC is a relatively complex organization. It has a wide reach and impacts countless businesses and individuals, many directly. Even when it is functioning smoothly, AMVIC will still draw a fair share of critics due to what some would see as an over-emphasis on regulation whereas others would be pleased to see it regulate, just not them.

7.1 Purpose of AMVIC

The Alberta Motor Vehicle Industry Council (AMVIC) was created 17 years ago to regulate the automotive industry in Alberta and ensure a fair marketplace for consumers and businesses. We were advised that the Government of that day which had embarked on a number of deregulation initiatives was considering withdrawing from the regulation of the automotive industry but ran into considerable headwind ironically from the industry leaders. Their concern appeared to be one of expressing a need for regulation to police the industry and ensure that everyone involved was participating on a level playing field. The Government which had been subsidizing regulation stated that it would create the regulatory regime but that industry would have to do the “heavy lifting” of regulating and pay for the privilege of being regulated.

We were also given to understand that at the outset AMVIC was viewed as a shared initiative between Government and industry and thus each would be viewed as a partner in this enterprise. It was not expected to become an “us vs them” style of governance. Government would establish the rules and the roles; industry would ensure the delivery of services and the establishment of clear standards and enforcement; and the public would assess whether or not these roles were being followed.

AMVIC exists within a legislative envelope which provides it with its authority to license or not; to investigate; to levy fees; to prosecute; to refer for criminal prosecution.

The *Fair Trading Act*, Automotive Business Regulation, and the Delegation Agreement with AMVIC establish a legal structure and mandate for AMVIC to create a fund to compensate consumers who suffer a loss arising from the actions of an AMVIC licensee.

7.1.1 Delegated Activities

The *Fair Trading Act* delineates the role for AMVIC and the responsibilities formally assigned to its Director as delegated (the “Director” identified in the Act and Regulations). With respect to the automotive business the Director’s powers duties and functions under the Act include:

1. The licensing (businesses) and registration (salespeople) administration under the *Fair Trading Act* and the *Automotive Business Regulation*.
2. Investigations, claims and enforcement arising from complaints under the *Fair Trading Act*, the *Automotive Business Regulation*, the *Cost of Credit Disclosure Regulation* and the *Internet Sales Contract Regulation*.
3. Establishment and administration of the compensation fund.
4. Establishment of educational programs for consumers and industry members in relation to automotive businesses.

7.1.2 AMVIC as an Organization

In response to this guidance by the Government, AMVIC was created under the Societies Act which in turn realized the creation of a governing board to oversee the operations. The Board retained an Executive Director (the title was subsequently changed to Chief Executive Officer on 23/09/15) and has developed over time an administrative structure employing some forty-eight (48) staff. Most of these staff are based in Edmonton which serves as the AMVIC headquarters with a smaller office located in Calgary. The Society establishes the overall direction through its approval of the bylaw; the Board oversees the governance aspects including approval of a business plan, annual report, policies, budget and the hiring of the CEO. The latter has responsibility for directing the day-to-day

management of AMVIC through the delegation of responsibilities to four senior managers plus legal counsel and the supporting staff.

7.1.3 Observations

AMVIC has been an ambitious undertaking from the outset. Its formation has been, as might have been predicted, marked by both successes and setbacks. Becoming a delegated regulatory organization has involved a sharp learning curve and various missteps along the way. Two Executive Directors preceded the current leadership. Both were released from their duties as a result of a lack of confidence by the respective boards. Members of senior management have been terminated or outplaced and most of the employees have been recruited over the past five years (see Section 7.8.5 re: turnover). (Of the 48 staff of AMVIC the vast majority have been with the organization less than five years).

At the same time, AMVIC has had its fair share of successes including more focused enforcement; industry standards created; new communications tools to ensure market awareness; on-line courses for those in the industry; enhanced website for easier consumer use; a compensation fund for consumers who feel that their rights were not respected; board governance training; new policy development; industry violators identified and penalized; employee compensation review completed; employee survey conducted; organization strengthened through new positions being added.

Perhaps because of the very nature of AMVIC it has been under scrutiny since its creation and has been the subject of seven reviews over its 17 year history. Few other organizations could or would want to point to that degree of scrutiny and oversight. And yet, there have been ongoing concerns raised from the industry, consumers and staff within AMVIC pointing to various inadequacies and challenges and enlisting the support of the Minister (and her Department) to make any necessary improvements.

Any attempt to develop renewed credibility in a new system of automotive regulation must first deal with the purpose behind the establishment of AMVIC

and whether or not it is still the appropriate body to carry the torch. While we were generally impressed by the efforts being made by the current staff in carrying out their respective mandates, simply adding more resources to the mix is not the right step to take. The Government needs to assert its confidence that AMVIC is the right organization to handle automotive regulation, consumer protection and complaint investigation/reconciliation. If it is the appropriate entity, what changes are needed to ensure that its core functions are clear and being discharged as identified by legislation? Further, AMVIC should be only tasked with its fundamental roles so that over time it will develop a solid reputation in the marketplace as being there for both the consumer and the industry. If the former is confident, the latter will enjoy success.

We see the fundamental purposes of AMVIC to be:

- Creating an awareness of the value of fairness in the enforcement of the automotive industry
- Maintaining and overall licensing and compliance framework
- Ensuring that the industry and the public are informed as to the rules governing this important industry and why they ought to be uniformly practiced
- Protecting the public from unscrupulous dealers and individuals who are not playing by the same rules and who would do harm to both the public and the industry
- Enforcing the laws which apply in an even-handed manner which will help to develop confidence in the fairness of the system
- Building an informed industry and public through increased awareness and qualified training
- Ensuring that the employees who seek to resolve disputes between those who feel aggrieved and/or misrepresented are fully trained and supported

- Assisting those who have suffered loss through illegal behaviour have avenues for pursuing redress and are properly compensated.

7.2 The Voice of the Public

If the purpose of AMVIC is to represent and reflect the concerns of the automotive industry, it could be described accurately as succeeding. If its purpose is to reflect the views and concerns of the public at large, we do not find this to be the case. The “public” voice on the board is or has been represented in the main by former members of the automotive industry who no longer play an active role but who have strong ties to the industry; or by Ministerial designees whose appointment was questioned because of perceived political interference rather than a posting based on competency. While the appointment of those with industry experience might provide the Board with the historical insights of those who previously played a role in the industry, the fact that they would be biased in favour of the industry which provided them with a decent living is both understandable and predictable.

7.2.1 Voice of the Public on the Board

The difficulty faced by AMVIC lies in the fact that there are no “public” spokespersons. That is, Alberta does not have an identifiable body who represents the public at large on matters pertaining to auto vehicle ownership. While it might be advantageous to have such a body in this Province, doing so by design may not achieve the purpose intended. It is the public who are impacted by the industry in terms of legislation, regulation, a code of conduct, training, and awareness of challenges. AMVIC has been trying to provide such a voice but has struggled due to less than adequate representation in terms of the cross-section of the Alberta public.

The question which needs to be resolved is this: who ought to govern AMVIC and how does the Government ensure adequate representation of a cross-section of the public as well as members of the industry? We commend the current Board members for trying to also speak for the public. Their efforts have been sincere

and are making a difference. At the same time, AMVIC's legitimacy rests on its ability to carry out its mandate without the perception of bias or favoritism.

Should AMVIC simply represent the industry? This option has some merit in terms of:

- Where is its funding source?
- Who is most likely to benefit?
- What was the original target/purpose?

There is no question that the industry "voice" ought to be heard as it will certainly benefit the most directly.

Should AMVIC represent the public? This too is supportable in terms of:

- Who is impacted by the industry?
- Are the voices of the public being heard?
- Which audience needs to be protected?
- How can the Government be assured that its laws are being carried out most effectively and with the desired intent?

Should AMVIC be considered an agent of the Government? Given the legislation and its creation, this too has considerable merit.

- How can the Government ensure that the legislation is being carried out effectively and fairly?
- Does the Government have a responsibility to ensure fairness in the marketplace?
- Can this be achieved by an arm's length agency?

7.2.2 Voice of the Public through Appeals

There are currently five types of appeals that members of the public or industry can utilize. Most appeals are authorized under s. 179 of the FTA, plus there are appeals relating to salesperson registrations, and there is an appeal process in relation to the Compensation Fund.

Appeals under the FTA are as follows:

1. s. 135 appeals - these are mainly appeals from licensing decisions (refusals, terms and conditions, cancellations and suspensions). The appeal body (a 3 person panel) that hears these appeals is an appeal board appointed by Service Alberta in accordance with the *Appeal Board Regulation*.
2. 3. s. 129 and s. 157 appeals - these are appeals from Director's Orders and the appeal body (a 3 person panel) that hears these appeals is an appeal board appointed in accordance with the *Appeal Board Regulation*.
- s. 179 appeals relate to administrative penalties - these are appeals from administrative penalty decisions and the appeal body that hears these appeals is an appeal board (one person) appointed in accordance with the *Appeal Board Regulation*.

Section 179 appeals are commenced by notice of appeal served on the Minister and are heard by an appeal board appointed in accordance with the *Appeal Board Regulation* and the procedure is governed by the *Appeal Board Regulation*. The appeal panel selected by Service Alberta is chaired by a lawyer who is assisted by two lay people. There is a further appeal from the decisions of this appeal board to the Court of Queen's Bench.

Salesperson appeals fall under s. 22 of the *Automotive Business Regulation* and are appeals from decisions regarding salesperson registrations (either under the ABR or s. 127 of the FTA). These appeals are to be conducted "in accordance with the process established by the Director" and the Director is given the authority to establish an appeal process including forming or designating an appeal body. These appeals are heard by the Salesperson Appeal Committee established by AMVIC. AMVIC has established an appeal policy for this process. This appeal process was challenged in the Court of Queen's Bench a number of years ago and the panel decision and procedure was upheld.

Compensation Fund Appeals are run in accordance with the Compensation Fund Appeal Process outlined in s. 7.34 to 7.37 of the AMVIC Bylaws. There have not been any appeals of decisions to-date.

In looking at the various appeals that have occurred, the decision being appealed in almost all situations stems from the decisions of one person, the Fair Trading Director authority as delegated and carried out by the CEO of AMVIC.

7.2.3 Observations

The model as it presently exists is flawed. It is struggling to find its way and does not seem to have the full support of the industry, the public or the Government. (Some might argue that this description must mean it is doing something good!) We believe that there is a role for all three and that each could co-exist under the appropriate guidelines and protocols.

The Government has its agency: the Ministry (includes Department) of Service Alberta which ably represents Government concerns through the legislation, regulation and agreements. The industry has its own associations (and one might argue, the Society) who are quite able at espousing and advocating for what is perceived to be best for the industry.

The “public” voice is missing. This absence could be rectified in various ways:

- a Consumer Automotive Protection Council could be created
- the Minister can appoint members to the current Board (provided for in the current model)
- the AMVIC Board could solicit members through public advertising
- various professional and public societies could be solicited for appointees (e.g. APEGGA, Law Society, Alberta Arbitration and Mediation Society).

The decision being appealed in almost all situations stems from the decisions of one person, the Fair Trading Director authority as delegated, carried out by the CEO of AMVIC. That in itself is significant and creates some of the conflict concerns that have been raised by many. The ability for the Executive Director to delegate critical decision making is presently held up with the proposed bylaw amendments. That would help to reduce the present perception of conflict.

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As noted, appeals almost solely result from the decisions of one person (the CEO) who has the Fair Trading Director authority delegated to him as the CEO of AMVIC. Bylaw amendments have been proposed to allow the CEO to delegate some of this authority to staff, but the situation of the most senior management position has raised concerns regarding the perception and reality of conflict this creates in the organization and in the processes administered by AMVIC.

A number of improvements have been suggested, by Service Alberta and AMVIC staff that should be reviewed by Service Alberta (and AMVIC) as to their merits. We note that some of the changes will likely involve a policy adjustment by the Board whereas others may need to be considered during a subsequent legislative review). These would change organizational authorities and processes to reduce the number of appeals being received:

- expand the scope of negotiated agreements, called an Undertaking, and allow them to include a penalty, and not just the costs of the investigation;
- allow Undertakings to be used more than once with a progressive penalty;
- allow AMVIC investigators to issue a ticket with or without a specified penalty at the time of investigation for additional violations;
- improve the current process for imposing administrative penalties; reported as being both cumbersome and labour intensive for AMVIC, and not providing timely results;
- where the cost of investigation is supported by the compensation fund, any administrative penalties should be credited to the fund;
- review the use of a formal AMVIC discipline tribunal that will consist of a panel of public and industry members; separate from the Board (members would need to sit on a regular part-time basis and be available to hear reviews of all non-consent matters); (The Real Estate Council of Alberta reported as having a similar arrangement);

- improve the clarity of procedural rules surrounding appeal panels so the public, staff and industry feel more comfortable using the processes;
- shorten the time for appeal panels to reach a decision;
- continue to improve the training for members of appeal panels on processes and administrative law; and
- increase the flexibility of decisions on payouts from the compensation fund, including the payment of partial amounts during the process where there is need.

7.3 Proposed Legislative Changes

In our discussions with AMVIC officials we heard several concerns and suggestions regarding the current suite of legislation which it is impacted by and/or must enforce. The content of what was discussed point to a degree of frustration in the lack of attention to issues and concerns which directly impact the ability of AMVIC to meet its current obligations. Some of these issues are simply a matter of time and experience as both will drive the identification of areas for legislative change which may not have been noted in earlier discussions.

While discussions regarding the need for legislative improvements go on between Service Alberta management and that of AMVIC on a regular basis, some of the proposed legislative and regulatory changes deserve consideration in the near future rather than being shuffled off to some distant legislative review calendar date. These include:

- Assess the advantages and disadvantages of legislation which is particular to the automotive industry
- Gain a better understanding of the direction and flow of funds received from administrative penalties
- Develop training program for investigations and industry standards to specifically link legislation with business processes and roles and responsibilities

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- Ensure that every vehicle brought into (or sold in) Alberta has a mandatory continuous registration and repair history which has been tracked and maintained
- Appoint an industry panel to deal with administrative enforcement
- Clarify the duties of the “director”
- Ensure that Peace Officers have a clear enforcement mandate relative to the provision of a MFA (mechanical fitness assessment)
- Require businesses to have advertised vehicles in stock within 2-3 days of the appearance of the advertisement; place specific requirements on the advertisement relative to final price
- Create a stakeholders tribunal responsible for disciplinary matters
- Clearly define when ADR (alternate dispute resolution) is deemed acceptable as a practice and when it is not
- Enable the application of costs for investigations and administrative charges
- Place time restrictions on anyone reapplying for a license having been previously refused; ensure a reasonable period of time between applications
- Require one license per location; legitimize a current AMVIC practice
- Require the bill of sale for all new or used cars to include full disclosure of all financials
- Regulate the financing and lending practices in the industry ensuring that all customer costs (and forms of financing) are made clear at the time of vehicle purchase and not through “required” extras
- Determine if the MFA is the best system for vehicle inspections; examine the alternatives
- Ensure that auto auctions are providing full disclosure of all vehicle-related information/history to ensure that these vehicles are roadworthy.

7.4 Relationship to Service Alberta

The focus of Service Alberta is expressed in its Annual Report (2015-16) and is stated as follows:

- Protecting consumers in an increasingly complex and changing economic and social environment;
- Optimizing the current programs and services to meet existing needs;
- Modernizing the delivery of current programs and services to meet emerging needs; and
- Developing breakthroughs and innovations that will prepare the Ministry to meet future needs.

AMVIC is directly tied to the Government through agreement. It has been delegated the authority to carry out Provincial laws and regulations in a manner consistent with the Government's insistence on fair play and equal treatment. AMVIC has a Delegation Agreement (now being referred to as an Administrative or Service Agreement) with the Minister of Service Alberta that empowers the organization to enforce and administer the requirements of the *Fair Trading Act* for Alberta's automotive industry. The Agreement has been extended to December 2016 (with the potential to extend it a further year to see what changes might be necessitated by the findings of this Review).

The suggested name change is designed to re-name the "Delegation Agreement" an "Administrative Agreement" or "Service Agreement" to remove the confusion that comes up in relation to the FTA Delegation (from the Director, which gives legislative authority) and the administrative operational standards that the Minister is setting for AMVIC.

The Delegation Agreement (agreed to by the Government on November 26th 2012) spells out the anticipated legal arrangements between AMVIC and the Minister. It also makes various notable statements which we paraphrase:

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- AMVIC is to function independently from the Government; this aligns with its regulatory role and is essential if it is to be seen as distinct by both the industry and the public
- AMVIC is accountable to the Legislature through the Minister; this accountability enables the Government to assess how its functions are being discharged
- AMVIC acknowledges that the Minister (and the Director of Fair Trading) can amend the legislation regarding AMVIC
- AMVIC has the authority to delegate the Director of Fair Trading duties
- AMVIC acknowledges that if it delegates the Director of Fair Trading responsibilities it will not interfere with the independence of that role
- AMVIC acknowledges that it is a public body under FOIP.

AMVIC agrees to:

- Maintain a code of conduct for board members, officers, employees and agents
- Maintain policies and procedures
- Maintain a code of conduct for Peace Officers
- Pay all costs associated with appeals and arbitrations
- Employ the necessary Peace Officers; respect the laws regarding the gathering, collection and holding of information
- Set levies as agreed to by the Minister
- Prepare a business plan as per the prescribed format for the following three years
- Provide the Minister with an annual report and audited financial statements
- The Minister will complete an operational review every three years and may do so at any time

- AMVIC agrees that it will not without the Minister's prior consent make any changes to the bylaws and objects; transfer any membership nor add any new member; provide financial assistance to third parties
- AMVIC shall agree to an orderly winding up of its affairs if the agreement is terminated.

7.4.1 Concerns of the Government

We were made aware of a number of concerns/issues in the relationship between AMVIC and the Government (Service Alberta). While some of this is to be expected, there were other comments made which point to more deep-seated, systemic issues. Part of this difficulty is due to the two quite different roles and the fundamental responsibilities of each. It is also in part attributable to the objectives of the two principal audiences: AMVIC is a Society with a requirement to report to its members; Service Alberta is a ministry with an obligation to account to the Legislature.

The delegated role/relationship between AMVIC and its parent department (Service Alberta) is strained due to a number of factors which could be summed up or enveloped in "a lack of trust and confidence". These concerns, which it has disclosed on previous occasions, are the result of direct contact with AMVIC through individual meetings, operational reviews, attendance at Board meetings and the receipt of calls from the public and from AMVIC employees who are not happy with various management-related activities or attitudes.

In the main, the concerns which we have heard voiced by Service Alberta and/or read about in various briefings and correspondence speak to misgivings regarding AMVIC's manner and style of conducting investigations, negotiating with complainants and businesses and conducting enforcements. There have also been concerns voiced regarding how well the Board is or is not briefed.

From Service Alberta's perspective, the concerns are (as we understand it):

- AMVIC has not been serving Albertans as intended

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- Relationship strained almost from the outset; early management pushed back against any suggestions from Service Alberta
- Management should understand where it links to Service Alberta in the hierarchy: linkage should be with the ADM, Director and Manager
- AMVIC management appears to be running the show with minimal direction from the Board
- Investigations and inspections process not always appropriate
- Oversight by the Board while improving has appeared to be weak and ineffective
- Penalties, undertakings and processes appear to be inconsistent with FTA/ABR
- The control and use of the compensation fund has not been consistent with its objective; AMVIC has not been sympathetic to consumer by making it difficult to access the fund
- Interference has been alleged during investigations; have been informed that some investigation files changed by management
- Accountability of the CEO has not been readily apparent
- Unclear role of mediation and ADR; concerned about excessive use of enforcement threat
- Penalties do not meet the criteria of cost reimbursement; unclear as to criteria for penalty amount
- AMVIC charging levy for multiple sites; unclear authorization
- Not clear if current governance model viable
- All delegated regulatory organizations should have same powers/expectations
- Service Alberta identified issues of concern in 2013-14; Board said it was not aware of these issues; SA views this as a failure of governance; how close was Board watching the system/practices.

From AMVIC's perspective, the concerns are (as we understand it):

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- Difficult to dialogue with several of the former Ministers; made it difficult to bring about needed changes
- The Board linkage is to be with the ADM and DM on behalf of the Minister
- Government needs to develop more of a helping role
- Generally seen as strained but members express uncertainty as to why; most feel that positive results are more likely provided that they have regular meetings
- Concerns expressed that senior management of Government not as accessible as hoped; meetings are described as cordial and productive for the most part
- AMVIC may rely on Government too much; may almost be asking for involvement by Service Alberta and then upset when it does get involved
- AMVIC should have a stable source of funding
- Looking forward to an improved relationship; we need Government to be active members
- Government has made claims and demands of AMVIC but do not participate or support AMVIC; have not addressed the shortage of “Members at Large” nor have they sent representatives to join the meetings on a regular basis; seems counterproductive to request results without participating and understanding what is actually occurring.

To be fair and balanced, this relationship goes on daily and business gets done; relationships go up and down in the normal course of events. We were advised that there is a regular stream of e-mails and phone calls between AMVIC and Service Alberta on a wide variety of issues. These contacts seem to occur at fairly senior levels and are reported as cordial and often helpful.

7.4.2 Operational Reviews

The Delegation Agreement entered into October 1st 2012 (Sections 6.7-6.9) provides authorization to the Minister to conduct operational reviews every three years and any independent reviews as the Minister deems fit. Such reviews have occurred in 2009, 2013, 2014. In addition, the amendments to the FTA enable the Minister to conduct a special review/audit which has led to this Governance and Operations Review.

The Agreement spells out the responsibilities, authority and power of the Minister and Legislature to:

- amend or repeal legislation related to AMVIC
- rescind any delegation
- require an annual report of AMVIC activities
- receive an annual audited statement
- conduct an operational review every three years;
- conduct any other review of operations at any time.

It is our understanding that these reviews are undertaken by the Compliance and Accountability unit of Service Alberta every three years. The last review was completed in 2014 by Service Alberta.

The **2009 Operational Review** conducted in November 2009 resulted in 38 recommendations which provided insights and advice relative to:

1. Fiscal Management: Short and long term sustainability; policies surrounding funds use-restricted by the Board; and the management and control of vehicle assets.
2. Board Governance: Annual reporting practices; Board continuity and composition; job descriptions; board sub-committees; differentiation of Board and operational activities; AMVIC bylaws; and reporting to Corporate Registries.

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3. Business and Strategic Planning: Contractual and operational requirements; strategic planning considerations; compensation fund; and performance measures.
4. Program Management: Licensing; complaint investigations and enforcement; education.
5. Administration: Expense claim policy; human resource policy; electronic system policy; records management policy; FOIP requests, cell phones; and insurance.

AMVIC accepted all of the recommendations but many of the timelines provided to resolve the issues were in 2011 or 2012. Concerns over these timelines were communicated to the AMVIC Board by the Director. As the only requirement is that AMVIC respond to the recommendations from the Operational review, not that they accept the recommendations or implement them in a timely manner, no further actions were taken. AMVIC management reported to the AMVIC Board and to Service Alberta on the implementation of the recommendations until changes in AMVIC management and Board direction disrupted the timelines.

A similar review was conducted in **February 2013** which resulted in 54 recommendations on:

1. Board Governance: Policy reviews; board member orientation; board sub-committees; differentiation of Board and operational activities; stakeholder and public consultations; job descriptions; reporting to Corporate Registries.
2. Business and Strategic Planning: Contractual and operational requirements; performance measures.
3. Delegated Activities: Licensing; complaint investigations and enforcement; compensation fund; and education and communications.
4. Fiscal Management: Restricted fund; financial policies, management and control of vehicle assets.

5. Administration: Policy review; expense claims; performance appraisals; code of conduct; complaints against AMVIC; electronic systems; records management; FOIP requests; cell phones; and insurance.

A number of the recommendations mirror those from the 2009 Operational review. AMVIC accepted all of the recommendations, but as with 2009 the timelines initially set out were of concern.

In July 2014 the Government approved the recommendation from Service Alberta staff (in response to concerns raised by consumers, businesses, and industry associations) that an Operational Review of AMVIC investigations be undertaken. The Consumer Investigation Unit and Special Investigation Unit investigators conducting the review scheduled the review for September. This Review looked at AMVIC policies, guidelines and operational practices, investigation files, and included interviews with AMVIC investigation staff and AMVIC management. A draft report was prepared and subsequently amended but not before someone leaked that to the media, resulting in considerable coverage and questions for AMVIC.

That review found that:

- *“Failure of AMVIC management to meet legislated requirements under the Peace Officer Act. The Delegation Agreement with AMVIC requires AMVIC to remain an employer of peace officers.*
- *Misuse of Undertakings by the AMVIC President and CEO. The Fair Trading Act establishes specific requirements related to the use of Undertakings. Despite previously being advised of concerns related to the use of Undertakings by AMVIC and specific guidance on appropriate use, the AMVIC President and CEO had expanded that misuse.*
- *The AMVIC President and CEO had engaged in behaviour that did not meet the requirements of natural or administrative justice as generally recognized. This includes active participation in investigations, directing investigators as to findings and*

recommendations, failure to conduct hearings in an appropriate manner, and failure to follow a process that is fair, impartial and open.

- *Investigations staff at AMVIC expressed substantive concerns about the knowledge, behaviour and demeanour of AMVIC management that have resulted in significant staffing issues in relation to staff turnover and morale.”*

This Review unearthed serious issues related to governance and operations. The investigative review also determined that AMVIC had not adopted or appropriately implemented recommendations respecting investigation and enforcement practices from the 2009 and 2013 operational reviews. (AMVIC responded that it would undertake the recommendations in a spirit of cooperation with Service Alberta).

This **2014-15 Review** (dated April 29th 2015) resulted in 16 recommendations to the AMVIC Board on:

1. Responsibilities and behaviour of the Executive Director (Now President and CEO);
2. Appropriate use of investigative and enforcement tools and processes;
3. Operational review standards;
4. Staff training and morale;
5. Compliance with Peace Officer Act standards and policies.

Meetings with the AMVIC board were held in early 2015 to present the results of the 2014 investigative review. Following acceptance of those recommendations, AMVIC engaged the accounting and consulting firm MNP to produce an implementation plan to address the recommendations. Their 19 page report was based on MNP’s independent assessment of AMVIC’s progress; interviews with the appropriate staff; and discussions with Service Alberta and the Board.

The Government approved the MNP plan in June 2015. AMVIC has subsequently provided quarterly reports to the Government reporting on their progress in implementing the recommendations, concluding with their report on April 11th

2016 which concludes most recommendations have been implemented. As we understand it, the concern of Service Alberta relative to that report was the absence of any substantive evidence that the recommendations were being adopted given that there were no formal tools that would permit any independent verification.

Based on our reading of their report, the authors made a number of credible observations and provided what we would view as useful advice to the ongoing health of AMVIC including that AMVIC should: ensure policies are reviewed at least annually; maintain current MOUs; enhance investigative reports; ensure proper training of investigators; address issues relating to investigator safety; simplify the charge approval protocol; develop enquiry/complaint handling flow chart; remove CEO from engagement in investigations files; strengthen the Board's capacity to provide oversight; enable effective oversight; address the morale issues; slow the pace of change; develop a whistle-blower policy.

We were advised by AMVIC that Service Alberta has not been intimately involved in guiding and supporting the Board. It has appeared to AMVIC that Service Alberta relies upon their Operational Reviews, investigations and behind the scenes enquiries to develop their opinion of AMVIC. In the opinion of AMVIC, these have been negative encounters which cloud the overall perspective of Service Alberta and tend to portray AMVIC in a poor light. Further, there is the perception that any industry complaints to Service Alberta results in the Government immediately taking the side of industry rather than acting as AMVIC's supporter or at least taking a neutral stance.

We note as well that the flow of communication has been uneven and often associated with issues rather than successes or mutual interests. This has, in the opinion of AMVIC tended to set Service Alberta apart from AMVIC rather than immediately picking up the phone or scheduling a meeting at the Deputy Minister/ADM/CEO level. The leaked investigations report and the subsequent media outcry further poisoned the atmosphere between the two parties which also helped to erode whatever goodwill had been banked to that point in time.

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At the same time, meetings are described as cordial and productive for the most part. Management reported that individual staff get along quite well and are able to share ideas and concerns. The backdrop to the concerns that have been raised appeared to us to be the outcomes of the leaked 49 page report and the less than prompt response of AMVIC to the recommendations put before it by Service Alberta.

While AMVIC suggests that it requires additional funding and preferably a stable funding source, it is also apparent that its reliance on the \$6.25 levy per vehicle sold plus license and registration fees has allowed AMVIC to build up a substantial funding base. While we realize that these funds could be in jeopardy if the rules change regarding remedies and penalties, the recent history has not proven that to be the case (given that the stringent pay-out regime is still in place).

Given that the Operations Reviews pointed out what Service Alberta saw as significant issues, it was somewhat surprised to find that the Board of AMVIC was not aware of the gravity of their findings. Service Alberta was left to wonder how close the Board was watching the system/practices. MNP was retained by AMVIC to develop implementation plans which were submitted to the Board and Service Alberta. These reports have been met with somewhat better response by Service Alberta who express that it is looking forward to an improved relationship.

From its perspective we understand that Service Alberta believes that it enjoys a reasonably good working relationship with AMVIC. It believes that the agency is improving its service through improved training and through its follow-up (if somewhat belatedly) to the recommendations of the Operational Reviews. Service Alberta and AMVIC staff are in frequent contact through a series of unplanned meetings; a standing invitation to a Service Alberta staffer to attend Board meetings (until this was discontinued by AMVIC in September 2014). There was considerable discord between Service Alberta and AMVIC at that time resulting in no further attendance (by mutual agreement). (This practice of an open invitation to Service Alberta appears to have been renewed). However, there have been meetings between the Minister and Board Chair but these are

described as infrequent. Since the MNP report was completed, meetings were held to discuss the implementation plan. Service Alberta has also conducted training sessions for AMVIC staff and regards these sessions as useful connections. The AMVIC Board believes that it has responded appropriately to the challenges and observations posed by the prior reports and that its appointment of MNP was done so in good faith to show that it was serious about changing the perception of the Government. Having said that, there is also recognition by Board members that the relationship is still flawed and tentative and that other changes would likely have to be made.

We were also advised that the Government (Service Alberta) believes that it has been actively supporting actions the Board is taking to improve governance. Meetings between the Board and senior officials have been well-received and some progress was made in making sure that this regulatory agency was on the right path.

In spring session 2016 the *Fair Trading Act* was amended to increase government oversight of delegated regulatory organizations including AMVIC by establishing the authority for the Minister to conduct reviews, issue orders and, where warranted, dismiss board members and employees and appoint individuals to oversee the management of delegated regulatory organizations. These enhanced oversight powers are similar to those in many other pieces of legislation in Alberta, including the *Real Estate Act* and *Municipal Government Act*.

The Government has cast this Review as evidence that it is keen to ensure that AMVIC is moving in the right direction and developing the systems and structure necessary to ensure ongoing improvements in governance, public accountability and service delivery.

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Current AMVIC Reporting and Approval Requirements		
Reporting		
	s. 6.1 Agreement	Provide a 3 year business plan to the Minister prior to AMVIC fiscal year end
	s. 6.4 Agreement	Provide an annual report to the Minister within six months of AMVIC fiscal year end
	s. 6.9 Agreement	Provide a written response to the Minister on operational review recommendations within 90 days
Notification		
	s. 4.2 Agreement	Notify Minister and Director if ability to employ peace officers is in question
	s. 9 “Schedule B” Agreement	AMVIC must notify the Minister immediately on any breach or suspected breach of FOIP and confirm the notification in writing within two days
	s. 1 “Protocol 1” Agreement	AMVIC must notify the Director when it has received a request from the media
Approval		
	s. 136 (3) FTA	Bylaws must be approved by Director
	s. 136 (8) FTA	Levies on licensees and designated agents must be approved by Minister
	s. 5.1 Agreement	
	s. 136 (9) FTA	Disclosure information obtained through use of delegation must be approved by Director

7.5 Governance

AMVIC is incorporated and organized under Alberta's *Societies Act* as a regulatory board for the purpose of exercising the delegated powers, duties and functions. As such, AMVIC is required to have members (a society) and a board of directors. In addition, AMVIC has a "delegation agreement" with the Province of Alberta which provides it with a range of powers and responsibilities which empower it to guide and direct the functions of AMVIC.

7.5.1 *Role of the Society*

The AMVIC Society consists of nine members, four that are public and five that represent automotive industry associations active in Alberta: the Motor Dealers Association of Alberta, the Recreational Vehicle Dealers Association of Alberta, Auctioneers Association of Alberta, the Alberta Automotive Recyclers & Dismantlers Association and the Canadian Independent Automotive Association. With respect to the public members, the Bylaw indicates that "The Public as represented by four natural persons selected from and by the Public-at-Large Members of the Board". The "public-at-large" members will be nominated by those members appointed to the Board by the Minister (i.e. Sec. 3.2 stipulates that the Board will include six (6) Directors appointed from the Public by the Minister). The Society was created as a vehicle for the Government to utilize in delegating the responsibility for administering the Fair Trading Act and associated regulations. The Society is required by bylaw (Sec.10.1) to meet annually but has met up to 3-4 times per year (including once for an Annual General Meeting). The Society has a mandate of approving any recommended bylaw changes; controlling the limits on the compensation fund; and recommending the names of the industry at large positions on the AMVIC governing board.

While the Society plays a very limited role in the affairs of AMVIC, it does have a say in what AMVIC does and how it does it largely through the influence of its members. The Society can impact Board policy through its appointed members

and through its dialogue with the AMVIC Board. In some ways, the Society acts as an oversight board while delegating the actual delivery on its objects to the AMVIC Board.

The objects of the Society are summarized as follows:

- Act pursuant to legislation or regulations
- Establish, maintain and administer policy and programs to enhance highway safety and a fair and informed marketplace in the motor vehicle industry
- Enhance consumer protection and confidence
- Promote consumer education, information and awareness in the industry
- Promote education, certification and licensing of industry members
- Develop codes, principles, frameworks and practices in order to foster high ethical standards and professionalism in the industry
- Promote alternatives to litigation for the resolution of disputes between consumers and industry members
- Establish and collect fees, charges, levies or assessments
- Engage in other activities in order to fulfill any mandate assigned or delegated pursuant to any legislation or regulation
- Receive, sell, manage, invest, lease, mortgage, dispose or property of the Society.

It is our view that the value of the current corporate configuration is unclear. While we held over 60 interviews, very few of those could define what the Society was doing that the Board was not. With its current make-up, the Society is perceived as biased in favour of the industry. Its value appears to be limited as a governance structure which gives license to the real delivery system (i.e. the Board). The Society provides the Government with a body corporate to enter into a contract with to create the AMVIC board.

The role of the Society impacts this situation. It was initially set up as a vehicle for enabling the Government to get out of the business of regulating the industry. The Society's role appears as a hybrid: it is part overseer of the system and part final approving authority of any changes to the model. It has likely added some degree of value over the years by providing AMVIC with stability and an anchor. Because it has such a limited role vis-à-vis the Board it does not play a significant role in the ongoing governance.

We were made aware of the concern by Board members that there is generally limited contact with the members of the Society. This gap is interesting as one would expect that industry representatives would have considerably more contact and thus awareness of each other's concerns. There is also evidence that the two (i.e. the Society and the Board) do not always agree on matters and thus in some ways one acts as a check on the other. Some have suggested that the real role of the Society is to act as the "Senate" for the organization in that it serves as a place for "sober second thought".

While there may have been some value in the role played by the Society in the early formative days of AMVIC, it would appear to us that its functions could be readily assumed by the Board. This would simplify the system of governance for all those involved. Society members are still represented on the Board plus their advocacy role, as we understand it, is still part of the mandate of each Association. Agreement to this change by the Society would ease the transition which we will propose and would, at the end of the day, result in a much stronger governance model that meets the needs of a changing order of things.

7.5.2 *Role of the Board*

AMVIC is a non-profit society with a 13 member Board of Directors. Seven board members are appointed from industry and six members are appointed to represent the public by the Minister of Service Alberta. AMVIC's CEO reports directly to the board of directors. Section 3.2 of the Board bylaws speaks to this arrangement as follows:

3.2 The Board of Directors shall be appointed as follows:

- (a) six (6) Directors appointed from the Public by the Minister;*
- (b) five (5) Directors appointed as follows:*
 - (i) one (1) Director appointed by the Motor Dealers Association of Alberta;*
 - (ii) one (1) Director appointed by the Recreational Vehicle Dealers Association of Alberta;*
 - (iii) one (1) Director appointed by the Canadian Independent Automotive Association - Alberta Chapter;*
 - (iv) one (1) Director appointed by the Auctioneer's Association of Alberta;*
 - (v) one (1) Director appointed by the Recyclers and Dismantlers Association of Alberta.*
- (c) two (2) Industry-at-Large Directors who are an owner or employee of an automotive business in Alberta appointed by a simple majority vote of the Members of the Society from qualified nominations received.*

The AMVIC Board provides oversight and direction for AMVIC's CEO and for AMVIC employees. The Board's role (see Sec. 5.3.4) might be summed up as: setting organizational priorities; setting policy guidelines; ensuring financial and operational viability; providing direction to and oversight for administration; and communicating benefits to all stakeholders. The Board through its strategic planning activities and framework sets the vision, mission, goals and priorities of the organization. While the Board sets the course in terms of the broad strokes, the CEO is expected to achieve the stated results through his guidance of the organization.

AMVIC is a delegated regulatory organization (DRO) with administrative, regulatory, education and enforcement responsibilities. It is important to note that AMVIC was not established under the *Fair Trading Act* and the Society is not a creation of the legislation.

In addition to the *Fair Trading Act* delegation from the Director of Fair Trading, there is an administrative agreement between the Minister of Service Alberta and AMVIC (a one year extension agreement was signed last year). The current delegation agreement expires December 1, 2016. The delegation agreement sets out the roles and responsibilities between the parties as part of the delegation and covers items such as:

- Codes of conduct, policies, procedures and other requirements;
- A requirement to provide a 3 year business plan to Minister prior to end of fiscal year;
- A requirement to provide an annual report and audited financials to Minister within six months of fiscal year end;
- Cooperate in audits and reviews and respond to recommendations from such;
- Maintain records in accordance with FOIP; and
- Consult/inform Service Alberta on any external communication.

The Agreement makes it clear that:

- AMVIC operates independently from government in its regulatory role.
- AMVIC decisions must be made and seen by the participants and the public as independent and impartial.

While AMVIC operates independently from Government it is not seen to operate independently of the industry. There are no non-industry members on the Board at the present time. A previous decision to strengthen the public (consumer) participation on the AMVIC Board has not materialized and as such has done nothing to ensure that the operation of AMVIC is unbiased.

7.5.3 Observations

To its credit, the Board has been striving to improve its understanding of “good governance” and its role in influencing the organization. Its members appear to take their responsibilities seriously and while they each have busy lives based on their business and family obligations, they make time for Board and committee

meetings and special planning events (i.e. the annual strategic planning two day meeting in Banff in September). Most Board members believe their actions as a board are balanced and informed. They recognize that their “industry” representation may be viewed as skewing decision-making but accept that as inevitable. Ironically, some advised us that once appointed to the Board they become instant enemies of both the industry and Government!

Board Style of Governance

Boards typically fall into one of two styles: they either get overly involved in the day-to-day management of the organization thereby paralyzing it through too much attention to detail; or the Board stands back: turns over all authority to the management; attends meetings; shows little interest; collects its per diems; and heads home. This Board appears to land somewhere in the middle. It was previously viewed as the latter (i.e. limited involvement and interest) style but has now taken a much firmer grip of AMVIC and wants to fully understand its business almost to an extreme. (We were generally impressed by the genuine interest and commitment of the current members to fully understand this business of governing).

We were advised that the Board had historically relied extensively on its CEO to provide it advice and to guide any of its actions. This style resulted from a Board which was (reportedly) not engaged in governance and management which stepped into and assumed the role intended for the Board. As a result, the Board did not feel it was accomplishing what it had intended and nor was it as aware as it should have been with regard to the impact of managerial decisions.

Their sense of being too hands off may have led to the current style which some would describe as being more of a management board than a governance board. That is, and in response to the criticism that the Board was not paying attention to its responsibilities, it determined to get a much better handle on things and may now be taking that to a considerably different level. Obviously, some balance is needed and as this Board gains confidence in itself and its understanding of what management is about, it will likely move closer to a pure

governance model. In some ways, the present style is quite suitable at the moment.

We were encouraged by its desire to understand the business from a Board perspective to the extent that it has requested and made use of well-experienced board advisors on an annual basis. It has active, engaged discussions at the Board and committee tables and management is coming to understand that more rather than less information is expected.

As we view the present Board (based on our interviews and review of the available documentation) the Board appears to be:

- conscious of the seriousness of their roles and the potential impact of their decisions
- aware that frequent leadership changes has not helped the stability of the Board nor its effectiveness
- understands that it has been and likely will be lobbied by individual staff members who may or may not have a legitimate complaint against senior management
- concerned that the vacancies in public membership are not healthy to the Board's efforts to be viewed as more broadly-based
- much more aware of the need for all members to be equally engaged and informed;
- aware that the length of their terms needs to be re-examined if they are to become a higher performing regulatory body
- aware of the need to be aligned with the Government in terms of their focus on protecting the public as well as the industry.

This Board needs to evolve into a stronger governance body with a clear mandate, strong and well-equipped Board members with a broad skill set, enhanced diversity and stronger public representation. This should be accompanied by a re-vamped committee system which reduces any overlap, ensures balanced public-industry representation and which focuses the Board's

decision-making on its key priorities. We have addressed some of these issues in the sections which follow.

Board Membership

Regardless of best efforts and good intentions, the Board realizes that it has been and is currently regarded as an “industry” board. Its membership over the 17 years has been predominantly industry. While AMVIC operates independently from Government, it is not seen to operate independently of the industry. There are no “non-industry” members on the Board at the present time. A previous decision to strengthen the public (consumer) participation on the AMVIC Board has not materialized and as such the present composition of membership has done nothing to ensure that the operation of AMVIC is unbiased.

It is not that the Board is unaware of the perception or has done nothing to counteract it. The bylaws have been changed to add public members to the Board’s membership. Over time the Board has made a conscious effort to have more of a public profile and this has resulted in a greater sense of parity in terms of membership at the table. The Board was quite open to receive and welcome such members. Government members and friends/associates were appointed by a previous Minister, and the face of “public” membership remained elusive. The Board is hopeful that a more public approach to recruiting members will be employed. We note that some work has been done on a skill set matrix which will need to be upgraded and updated on an annual basis. We would hope that with the adoption and implementation of this Report, the matter of Government appointees should be expedited.

Meanwhile, the industry’s main players (in terms of Associations) continued to have a seat at the table with the support and guidance of their “sending” board. Those voices (as would be considered predictable) have been very persuasive in ensuring that industry issues and perspectives are given attention if not priority. The challenge is one of perspective: is AMVIC expected to represent the needs and concerns of industry or that of the public? While those two will not always be at odds, there will be times when that is so. What takes precedence?

It is our view that the industry is well-positioned and represented through its various industry-associations. These are well-organized bodies which are able to speak with eloquence and determination to the needs of their members. One of their principal roles is that of advocacy in terms of monitoring any changes/shifts in Government policy which might impact the industry. Their industry leaders are tasked with speaking to the issues and challenging any action or policy which might damage (in their opinion) the viability of their members.

AMVIC's role is not that of an association. Its fundamental purpose is to provide oversight to the proper enforcement of the legislation so that both the industry and the public are protected from any activity which would counter "fair play".

Board Member Term

The Board bylaw also provides direction with regard to the term of Board members. Section 3.5 states that:

3.5 The maximum term for Directors to serve on the Board of Directors is five (5) years, except as provided in (a). The length of a Director's first term is 3 years, except as provided for in (b). The length of a Director's second term is 2 years. The Length of the term for a Director filling a vacancy is the same as the term of the former director being replaced. The term of a Director expires at the end of the Annual General Meeting of the relevant year. Directors who have served two terms may not be reappointed until a minimum of one year has passed after the end of their term.

(a) As per 5.3 a Director may serve an additional year as Past Chair if they have been serving as chair in the final year of their term. If the Director serves an additional year as Past Chair, the Board of Directors will move to a fourteen (14) member board for that year only. The composition of the Board or the appointments will not change. The appointment for the industry sector or public-at-large for which the Past Chair serves will still occur and the incoming Director will still have the opportunity to serve two terms.

(b) The initial term of a Public-at-Large member may be set by the Minister.

The issue of board member tenure has been raised several times during the course of our Review. On the one hand, we met with members who are busy people in their own businesses and personal lives and who are not looking for added duties and obligations. On the other hand, we also heard from those who felt that the length of terms meant that those who enjoyed their roles and were effective in them were not given sufficient time to have much of an impact. We also heard that there is a rather steep learning curve for most Board members and thus their feeling that they do not contribute much until the end of their first year.

Trying to balance the two perspectives will be difficult. We believe that as an agency which has an agreement with the Government to deliver services, it should not be too big a stretch to align the governance practices of AMVIC with that of the Public Agencies Governance Act.

Board Member Recruitment

Much has been said regarding the best ways to identify and attract the best candidates for open positions on a board. Some point to a particular skillset such as accounting or law; others speak to the need for experience in working within a Government setting; still others focus on past experience in a related field.

AMVIC does need to work on a “Board member profile” which would clearly identify the type of individual who the Board thinks would best fit their circumstances and needs. However, care must be taken to not focus on the wrong criteria which will simply mislead current Board members and result in a Board that is not any stronger or more reflective of the general population. The key, in our opinion and experience, is to think through what is needed and what the ideal candidate will bring to the table.

Some boards have found that developing a skills matrix is helpful in their recruitment and selection processes. Such a matrix was crafted by this Board and

resulted in the following skills being identified as potentially of value to this Board:

- *Understanding financial statements and budgets*
- *Experience with Board processes and governance models experience*
- *Business experience*
- *Non-profit or corporate board experience*
- *Risk management*
- *Stakeholder or Government relations experience*
- *Industry experience*
- *Leadership*
- *Legal*
- *Marketing & Communications*
- *Gender diversity*
- *Human resources*
- *Regional location*
- *Strategic planning*
- *Technology*

AMVIC is not subject to the *Alberta Public Agencies Governance Act*, which requires an open competitive process; however, Service Alberta has committed to adopting the Agency Governance Secretariat best practices relating to board governance (as much as is practical). The Agency Governance Secretariat has adopted open and transparent, competency-based recruitment as a best practice.

“The following principles will form the basis of all agency recruitment and appointment processes:

- **Competency:** Selection is based on skill sets that meet the needs and nature of the organization so that the agency has directors who, together, have the competencies to implement good governance practices and meet the agency’s mandate.

- **Agency engagement:** The agency is involved in establishing the governance needs of the agency, reviewing candidates, and advising on recommended candidates. At a minimum, the chair or another board member will be included in the selection panel.
- **Transparency and openness:** The recruitment and appointment process is clear, publicly available and communicated to stakeholders. Individual openings for positions are publicly advertised, and reasonable steps are taken to reach a large number of diverse and eligible candidates. Appointments are publicly posted.
- **Consistency:** The recruitment and appointment process is applied consistently for all directors appointed by the government to its agencies.
- **Timeliness:** Appointments are made and announced in a timely manner.
- **Diversity:** The recruitment and appointment process recognizes the importance of diversity. In order to ensure a constant and on-going pool of qualified candidates, the government will promote the value of board membership, increase public awareness of opportunities and actively recruit candidates from across the province”.

These principles make good sense and ought to be applied in this case. It would be helpful to the Board to adopt the Agency guidelines and parallel their principles as much as is possible.

These aims directly apply to the challenges facing AMVIC. While there is no legislated requirement for AMVIC to comply with this Act, we see it as addressing a number of the challenges which we have identified. We believe that adopting these statements as AMVIC policy will be helpful and important moving forward.

Board Member Orientation

We were advised that all new members on the Board receive a thorough orientation to their roles. This is achieved typically through a four hour

orientation seminar provided by the management wherein each of the key aspects of AMVIC's mandate is covered by one or more senior staff members. The orientation is normally planned for one day after the AGM where the new directors have been appointed. All senior managers from AMVIC attend and provide an overview of their area for the directors. (This approach has been well-received by the Board members).

Directors are provided with a copy of the bylaws of the Council, the Annual Report, the independent auditor's report, the current Strategic Plan (2016-2021), the Remuneration and Expense Policy, the Government-AMVIC Delegation Agreement, key legislation and regulations and a copy of the most recent Service Alberta Operational Review.

In addition to this orientation, Board members are expected to ask questions of fellow members and the Chair. The orientation has been deemed to be acceptable by the Board members based on their own limited experience with such processes elsewhere. Management obviously understands what its mandate is and reportedly provides a good overview of their areas of authority. They are pleased to respond to questions from the new Board member(s) and fill in some of the gaps relative to the knowledge of those joining the Board.

The Chair speaks to how the Board functions including table officers and committees; the frequency of meetings; the expectation that a member will engage and ask questions. It is our view that the process could be made more complete with more attention paid to the challenges facing the Board.

Board Training

Most boards today understand the need for ongoing training. They realize that a fairly limited introduction to "good governance" will not be sufficient to resolve governance issues in a reasonable fashion. While a solid orientation program can be very helpful, ongoing training is essential if the Board is anxious to add value. In this instance, AMVIC's Board has had some governance training over the past year or two. This training has been combined with the orientation for new members and strategic planning for the full Board which occurs at the two day

strategic planning/meeting held in September of each year. Over the past couple of years the Board has attended sessions with:

- *Darren Thomas - Governance training - September 2014*
- *MNP - Strategic Planning - September 2014*
- *Joan Hertz - Board and Committee Effectiveness Evaluation - 2014-15*
- *Joan Hertz - Board self-assessment and peer review*
- *Joan Hertz - Governance training - September, 2015*
- *Don Cummings - Governance/Strategic planning - September 2016*

This focus on continual Board training will be of considerable help to the Board as it enters this new phase.

Board Member Meetings

The Board meeting schedule is set annually and includes six regular Board meetings, a Board Strategic Planning retreat (combined with the September Board meeting) and the Annual General Meeting (with the Society). The regular Board meetings alternate between Edmonton and Calgary. The meetings tended to take most of a day (8am-4pm) and appeared to be focused on the issues which were of concern to the management. In camera meetings are generally scheduled for the beginning and end of the meeting. Only Board members are expected to stay although the CEO might be invited to do so. Committee reports are presented verbally with few motions arising from them.

Based on our review of the agendas over the past four years we found that the meetings appeared to be useful forums for debate and discussion of a variety of key matters, including:

- Amount of restitution by AMVIC to unhappy customers
- Need to restrict certain funds
- Identifying “curbers” program
- Compensation fund updates
- IT improvements
- Policies

- Signing authority of CEO
- Employee guidebook
- Code of Conduct
- Approval of Navantis operating system
- Appointment of auditors
- Response to Service Alberta investigations report
- Applications for industry at large representatives
- Request for governance review
- Board director alternates
- Investment policy
- Change of Executive Director title
- Business Plan approval
- Competency matrix
- Delegation Agreement

The Board went in camera at certain meetings and reportedly discussed issues pertaining to the performance of management specifically and the organization generally.

Based on our review of the agendas and minutes, and our discussions with Board members, the meetings have been useful from the perspective of ensuring that all members are aware of key issues and in monitoring progress of key issues. They have not been overly helpful in terms of the Board developing key performance targets for the CEO nor in managing the relationship to Service Alberta but we believe that progress is being made in those areas as well.

Board Member Compensation

We were advised that the compensation paid to Board members is established by the Board on an annual basis. This policy was first established in January 2006 and was reviewed and updated in 2009, 2010, 2013, and 2014.

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The Board sets reasonable compensation rates based on participation in Board (including committee) activities. These rates are as per the Government of Alberta “Remuneration” policy.

Based on the Government website, the current rates are as follows:

Hours Including Travel	Director	Chair
Equal to or less than 4 hours	\$164.00	\$219.00
Greater than 4 or less than 8 hours	\$290.00	\$383.00
Greater than 8 hours	\$427.00	\$601.00

Expenses are covered at rates established by the Public Service Subsistence, Travel and Moving Expenses Regulation, except for km which is set at \$0.505. These items are stated on the expense claim provided to each member of the Board.

These rates appear to be acceptable and were not questioned by any Board member. Board member expense claims are filed with the Treasurer or in the case of the Treasurer with another member of the Executive Committee and are reviewed and authorized for payment.

It is our assessment that most members would serve without this compensation which serves to largely address their actual costs to attend. An annual review of what the Government is doing relative to other boards and commissions would ensure that these amounts are kept consistent with Government policy on this matter.

Management of the Society by the Board of Directors

The Board bylaw makes it clear that the Board has the authority to guide the delivery of AMVIC’s mandate on a day by day basis. These decisions and actions are required to be consistent with the mandate provided by bylaw as only the Society has the authority to change the bylaws. Bylaw changes are recommended

to the Society from time to time. This has occurred seven times over the course of the past 17 years (i.e. since the inception of AMVIC).

3.8 The Board is to manage and direct the affairs of the Society in the name of and on behalf of the Society.

3.9 Except when the Act or these Bylaws otherwise require, the duties and powers of the Board under the Act and these Bylaws are to be exercised by resolution of the Board.

3.10 The Board may enact and enforce policies regarding the direction and management and operation of the Society, and such policies shall be consistent with these Bylaws.

3.11 The Board may make rules:

- (a) respecting the carrying out of its duties and powers;*
- (b) respecting the calling of meetings pertaining to carrying out its duties and powers and the conduct of business at those meetings;*
- (c) respecting the appointment, removal, functions, powers, duties, remuneration and benefits of employees and agents of the Society and members of a committee;*
- (d) delegating to the Society Directors, officers, employees or agents or a committee of the Society, the carrying out of its duties and powers, except the power to make rules under this Article;*
and
- (e) respecting the establishment, membership, duties and functions of special, standing and other committees with respect to its duties and powers.*

When taken as a whole, these powers effectively give the running of the organization on an ongoing basis to the Board (and as delegated obviously to the CEO). In effect, there is not much of what happens that is not an outcome of Board policy. The Society's voice is silent on these matters although it can question the Board at its annual meetings with respect to any decision the Society

feels that the Board made which is not in keeping with its mandate. At least to some extent, that is healthy.

Chair of the Board

The Board bylaw specifies that the Chair of the Board is also the chair of the Society. This provides some continuity and consistency as well as promotes a more complete understanding of what the Board is about between meetings of the Society (the Board meets monthly whereas the Society must meet annually). The Chair (Sec.6.1) also has the responsibility of presiding at all Board meetings; serving on committees as a non-voting member (unless so authorized by the Board); providing the members of the Society with a report on the Board's activities; and handling any other matters as delegated to him/her by the Board. The Directors elect from their own members a Chair, Secretary and Treasurer, with the outgoing Chair serving as Past-Chair. Article 6 identifies the responsibilities of Secretary and Treasurer (Section 6.2). These appear to be standard to such boards. That is, the Secretary records the meeting proceedings; maintains a record of the minutes; preserves custody of the corporate seal; provides notice of meetings. The Treasurer is responsible for receipt of all funds paid to the Society; handling all banking matters; presenting a financial statement to the Board as required and at the AGM; and reviewing bank reconciliations. Both the Secretary and Treasurer may delegate their responsibilities as approved by the Board. The Past Chair's duties are also listed and include preserving the continuity of the executive; nominating the new executive; and providing advice to the new chair.

Roles of Board Members

The roles of Board members are outlined in section 6.7 as follows:

- *Represents their constituents; serve on Board committees; and attend Board meetings.*

The role of Board members is identified as first and foremost the representation of their constituents. This statement points to a fundamental aspect of the AMVIC Board which needs to be clarified. Is this to be a Board of representatives

or a Board of members who once nominated to serve and elected as Board members no longer represent their former constituents but rather, are expected to represent the decisions made by the AMVIC Board? The former indicates that AMVIC's best interests, regardless of what they may be, will not take precedence over the direction a Board member as a representative of another body has received from the sending body. The latter would require a Board member to seek the best interests of the AMVIC Board.

These are two fundamentally different roles which need to be clarified.

It is our understanding that an AMVIC Board member, once he/she crosses the threshold of a Board-meeting room no longer is an agent of the sending or "home" association but, rather, is a member of the AMVIC Board whose role it is to seek what is in the best interests of AMVIC. If not, then the role of AMVIC becomes one of "strongest voice wins" and the agenda of the sending associations becomes the focus of the Board members.

Ministerial Appointments

Board members are appointed for an initial three year term and can be appointed for one additional two year term. The public-at-large representatives must be residents of Alberta and they and their immediate family cannot own, operate, be employed by, or be a director of an AMVIC licensed business. According to the Board bylaws, the Minister has the authority to appoint six public-at-large members. While there is a certain degree of latitude in these choices, the Government has indicated that it will follow the process recommended by the Public Agency Governance secretariat with regard to appointing the best suited candidate to fit the Board's requirements. (This presumes of course that the Board has developed such a profile).

The Minister can direct the department to use one of the three methods listed below for the appointment process:

- a selection committee can review candidates arising from an open, competitive process and provide the Minister with a short list of recommended candidates to choose from;

- the Minister can suggest a list of candidates for consideration by the selection committee; or
- the Minister can select an appointee directly.

The Ministerial appointments are currently vacant as the Government determines what approach it will take vis-à-vis Board governance. Given that this has had an impact on the Board in terms of not having access to “public” voices; the Board has expressed its desire to the Minister via her staff to have these positions re-filled as early as possible.

Bylaw Changes

On an ongoing basis, the management of AMVIC keeps a record of concerns relative to the Society by and how that is impacting Board governance. The requisite proposed changes are referred to AMVIC legal counsel for drafting. These are then reviewed by the Board and, if deemed acceptable, forwarded to the Society for their review and approval.

Once the Society has approved the proposed amendments, the amended bylaws are forwarded to Service Alberta as per the legislation for final approval before they are sent to Corporate Registry for filing.

The AMVIC Bylaw was originally approved in February 1999 and has since been amended seven times for a variety of reasons, such as:

- *June 23rd 2004: 1 member added from Auctioneers Association of Alberta*
- *February 12th 2007: Increase Board from 9 to 11 members; added member from the Recyclers and Dismantlers Association and a salesperson*
- *November 16th 2011: Added the compensation fund articles*
- *November 22nd 2011: AARDA added as a member*
- *June 19th 2012: Increase Board from 11 to 12 members; auto body added; term for past-chair*

- *June 7th 2013: Adjusted board composition to increase public representation*
- *June 13th 2013: Adjusted Society composition to increase public representation from two to six members; industry representation decreased from nine to seven*

The essence of these changes resulted in a larger more representative board (and Society) including a substantially increased number of public representatives who have not always been viewed as “public”.

Committees

The Board bylaw (Section 6.9, 6.10) provides the authority to the Board to create whatever standing or special committees it deems necessary from time to time. Currently, the AMVIC Board makes use of a series of committees to assist it in its guidance of the organization and in its duty to report to its membership. This style of governance is quite common among governance bodies and can be useful providing that:

- The purpose of the committee(s) is clear
- The membership is dynamic; its members are sufficiently interested and change from time to time (preferably on an annual or bi-annual basis)
- The chair is well-versed in what needs to be accomplished and has had some involvement in the agenda-building process
- The meetings are held sufficiently regularly so as to maintain some degree of momentum
- Management is engaged in the meetings without being directed by the members to undertake responsibilities (which is the purview of management)
- Issues are discussed thoroughly; matters are followed up; good questions are asked

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- Issues receive a broader perspective as a result of committee involvement
- Directors have input into the development of programs
- AMVIC's messages have greater likelihood of reflecting the views of Directors
- Individual issues can be examined in greater depth and then reported on to the Board
- The committees report regularly and effectively to the full Board as advisory only; the Board provides direction to all members, all committees and through the CEO to management.

Who Are They?

- Executive Committee
- HR Committee
- Audit/Finance Committee
- Nomination Committee
- Executive Director Review Committee (now part of the Executive Committee)
- Investigations Committee
- Communication/Education Committee
- Compensation Fund Review Committee
- Salesperson Appeal Committee-Calgary
- Salesperson Appeal Committee-Edmonton

Membership

- Terms of reference indicate that three members or as determined by the Board
- AMVIC list of committees indicate that the committees typically consist of four Board members with the Board officers serving on the Executive Committee (Chair, Treasurer, Secretary, Past Chair)

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- Three members appointed to the Communications/Education Committee
- Members are appointed to committees after the Annual General Meeting
- In the absence of public members the workload and expectations of current Board members has expanded

Terms of Reference

- Each committee has an established terms of reference; the first attempt at this occurred in November of 2011, prior to the arrival of the current management group; since then, a more detailed communication/education committee and investigation committee terms of reference have been developed and approved by the board on March 12th 2015 while other changes were approved by the Board on November 24th 2015
- The Investigations Committee and Communication/Education Committee have a well-defined “committee charter” which could be utilized for the other committees as well

Tenure

- Committee members are appointed for a one year term; they are eligible for re-appointment with no maximum in the number of years served on the same committee

Frequency of Meetings

- Committees meet on an as needed basis at the call of the committee chair/their schedule of meetings appears to be driven by what matters of significance or time sensitivity might be on their agenda

Procedures

- The meeting procedures are to be established by the Board

Chairmanship: Responsibilities, Appointment

- The chair is appointed to the position by the Board

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- The chair of the committee is to preside at all meetings; present a report on the committee's activities to the Board; and handle whatever other duties the committee might request

Management Advisors

- The applicable senior manager for each committee is expected to be in attendance at all committee meetings
- Each manager is responsible for helping to develop the agenda and for preparing a report on his/her issues which the committee is to address

Follow-Up: When Presented to Board; By Who; What Impact

- Committee minutes and reports are added to the Board agenda by the Secretary to the Board; the Committees are all listed for each meeting and those who have a report to present do so through their chair
- Most "reports" from a committee appear to be made verbally

Value-Added

- We asked Board/committee members to provide us with their assessment of the committees on which they serve. The comments we received were generally quite positive. We heard that the committee:
- Serves as a vehicle through which the board can be made aware of the general activities and effectiveness of the staff
- Able to monitor and recommend general activities that reflect the will of the board and aid the staff in its efforts
- Help identify areas of improvement and give direction that will positively impact AMVIC's effectiveness for Albertans and Industry
- Can lend a longer range oversight on behalf of the board and provide evaluation and direction to the management
- Important in bridging the "gap" between the Board and management and key in facilitating knowledge and understanding for the Board to practice its governance

- Capable with meeting with both Government and the Society without having to bring in the entire Board of Directors
- Enables better understanding with communication and dialogue to Service Alberta about our open (and closed) cases
- Able to ask some pretty straight forward questions (without the CEO present)
- Great value as problems, procedures and direction are able to be researched and worked out by a few of the board members in an efficient manner; results are then brought before the board and can be discussed in an educated manner allowing the board to make an informed decision rather than scrambling for more information or making a decision based on the limited available information
- Enables a fulsome discussion of any performance issues
- Provides a great opportunity to understand the Industry & how we as staff can assist, educate and add value.

Board members have questioned the quality of Board/committee reports in terms of whether or not they are getting proactive advice. Each committee has been assigned a set of “terms of reference” which guides the work of the committee. Our review of these terms of reference assures us that the mandate for each is clear and consistent with the Bylaw.

What is not appropriate for the Bylaw to have considered is the authority granted the Board to delegate “any of its powers or duties to a committee appointed by the Board.” This in effect neuters the influence of the Board in such circumstances and would allow for “governance by committee” which is never appropriate or consistent with good governance principles of a not-for-profit society. Board committees ought to be clearly identified as “advisory to the Board” so that the full Board retains the authority to make decisions.

6.9 Standing or special committees may be appointed by the Board for any purpose considered necessary or desirable.

Delegation to Committee

6.10 The Board may delegate any of its powers or duties to a committee appointed by the Board.

External Review

The Board retained an experienced governance consultant in **March 2015** to conduct a Board evaluation. Ten Board members completed surveys on Board effectiveness (52 questions) as well as a peer review and self-assessment review (16 questions). They also attended a Board governance seminar conducted by the same professional consultant based in Edmonton at the Board's strategic planning seminar in September 2015. In general, the feedback from the Board members was quite positive with a number of useful suggestions made as to what follow-up would be of assistance. We are advised via the summary report by the consultant that:

- *Board members were generally satisfied with their understanding of the mandate and responsibilities of AMVIC*
- *Board members were generally satisfied with the strategy, vision etc.*
- *There was an opportunity for improvement in fostering more open and clear communication in the industry and with Government*
- *There was an opportunity for improvement in relationships between the Chair/CEO with the Minister/Deputy Minister*
- *Board members were generally satisfied with being kept advised relative to material issues (e.g. budget, financial controls, responsiveness of management)*
- *Improvements could be made in the assessment of the CEO's performance assessment, compensation, succession plan*
- *There was an opportunity for improvement in the composition of the Board, appointment of members (particularly Government appointees); two year terms (being too short)*
- *There was an opportunity for improvement in Board members training and orientation*

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- *There is general satisfaction with Board policies and processes; some opportunities for improvement cited*
- *More awareness needed in terms of the conflict of interest policy and for a Board communications policy*
- *Changes could be made in the size of the Board which would be beneficial*
- *There was an opportunity for improvement in terms of the appointment processes to the Society and Board*
- *There was an opportunity for improvement in the strengthening of committees in terms of membership, broader array of key issues.*

The peer and self-assessment results were deemed to be quite useful. The feedback provided to individual Board members was sufficiently pointed to be useful; continued coaching and training was supported. There was a general sense that the Board needed to be more strategic on the key issues.

Board members then and now recognized the need to provide useful and timely guidance to the management. They also saw the importance of being engaged in a thorough performance review process. Board members felt that they were trying to offer balanced views in spite of the absence of public appointees. Board members expressed to us that they felt they were heading in the right direction until they met with Service Alberta and perceived that there were issues that were not being addressed.

Board and Senior Management

We conducted interviews with the current and some former members of the AMVIC Board and Society. Based on those interviews and recognizing that the commentary ran a full gamut of support and admiration to major concerns and misgivings relative to style and integrity, we believe that:

- The CEO came into the organization at a particularly difficult time in its history; a change had just been made in terms of AMVIC's leadership position and at least some of the staff were embittered by the decision

of the Board to seek someone new for the then position of Executive Director.

- The CEO spent the first eight months “getting his feet wet” in the organization and developing his own understanding of the mandate and tasks ahead.
- The Board was concerned that it not be treated as not needing to know what was going on and thus took quite an active interest in the decisions of the CEO.
- Attendance by the management at Board meetings has generally been predictable and appreciated by the Board members. The Board receives reports from each of the senior managers and is afforded the opportunity to ask questions. The CEO does not restrict access to his senior managers at these meetings.
- Similarly, Board committees are attended by the applicable senior manager and again their connection to these committee members is ongoing, open and fulsome.
- The Board through its HR Committee is tasked with the responsibility of assessing the CEO’s performance. This was previously the duty of the Board Chair but the Board felt that a broader perspective and more eyes/opinions on the topic would provide a greater sense of balance and views. This committee will also review the CEO’s position description and the Employee Policy and Guidebook.

7.6 Compensation Fund Background and Status

The Fair Trading Act (Section 137) states that the AMVIC may set up a fund.

137(1) A regulatory board may create a fund to be used for the following purposes:

- (a) to pay claims of persons who have suffered loss or damage arising out of the operation of a business by a licensee;*
- (b) any other purposes authorized by the regulations.*

It goes on to say that AMVIC can levy fees to meet these purposes

137(2) Subject to the regulations, the regulatory board may collect money by the levy of assessments on

(a) licensees, and

(b) designated agents as defined in section 102 who are engaged or employed in a business in respect of which powers, duties or functions have been delegated to the board under section 136(5)

It then goes on to say that these levies must be paid into the fund.

(3) The money collected under subsection (2) and any income from the investment of that money must be credited to the fund.

(4) A regulatory board is deemed to hold in trust all money credited to a fund and must immediately deposit that money in a trust account in a bank, treasury branch, trust corporation or credit union in Alberta, separate and apart from any other money of the regulatory board.

(5) Despite subsections (3) and (4), a regulatory board may, from the income from the investment of the money in a fund, pay the administrative costs associated with the fund.

(6) If the income from the investment of the money in a fund is insufficient to pay the administrative costs associated with the fund, the regulatory board may collect money to pay those costs by the levy of assessments on licensees and designated agents as defined in section 102 in accordance with the regulations.

The Act does not call it the Compensation Fund. However, the regulations state in the definition section that the ““compensation fund” means the fund established by the Council under section 137(1) of the Act”.

The Regulations state that:

31(1) The Council must ensure that an audited financial statement on the compensation fund containing the information required by the Minister is prepared for each fiscal year of the Council.

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(2) The Council must submit an audited financial statement prepared in accordance with subsection (1) to the Minister within 60 days after the end of the fiscal year for which it is prepared.

The AMVIC Bylaws create a Compensation Fund. This Fund is administered by the Council as an internally restricted reserve of unrestricted net assets. All other aspects of the financial activities of the Council are treated as separate from the Fund.

The Fair Trading Act states that the Board *may* establish a compensation fund.

Status of the Compensation Fund:

1. The Fund was established by the AMVIC through the Bylaw
2. Funds are transferred to the Fund through board decision
3. Fund is to be used to compensate consumers for loss (rules govern this)
4. Funds in Compensation Fund are to be kept in an account separately from other funds of AMVIC
5. Interest earned on money in the Fund must be kept in the Fund
6. May pay Compensation Fund administration and consumer/industry education costs from the fund
7. Board cannot transfer money into fund after it reached \$4.0 million
8. If Fund is less than \$1.5 million it can only be used for compensation payments
9. If Fund exceed \$1.5 million then to the extent that it is greater than this, fund can be used for additional defined purposes as 6. above.

Rules on Investment

1. Fund was established as a trust fund.
2. Money has been transferred to the fund. In 2015 financial statement it reached \$4.0 million.
3. Balance sheet shows restricted assets investments of excess of \$3.8 million. Restricted assets indicate segregation.
4. Investment report provided evidence that the fund is kept separate. It suggests that it complies with trust fund requirements.

7.6.1 Comparison of Enabling Legislation

Comparisons were made of the enabling legislation, delegation agreements, and program structures for organisations providing consumer protection within the motor vehicle industry in Alberta, British Columbia, and Ontario.

While there are many differences in the enabling legislations the following notes significant differences to the Alberta legislation observed:

- a) British Columbia provides for the Minister to revoke the transfer of the Compensation Fund to the society, and place it as a trust fund under the government. (No such provision exists in Alberta legislation)
- b) British Columbia provides that the Motor Dealer Customer Compensation Fund Board, a separate and independent Board from their society, has the exclusive jurisdiction to hear and decide claims against the Compensation Fund. (Alberta legislation is silent on this, and decisions are made by the President/CEO)
- c) Ontario provides a Board of Trustees for their Motor Vehicles Dealers Compensation Fund, consisting of nine members, three of whom are appointed by the Minister. (Alberta provides for this through the approval of society bylaws)
- d) Ontario provides that the Board of Directors of the society be half representative of consumers' interests, and half representatives of the motor vehicle industry. (Alberta provides for this through the approval of society bylaws)
- e) Ontario provides, by regulation, specific amounts dealers will annually pay to the Compensation Fund, and a minimum Compensation Fund balance of \$3,000,000 that must be maintained and dealers are to be requisition for any shortfall. (Alberta has no specific requirements in regulation)
- f) British Columbia provides that the costs of administering the Compensation Fund "must" be paid from the Compensation Fund. (Alberta legalisation states "may")

- g) Ontario provides that the Compensation Fund holds an irrevocable letter of credit where a motor dealer provides extended warranties. (Alberta does not require this type of security)
- h) British Columbia provides a Registrar of Motor Dealers specifically stated as “acting independently and unfettered by the Board” to administer the provisions of the legislation. Ontario also provides for a Registrar to administer the provisions of the legislation. (Alberta legislation does not require a specific position)
- i) Ontario provides for a fee “for each place from which the dealer is authorized to trade”. (Alberta provides for a single fee per dealer)

7.7 Organizational Functions and Challenges

We turn to the administrative organization in this section of the Report. It is a critical theme in that the administration serves to carry out the AMVIC mandate on a day-by-day basis. While we recognize that a review such as this hardly does justice to the work of staff and management in discharging the duties of an organization of this complexity, a “broad strokes overview” will be helpful in understanding and placing in context our observations.

On the whole, we believe that the management and staff of AMVIC have been trying to diligently serve the organization and fulfill the obligations of their roles. While there are issues which we feel ought to be addressed, our sense was that on an individual basis, AMVIC’s staff were committed to fulfilling the requirements of their roles. What was not as clear was the level of guidance provided by senior management nor the sense of collegiality one would expect to see in a healthy organization.

7.7.1 CEO and Senior Management

The management of AMVIC has been designated to its Chief Executive Officer (CEO) (also referred to as President) formerly known as “Executive Director”. The CEO, according to the approved position description, “...is accountable to provide, monitor and evaluate a licensing and regulatory enforcement program

for the motor vehicle industry in Alberta. The Chief Executive Officer leads AMVIC to achieve the performance measures set out in the approved Strategic Plan. The Chief Executive Officer ensures that AMVIC works within the policy parameters established by AMVIC's Board of Directors and the delegated activities defined in Service Alberta's Delegation Agreement with AMVIC."

The culture of AMVIC was a concern to the then Board and thus the now incumbent CEO was tasked with determining what changes were necessary in order to enable the organization to function at a higher level. This was obviously a difficult one to change overnight. While re-building a management team would be expected to garner support for the CEO, this has not been an easy process or one without some degree of resistance.

The CEO has been instrumental in focusing more resources on various aspects of AMVIC's mandate including public awareness, industry standards and investigations. He has not been reluctant to take on significant challenges including the inspection of industry "heavyweights".

The expectations of the CEO are based on the approved position description and the accomplishment of the Board's approved business plan. These expectations are as follows:

- Principal advisor to the Board in the conduct of its responsibilities with respect to the oversight of the organization; ensures that the Board is continually aware of what key matters are occurring in the organization
- Ensures that the Board is equipped with the necessary information to make good business decisions
- Directs the organization in concert with the approved policies and objectives including that which is stated in the Business Plan and annual budget
- Manages, guides, supervises, disciplines all senior managers

- Retains senior managers to fill the positions which have been vacated; ensures that they meet the requisite qualifications; provides annual performance assessments
- Coaches senior managers on any necessary changes to how policies are to be discharged or on any desired changes to performance standards
- Liaises with the CFO so as to ensure that the fiscal management of AMVIC is in accordance with approved policies and accounting standards
- Refers matters for legal counsel which may be in question or which may negatively impact AMVIC if mishandled.

The fact that there are strong-willed owners, businessmen and women in the industry results in no shortage of opinions as to how well the regulatory system is working. Fees are scrutinized; staff levels are criticized; visits to “our” stores are seen as excessive; investigators are viewed as overly intrusive. This is not an easy industry to regulate and the fact that any attempt to do so or to add on additional layers of regulation or license fees is quickly rejected or, at a minimum, criticized. In short, the CEO has frequently tackled difficult issues.

While proud of the accomplishments of AMVIC in his tenure, the CEO is concerned that his reporting and the decision-making of the Board is not always connecting with the top echelon of Service Alberta. This has served to inhibit the confidence of the Ministry and raised added questions relative to the internal workings of AMVIC. The CEO has felt that the management are supported by the staff of Service Alberta but may have lost the support of the Ministry’s senior management. A part of this sense was attributed to the Operational Reviews and, in the opinion of the CEO, the fact that he was not able to meet directly with Service Alberta management and share his responses.

One of the critical aspects of any CEO position is the expectation that the CEO will “manage up and down”. This refers to the fact that the CEO position serves as a link-pin between the governors of the system (Society and Board in this

instance) and those managing on a day-to-day basis. In order for the organization to function at an optimum level, the CEO is required to build a relationship of trust and respect with the Chair and Board members. This relationship is built in the ongoing contacts between the CEO and the Chair (who serves as the leader and representative of the Board) and is further buttressed by the regular contacts the CEO will inevitably have with other members of the Board through committees and Board meetings.

The Board members are obviously not in a position to see how the CEO interacts with his senior management on a daily basis and thus they rely on their observations at Board meetings and on the feedback which some receive from individual Board members between meetings. If the senior managers appear to be very supportive in their comments relative to their interactions with their “boss” then the Board members pick up the sense that the senior management is working in a collegial fashion. When there appears to be considerable tension or stress between members of the management group, Board members will detect that despite “playing nice” at meetings and in public, the relations have soured and do not reflect the respect required or expected in good management. Whereas the nature of this business seems to invite a certain level of tension due to the degree of commentary received on almost a daily basis from those not particularly happy with AMVIC’s services or responsiveness, the challenge for management is to rally together and defend the good of what AMVIC is trying to do in the marketplace. The CEO needs to be the “face” of that thrust by senior management and thus the need to maintain healthy relationships with the team and throughout the organization.

The consequence of the external reviews which have been conducted and the resulting media commentary has likely exacerbated any relationship challenges. Ongoing comments from staff to their managers (and to personnel of Service Alberta) do little to shore up any cracks in management solidarity. Rather, these tend to foster a sense of uncertainty and inadequate support for those “in the

trenches” which in turn brings management’s responsiveness and collegiality into question.

These troubling issues need to be addressed by management if the organization is to move forward in a constructive manner. This is the mandate of the CEO and any changes to what we see as an absence of collegiality and team leadership are a central portion of his accountability to the Board. The Board needs to be proactive in this regard and attentive to the need for a different style of administrative leadership which brings out the best in terms of managerial performance.

7.7.2 Role of Senior Management

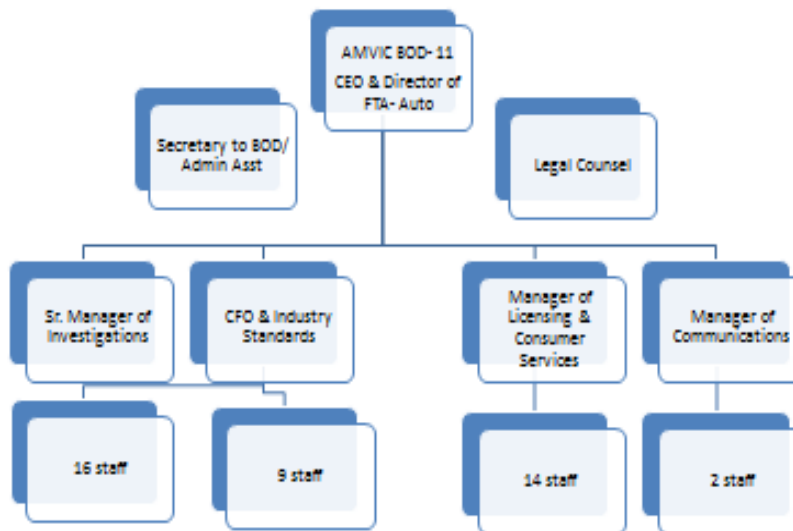
The role of senior management in any organization is critical to how well it achieves its mandate and priorities. While each senior executive plays a fundamental role in their own duties, they also act as the Board’s executive team and thus impact the implementation of policies and affect the tone of the entire organization. These six managers implement Board policies; guide the direction of key programs and services; monitor the delivery of functions by their employees; recruit and train their direct reports; add discipline to how the organization functions; maintain an awareness of the impacts their follow through on policies is having on the industry.

AMVIC has an approved Organizational Structure policy (September 23rd 2015) which outlines the policy statement, authorities and responsibilities. The policy was originally documented and approved in August 1999; and revised several times over the succeeding years (i.e. 2011, 2014, and 2015). It rightly accords the Executive Committee of the Board of Directors with the authority to approve any changes to the position description of the CEO and it delegates such authority to the CEO to approve the position descriptions for Managers, Executive Assistant, Secretary to the Board and Policy Coordinator. Approval of changes to the structure vis-à-vis the senior management reporting directly to the Board are

also appropriately reserved to the Board (in our opinion) but any other positions should be left to the discretion of the CEO.

The Board and CEO are to be commended for having such a policy and for ensuring that it is regularly monitored and updated.

Organization Now



While the current Managers come from a variety of backgrounds, they appear to fully understand the expectations of their roles and appear to have the competency to handle their duties. One or two are quite new and so will take time to become fully familiar with the organization, its culture and with each other.

On the positive side, we heard that there is a reasonable degree of clarity with respect to the roles of the senior managers. These are described in position descriptions and have been discussed with the managers. Management meetings are also viewed by most as helpful to their work. Regular meetings (intake

meetings) take place between Investigations, Consumer Services Officers, Industry Standards Officers and Licensing to build strong working relationships. We note that there is some concern that senior management may not only be well-informed but that they may also become too involved in matters which ought to be delegated. This has been expressed as “pervasive and unsettling”. We also heard that the transition from the CEO to an interim replacement in his absence (e.g. holidays) has not been well-communicated. Managers complained of not understanding what authority the replacement/interim CEO had and thus what power to make any changes.

Of interest was the concern that management is not consistent in its approach to their involvement in files relative to investigations. Standard protocols do not seem to either be well-understood or are too easily interpreted in a variety of ways.

We also heard from Board members that some Managers are overly zealous in tackling what they see as problem businesses and individuals to the point of targeting any which are reluctant to quickly comply with any AMVIC requests. Because of the limited size of the senior management and yet a full array of management requirements, some of the duties fall to who seems to best fit a particular role. This has impacted the role of the chief financial officer (CFO) in that his duties include that of human resources. While this may seem to be reasonable to the CEO and senior management, the staff express support for a separate HR presence as a distinct entity. Staff complain that they do not have confidence that they can discuss their personal issues within a confidential setting and without fear of reprisal or dismissal. Further, the organization’s priority of health, safety and training is perceived as in need of review and/or strengthening.

7.7.3 AMVIC Principal Functions

We note that the principal function within management is that of the CEO. We also note that given our earlier description of this role (Sec.7.7.1) we will only

summarize it here: work with the Board of Directors and directly related ministries of government to assist the Council meet its objectives; implement, manage and control the policies and programs approved by the Board of Directors; provide leadership to the development of policies and services; oversee the financial affairs of the Alberta Motor Vehicle Industry Council and the Compensation Fund responsibly and in accordance with the policies set out by the Board; staff AMVIC's organizational structure and provide leadership, direction and management to staff members for the effective execution of the approved activities.

Senior Manager, Investigations

This position is critical to sustaining AMVIC's day to day operations as well as to achieving the required outcomes under the delegated agreement with Service Alberta. This senior executive function is critical to the success of AMVIC in pursuing all investigative and enforcement activities relative to its mandate. The Senior Manager of Investigations represents AMVIC in matters involving legislation, policy and procedure, enforcement, and coordinated investigations with the government, law enforcement and industry associations.

The Senior Manager, Investigations has responsibility for:

- All matters involving legislation, policy and procedure, enforcement, and coordinated investigations with the government, law enforcement and industry associations.
- Investigations, claims and enforcement arising from complaints under the Fair Trading Act, the Automotive Business Regulation, the Cost of Credit Disclosure Regulation and the Internet Sales Contract Regulation.
- Ensure that all industry and consumer complaints are responded to appropriately and within the time frames set out in AMVIC's policies and procedures; monitor the actions/behaviour of Peace Officers and any complaints against their actions.

- Set and monitor progress toward long and short-term goals for the Investigation Department and individual Peace Officers including: managing workload assignments; serve as an expert resource to Peace Officers; interpretation of legislation; investigative techniques/procedural direction/case law/hearings.

The Senior Manager supervises Peace Officers and Complaint Advisors; and is assisted by a Manager North and South.

Investigations by month have been fairly consistent (April 2011-December 2015) with 111 in April 2011 and 122 in December 2015. The high during that period was 278 in January 2013. In terms of call volume by month, over that same time period, the numbers are quite similar: 411 in April 2011; 368 in December 2015. The highest call volume was 1129 in March 2012.

Calgary office south currently has a case load of **184** files, with an average of 26.2 files per investigator. The Edmonton office north has a current case load of **186** files, with an average of 31 files per investigator. The oldest investigative file is from December 2014. (Investigations Operations Report August 2016)

Chief Financial Officer/ Industry Standards

One of the key executive positions reporting to the CEO is that of the Chief Financial Officer. He serves in effect two functions: finance and industry standards. As his position description states: “The Chief Financial Officer is required to give direction and leadership toward the achievement of the organization’s financial well-being. This position is critical to sustaining AMVIC’s day to day operations”.

This position manages key functional areas: the financial risks for AMVIC; management of the AMVIC information technology systems and Human Resources systems; the AMVIC Compensation fund; asset management including office accommodations and company vehicles; and manages the Industry Standards department. The staffing in this functional area includes that of the: Compensation Fund-Coordinator; Accounting Assistant; IT Generalist; Business Analyst; Senior Industry Standards Officer.

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Regular monthly reports are filed with the Board and senior management. These reports feature a commentary citing any significant matters and those factors which might be impacting the budget forecast. The most recent report (June 30th 2016) indicated, for example, that:

“Licence fee revenue is \$114k above budget and \$113k above last year. Industry Standards inspections are making an impact and licensees are ensuring their salespeople are registered. AMVIC staff continue to pursue licensees and registrants who are late renewing. Sales levy revenue is \$5k below budget and \$4k above last year. The Desrosiers Automotive Reports indicated Alberta new vehicle sales are 5.64% lower than last year for the April. This indicates sales levy revenue is being boosted by an increase in used vehicle sales and late levy payments that were due last fiscal year. Also, we are confident that Industry Standards inspections are making an impact and licensees are remitting unreported levies from previous periods. Staff continue to contact those licensees who are late reporting and remitting sales levies.”

With respect to Industry Standards, reports to the Board indicate that the staff have been completing inspections of businesses including a focus on the consignment businesses (particularly in the period of 2014-15). Further, the industry standards officer has focused some time on new businesses and ensuring that these obtain compliance with regulations and fee requirements. The September 2016 report to the Board indicates that “industry standards completed 122 onsite inspections between April 1-June 30th 2016”.

The purpose of Industry Standards is to obtain compliance with legislation. This is done through inspections, reviewing of advertising, and industry education. This is a different approach than enforcement from investigations. Industry Standards is staffed with five positions; manager, two field inspectors, advertising officer, and a coordinator. These employees inspect approximately 450 licensees per year and review in excess of 10,000 advertisements. A licensee is usually given one month advance notice of an inspection. The Inspector is

usually onsite for 3 to 4 hours to conduct the inspection. Samples of transactions are reviewed, not 100% of transactions. Findings are reviewed with the licensee and best practices are suggested. A “findings” letter is sent to the licensee. When significant issues are found, the inspection will be terminated and referred to investigations.

Risk based inspections target all consignments, all new businesses, wholesalers, and licensees with a high number of complaints. AMVIC will not usually inspect if there is an open complaint as an inspection could hinder an investigation. The Advertising officer reviews and identifies advertising issues and works with licensees to obtain compliance.

With respect to **HR management**, the CFO is to be guided by the AMVIC Employee Policy and Guidebook. This guide was first developed in 1999 and revised subsequently in 2007, 09, 10, 14, 15.

“This Employee Guidebook has been prepared to give you information and guidance regarding policies, procedures, working conditions and benefits of AMVIC. The Guidebook contents are subject to amendment and updates as required. Some of the information given is in summary form. The Guidebook cannot always be used as the only basis for decisions concerning an employee’s working conditions or eligibility for benefits. If there is a conflict between the Employee Guidebook and the individual’s contract, the contract will prevail.”

The HR policies appear to be quite comprehensive and well-worded. They cover all of the fundamental responsibilities normally embedded in Human Resources. The significant and oft-repeated concern which we heard is with respect to the following:

“Policies relating to human resources are developed by the AMVIC management team, approved by the Executive Director and administered by the Chief Financial Officer.”

The absence of an HR Officer has been a matter of contention within the staff for some time and needs to be addressed. The employees are not confident that

their concerns will be met with empathy and confidentiality under the current regime, regardless of “best intentions”. We address this matter in the Recommendations (Section 9, Recommendation 10).

Manager of Licensing & Consumer Services

This senior executive is responsible for the two key areas of licensing and consumer services. She is expected to:

- maintain up-to-date and accurate licensing for businesses and registration for salespeople
- create, communicate and support a strategic vision and operational plan for licensing and registration
- policy development and documentation
- diplomatically and tactfully negotiate and influence to resolve difficult licensee situations
- liaise with external government and non-government agencies regarding the *Fair Trading Act*, *Regulations* and AMVIC’s *Bylaws*
- ensures seamless continuing competency processes for the renewal process; provides leadership in relation to licensing IT systems and processes
- provides reporting and statistical analysis as required
- recruiting and training licensing staff
- providing ongoing guidance to their functions
- providing advice to other members of the executive team; and
- generally participating in the development of the strategic plan and preparing her section of the Annual Report.

The responsibility for managing the consumer services office was allocated to Licensing in December 2014. This led to a refocused approach on attempting to arbitrate a suitable agreement between contending parties so that both the concerns of the stakeholder and customer were taken into account.

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Licensing and salesmen registration is a delegated function for AMVIC to discharge for the Province. Licensing is carried out with businesses which sell cars to a consumer (individual, business with less than 5 vehicles). Registration is provided for vehicle sales staff and a training and education function is also made available to businesses which are seen to be operating below industry standard or have been identified as suspect. An inspection can also be carried out for verification purposes.

All automotive businesses in Alberta must be licensed and all salespeople must be registered by AMVIC. Currently, AMVIC licenses approximately 7,000 businesses and registers more than 9,000 salespeople. In the past year, the *AMVIC Online* portal was implemented offering around the clock expedient and convenient service. Businesses and salespeople can self-manage their licensing and registration activities and complete required training online. Consumers are able to file complaints online.

As reported to the Board, the Manager recognizes that focusing solely on increased investigations is not the answer. Rather, the approach is to see where some ground might be for a mediated settlement of the issues not involving a breach of legislation. This has led to an increasing reliance on ADR (alternative dispute resolution) where the staff who are trained in this process assist in the resolution of customer complaints.

“Complaint files will only be forwarded for further investigation and possible charges, undertakings and/or administrative penalties if the violation is an ongoing issue and/or a severe violation of the legislation”.

(Report to the Board, January 7th 2015).

We also noted that the proper handling of complaints can often be resolved without a major investigation provided that the receiving staff are well-trained and sincere about seeking an amicable resolution. As noted in a report to the Board

“Not all calls turn into formal complaints. Many consumer complaints fall outside of AMVIC’s authority. In those cases, the consumer services officer

directs the consumer to the correct authority during the first call. We also encourage callers to attempt resolution of their issue directly with the stakeholder before making a formal complaint to AMVIC. As you can see, despite the high call volume, only 21% of callers felt the need to present a formal complaint to AMVIC and 57% of those complaints were successfully brought to a resolution by the consumer services team.”
(Report to Board June 2nd 2016)

From the interviews, it was commented that more people (1-2) can be used to help deal with the volumes. The culture of the CSO process is fairly open and much better since 2014. Tension was much higher at that time and it has improved. The cubicle configuration is a good way for CSOs to operate. A contrasting comment was offered that the CSOs may tend to be overly consumer friendly and may need a script to follow and some training to better align with an independent advisory role.

Another consumer protection role by AMVIC involves the daily online ads by dealers on pricing and deals which a consumer may see. Often these ads do not conform to the FTA and AMVIC may undertake a review where this is clear.

Within this unit, consumer complaints are received and an alternate dispute resolution process (ADR) can be used to resolve a dispute (typically minor) for repairs or a car sale (new or used). If the unit perceives a violation of an Act or regulation, the file will be passed forward for an investigation. The Alternate Dispute Resolution approach and philosophy has proven to be very instrumental in getting issues resolved with little fanfare. This has resulted in complaints being handled much more expeditiously; customers having a better overall experience; manpower requirements have been reduced; and Investigations staff are left to contend with the more significant breaches/issues. We were advised that use of the ADR process resolved disputes totalling more than \$1M.

There has been a decrease in the total number of licensed motor vehicle businesses during the current economic downturn in Alberta. However, there continues to be new businesses entering the marketplace and the number of

newly registered salespeople continues to grow. This is attributed to a high turnover of salespeople.

Manager of Communications and Education

The Manager reports to the CEO and is part of the AMVIC management team. As a member of the management team, the position contributes to the overall planning and strategic direction for the organization. The Communications and Education Manager is responsible for the recruitment, supervision and performance evaluations of two positions - an Education Assistant and a Communications Assistant.

This position:

- plans, develops and implements AMVIC's industry and public awareness programs and policies
- oversees the development of strategic communications plans and products in support of AMVIC's mandate
- is the organization's key resource for external and internal communications: writing, editing, media relations, issues management, communications planning, advertising and publication of corporate communications materials
- provides effective communications to the public and stakeholders about AMVIC's regulatory role and enables/coordinates the establishment of educational programs for consumers and industry members in relation to automotive businesses
- Oversees strategic communications, print and electronic communications; maintains timely updating of content on AMVIC's website; monitors, maintains and ensures timely updating of AMVIC's Facebook and Twitter accounts; provides media relations/issues management; ensures AMVIC policies are current and helps create new policies as required by the Board of Directors

- Reviews current education programs and recommends additional programs that would be beneficial.

Based on reports to the Board and our interviews we observed that the proactive approach being taken by the Communications Department has increased consumer awareness as to their rights and options. These efforts have also impacted the quality of automotive service delivery through required salesperson training before receiving accreditation to sell vehicles.

The management and use of the AMVIC website is also worthy of note. We have reviewed this site and believe that it provides useful information on a wide range of relevant topics which may be of concern to those who wish to voice a complaint or those who want to know more about the organization and how it is set up and functions. The website includes information on the history of AMVIC; its legislative and policy base; how to file a complaint; complaints received (622); investigation files closed (269); licensed businesses (6645); registered salespersons (805); access to the Compensation Fund; how to get licensed; how to be educated to be a salesperson. In effect, the site is helpful to those in the industry and to those who feel that the industry has let them down.

Legal Counsel

The newest member of the AMVIC executive team is that of Legal Counsel. This person is expected to develop a solid understanding of the law, regulations and issues which impact AMVIC and provide advice to management on matters which require a legal opinion. As noted in AMVIC documentation, its legal counsel will be expected to oversee and advise on

“diverse and complex set of current legal issues and provide legal and strategic advice and leadership to the AMVIC board, executive director and management team on all aspects of its business, including program delivery, administrative proceedings, public agency governance, legislative initiatives, contracts, and procurements”.

Legal counsel has been useful in providing the Board, CEO and senior management with her comments on a wide variety of referred issues including

bylaw changes, legislation, the compensation fund, employee issues, policies, crown concerns, complaint forms, FOIP requests, advertising issues, MFA, internal matters, current files including high profile issues, letters to the Minister, delegation of authority questions.

Executive Assistant, Secretary to the Board and Policy Coordinator

This position has often been referred to as the glue that keeps everyone and everything together. The Executive Assistant provides senior administrative assistance to the Executive Director of AMVIC, the AMVIC Board of Directors and is responsible for:

- the maintenance and coordination of AMVIC bylaws and policies
- scheduling AMVIC Board and Committee meetings
- ensuring all meeting logistics
- recording all meeting minutes and circulate these
- coordinating the AGM
- preparing and distributing all correspondence for the CEO
- maintaining the records management system
- planning and coordinating any travel arrangements
- establishing and maintaining positive working relationships with consultants, suppliers, and staff at the Motor Dealers Association (MDA), Alberta Service and Repair Association (ASRA), Recreational Vehicle Dealer's Association (RVDA).

7.7.4 Some Observations

What follows reflects the observations of the service delivery **by the senior management** and those areas wherein changes should be considered and, where practical, made. It was our assessment that the management as a group have been tackling their responsibilities in a generally professional manner but may lack some cohesion/collegiality which would improve their overall performance. There has not been sufficient attention paid to how well the “team” functions and what could be done to minimize competition for resources or notice.

In some areas (particularly Investigations), we found disgruntled employees who levelled considerable criticism at “senior management”, some by position and others more generically. In other instances, the staff seemed genuinely pleased to have their positions and to work in a decent environment where their work was considered meaningful.

Licensing and Consumer Services (Observations)

A number of issues that relate to licensing and registration have been identified; they include:

- Gaps in servicing some Alberta markets; trying to ensure that all automotive businesses are properly inspected and licensed
- Licensing requirements, fees and policies that are not well understood within the automotive industry
- A licensing and registration fee structure that requires review to ensure a sustainable funding model while delivering value to stakeholders
- A fully operational and stable *AMVIC Online* portal that offers functionality for all stakeholders of the organization, particularly to address the needs of Investigations
- All files need to be complete and accurate; continuous training and updates needed to ensure all files fully documented and capable of being processed by investigators
- Processes need to be checked by peers to ensure files are handled in a standard fashion; Information not always put in electronic file which frustrates investigators; shortfall in quality of approach deemed to be a reflection of inadequate staffing
- Staff training has not been a priority - often mistakes - lack consistency among advisors - need for cross training
- Trust issues have arisen in the field due to perceived leaks of what were thought to be confidential discussions

- Position descriptions need to be regularly reviewed to ensure all are updated to reflect any changes in the organization
- CRM needs to be cleaned up; too many locations for data; working on it
- Hold staff meeting every 2nd Friday; good discussions reported; opportunity to speak to quality control issues
- Occasionally changes are made in policy and the staff have not been advised; seems to be a fairly consistent complaint
- Use of mail out penalty letters is seen by some as no-no; many advertisements are improper or show pictures of wrong vehicle etc; regulation needs to be strengthened
- Concern expressed about multiple location licensing; need to ensure that this approach has been approved by Government.

Investigations (Observations)

- New Senior Manager still learning this position; has been taking an active role and is visible to his staff; will take time to be fully embraced by his staff; management likely aware that some believe that investigators do not trust anybody!
- Investigations feels it is understaffed based on expected duties; staff expressed that file loads are too big for each officer; 20 - 35 and sometimes 40 files going at any one time (staff spoke to what capacity would be deemed to be ideal: suggestion of a maximum of 15)
- Concerns persist that the system is still too open and permits/encourages management to be overly involved in files
- IT systems need to improve to be helpful; records management is poor with security of evidence challenging if not inappropriate
- Training of Peace Officers is weak; need work around investigative requirements for Crown to proceed with charge; some PO's concerned

that they are not able to get a decision to lay charges in a timely manner

- Manager N and S assign files and determine when/if charges are to be laid; staff do not appear to understand when the Senior Manager is or should be involved
- When a complaint of a PO comes in, it must be handled in accordance with Peace Officer Act; sometimes AMVIC fails to comply
- Manager North and South located in Edmonton office; communicate with CEO and Manager of Investigations daily
- Number of files increasing substantially due to current economy; not clear what the success rate is for concluding files
- Seems Calgary office is producing many more files and charges than Edmonton; believed that the Edmonton office oversight of PO's is using more mediation
- Currently PO's work from home creating a security challenge; need to revisit this policy; Calgary and Edmonton need to work more collegially to ensure security of files, access to each other for training purposes, support and personal security
- RCMP and City police are too busy to handle issues; only get involved upon complaint when AMVIC cannot handle

Industry Standards (Observations)

- Relationships with industry stakeholders and licensees are improving now that there is a better understanding of the organization's focus on compliance
- Opportunities remain to improve relationships with all stakeholders to further the goal of regulatory compliance and creating a fair marketplace
- The introduction of the Industry Standards group in late 2014 enhances the compliance inspection approach; educating industry members to

achieve better compliance is a focus as well as improving the marketplace for consumers

- The senior manager of investigations, supported by a full investigations team, has increased organizational capacity and expertise to conduct investigations; continued focus on compliance will help foster and promote positive and constructive relationships with industry
- There are challenges making constructive dialogue, issue resolution and gaining acceptance for the work of the Industry Standards group challenging
- Implementing alternate dispute resolution provides an opportunity for complaints to be resolved to the consumer's satisfaction; important to note that whenever a potential breach is identified, the file is sent to investigations; all breaches are investigated (Since 2001 AMVIC facilitated consumer-industry negotiations have returned over \$26.4 million to Alberta consumers)
- Differing definitions of what "appropriate" enforcement ought to involve, specifically in consideration of the guidelines for, severity of and frequency of punishment
- "Curbing" is seen as a threat to a fair marketplace where unlicensed consumers buying from curbers are assuming significant risk and dealers operate with a disadvantage
- The outdated Mechanical Fitness Assessment (MFA) form is misunderstood by consumers and industry and thus is in need of review and redevelopment; consumers often confuse the MFA with a vehicle inspection which it is not; many licensees feel they provide an inspection that is more thorough than an MFA and should not have to supply an MFA

- Industry standards and investigations continue to work together to ensure the two departments are best positioned to reduce process duplication and increase efficiency.

Corporate Services (Finance/HR/IT) (Observations)

- Most express confidence that financial management systems are in place and working; CFO deemed by most to be approachable and accessible
- Some concern that finance receiving disproportionately more attention than other departmental functions (e.g. IT, HR)
- In discussion with management, we heard arguments that AMVIC needs to expand substantially in terms of its current complement of personnel (48); some staff also mentioned the same need for more people in CSO and in investigations; volume has increased quite a bit in the last few years; issues are more complex in nature of complaint; current resources limit the scope of any service delivery; need for more investigators in the north and south regions (to regularly cover other Alberta main centres for education, inspection and investigations)
- A concern exists in the ownership of the IT system given it is customized for AMVIC and is now a significant operational asset; consideration should be given to internalize system management and regular improvements, staff would need to be capable and trained in these areas; one supplier apparently outsources to an international supplier office for coding which may raise security and risk concerns over data management and integrity on a very important data source
- IT (information technology) area has no approved strategic plan/performance measures; these have been created internally but not approved by management

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- Specific area of concern is the strategic importance of the CRM (customer relation management) IT system which is core to the accurate and timely operations of AMVIC
- Management has allowed access to files which are not secured from internal users who do not need to know the status of a current investigation; this security feature gap is being remedied currently and is an integral part of this type of agency
- New staff orientation viewed as weak; lacks a professional focus; some report that new staff are thrown into the system and expected to simply look over someone's shoulder
- Organizational focus on training is not as strong as the policies might suggest; training program lacks strategic plan or focus
- Morale to some is ok; to others is low; since bill 8 fear of changes is looming over heads
- Unclear who the auditor works for: the Board or the CEO
- No succession planning both for the Board and for AMVIC management
- Compensation fund managed by this department
- CFO is responsible for too many departments; should be dealing with corporate services and finances not Industry Standards or any other aspects of operations; CFO not trained to supervise Industry Standard Inspection program; should be reviewed as to best fit; need an independent person to handle HR issues in order to gain the confidence of staff
- Cheques under \$25,000 require Chair or Treasurer to sign (2 signatures); over 25K requires Board approval; these limitations should be reviewed by auditor
- Significant management changes past couple of years have impacted the organization's ability to stabilize; HR difficulties stemmed from these adjustments

- Salary review did not bring staff up to Government pay grids, but used a number of calculations to bring to the 50 percentile; some staff reported that managers well treated by review but not other staffing
- MNP report appears to show that they have accomplished implementation of recommendations, but there appears to be no ongoing reporting requirement and no commitment to review performance going forward
- Inspectors try to see about 300 dealers per year, out of 6,000; impossible to inspect all dealers; about 120 per quarter; 80% have issues and follow-up required; most offences under S.6 Unfair practices of the “Act”
- Inspectors suggest a bottleneck when sending matters to investigators who are too busy to address and time constraints can let offender off the hook
- Inspectors work from home just like investigators
- When started, inspections was significant push back from industry; seems to be reluctantly accepted; purpose is apparently perceived as keeping dealers on their toes knowing they could be inspected ; reportedly some change in behaviour; has been occasions when inspection has been requested by dealers; want to do things right
- PO’s find Novantas system unreliable, unfriendly, and insecure and does not meet standard policing security system; when system purchased and modified staff not consulted - user input lacking?

Communications/Education (Observations)

- Stakeholder and consumer confidence in AMVIC is an ongoing issue; major challenge is to promote and educate on a small budget; communicating through monthly news-letter to about 14,000 subscribers, 600 quarterly subscribers

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- Continued focus required with respect to managing consumer expectations, industry expectations, media requirements; communicating with organizations for new Canadians - a work in progress
- Web site interactive and working reasonably well
- Communication Officer facilitates employee one day strategic planning session
- Daily tasks include addressing issues that come from media, preparing information for distribution, support for CEO office, reviewing public documents, planning promotions for AMVIC, attending various associations, not-for-profits, departments, municipalities and others to educate
- Brand is a negative to industry and not well known to consumers; image improvement; need for improved stakeholder relationships; Communications is continually focused on getting increased brand recognition for AMVIC; its limited resources and the geographic reach of AMVIC makes this particularly difficult
- From developing training modules for salespeople to be delivered online to launching a new website and enhancing social media presence, AMVIC has undertaken efforts to update and improve accessibility of information for stakeholders in recent years
- Communications has a role in developing a more healthy relationship to Service Alberta through communicating the good things AMVIC has been doing
- Consumers need to be informed on what changes AMVIC is making to enhance their access to assistance and resolution of issues

Still, there are many Albertans that do not know or understand their responsibility under the *Fair Trading Act* or the role that AMVIC plays. It may be that Alberta consumers do not see a need for AMVIC until they identify a problem

that they are unable to resolve independently. AMVIC also has limited resources for communications and training given the size and geographic reach of the industry.

Legal (Observations)

- Some concern expressed regarding the need for full-time legal services on an in-house basis; by contrast, those who made use of the advice provided were impressed
- In house counsel has been helpful in reviewing proposed bylaw changes and interpreting the legislation for managers
- Questions largely around access to services and whether or not there was sufficient justification for in house counsel
- Based on the comments from management there seems to be quite a number of files which have been referred for comment; this demand is not likely to lessen
- Questions as to why decisions are appealed to CEO; he makes decisions on the penalty then hears the appeal
- Many files quite complex; lengthy investigations; gray areas at law; believes an argument could be made for separate legislation
- Need to fully understand the nuances of administrative law; need for background in consumer protection issues
- Position of Registrar needed; should be separate from investigators

Some General Observations

- Government needs to receive informed opinions from AMVIC management and the Board; concerns expressed regarding the clarity of information being received by the Government; are both acting in a transparent manner
- Concerns expressed that FTA and ABR have a number of gaps and subjective components allowing AMVIC to make their own

interpretations; needs tightening up (e.g. all vehicles should be registered and history up-to-date upon sale)

- Need motor vehicle specific legislation for the auto industry
- Need for there to be a dedicated crown so that action can proceed swiftly; current crown process long, cumbersome and often plea bargained
- Due to number of investigations and complexity many concerns raised about the length of time it takes to complete a file, sometimes years!
- Why so many reviews and investigations/audits? Organization feels like it is under siege
- Some would suggest that AMVIC should not be run by industry but by a separate independent agency; not clear who the public/consumer is; no representation except via the government
- AMVIC does not have sufficient resources to implement and enforce fairly across the board, must be selective and make examples of poor operators
- Need to better define mediation and ADR; concern expressed that some CSO's are leveraging mediation with the threat of prosecution, which is not legal or fair
- Some staff mentioned that they were worried about questioning management
- If an investigation file is open investigators will not comment to CSO or inspectors; is seen as a lack of cooperation within - if investigator is not active in the file it can become a customer service issue for AMVIC
- If the file is to be handled through ADR investigators should stand down and suspend investigation until CSO's has had an opportunity to bring adjustment

- Need a General Manager with decision making power to oversee and work with Investigators and Inspectors; currently the CEO is in a conflicted position and may be unable to give guidance and direction

Facilities and Resources

- Bear pit environment is crowded and often too noisy when several on phone
- Reception is small and unimpressive
- Investigations offices in both Edmonton and Calgary should be larger and separated from operations and administration; Calgary PO's suggest office is not conducive for an investigative office and location for officers to keep records secure and hold confidential interviews
- Access to IT for investigators should be secure from everyone else
- Peace Officers each need a locked office with interview sites; often PO's are under resourced, need help with big cases, yet left to flounder

Industry Issues

- Compensation fund levy was to be for 3 years and once fund topped up was to be discontinued
- Value of society questioned by some in industry and stakeholders; auto industry image is tainted by self-regulated industry organization; suggest that AMVIC is going after the good operators and leaving the curbers and bad guys alone
- Industry suggests AMVIC is getting too big, too many staff and looking for ways to insert themselves into everyday good operation by finding nit-picky things to charge with; AMVIC is upsetting the owners and operators by being too invasive asking for financial, sales info, etc.; AMVIC is spending according to its revenue; more revenue more enforcement which irks the industry
- AMVIC suggests that many times a lack of simple business management skills is the issue

- Resist having to car-proof on vehicles; lack of registration continuum is seen as a problem; the industry is not working to have province change system
- Use of MFA system to prove safe and road worthy is not appropriate; should all be safety and mechanically inspected; industry is resisting having to provide a proper vehicle inspection by a certified mechanic
- Odometer fraud, lack of vehicle safety, and lack of continuous registration
- It is suggested that most car dealers and sales personnel are either unfamiliar with the FTA or lack knowledge of its contents and their requirements - education?
- Where are the sales levy kept; how are they spent and who is guarding the fund?

7.8 Management Practices

We did not conduct a thorough review and assessment of managerial practices other than through the questions we posed of the managers and their subordinates. While we believe we were provided with candid comments and feedback, our focus was on a much broader scale and so we may have missed some key aspects of what each Manager was doing. We believe, however, that we have a reasonably good grasp on the basics of their practice.

7.8.1 Performance Assessments

One of the basic yet fundamental management practices is that of performance assessment. It is essential that every employee receive his/her performance review on at least an annual basis and more frequently if performance issues are noted. We were advised that the CEO conducts an annual assessment of his Managers which is based at least in part on a self-assessment which the managers prepare. The CEO reviews their commentary; makes whatever changes he feels are appropriate; and then signs off. These are conducted every spring for all

staff. The CFO maintains a log of this process to ensure that it is being followed through by all managers.

We were advised that each employee has a performance review by their supervisor and that these are regularly conducted and recorded. We were also advised by some that their supervisor simply asked them to sign the performance assessment form without any sit down meeting between employee and supervisor. (The supervisor has explained that the reason for this is that they are too busy doing other important things)!

Performance reviews are addressed in the Employee Policy and Guidebook (dated June 23rd 2015)(Sec. L2) and are to be conducted in March of each year. The objectives of conducting such a review are: “Promoting two-way communication between supervisor or manager and staff member; measuring effectiveness and providing feedback on job results; promoting understanding of AMVIC’s business needs and strategic plan; identifying goals and expectations for future period”. The performance appraisal is an ongoing review and assessment during the year. There should be no “surprises” regarding job performance for either party at the appraisal. The results of a performance appraisal provide a basis for making decisions on: job enrichment; promotion; compensation; training requirements. All employees receive an annual performance evaluation. The evaluation is conducted by the immediate supervisor. The employee being evaluated is expected to participate in the discussions.

In terms of the performance management system, we were advised that performance is tracked and goals are set when improvement in performance has been requested. Management can access the AMVIC in house legal counsel regarding the handling of performance problems.

We also believe that the chief executive officer must be assessed annually by his/her governing body to ensure that the relationship is sound and that it includes a recognition of how important regular assessments are. The CEO-Board relationship is critical to the performance of the organization, including that of the Board. The Board established an Executive Director Review Committee

consisting of two members from the Board to conduct the annual review. This committee was folded up inside the HR Committee which now does the assessment and presents it to the Board. This process generally happens prior to the fall AGM.

AMVIC engaged external assistance in an “Employee Engagement Survey” in early 2015 conducted by an experienced professional consultant. With the exception of the Executive Director (now CEO) 40 staff participated in the survey. The results pointed to what the report described as “happy employees” based on their responses. The nine questions asked addressed their level of understanding of and participation in the strategic plan; the sense of empowerment to do their jobs; room for career growth in AMVIC; how well compensated for their positions; support and guidance from their supervisors. The majority felt that communication needed improvement. Most spoke to the AMVIC image as either negative or non-existent (i.e. under the radar). The consultant’s concluding comments expressed that “the majority of the employees at AMVIC appear to be happy and productive” albeit “...there are still pockets of discontent within the organization”.

7.8.2 Financial Management

We were advised that managers are provided with a monthly comparisons of actual expenses with expenses in the comparative budget for the month. The monthly budget is prepared recognizing many expenses are relatively consistent from month to month while others are specific to one or more months. Thus, the report tends to report actual expenses to a realistic comparable budget. Managers are expected to prepare budgets; to review expenditures (actual against budgeted and compared to previous year’s budget); to stay within their approved budget. Each Manager has spending authority up to \$5000 (as per the accounting policy)(CEO up to \$25,000); above that limit, the expenditure must be signed by two members of the Board (with one of the two being either the Chair or the Treasurer). All expenditures need to be approved by the relevant

department head to assert that it is a valid expenditure. Internal cheque signing has by policy been limited to two members of senior staff other than the Treasurer which was intended to separate the Treasurer from any perceived or actual authority to get expenditures approved on his own authority. With the changes in accounting practices since that policy was approved, there is sufficient separation to allow the Treasurer to be a signing authority. A policy change would be needed to approve this change.

7.8.3 Staff Meetings

Meetings of senior management take place each Monday morning and generally last about 1.5 hours. In addition to these meetings, the CEO meets one-on-one with his senior managers every two weeks (and as frequently as required). Some Managers hold staff meetings every second Tuesday; others might meet weekly. These are described as very useful regardless of the size of the department.

Staff collegiality seems to have decreased over the past six months. Concern has been expressed with respect to more tension being evidenced within the management team, particularly between Investigations and Licensing/Consumer Services. Due to the importance of these functions and the need to ensure support and feedback on these respective functions, senior management needs to address this and focus on getting all managers onto the same page.

7.8.4 Training

The ongoing training of employees is viewed as important by AMVIC. Each department is encouraged to bring forward a training plan for their employees as a part of the performance assessment process. The training is expected to be aligned with the employee's job responsibilities. Some of the training is conducted internally; other training occurs offsite. The Employee Policy and Guidebook deals with this matter. The policy statement indicates that AMVIC supports related training for its employees "*AMVIC encourages employees to take courses and workshops that will aid in their self-development and improve their effectiveness in their jobs*". Courses can be initiated by the employee or by the

employer. When the course costs exceed \$1000 AMVIC may require that the employee enter into a reciprocal agreement with AMVIC. The Executive Director (CEO) is delegated the authority to authorize training courses.

Further, a “Health and Wellness Account is a fund established to encourage an individual commitment to personal health. The financial assistance for each eligible employee in each calendar year is \$500...Expenditures are primarily employee-driven, and are intended to:

- encourage employees to access tools and resources to assist them to remain healthy
- promote workplace health and wellness and the employee's responsibility to make healthy choices”.

7.8.5 Employee Turnover

One of the issues raised with us pertains to the considerable turnover of employees in AMVIC since its inception. We have inquired and can report that of the current list of approximately 48 employees, the tenure of their employment follows (i.e. the year when a current employee was hired):

2002	One employee
2008	Two employees
2011	Three employees
2012	Four employees
2013	Ten employees
2014	Twelve employees
2015	Eleven employees
2016	Four employees

We note that of the 48 employees, 42 were hired in the past four years. Of the senior management team of five employees, all have been with AMVIC less than four years. Of the 11 staff in Licensing, all have been employed since 2011. Of the 16 staff in Investigations, all but two were employed since 2011. The CEO has the longest tenure of this group having been hired June 1st 2012.

We were advised by the CEO that most of the turnover of employees has been by personal choice and not performance management issues. Some retired and others left for career opportunities elsewhere. The net result has been substantial severance costs which between February 2012 and May 2015 was a total of \$453,337 (AMVIC calculation).

7.8.6 Employee Compensation

AMVIC has conducted a compensation review of its current positions utilizing an external and experienced organization (The Conference Board) (November 2015). Their assessment indicated that:

“overall, AMVIC is generally well positioned in the market in relation to base salary. However, four positions have the potential for review and reclassification to align them with market base salary rates identified through the custom survey. Our Alberta market research also shows that AMVIC is well positioned in terms of its benefits plan. In addition, interviews with key stakeholders across the organization have provided the project team with insights into the “full picture” of non-monetary elements of AMVIC’s total rewards environment, such as work/life balance, operating environment, and career progression (there was a stated interest to develop specific job levels within job families to support career progression). While a detailed review of all these elements was not conducted, we note that, per the interviews, AMVIC is considered to have a rewarding and positive work environment. This can enhance its value proposition and overall employee experience. It is important to note that AMVIC has undergone considerable change in recent years, including staff changes, a higher media profile, and on-going organizational review. As the organization continues to evolve, monitoring staff development and engagement will a key element to support growth and customer service programs.”

7.9 The Compensation Fund

In the late 1990's the need to provide systems that protected consumer rights and at the same time provided industry with effective dispute resolution processes was voiced by consumers, industry and governments across Canada. Dispute resolution systems were developed in Alberta, and across Canada, that included a number of common principles;

- dispute resolution systems that fairly represented consumers, industry and government
- dispute resolution systems run by independent and unbiased organizations
- processes that perceived the interests of both sides of each dispute
- processes that attempted to resolve disputes with minimal commitment of time and resources of all parties
- providing tools such as mediation or direct negotiation where needed
- processes that could provide the powers of investigation where necessary
- where other methods of dispute resolution did not succeed, to provide for an independent and fair hearing for the parties where compensation may be awarded
- and, more recently, where businesses are not able to pay the compensation awarded (i.e. bankruptcy, fraud, etc.) that a compensation fund be provided.

The *Fair Trading Act*, Automotive Business Regulation, and the Delegation Agreement with AMVIC establish a legal structure and mandate for AMVIC to create a fund to compensate consumers who suffer a loss arising from the actions of an AMVIC licensee. The AMVIC Compensation Fund was formally launched in March, 2012. The compensation fund achieved a major milestone during the past year by reaching the maximum funding level of \$4,000,000.

7.9.1 Society Role

In Alberta, the choice for an ‘independent and unbiased organization’ was to create a not-for-profit society who would be empowered by act, regulation, and agreement. This was also the choice taken in British Columbia and Ontario where similar societies, but with differing mandates within the motor vehicle industry, were being set up at this time.

The Society meets about 3-4 times annually including once for an Annual General Meeting. The Society has a mandate of approving any recommended bylaw changes; controlling the limits on the compensation fund and recommending the names of the industry at large positions on the AMVIC governing board.

7.9.2 Delegation Agreement

Through the Delegation Agreement, the Minister responsible for the Act has delegated the responsibility for the establishment and administration of the compensation fund to AMVIC.

7.9.3 Administration of the Compensation Fund

The following information was provided on how the Compensation Fund is currently administered.

The Automotive Business Regulation includes the following requirements regarding the Compensation Fund:

- 28 - *When the fund exceeds \$1,500,000, the portion of the fund exceeding \$1,500,000 may, with the prior permission of the Director, be used by the Council for the purposes of providing information relating to the automotive business to consumers and persons engaged in the automotive business, and paying the costs of investigations for which the Council is responsible.*
- 29(1) - *The Council may make bylaws on the payment of claims from the compensation fund, including identifying the claims that may be paid, who is eligible to make those claims, setting out the conditions*

to be met before a claim is paid, and the maximum amount that may be paid to a claimant or group of claimants.

- *30 - providing that the business operator is liable to the Council for the amount of the payment and the Council may collect the amount by civil action.*

The AMVIC Bylaws include the following sections regarding the Compensation Fund:

- *7.20 - the eligibility of a claim, including an ineligibility if the business was not licensed at the time of the transaction.*
- *7.21 -the payment of successful claims, and limiting compensation to the amount set in the fund.*
- *7.22 - the time limit for submission of a claim by a Consumer; including limits of a maximum of 3 years from the date of the transaction, 2 years from the date the Consumer knew or ought to have known they had a claim, 1 year from the date AMIVC took administration action regarding the transaction, and 1 year from the date that charges have been laid by AMVIC.*
- *7.23 - claims for funds recovered by the Consumer in other ways are not eligible.*
- *7.24 - Consumer required to provide an undertaking to deduct the amount of compensation from any civil action.*
- *7.25 - no restrictions on Consumer pursuing civil action.*
- *7.26 - Consumer required to complete an application form regarding a claim.*
- *7.27 to 7.33 -Compensation Fund Review Process including; CEO responsibility (may be delegated), review of initial claim, notice of claim to business or salesperson, review of representations on claim from business or salesperson, Consumer may be granted opportunity to respond to representations in writing from business or salesperson, CEO determines if claim is valid, notices on decision sent out, CEO*

may request business or salesperson to pay a valid claim within the time specified, if the claim is not paid then the Consumer is paid from the Compensation Fund and administrative action may be pursued against the business or salesperson.

- *7.34 - right to appeal to a Compensation Review Panel*
- *7.35 - appeal limit of 30 days from the date of the decision of the CEO.*
- *7.36(a) to (b) - contents of the notice to appeal*
- *7.36(i) to (vii) - Chair of the Board to establish a Compensation Review Panel within 45 days,*
 - *if claim is under \$5,000 may be a Panel composed of one member of the Board of Directors and the hearing shall be in writing unless the Chairperson makes an order to the contrary,*
 - *if the claim is \$5,000 or more the Panel consists of a Chairperson who is a member of the Board of Directors, an owner or employee of an automotive business, and a representative of the public who may be a public-at-large member of the Board of Directors,*
 - *decision of the Compensation Review Panel is final*
- *7.37 - Compensation Fund Claim Limits; limited to:*
 - *what the Consumer has paid or is obligated to pay regarding the transaction, plus interest,*
 - *a maximum amount to a Consumer of \$25,000*
 - *a maximum amount of all claims against a single licensee of \$300,000*
- *7.38 - Board of Directors may transfer monies from operations to the Fund.*
- *7.39 - If the Fund exceeds \$4,000,000, no further funds may be transferred.*

The AMVIC Compensation Fund Policy includes the following:

- ○ 4.1 - AMVIC's Board will establish a Compensation Fund Review Panel, two members of the Board to approve the Letter of Authorization for all claims in excess of \$15,000, two members of the Board to approve the Letter of Authorization for all aggregate claims against a licensee in excess of \$100,000
- ○ 4.2 - AMVIC's Executive Director to approve individual eligible claims up to \$15,000 and aggregate claims against a single licensee up to \$100,000
- ○ 4.3 - AMVIC's Chief Financial Officer to oversee the administration of the Fund including overseeing the requirements for an application for compensation and the process for receiving and reviewing applications
- ○ 4.4 - AMVIC's Compensation Fund Coordinator to administer the Fund on a day-to-day basis, including the administration and review of all claims, correspond with applicants and other parties, liaise with investigators, and provide administrative support for the Fund to the CFO
- ○ 4.5 - AMVIC's Investigations Department will scrutinize all claims, conduct investigations, prepare investigation reports for the Coordinator
- ○ 4.6 - The Compensation Fund Review Panel established by the Chair of the AMVIC Board, consisting of three members with the chairperson being a Board of Director for the Society, a licensee, and a member of the public. The responsibilities of the Panel include: review if appeal claims are eligible for compensation, determine the amount of compensation to be awarded, provide direction to the Executive Director and Compensation Fund Coordinator on matters of

claim processing, and approve cheque requisition for all eligible claims submitted by way of appeal.

- ○ *5. Establishing a minimum Fund level guideline of \$1,500,000 subject to Board discretion. When the Fund exceeds \$1,500,000, the portion of the fund exceeding \$1,500,000 may, with the prior permission of the Director and Board approval, be used for the purpose of providing information relating to the automotive business to consumers and persons engaged in the automotive business, and paying the costs of investigations and or other administrative costs directly related to the Compensation Fund.*
- ○ *6 - The CFO is responsible for the administration and investment of the Fund.*

The AMVIC Consumer Services Policy includes section the following regarding the Compensation Fund:

- *2.1.8 - A CSO will only recommend the submission of a complaint form and/or a compensation fund application where the concern involves a motor vehicle, a licensee or salesperson, or a consumer transaction.*

The AMVIC Investigation Services Policy includes the following section regarding the Compensation Fund:

- *2.1.2 - At the outset of a compensation fund investigation, the Investigator will determine the specific grounds for eligibility of the claim.*

7.9.4 Our Observations on the Compensation Fund

The following are our observations on current practices regarding the Compensation Fund. As noted elsewhere in this Review, the AMVIC Board and others have made observations on the current and future role of the Compensation Fund, and those observations have been considered in providing this consolidated list.

Report on the Review of the Alberta Motor Vehicle Industry Council

- a) Since its creation in the 2011/2012 Financial Year, the Fund has received the funding of \$4,000,000 over a four year period from the operating funds of AMVIC:
- | | | |
|------|-----------|-------------|
| i) | 2011/2012 | \$1,500,000 |
| ii) | 2012/2013 | \$ 500,000 |
| iii) | 2013/2014 | \$ 500,000 |
| iv) | 2014/2015 | \$1,500,000 |
- b) The Compensation Fund reached its cap of \$4,000,000 in 2015,
- c) The Alberta Motor Vehicle Council Business Plan 2016-2019 (pg. 21) shows that no further contributions to the Compensation Fund (as required by the current bylaws) are proposed for 2015/2016, 2016/2017, 2017/2018 and 2018/2019. It is noted that the Unrestricted Assets of the Council are anticipated to increase by \$1,500,000 during this same period as a result.
- d) The Alberta Motor Vehicle Council Business Plan 2016-2019 (pg. 21) also shows that revenues from licensing and levies is forecasted to continue to climb in future years. Members of the MDA and RVDA provide the majority of the revenue from the \$6.25 per vehicle sales levy that AMVIC has used to establish the Compensation Fund.
- e) In the past 20 years, none of the major automotive business failures that have occurred in Alberta and resulted in substantial consumer losses have been MDA or RVDA members. A number of MDA and RVDA members feel that expanding the AMVIC Compensation Fund would effectively punish large dealerships for failure or fraud by other AMVIC licensees.
- f) A committee of the AMVIC Board is reviewing the compensation fund. The proposal (June 20, 2016) includes: compensation to consumers (eliminate \$300,000 per business limit, remove time triggers), amend criteria, legislate action for non-payment by industry, improved funding model, new policy, options to mitigate. The implications of a fund change are not assessed at this time.

- g) Few claims have been made against the AMVIC Compensation Fund. Information provided by AMVIC showed that in the last 4 years a total of four (4) claims have been approved, totalling \$9,419.34. In that same period, five (5) claims totalling \$155,119.82 were determined to be ineligible.
- h) As part of this review, comparisons with similar consumer protection organizations in the motor vehicle industry were undertaken, while noting the differing mandates in each province. Claim rates against compensation funds were compared, and while information is collected in different ways in each province, the following comparison is provided:
 - i) Alberta - Claims over 4 years: 9 claims, 4 approved, 5 ineligible, \$9,419.34 approved for compensation (processed 2 claims/year)
 - ii) British Columbia - Claims over 19 years, over 1,000 claims, of which 57% were approved for compensation. Over \$2.9 million has been paid to consumers (processed over 52 claims/year)
 - iii) Ontario - Claims from September 2007 to April 2014 totalled 114 with a payout of \$2,300,000. However multiple claimants against a single dealer are counted as one claim; the three largest dealer indebtedness claims during this period included 434 individual claimants. During 2015 there were 23 claims received, 22 claims were approved, and the value of claims paid was \$184,000.
- i) The following comparative data shows that on a per capita basis, Alberta has the highest level of Compensation Fund assets; inspections are “tools” to manage industry performance for all, and Alberta inspects about 6.3% of dealers compared with BC at 5% and Ontario at 3.2%.

Report on the Review of the Alberta Motor Vehicle Industry Council

Comparative Data				Annual Comparison						
BC	Population	New	VIC				Complaint	Inspections	Comp	Fund
2015	Million	Car Sales	Rev- \$M	Dealers	Sales People	Calls	Dealer		Fund \$M	Claims
est 2003	4.7	21092	4.9	1416	7205	1359	155	722	1.2	34ttl; 21pd
		June, 2016					\$1M		\$ 0.26	\$135,000
									Per Capita	
Comp fund								Since 1995- paid \$3.05m		to 623 people
ON	Population	New	VIC				Complaint	Inspections	Comp	Fund
2015	Million	Car Sales	Rev- \$M	Dealers	Sales People	Calls	Dealer		Fund \$M	Claims
est 1997	13.8	81460	11.5	8106	27092	180,000	1173	2557	7	20 pd
		June, 2016					\$933,800		\$ 0.51	\$100,307
							Aver=\$5K		Per Capita	
Comp fund									Max- \$45k	
AB	Population	New	VIC				Complaint	Inspections	Comp	Fund
2015	Million	Car Sales	Rev- \$M	Dealers	Sales People	Calls	Dealer		Fund \$M	Claims
est 1999	4.2	21181	6.4	6500	9560	8788	1041	410	4	4 pd
		June, 2016					\$1.4M		\$ 0.95	\$9,400
									Per Capita	
Comp fund								Max- \$25k	or Total \$300k/ Business	

Sources: VIC websites, Annual reports, Statistics Canada

- j) The Compensation Fund is not well understood as a tool for consumer remedy and many industry people see it as too large. The scope of the fund also needs to be reviewed as British Columbia and Ontario have included motorcycle and ATV purchase transactions within their funds.
- k) In British Columbia the Compensation Fund is managed by a separate board appointed by the Society.
- l) The 2015 Financial Statements disclose that the Council accrued \$300,000 as Compensation Fund claims accrued payable for claims arising from the closure of a consignment business. The payment date for these claims is expected to be in fiscal 2018.
- m) An additional \$300,000 is expected to be identified for a second occurrence, likely in the current year.
- n) The regulations and the bylaws permit Compensation Fund amounts in excess of \$1,500,000 to be used for education and investigations. This was also noted in the financial statements. The Board has not utilized this provision.
- o) The Board and management have advised that the following issues related to the compensation fund need to be addressed:

- i) Having achieved the target amount of \$4M the question is “now what?” Does the fund level continue to make sense or should that be a floating target?
- ii) Should the \$6.25 levy on new vehicles be reconsidered now that the fund target has been reached? Is this an onerous amount or more of an industry “talking point”?
- iii) Are compensation requests being fully, fairly and quickly considered or is the evaluation mechanism at fault? Should AMVIC (or the Government) consider a different style of remedy given the few dollars that have been paid out to date? Should the wait time for pay-outs be reduced to allow for a more time-sensitive response or is the current three year period justifiable?
- iv) Are the current criteria for pay-outs reasonable or are the imposed limitations overly constraining and unduly harsh?
- v) Is the fear of high compensation values justified and does this support the \$300,000 limit per business? Should the fund maximum be increased to recognize that current and future claims will quickly reduce the fund balance? Is the cap on compensation reasonable and does it offer a fair value to the consumer for any redress a consumer might expect?
- vi) Is there sufficient evidence that the public is even aware of the “compensation fund” and its purpose? How might that recognition be increased? How could AMVIC raise its awareness and that of the fund to ensure that consumers will have a reasonable appreciation of its availability and its conditions?
- p) If the Compensation Fund is opened up for larger payouts or if the organization is to grow as Alberta’s population grows, then fees and levies may need to change. While the levy in Alberta is \$6.25, the Ontario levy is \$10 per vehicle, and in BC license fees are comparatively higher.
- q) The \$300,000 limit per licensee delays the processing of individual claims, and severely restricts Compensation Fund payments to individuals as all

claims must be aggregated first and then pro-rated. As noted, expected payments are well under the \$25,000 individual limit.

7.9.5 Trends & Issues

- a) Since the \$4,000,000 maximum was achieved (and how that number was determined is not clear) by the Compensation Fund in 2015 numerous questions remain about how to sustain the fund and allow for reasonable access to the fund for consumers.
- b) The financial statements include this in following paragraph: Amounts in the Compensation fund in excess of \$1,500,000 may, with the prior permission of the Board of Directors, be used for the purpose of providing information relating to automotive business to consumers and persons engaged in the automotive business, and paying the costs of investigations for which the Council is responsible. This provision provides for mechanisms for the sustainability of the Compensation Fund, and these mechanisms should be utilized in the future revisions.
- c) In reviewing the \$4,000,000 maximum limit, the \$1,500,000 minimum limit, the \$300,000 licensee limit, the \$25,000 individual limit and the level of fees and levies providing revenue to the Compensation Fund, there is concern that the choice of new limits, fees and levies will simply reshuffle the problems now being addressed. These limits, fees and levies and the rules applying them need to be reviewed by a professional actuary, who is experienced in applying their specialized knowledge of the mathematics of finance, statistics, and risk theory, on these types of regulatory programs, providing advice to the Minister and AMVIC.
- d) A mechanism for the regular review of limits, fees and levies is needed. Further actuarial review coinciding with a review of limits, fees and levies should also be undertaken to ensure the sustainability of the Compensation Fund.

- e) Consider empowering AMVIC to develop additional alternate dispute resolution (ADR) strategies to obtain restitution for consumers and that punish violators when appropriate, while considering AMVIC's investment in undertakings and supporting the compliance goals of the organization.
- f) We do not see the ability of a Consumer to submit a claim for compensation as being transparent within the policies approved by AMVIC. This view is reinforced by the minimal statement about the Compensation Fund within the AMVIC Consumer Services Policy.
- g) Concern exists in that AMVIC is building a Compensation Fund but not using it; additionally, several asset balances are building internally without clear intent for their use; these are fundamental policy issues of concern to many who are part of this system.
- h) The time limits applying to the submission of a claim by a Consumer of 3 years, 2 years, or 1 year in different circumstances have reduced both the transparency and fairness of the system. Less complex rules are needed.
- i) A concern exists in having the Compensation Fund decisions held internally without oversight or any access to an external appeal process.

7.10 Business Planning and Financial Management

Essential to AMVIC's overall fiscal and organizational health is a clearly-focused approach to business planning. It is certain that both the Board and management need to be fully engaged and supportive of a planning framework and willing to invest the time and energy to accomplish this so that the results make sense to everyone and thereby impact the organization.

Background to Accountability framework:

Key elements of a typical accountability framework include:

1. Planning
2. Executing the plan
3. Monitoring progress
4. Reporting results

With respect to planning, the key elements include:

1. Strategic or long term plan
2. Business plans (i.e. the Delegation Agreement requires these to be three year plans)
3. Operational plans

In a strategic plan an organization sets key strategies which typically cover longer term. A business plan refines the broad, high level and long-term strategies set out in a multi-year strategic plan to more specific actions. The plan also links these to the relevant organizational unit and costs. Business plans sit between the strategic plan and operational plan(s). The point, in part, of an operational plan is to be specific about who is accountable for the implementing of the strategy.

The Board's Strategic and Business plans start by setting out "Guiding Statements". These include:

Mission

AMVIC's mission is to protect the public interest and promote trust and confidence in the motor vehicle industry through heightened awareness and the fostering of a positive exchange of information among industry stakeholders.

Mandate

The mandate of the organization is to provide consumer protection in Alberta's motor vehicle industry through mandatory licensing for motor vehicle businesses and salespeople as required by the Fair Trading Act of Alberta and to provide a fair marketplace for automotive consumers and businesses.

Principles

The following principles provide the framework for all policies and procedures developed at AMVIC and help the organization successfully deliver its delegated activities and mandate:

- *Protect Alberta consumers from unfair business practices and work towards building trust and confidence in the motor vehicle industry.*

- *Self-manage an effective mandatory motor vehicle industry licensing program.*
- *Foster open and clear communication in the motor vehicle industry and support an honest exchange of information among industry, government and consumers.*
- *Assist the motor vehicle industry to build best business practices upon the framework of the Fair Trading Act through education, compliance and enforcement of legislation.*
- *Provide an alternative to litigation through alternative dispute resolution of consumer complaints.*

Strategic Plans (2015, and 2016 - 2021):

The Plan is structured in 8 sections; these are:

1. Introduction
2. Guiding Statements
3. Strategic Plan Priorities
4. Licensing & Registration
5. Compliance & Enforcement
6. Compensation Fund Administration
7. Stakeholder Education
8. Governance

In section 3 -Strategic Plan Priorities, the Board discusses three (3) organizational priorities. These priorities were identified during a planning session in the fall of 2015. Similar priorities were set out the subsequent 2016 - 2021 plan. These priorities are: operating proactively, compliance orientation and educating stakeholders. For each priority the Board sets out strategic plan actions, each of which are expanded on subsequently in the plan. Each action forms a key strategy under one of the five (5) additional sections.

We noted that the differences in this section between the two strategic plans are in the strategic actions set out in “operating practice”. In the 2015 plan there are four (addressing curbing, defining the scope of licensing & registration,

working with municipalities, understanding legislation). In the 2016-2021 plan two additional actions were added (focusing the message and strengthening the organization). With respect to the two remaining priorities the actions set out in both plans are:

- Compliance orientation:
 - Compliance-First Approach
 - Monitoring the Success of Compliance Officers
 - Clarifying Mandate & Scope
- Educate Stakeholders
 - Reviewing Fees - Demonstrating the value of services for fees and the benefits to consumers when choosing an AMVIC dealer
 - Investing in continuing education
 - Developing consumer awareness
 - Involving industry

Each subsequent section (4 - 8) includes a discussion on the current state, trends and issues, and a number of key strategies.

Observations

A strategic plan normally covers a longer term. It sets the framework for further planning. When examining these two plans it is clear that the initial plan set out as only one year was a precursor to the second plan which purports to cover five years. The two plans are quite similar. We do see changes to trends, issues and actions under key strategies. The plans are readable. What is unclear is when the actions will be completed over the term of the plan.

In the 2015 plan there are almost 100 strategic actions listed. The 2016-2021 plans include a similar number of strategic actions. This is a very large number of actions. One questions whether all the actions are truly strategic. A review of the actions suggests that some are more tactical in nature. However, if we

accept that all actions are strategic, it is noted that there are so many that the organization will struggle to accomplish them all, or actually focus.

We learned that the plans were prepared by a consultant after a planning day facilitated by the same consultant. Management and the Board reviewed the plans. This review could result in changes. Management noted that the plans were not particularly strategic. We were advised that they will be contracting with a different consultant with a view to developing a plan that is more strategic in nature.

Business Plans (description)

The Board prepares three year business plans. The websites contains thirteen business plans; the first being 2004-2007 and the most recent being for years 2016 -2019. The two plans we examined were the 2015-2018 and the 2016-2019. Business plans essentially mirror the related strategic plan, while providing some additional information.

In the case of 2015-18 business plan the additional information was:

- a) For each delegated activity (e.g. Licensing & Registration) the section starts with a goal statement. In the case noted it was:

Goal One: Administer an effective and efficient mandatory licensing and registration program for automotive businesses and salespeople.

Such a statement provides insight into what the Board plans to accomplish to meet the expectation of the delegated responsibility.

- b) For each delegated activity (e.g. Licensing & Registration) the section ends with the set of performance measures the Board will use to determine how well it met the goal associated with the delegate responsibility. The Plan includes about 12 measures in total. The Governance section does not have any measure, nor does it have a goal.
- c) The plan also includes a section called “Financial Plan”. The financial plan provides the revenue and cost over eight (8) years. The amounts are “actual” for the three years of 2010 to 2014. The 2014-2015 numbers are a projection.

The remaining three years are referred to as budget. Revenue categories are consistent with those employed in the financial statements. Expenditure categories match the delegated activity. This structure matches the structure of the plan, in part. However, the financial information also separates out expenditures in a category named “Administrative, Executive, Finance and IT”. In addition, financial information is provided on investments and fund balances.

The 2016-2019 business plan is similar in structure to the 2015-2018 plans except that it does not include goal statements.

Observations

Successful organizations employ planning to drive an organization forward. The fact that the business plan does not vary, except as noted above, at all from the related strategic plan calls into question the organization commitment to planning.

Performance measures tend to be input, efficiency measures or output measures. We do not see measures related to outcomes. The targets set for a number of the measures show expectation of improvement over time, while other targets are the same year over year.

We learned that managers develop targets based on what they believe will be accomplished. When asked about whether targets include a stretch element based on strategic initiatives, we were advised that management was not aware of any discussion which would result in this occurring. In cases of a performance measures *Grow the Fund to a sustainable level* and *Reimburse consumers in accordance with approved policies* each year is the same as the previous and in both cases they are scored as essentially 100%.

In general, the measures are likely useful for management oversight, but is unclear how they demonstrate that the Board is achieving its purpose.

It must be noted that as mentioned the 2016-2019 plan does not include goals. This is contrary to Section 6.2 of the Automotive Business Regulatory Services Delegation Agreements which requires inclusion of goals in the business plan.

Operation Planning

We were advised that the Council does not prepare operational plans.

Budget

Each year the Council's management develops the budget for the next year.

The process followed was describes as:

- *CEO and CFO discuss parameters of the budget. The Executive team has some input into the budget as well, but are not overly involved. Numbers are based on historical cost plus a reasonable % increase. Considerations include what might be needed in the future, what is needed to meet mandate and recognition of what the Board would think. However, greater emphasis is given to their understanding of the Board's view.*
- *The budget is discussed with the Audit and Finance Committee. While we were advised of the Audit and Finance Committee role, we could not find reference to its duties described in the Committee policy.*

The budget proposal (12-page document) prepared by the CFO is presented to the Board of Directors. The 2016-17 proposal was dated March 9, 2016. It starts by stating that:

"The preparation of this Budget 2016-17 is based on the direction outlined in the Board's 2016-21 Strategic Plan which was approved on November 24, 2015. This budget will enable AMVIC to meets its four goals, sometimes referred to as the four pillars, as delegated by the Minister of Service Alberta..."

It goes on to discuss the financial environment that the Council is operating within and also outlines proposed changes in relevant statistics. It goes on to discuss changes from the previous year and the underlying assumptions that are the basis to these changes. The budget itself is presented in comparison to the previous year's budget and financial projection, results from two years ago and calculated increases by line item.

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Revenue is categorized by subject area, and expenses are categorized by object of expenditure. The budget for 2016-17 shows expected revenue of \$6.40 million and expected expenses of almost \$6.26 million. The budgeted surplus is \$144 thousand. This is down from 2015-16 projected surplus of \$789 thousand and 2014-15 actual of \$1,437 thousand.

The Budget is followed by “*Budget Summary by Expense Category Explanations and Assumptions*”. The largest single expense category is labour. The budget discloses an expected labour cost of about \$4.3 million, which is just under 70% of the expenses for the year. The Budget is approved by the Board.

Observations

The budget preparation process is relatively informal. However, this is not an issue unless there is a desire to subject it to a more rigorous review. Given the reduction in surplus over the last few years and the potential for a deficit in the future, such a review may well be necessary. The expenditure categories in the budget are different than the ones used in the financial plans; which as noted, are different from the 4 pillars.

In-Year reporting to Board and Management

Managers provide a report to the Board on the operations of their area. Reports describing activities are for the period under report (the example provided to us was for the first quarter). Some management reports included an update on the current strategic plan. This could include statements on results, and progress on performance measures. However, reporting against the plan is not consistent. The final section of the quarterly report provided was the Finance Report prepared by the CFO. This report includes a summary of revenue and expenses to date compared to the equivalent period in budget and the previous year. Variances are provided and discussed. The summary report matches the categories on the F/S and budget. The Summary is followed by a detailed list of YTD expenses by subcategories. These are also compared to budget and prior years’ expenses for the quarter. We note that provision of the detailed list invites

detailed questioning by the Board. Also provided is a similar comparative to balance sheet categories at the detailed level.

Finally, the Directors' Due Diligence Quarterly report is provided. It is signed by the CEO and CFO.

Observations

The report package is extensive and includes a significant amount of information and a great deal of statistical data. The link to the strategic/business plan is quite evident in some manager reports but less in other reports. What is not seen in the report provided was which items should be of particular interest to the Board. Put another way, "what are the critical issues arising in the quarter?" The level of detail provided without any text to focus discussion on key issues invites the Board to discuss at the detail operation level rather than focus at a strategic level.

Annual Report:

The Council publishes an annual report each year. It is authored by the Communications Manager working under the direction of the CEO. These reports are available to the public on the Board's website along with its Strategic and Business plans. An annual report, at its core, is an **accountability document** that demonstrates how well an organization has been in implementing its plans, both financial (budget) and performance. This means that matters are objectively set and analyze the results in an unbiased and informative manner. In addition, annual reports are used to inform the reader about the organization regarding what/how it has done and its successes. However, annual reports that emphasize the public relations aspect over their accountability role are of little use to readers who wish to assess how effective an organization has been.

Description

The 2015-2016 annual report is 52 pages long with a wide range of statistical data, pictures and explanatory text. The table of contents list the following sections:

- *What we do and who we serve*

- *Accountability*
- *Governance*
- *Board of directors*
- *Message from the board chair*
- *Message from the board treasurer*
- *Message from the executive director*
- *AMVIC at your fingertips*
- *Protecting consumers*
 - *Connecting*
 - *Licence to operate*
 - *Strategic plan metrics: compensation fund*
 - *Strategic plan metrics: licensing*
- *Educating licensees*
- *Ensuring compliance*
 - *Strategic plan metrics: industry standards*
- *Enforcement*
 - *Strategic plan metrics: investigations*
- *Helping consumers*
 - *Strategic plan metrics: consumer services*
- *Educating consumers*
 - *Strategic plan metrics: communications*
- *Executive team*
- *Financial statements*

The first eight (8) pages cover the 4 sections in a factual informative manner providing a “user-friendly” informative look at AMVIC which is relatively attractive and easy to read. The text also provides background information about the Board. The “Message from the Chairman” discusses a number of items and provides volumetric data on a number of tropics. Topics covered included:

- Board activities

- Priorities
- New initiatives

The report of the Board Treasurer highlights the financial results for the year relative to the previous year and the budget. It sets out major variances and describes the reasons for the variances. It also discusses an upcoming issue with funding. The Board expects that costs will exceed revenue at an unspecified time in the future. The reason given was “as *AMVIC strives to regulate the dynamic motor vehicle industry*”.

The Executive Director’s report reviewed the activities of the Board and sets out several events viewed as successes by the Board. These include the amount of money paid to consumers as a result of an alternative dispute restitution process. It also cited a case of a significant fine and the positive result of the conviction appeal. Both arose from an AMVIC investigation. The AMVIC on-line is also presented and the new additions to the portal.

With respect to performance measures information is somewhat mixed. For example, in one case the measure is “Percentage of licence and registration applications processed within ten business days” while the actual data is percentage within five days. In one case the actual was less than the target but since the metrics are different it is unclear if the target was met or not. With respect to another performance measure, actual results were significantly below the target. A brief statement indicated that a significant effort to improve performance was implemented. Evidence suggesting improvement in the 4th quarter was supplied. In the case of the performance measure “*licensee inspections*” the actual result was 410 while the target was 600. There is no discussion of why the variance occurred and how performance may be improved. In general, performance measure variance of actual results from targets are not discussed. All performance measures in the business plan are included the annual report.

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The names of the executive team is provided and the report ends with the year's financial statement. The financial statements are provided in the section entitled "Financial Statements".

Observations

The report starts with the following statement:

AMVIC serves Albertans-- including first time car buyers, families upgrading to a new vehicle and everyone in-between. AMVIC enforces the laws that are in place to protect consumers and in doing so, helps create a level playing field for both consumers and industry.

From this we see that the Board is operating as a regulator to help to create "a level playing field". The question arises: after the year of effort how much more "level" is the playing field? To be useful, the annual report must provide a clear insight into the how effective the Board has been.

The annual report is quite informative in terms of what AMVIC does and the volume of its activity. The activity information is displayed in colorful graphs, which dominate the pages of the report. In contrast, performance measure information is included at the end of each section in much less dramatic fashion. We did note that while the business plan set out goals the annual report did not refer to them. The structure of the report does not match the plan so it is difficult to relate the two documents. We also noted that the report does not conform to the structure required by the government for its ministries, nor the requirement of an annual report of a listed private sector company. For example, it does not include a Management Discussion and Analysis section. In conclusion, the report is very informative on the "what the Council does" and its activity level. It has minimal information on its effectiveness. It does not serve as an accountability document.

Financial Statements

Description

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The financial statements are presented in accordance with Canadian accounting standards for a not-for-profit organization. The auditor issued an unqualified opinion on the statements.

Results for the year was a surplus of \$739,644 which was down from the previous year (\$1,437,022). While total revenue was fairly close to the previous year at \$6,444,792, expenses increased by \$683,998 to \$5,705,148. The largest increase was in the labour category which changed by \$631,423. Labour is the largest single expense of AMVIC at \$3,909,748. The Annual Report provided some insight into this increase. It stated that staff was increased and salaries were increased to ensure that it was competitive.

The Annual Report highlighted the issue that the Board believes that its funding model may not result in the organization being financially sustainable. They point to the drop in surplus as evidence of this challenge. The budget shows a consistent decline in the surplus over the next three years with the project surplus for 2017-20178 of \$23,976.

It is interesting to note the categories of expenses are not the same as the categories used in the financial plan. This is addressed, in part, through Note 5, which provides information on the nature of expenditures. The categories seem to match the grouping used for business planning, but it is in percentages. Also, as previously noted the budget includes a category entitled “Administrative/Executive/Finance/IT” which is not included anywhere else. The percentages are calculated by allocating overhead costs (Administrative/Executive/Finance/IT) over five categories in the business plan. The allocation is prorated based on spending by category. This is a relatively simple model that does not add to the information since it cannot alter the relationship between categories.

The statements disclose that the assets of AMVIC total \$10,840,325 of which \$9,469,240 are cash and investments. It should be noted that \$4,082,665 of the cash and investments is shown as restricted. The balances of internally restricted net assets can be altered by Board motion. Liabilities total \$606,783. Net assets

total \$10,233,542. Of this amount \$3,997,908 is the compensation fund, 666,929 is invested in capital assets, and 2,100,000 is internally restricted. The remaining amount of \$3,468,705 is unrestricted.

The internally restricted funds are made up of \$1,000,000 set aside to fund an orderly wind up, \$600,000 is for “unforeseen” financial obligations, and the remaining \$500,000 is for “...*management to make the Council’s operations more effective and/or efficient through innovative and technology driven projects...*”.

Observations

It is clear that the Council is in a strong financial position going forward. Based on the net asset position, its assets and the budget, assuming no particularly unusual and particularly negative financial event, it will be sustainable for a number of years.

Audit

The Council’s financial statement is audited by Grant Thornton LLP a professional accounting firm. As noted, the auditor provided a clean opinion on the financial statement. The auditor provided a formal report on the audit. This is presented to the Audit and Finance Committee at the conclusion of the audit. It takes the form of a typical report by an independent auditor. The report noted that no internal controls issues were identified. We were advised that no management letter was issued.

The Board established an Audit Policy. It also established a policy on the Audit and Finance Committee. The roles and responsibility of the Committee are set out in the Audit Policy. It is a reasonable policy.

The Audit policy requires the Committee to review the plans of the auditor. We were advised that this does not occur. We were told that the Committee also is involved in budget review and approves the investment guidelines. Neither responsibilities are dealt with in policy. At its most recent annual meeting the Board appointed the audit firm.

Business Plan

Under the terms of the Delegation Agreement, AMVIC is required to submit a business plan for the next three fiscal years to the Minister each year prior to the end of its fiscal year.

- The Annual Three-Year Business Plan has been reviewed by Consumer Programs and Compliance & Accountability.
- The Business Plan covers issues related to Service Alberta and past concerns with AMVIC's governance, management processes and structures, such as:
 - The board would like to meet quarterly with the Minister to discuss AMVIC's direction and to identify any preferences the Minister may have for the organization.
 - AMVIC will be conducting a review of current legislation, then proposing recommendations to clarify and incorporate changes in order to strengthen and clarify AMVIC's role and mandate.
 - They will seek to engage Service Alberta in order to identify consumer education opportunities.
 - The Delegation Agreement is to be reviewed in 2016, with governance or other organization functions being considered for inclusion in the updated agreement.
 - A review will be undertaken to determine whether a complete rebranding of AMVIC should be considered.
- AMVIC's business plan includes goals which will have a potential impact on stakeholders:
 - AMVIC will be studying the current fee assessment process and fee structure and consider if any changes should be implemented. Any change would require ministerial approval, and could result in industry opposition.

- AMVIC is looking to review the activities and businesses currently being licensed and identify gaps to clearly define their licensing and registration scope. AMVIC could ultimately recommend expanding their licensing mandate.
- They wish to be compliance-oriented rather than enforcement-driven to improve their working relationships with stakeholders and ensure a fair marketplace. A shift to a compliance-first policy could undermine consumer confidence in AMVIC.
- While there is already mandatory online training for salespeople, AMVIC will be developing new online training for other aspects of their licensed businesses, including Alternate Dispute Resolution training for their staff.
- The Business Plan also details a number of points relating to its budget as well as the administration of the compensation fund:
 - The Plan identifies a slight decrease in revenue in 2016-17 (0.63%, from \$6,458,172 to \$6,417,264) and a marginal increase of 3.5% for both 2017-18 and 2018-19. Changes to the economy as well as increases in expenses are attributed to the slight decrease for 2016-17.
 - AMVIC is expecting a budgeting surplus of \$236,434 against total revenues of \$6,400,000 for 2016-17, which represents a 70% decrease compared to the projected surplus the previous fiscal year.
 - Compliance & Accountability advises that AMVIC may see a further decrease in revenues in 2016-17 due to the economy, resulting in a drop in vehicle sales, impacting the levy collected by AMVIC. Because their budgeted surplus is relatively small, this could result in AMVIC realizing a budget deficit for this year. AMVIC would appear to have insufficient funds to cover any

short-term deficits, and they should be prepared to adjust future budgets to account for changes in economic trends.

- AMVIC has not addressed whether they developed and implemented a formal risk assessment process, as was recommended in the 2013 Operational Review.

Part Four: The Future

8.0 Where to From Here?

The most significant challenge in a Review of this magnitude and complexity is to keep the focus on those changes which would enable the service to be delivered as effectively as possible to its intended audience. In this instance, the audience is essentially two-fold: the industry and the public impacted by that industry (which in this instance is virtually everyone).

The key questions would seem to be:

- Is the purpose clear?
 - Are the objectives sound?
- Is AMVIC the right mechanism?
 - Does AMVIC enable the services to be delivered or inhibit them?
 - Does the public trust this system?
- Has the legislative framework been properly cast?
 - Is it fair to all parties?
 - Is there sufficient “teeth” in the legislation which provides incentives to do what is right?
- Do those governing have a clear sense of their duties/responsibilities?
 - Are they sufficiently well-advised to see the path clearly and provide adequate direction?
 - Are those governing reflective of those served?
- Are the expected results identified in advance?
 - Does an assessment take place?
 - Are those results published so that the intended audience can make a balanced determination as to the achievement of results?

This Government needs to see where the system can be improved so as to provide a real sense of fairness to all: not just to the individuals negatively impacted by a bad deal; not just to those making a major purchase or paying for significant repairs; but an industry which is aware of its impact and thus the need for clearly

established roles, terms of engagement for inspectors and investigators, training and adherence to not only approved regulations/protocols but also the laws governing the industry and its many offshoots. There are many aspects of concern but also a foundation from which to improve upon. In short, these challenges have been summed up as:

- *Protect the public interest*
- *Promote trust and confidence*
- *Provide consumer protection*
- *Provide a fair marketplace.*

Based on our comprehensive Review of the Alberta Motor Vehicle Industry Council, it is our belief and finding that there continues to be a need to regulate the automobile industry in the interests of it and the general public. The impetus for an organization like AMVIC is as clear today as it appears to have been when it was first considered in the mid-90's and constituted in 1999. AMVIC regulates a large and important industry: it has over 7000 licenced businesses and 10,000 registered salespersons; the businesses involved are reported to impact the Alberta economy to the tune of \$30 billion per annum.

We note that this is a relatively “new” organization with an impressive list of accomplishments in its resume. The fact that it has a number of challenges as identified in this Report is not surprising given its varied objectives and audiences; the fact that it requires a “mandate refresh” is apparent to the Government (on behalf of the public) and to the industry.

Our Report points to certain key observations:

- There have been considerable challenges along the way
- AMVIC's evolution as an organization has been fraught with various mis-steps and negative media coverage
- Its roles and responsibilities are significant, multi-faceted and challenging

- Regulation of any kind runs the risk of naysayers (often those in the industry) based in part on the view that the “good guys” are being regulated whereas the “bad guys” are getting away with poor performance
- AMVIC is slowly gaining more widespread recognition as a result of its communications initiatives which is good for the industry and public alike
- Its governance system is somewhat convoluted and needs to be streamlined.

8.1 Revisit the Core Purpose/ Desired Outcome

Our advice is to **begin at the beginning**: to examine the basic purpose of AMVIC and declare it to be what society needs and will support; or to re-position it in some other iteration.

While this comprehensive Report has focused largely on issues which were brought to our attention in the course of our study, we would be remiss if we did not point to a very important “bottom line”: there is a need for regulatory functioning on behalf of the Government, consumers and industry alike. The fact that it has this audience means that it will always experience some degree of friction and perhaps strife. Very few people appreciate being regulated by someone else or something else. And yet, this regulation is needed so that society is afforded protection from abuses by those who have difficulty living up to an acceptable standard.

Having conducted this comprehensive review, it is our judgment that there continues to be an obvious role to be played by such an agency.

As we understand it, the core purpose is summed up in the AMVIC mission and mandate statements. These follow:

Mission

AMVIC's mission is to protect the public interest and promote trust and confidence in the motor vehicle industry through heightened awareness and the fostering of a positive exchange of information among industry stakeholders.

Mandate

The mandate of the organization is to provide consumer protection in Alberta's motor vehicle industry through mandatory licensing for motor vehicle businesses and salespeople as required by the Fair Trading Act of Alberta and to provide a fair marketplace for automotive consumers and businesses.

These are not simple objectives as has been witnessed in some of the high profile auto failures. They demand vigilance by the public and by the industry. While this indicates that the Government needs to be involved through legislation/regulation and monitoring, it also seems appropriate that the industry be expected to play its role and make its contribution through funding and governance.

8.1.1 Advantages of the Mission and Mandate

There are **advantages** to the automotive industry:

- The confidence of the public is dependent upon knowing that there are rules in play for everyone
- That confidence is increased when there is a sense that Government has set the rules (through legislation and regulations) and that there is fairness in their application
- A major personal investment is (or should never be) treated lightly; consumers are far more likely to make that decision where there is trust in the service provider
- Through industry reporting and public vigilance those who do not abide by the rules are likely to be found out and subject to realistic penalties
- Through an effective communications/education focus, the public becomes aware of potential breaches of the law and unethical

practices and thereby becomes better able to advocate for themselves; this form of public monitoring is of great benefit to the industry

- Over time, and through continual vigilance, unfair and unethical practices are rooted out as the industry is viewed as more transparent
- Those who are unfairly treated, have the potential of being awarded a level of compensation which helps to reduce the sting of shoddy, irresponsible and financially unfair practice.

8.2 Governance Model

There are options. At the request of the Government we considered them: we started essentially with “begin again” and then examined whether the system and structure works or whether it would be better to design an entity closer to the current “ABC” (agencies, boards and committee) model reflected in numerous current Government entities or as some other iteration. While the ABC model has a number of advantages to the Government, recent discussions and decisions would augur against the creation of a new one if the advantages are not overly significant.

Government of Alberta Models of Governance

According to the Alberta Public Governance Agencies report, “*Alberta’s public agencies can be divided into 5 categories:*

1. *Regulatory/Adjudicative*
 - *regulatory agencies license, make rules and/or oversee a sector (e.g. the Agricultural Products Marketing Council). Adjudicative agencies make independent, quasi-judicial decisions (e.g. the Metis Settlements Appeals Tribunal). Some public agencies may perform both regulatory and adjudicative functions (e.g. the Natural Resources Conservation Board).*
2. *Public Trust*

- *agencies administer provincial financial and/or other assets in the public interest. Examples include the Alberta Investment Management Corporation (financial assets) or the Alberta Foundation for the Arts (other assets).*
- 3. *Corporate Enterprise*
 - *agencies provide or sell goods or services to the public in a commercial manner (e.g. Alberta Treasury Branches).*
- 4. *Service Delivery*
 - *agencies provide and/or direct government services (e.g. Alberta Health Services Board and the boards of post-secondary institutions such as the Board of Governors of the University of Alberta).*
- 5. *Advisory*
 - *agencies provide advice to government (e.g. Northern Alberta Development Council)."*

Based on this description and recognizing the “Society” form of governance, AMVIC would fall into the *Regulatory/Adjudicative* category. AMVIC has the authority to oversee the adherence to the regulations established by Government and to make independent, quasi-judicial decisions.

The “begin again” avenue has two major options:

Option “A”: Create an Alberta Auto Industry Regulator

This option would necessitate the following:

- rescind the Delegation Agreement with AMVIC
- negotiate changes to the Society bylaw
- the Government establishes a new “regulatory/adjudicative agency” (similar to the Natural Resources Conservation Board)
- empower this new entity under the Fair Trading Act to take on the mandate of AMVIC

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- Government transitions AMVIC's current delegated responsibilities to this new agency
- current Society members provide their input through their respective provincial associations.

It would have the advantage of:

- a fresh start
- a consumer driven model rather than industry (which is where AMVIC began)
- a delegated regulatory body with a governing board and a supportive administration
- appeal panels for challenges to administrative decisions
- a separate panel/members of the board to hear appeals to the Compensation Fund

The disadvantages would include:

- dismissing a currently functioning organization which has a track record of progressively becoming better known and more effective
- creating a new organization with all of the attendant issues which surround that and no promise that it will somehow "work better"
- convincing industry once again that this new entity will address all the "problems" they have identified with its former iteration

Option "B": Return the administration aspects of AMVIC to Service Alberta

This option would necessitate the following:

- recruit the staff (presumably transferring most from AMVIC)
- increase the payroll of Service Alberta (AMVIC's budget is approximately \$6M/year)
- remove any board oversight
- request a change in the bylaw so as to reflect the Society as an advocacy body only.

The advantages would appear to be minimal:

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- more consistent Government control and interpretation of the legislation

The disadvantages would likely include:

- less industry support; more resistance to a non-industry model
- more Government direct cost
- transfer issues relative to employees from AMVIC to Service Alberta and
- ongoing (and perhaps greater) arguments over the use of the auto levy of \$6.25.

Other options include:

Option C - Retain AMVIC/the current model

This option would result in:

- Accepting the observation that it is different and somewhat convoluted
- Addressing any perceived inadequacies or changes through bylaw amendments as needed (i.e. similar to what is done now)
- Focusing any change efforts on strengthening the administrative aspects.

The advantages would appear to be:

- a degree of comfort in knowing the issues and concerns
- various improvements have been made along the way and so would be retained
- the governance model however difficult to interpret is at least known
- continued Government control and interpretation of the legislation

The disadvantages would likely include:

- continued challenges vis-à-vis the governance model by industry, Government and AMVIC
- current frustrations regarding Government oversight
- the opportunity for any substantive change would have been bypassed.

Option D - Retain a Refreshed/Revised AMVIC

This option would result in:

- negotiating changes to the Society's powers so that they are limited to that of reviewing any Board-proposed bylaw amendments; receiving the

annual report and business plan from the Board; and recommending to the Board any changes in Society members on the Board

- separating the Society from its governance board (which currently adds an unnecessary layer of complexity)
- adjusting the Bylaw which features a Society of industry members (the majority) and the public (the minority) supported by a Board of Directors of industry members (the majority) and the public (the minority)
- all other governance and operational decisions would be made by the Board, including the authority to change the bylaws once the Society had received notice of the changes and an agreed upon time limit had passed to receive any suggestions relative to the proposed changes by the Society
- current Society members provide their input through their respective provincial associations.

The advantages would appear to be:

- convoluted and poorly understood governance model will be replaced
- the board will have the authority to act rather than refer to the Society for approval of any bylaw changes

The disadvantages would likely include:

- potential for pushback by Society members depending on how this is communicated

We recommend “Option D - Retain a Refreshed/Revised AMVIC” as the basis for moving forward

As this option requires change to the structure and role of AMVIC, the recommended changes are outlined as being:

- Negotiate changes to the Society bylaw in order to strike a balance in its governance structure (i.e. industry/public representation) which reflects its duty to enforce the Fair Trading Act (and other statutes) on behalf of the Government. (We note that it has moved towards this position over

the years by increasing the number of public representative positions on the Board).

- The Society, Board and Government should be deemed to be partners in the design through:
 - Reviewing and amending the bylaw to ensure that the society cannot interfere with the performance of the delegated activities or operational matters and authorities accorded to the board (i.e. the society would retain the authority to review any Board-proposed bylaw amendments; receive the annual report and business plan from the Board; and recommend to the Board any changes in Society members on the Board
 - Reducing industry membership and industry-at-large positions by one thereby creating a balance of industry/public positions in its membership (6 industry/industry at large; 6 public)
 - Industry members of the Board would include one representative of each of the current Society members as nominated by the current Society members and approved by the Board; consideration must be given to those who would plan to remain on the Board for the full term(s)
 - Allocating the authority to the Minister to appoint someone to the position of chair of the Board
 - Elevate Chair of the Board to a part-time position (such a person would be identified through the Government's own model (i.e. the Alberta Public Governance Agencies recommended approach) which should result in a qualified and independent person being appointed by the Minister.

Other recommended changes would include:

- Increase terms of every member to three years

- Change the term limits for members on the revised Board to reflect a maximum length of service of 4 terms (12 years) (which will be deemed to include any years spent as Chair or past-Chair)
- Enable any member having been appointed part way through a term (due to the retirement or resignation of a current member) to serve his/her full term allowance of 12 years
- Follow the public agency appointment process recently established by the Government relative to current public members seeking to complete their term allocation
- All appointments (other than the Chair) once made will be subject to the Board's own policies with respect to their reappointment
- Industry and industry at large appointments will be recommended to the Board by members of the Society; public-at-large appointees will be appointed as a result of the Alberta Public Agencies Governance regulations
- Reduce the Board committees to four (4); Executive (includes HR and Audit), Consumer Concerns; Investigations & Enforcement, Communications & Education
- Rotate their membership at minimum every two years; ensure an equal number of industry and public representatives on each committee; require written reports circulated to all committee members within 48 hours of a meeting; provide all Board members a written report from each committee in the agenda package for each Board meeting.

8.3 Tone at the Top

One of the most critical aspects of any organization is the sense of trust and confidence displayed at the top of the organization in terms of the style, capability and capacity for leadership. Organizations like AMVIC are complex both in terms of its governance and its service delivery. It is not a simple, straight-forward system and thus functions well only to the extent that it is

confident that its leaders are guiding appropriately and ethically. This leadership begins, in our opinion with the Board Chair and his Board colleagues with respect to the policy, governance tone which they illustrate through their decisions, decorum and sense of “doing what is right”.

The tone is also established by the Chief Executive Officer who has a critical connecting role between those governing and those managing the organization. This tone is reflected in a whole series of interdependent management functions (i.e. team meetings, performance reviews, encouragement, discipline, etc.) and attitudes and will in turn be reflected outwardly by how managers liaise with each other and with the audiences being served. The CEO will either be supportive or critical, trusting or suspicious, calm in the face of upsetting circumstances or flustered and anxious.

As well, the relationship between the Board as a whole and its CEO will be a key determinant in how well AMVIC as a total system functions. The Board is dependent on receiving quality and timely information from its chief policy advisor; that is how it makes decisions in which the Board places its confidence. This is why it is essential that the Board conduct regular performance reviews of its CEO and why the CEO needs to be an active participant in the process. If candour is the order of the day then issues can be identified and dealt with in a professional and timely manner.

At the same time, we believe that AMVIC as an administrative organization needs to improve. Based on our observations and what we were informed of through the interview process, senior management still has some distance to go in order to become a quality leadership team. Considerably more effort needs to be spent on developing collegiality and sharing information designed to enhance overall performance. While we respect the fact that senior managers prefer to hold onto their roles and guard them jealously, the good of the system requires enhanced ongoing communication including shared problems and solutions. Hiring experienced managers in their own field is not sufficient: they need to

understand that their performance is graded based on how the team as a whole performs, and not on their individual performance in one component of AMVIC. Connected to that observation is the absence of trust in AMVIC. Without prompting, we had quite a number of staff who approached us during the interviews and later by phone calls and e-mails to express their displeasure with their senior managers. While some of that can be attributed to either personal styles or a boss demanding better work done on specific files, the underlying tone should be of concern.

8.4 Legislation

The legislation is the basis on which decisions made by AMVIC rest. Such a framework is fundamental to a healthy industry and a protected public/consumer. Where legislation is broadly written or unclear, regulations clarify expectations and fill in the picture.

Our Report has identified the legislative basis for what and how AMVIC is established to do. Much of that base is derived from the Fair Trading Act and a Delegation Agreement. The Fair Trading Act was last substantively amended in 2006, seven years after it first came into effect. It is not surprising that there are efforts to have it reviewed now to determine if certain legislative changes might improve its effectiveness.

We believe that much of what ills the auto industry can be tackled through enhanced public awareness provided that the legislative, governance and administrative frameworks are functioning as they should. This requires ongoing monitoring and making adjustments as necessary.

. That calendar may not need to be adjusted as there are steps that AMVIC can take as a Society, Board and administration irrespective of legislative amendments.

The changes to legislation when that does come needs to include a fulsome review by a panel (**Auto Regulatory Legislative Review Panel**) of those representing: AMVIC, the consumer, industry, legal, governance, regulatory

organizations and Government of Alberta. Such a panel should be constituted now and empowered to assess the requests for legislative change made by AMVIC and the responses to date by Service Alberta.

8.5 Role of the Public

A review of the membership of the Society and Board provide clear indication that some changes are required. The Society membership is a function of the five Associations who hold membership and who nominate their choice of member to the Society; together with four public members selected from and by the Public-at-Large Members of the Board. As long as there is a Society under the present terms and conditions that is likely to remain as it is.

The composition of the Board needs to be re-thought and recast. This assessment also points to the obvious: those who are being protected from industry malpractice (the public) are the least observable (nearly absent) in any governance role. While there are a number of good reasons for their absence at any decision-making table, the public (consumer) needs to be involved at the senior most levels. The Board must include balanced membership to ensure that both the public and industry have a seat at the table where consumer redress (remedy and compensation) is being discussed. Further, public members should have complementary board governance skills (do not require an industry background) to understand, consider and decide on the issues. Presumably, there would be many potential candidates from a broad swath of public roles who would add a voice of reason, careful thought and independence to governance discussions. Equally though, the Minister needs to recognize the need for these people in a timely manner (given the current recruitment process).

Public presence could be achieved through:

- Ensuring that the APAG recruitment process and template is followed
- Ensuring that the current members of the Board have been consulted with respect to the type (qualifications and experience) of prospective members is ascertained

- Utilizing an external source to actually find the right candidates and recommending these as is laid out in the APAG information

The second mechanism for ensuring “public presence” is to request through a change to the Society bylaw that the **Minister make the appointment of chair** of the Society/Board. This again would follow the APAG process in terms of the search process and would be up to the Minister to select from a short-list of qualified candidates.

8.6 Role of Government

During the course of this review, we were presented with two very different portrayals of the role and influence of Government (as represented by Service Alberta). The one was as a result of the interviews we conducted with AMVIC Board, Society, management and staff and it was generally negative; that is, Service Alberta was often portrayed as the oversight body who would not be pleased with the efforts of AMVIC regardless of what the latter felt was being achieved. The second experience was our own wherein we were well-received and professionally treated. The staff were courteous to a fault and helpful on a wide number of inquiries and requests for assistance. The former seemed to us to be more institutional; the latter collegial.

In order for both the Government and AMVIC to be well-served, AMVIC needs to be recognized as a necessary service delivery system which functions in the best interests of the industry, but which also is essential to the confidence of Albertans in this particularly important and well-utilized sector. In order for that to occur, we believe that the role of Service Alberta needs to be understood as both the keeper of the legislation/regulations but also the enabler of good governance and management practices by AMVIC.

Service Alberta also needs to consider how it will change. Its modus operandi ought to reflect a traditional style of “we are here to assist you fulfill your roles” as opposed to “we are here to catch you when you do not”. Oversight is as much about facilitating to a commonly-desired endpoint as it is about correction.

The model of industry self-regulation (with public representation and Government oversight) is a proven one for other Alberta sectors and professions. Like others which are self-regulated, the onus should be placed on the leadership/ governance group to ensure that it is helping to develop a business environment where it can thrive and the public can be assured of fairness and prompt resolve of glaring deficiencies.

Having the industry “pay” for the privilege of being regulated actually makes a good degree of sense. Sound and effective regulation is “their” financial and business safety net. Having the consuming public contribute to that through a very minor charge/levy on a vehicle purchase justifies the provision of a “compensation fund” set aside for those who have been egregiously aggrieved through shoddy or illegal practices. This role issue is critical and needs a strong linkage (and legislation) to make it work well.

8.7 Separation of Roles

Currently, the CEO is expected to be the senior manager of the entity (AMVIC) and thus responsible for providing direction and oversight to the day-to-day activities and decisions of the management (and organization) while also assigned as the arbiter on appeals. This is an almost contradictory role and certainly one with built in conflict. One cannot be responsible for guiding investigations (or at least the investigators) and then being in a position to rule on the disposition of the investigative charges.

The need to separate the roles has been recognized previously by both AMVIC and Service Alberta but has yet to find its way to resolution. The arbiter of the system and the decisions it makes impacting dealers, salespersons, business owners and consumers should be the charge of a Registrar supported by an independent appeal panel.

The CEO should manage and provide oversight to the administrative system. He should be aware of what is happening at all times and able to guide workloads and assignments as needed. He should also be aware of what his investigators

are doing and ensuring that proper protocols are being followed. He cannot do that and maintain any neutrality in his current role as he acts as the “registrar” at the end of the process.

The appointment of a Registrar would require a careful recruitment process with the focus being on someone with suitable experience, maturity and judgment. While this might be someone internal to AMVIC, their present duties would likely have to be reconstructed to afford both the time and space to serve in an impartial role. This person would report to the CEO on internal administrative matters but be separate from the CEO on specific Registrar duties (and report to the Board via the Chair). He/she would also be functionally separate from the investigations functions/personnel.

The Registrar would need to:

- Have a thorough understanding of the Fair Trading Act and its regulations to ensure that his/her findings are within his/her regulatory authority
- Have the capability to carry out Administrative Actions
 - Signing Director’s Orders (eg: telling a business that they must stop selling vehicles if not licenced)
 - Reviewing, approving/rejecting Application Reports wherein an Administrative Penalty or Undertaking and/or face to face reviews are recommended
 - Determining the dollar value of an Administrative Penalty and Undertaking based on precedence/case law and/or severity of the infraction
 - Negotiating Administrative Penalties and/or undertakings
 - Sit as an impartial mind during Administrative Reviews to hear the arguments of AMVIC and the stakeholder as it relates to if an AMVIC licence/registration will be;
 - Refused
 - Cancelled

- Suspended
- Granted with conditions
 - Obtain further information regarding the applicant as required
 - Be the author of letters from the Registrar's desk that report his/her findings.

8.8 Role of the Chair

The current design includes a traditional and minimal role for the Chair of the Board. That person coordinates the Board's "voice"; he (in this case) speaks on the Board's behalf; chairs meetings of the Board and of the Society; speaks at various industry events; is asked to meet on occasion with the Minister, Deputy Minister and other Service Alberta officials.

With direction from the Board, the chair represents the Board and its interests in dealing with the minister, department, stakeholders and community. The chair is responsible for providing leadership for the Board in facilitating its work.

If the model were to be strengthened as we have proposed, the role of Chair would be enhanced as the head of a balanced board (six members drawn from the industries represented; six members from the public-at-large). The position of Chair should, in our opinion, be appointed by the Minister after a comprehensive search has taken place.

The role would include responsibility for chairing any appeal panels on FTA decisions; chair the Compensation Fund panel; recommend policy changes to aid the Board in its direction to the CEO; advise the Minister (through the Deputy Minister) as to what changes the Board has been making in its structure/organization and approach to issues; report on the overall performance of the Board in delivering its mandate and business plan; ensure proper separation of the quasi-judicial review process from other Board operations; approve and submit accountability documents required by the Minister such as business plans, financial documents, reports, performance

standards; and build understanding and trust through polices, multi-stakeholder consultations and clear communication.

8.9 Administrative Improvements

Reviews of this type cause many people and agencies to rethink what is needed/ what has gone wrong and why? As noted in the foregoing analysis above, AMVIC has a number of foundational pieces which work well and can be built upon. Some new resources are required and some strategic pieces are needed in the re-design of governance for a sustainable vehicle industry monitoring and enforcement system. That means designing the agency for a purpose and reducing the constraints and bottlenecks. We have identified and verified a number of these problems.

Moving to action is also important. The vehicle industry is dynamic and a very large industry (said to be \$20 billion to \$30 billion annually). A number of internal resourcing changes can be made. Other actions will need some further work on governance and structure and modernized/ improved legislation.

Management needs to be clear on expectations. Good practice cannot be expected without being shown or taught. Simply believing that the staff who are experienced in other venues will somehow be able to walk in and with a minimum of orientation be able to seize hold of a fairly significant slice of the workload is not justifiable or good management.

File management needs to improve particularly where a number of the staff are allowed to work out of their home office. The file workload for each needs to be monitored; investigative practices need to be continually refined.

Service Alberta needs to be careful in how it responds to the trap of believing all messages coming their way from disgruntled employees. While matters of significance need to be addressed, it seemed to us that certain employees have for whatever reason become poisoned in their relationship to management and are determined to do whatever possible to undermine their authority. This needs

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to be of concern to AMVIC management whose right to manage is being compromised.

AMVIC has one major partner: the Government of Alberta as represented by Service Alberta. Its success is dependent in many ways on maintaining that relationship in a healthy state. This is not now the case and that is recognized by the Board and administration of both entities. It needs to be.

There are several key structural (organization design) changes which ought to be considered:

- (a) Create the position of Manager of Human Resources responsible for performance management, compensation planning, benefits coordination, HR policy oversight, position classifications, employee assistance programs, FOIP management, and organization development. Separate the position from that of Chief Financial Officer.
- (b) Separate the CEO role from that of Registrar; the latter position should report to the CEO in a traditional sense: with respect to the hearing of appeals, the position should be directed by the FTA and report to the Board via its Chair.
- (c) Enhance the position of Chair by creating role expectations of 20 hours per week which will include oversight to the Registrar position purely on the appeals function.

The revised structure would reflect a senior management team of the following key functions:

- CEO
- Senior Manager, Investigations
- Senior Manager, Licensing & Consumer Services
- Director, Communications and Education
- Director of Fair Trading (Registrar)
- Director, Legal Services
- Senior Manager, Corporate Services (Chief Financial Officer).

While there is an argument to add more resources to this structure (e.g. Chief Operating Officer), the changes which we have recommended should be

sufficient at the moment and will take time to factor into the current system and mode of operation.

8.10 A Summary Note

While this comprehensive Review has focused largely on issues which were brought to our attention in the course of our study, we would be remiss if we did not point to a very important “bottom line”: there is a need for AMVIC as a delegated regulatory organization functioning on behalf of consumers and industry alike. The fact that it has this two-fold audience means that it will always experience some degree of friction and perhaps strife. Very few people appreciate being regulated by someone else or something else. And yet, this regulation is needed so that society is afforded protection from abuses by those who have difficulty living up to an acceptable standard.

The role of Government is that of oversight and protection of the well-being of our society. It does this in a multitude of ways:, through laws, regulations, management oversight, checks and balances and through delegating some of that responsibility to others along with the clout/authority to operate and the responsibility to report and account for decisions made.

It is our view that AMVIC, with the enhancements noted, has the ability and capacity to fulfill its role.

9.0 Recommendations

Circulation of Report

1. We recommend that, at the direction of the Minister, this Report be provided to the Board of AMVIC and to Service Alberta and that an Executive Summary be made available to the staff.

Purpose

2. We recommend that the purpose of AMVIC be reaffirmed as stated in the current mission and mandate statements.

Legislation

3. We recommend that Service Alberta create an “AMVIC Legislative Review Panel” consisting of representatives from AMVIC, the consumer, industry, legal, governance, regulatory organizations and Government of Alberta. Such a panel should be mandated to conduct a thorough assessment of the current legislative/regulation regime and propose any changes designed to strengthen the system; enable it to be implemented effectively; and ensure that consumer interests are met.
4. We recommend that AMVIC create the position of Registrar who will report on administrative matters to the CEO; and on regulatory matters to the Board Chair (acting on behalf of the Board); will act independently of the Chief Executive Officer in his/her Registrar duties; and who will be authorized by the Board to undertake:
 - i. registration and licensee systems
 - ii. enforcing the requirements of the legislation regarding the motor vehicle industry
 - iii. investigation of complaints and application of claims for compensation

- iv. presentation of processed and/or investigated claims for compensation to the Board of Directors serving as the Compensation Fund Appeal Panel
- v. provision of advice to the Board and to the Manager of Investigations on compliance issues as required.

Governance

- 5. We recommend that the Society bylaw be amended; that it provide for the Board to have equal industry and public representation.
- 6. We recommend that quality public members be recruited from a range of backgrounds external to the industry.
- 7. We recommend that the bylaw be amended so as to enable the Minister to choose the Chair based on the Alberta Public Governance Agencies profile/requirements.
- 8. We recommend that the position of Chair be appointed as a part-time role (20-30 hours a week) with reasonable compensation.
- 9. We recommend that the principles and bylaw basics be reviewed (Section 6) and incorporated as applicable in any bylaw/legislative changes.

Staffing/Organizational Issues

- 10. We recommend that the role of Manager, Human Resources be created as a direct report to the Chief Executive Officer.

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- 11. We recommend that steps be taken to re-focus the relationship of both AMVIC and Service Alberta such that it is designed to be a partnership and less adversarial.

Role Clarity

- 12. We recommend that the position of Registrar reporting to the CEO (for administrative matters) (and Chair)(for regulatory matters) be created.

Chief Executive Officer

13. We recommend that the CEO develop an “IT Review Team” drawn from across the organization to assess what steps should be taken to enhance AMVIC’s IT capabilities, staffing and controls.
14. We recommend that the role of the CEO be redefined based on the findings of this Report to reflect adequate role separation; clearly defined performance indicators; with the core responsibilities that of principal policy advisor to the Board and leader of the administrative organization.
15. We recommend that increased focus be placed on strengthening the degree of cohesion/collegiality which would improve overall administrative performance.
16. We recommend that the Board through its HR Committee provide the CEO with its findings relative to CEO expectations and performance.
17. We further recommend that the Board take the necessary steps to restore confidence in the administrative leadership and direction which are central to the transformational changes we have recommended.

Alternate Dispute Resolution

18. We recommend that AMVIC place increased emphasis on Alternative Dispute Resolution as the preferred course of remedy where that process can be applied. Care should be exercised to ensure that this process does not conflict with investigations or administrative law.

Licensing

19. We recommend that the legislative review ensure that all automotive businesses that should be licensed are required to be licenced. This will enhance consumer protection and level the playing field in the industry.

Communication

20. We recommend that continued attention be placed on the important roles played by the Communications department in getting the message of AMVIC out to the public, including into the smaller Alberta markets.

Compensation Fund

21. We recommend that the Compensation Fund be amended to be developed as an ongoing sustainable fund based on:

- i. set portions of revenue from licenses, levies and fees from the motor industry being allocated to the Compensation Fund,
- ii. maximum Compensation Fund limits, minimum Compensation Fund limits, the maximum claim per licensee limit (although the use of this limit and the delays it creates should be reconsidered), the individual claim limit and the level of licenses, levies and fees providing revenue to the Compensation Fund, and the proposed rules applying to the Compensation Fund, be set considering the advice to the Minister and AMVIC provided by a professional actuary, experienced in the application of the mathematics of finance, statistics, and risk theory, to regulatory programs, and
- iii. an actuarial review of the Compensation Fund sustainability be undertaken every 5 years.

22. We recommend that the Compensation Fund be placed under a separate and independent Board of Trustees, composed of an equal number of consumer and industry representatives, with the sole authority to:

- i. determine if a claim is valid or ineligible, and pay a valid claim,
- ii. authorize the recovery of claims,
- iii. approve the payment of administrative costs to the AMVIC society, and fund consumer and industry education programs.

23. We recommend that the Compensation Review Panel/Board of Trustees be requested to review past Fund appeals with a more flexible, open-minded approach and the authority to properly review claims perceived to be unworthy due to date of claim.

Appendices

10.0 Appendix A - Terms of Reference

OBJECTIVES

The objectives of the review are set out in the following prioritized list:

1. Determine whether board governance and operations are ensuring appropriate oversight of AMVIC.
2. Assess the organization's human resources strategy, processes and issues.
3. Assess the effectiveness of the management and general administration of AMVIC.
4. Evaluate roles, responsibilities and relationships between the board and senior management, as well as the board's and senior management's understanding of roles and responsibilities.
5. Assess whether AMVIC is implementing recommendations to address concerns raised from prior reviews, such as those pertaining to investigative and enforcement practices.
6. Determine whether AMVIC's protocols, policies and procedures adequately protect consumers.
7. Evaluate the compensation fund, including whether current limits on payments to consumers provide appropriate redress, if the current funding formula enables ongoing maintenance of the fund, and any relevant comparisons to other consumer protection funds.
8. Determine whether the current funding formula achieves the right balance of revenue sources between licensing fees and the industry levy to ensure the proportion of AMVIC's revenue funding operations and the compensation fund is fair to industry members.
9. Determine whether AMVIC is appropriately sized and skilled to carry out its delegated functions, duties and powers and if AMVIC is carrying out activities that are not within its mandate.

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10. Assess whether the current revenue generated provides a sufficient budget for an organization with an appropriate size to deliver AMVIC's delegated functions, duties and powers.
11. Evaluate the extent to which AMVIC has established structures and processes that enable organizational learning and continuous improvement.

11.0
