

## You Can't Rely on a Motor Vehicle's Mechanical Fitness Assessment

**By: Jonnette Watson Hamilton**

**Case Commented On:** *R v 954355 Alberta Inc (The Fast Lane)*, [2016 ABPC 229 \(CanLII\)](#)

The Fast Lane, a used car dealership in Calgary, was charged with three offences under the *Fair Trading Act*, [RSA 2000, c F-2](#). It was found guilty of misleading and deceiving the customer by representing that the 2006 Mazda she bought was in roadworthy condition, but not guilty of the other two offences. The Fast Lane had argued in its defence that it had relied upon the Mechanical Fitness Assessment required by the province's *Vehicle Inspection Regulation*, [Alta Reg 111/2006](#). Judge Heather Lamoureux concluded The Fast Lane's representation of roadworthiness was not intentionally misleading. However, she held that the used car dealer could not rely on the Mechanical Fitness Assessment for its opinion on roadworthiness because that Assessment did not speak to roadworthiness. A car buyer should not rely on that Assessment either. The Mechanical Fitness Assessment is yet another disappointment in the operation of the troubled Alberta Motor Vehicle Industry Council ([AMVIC](#)), which regulates motor vehicles, including their sale and repair, as well as the licensing of dealer and repair facilities in Alberta.

In June 2015, the customer who eventually purchased the 2006 Mazda, which had 240,000 kilometers on it, visually inspected the car and took it for a short test drive. She received a Mechanical Fitness Assessment from the salesperson she dealt with, who noted that three items were said to be "non-compliant" on that Assessment: the wheels, the ball joints, and the windshield. The salesperson told the customer the Mazda was "in roadworthy condition" and "safe and roadworthy" (at paras 3, 18). The customer assumed that The Fast Lane had performed a vehicle inspection and took responsibility for ensuring the fitness of the vehicle. Therefore, she assumed that she did not need to get an independent assessment. She was wrong.

The day after she bought the Mazda, the car would not start. The battery was the original one and a new battery was needed. Just two weeks later, after driving about 900 kilometers, the Mazda suddenly stopped and would not start again. After unsuccessfully trying to give the car back to the Fast Lane, the customer parked the car. A month later, in August 2015, the customer was moving and tried to drive the Mazda from her old home to her new home. There was a sudden bang, oil spilled all over the road and the engine quit. The Mazda was towed to her new home and never driven again; it does not start and is not driveable. A piece of metal was found in the engine block and an independent mechanic told the customer a new engine was needed. The end result was that the customer spent \$4,350 to go about 900 miles.

Judge Lamoureux found that at the time of the sale the Mazda was not roadworthy and was not fit for the purpose for which it was intended (at para 9).

The only assessment of the vehicle that was done before it was sold by The Fast Lane was the Mechanical Fitness Assessment (at para 6). An officer from AMVIC testified that the Mechanical Fitness Assessment is a condition precedent to sale of a used vehicle by a licensed

dealer to a consumer. It is required by section 15(1) of the *Vehicle Inspection Regulation*, [Alta Reg 111/2006](#), which states:

15(1) Subject to subsection (2), a dealer in used motor vehicles shall, before entering into a contract to sell a motor vehicle, give to the buyer a used motor vehicle mechanical fitness assessment that contains the following:

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

The Mechanical Fitness Assessment is completed by a certified journeyman technician and prepared for the dealer and, eventually, the buyer. AMVIC created the mandatory report form that is to be used for the Mechanical Fitness Assessment. That one-page form, which is available [here](#), provides spaces to input all of the information required by section 15(1). The form appears to list numerous parts of a vehicle and state whether each part “complies” or is “non-compliant”. Judge Lamoureux agreed that, on its face, the Mechanical Fitness Assessment purports “to be a representation as to the road worthiness of a motor vehicle” (at para 10). However, she stated that there are “fundamental flaws and omissions” in the Mechanical Fitness Assessment and section 15(1) of the *Vehicle Inspection Regulation* which requires it (at para 10). According to Judge Lamoureux:

the regulation itself omits any requirements to undertake a roadworthiness assessment of the powertrain, accelerator, fuel system, exhaust, transmission, clutch, fluid levels for the power steering and brakes, the CV joints and the front/rear/spindle axles — all of the fundamental operating aspects of a vehicle. (at para 10).

The Mechanical Fitness Assessment form does require an assessment of the components of the powertrain that Judge Lamoureux listed, but not the engine. All of listed parts of the powertrain do have to be assessed as “complies” or “non-compliant”. The problem which Judge Lamoureux pointed out is that the *Vehicle Inspection Regulation* does not set any standards for judging the powertrain components.

The same is true of the section of the form titled “Electrical”, which includes wiring, battery, switches and alternator. Those electrical components also must be assessed as “complies” or “non-compliant” but the *Vehicle Inspection Regulation* sets out no criteria for assessing them.

Why the 10-year-old battery in this case was assessed as complying, and with what it was supposed to comply with, is not specified.

The *Vehicle Inspection Regulation* certainly does set standards or criteria for assessing many of the things listed on the form: all of the various lamps, some instruments, the brakes, the steering, the suspension, the diagnostic codes, the frame and body, the tires and the wheels. For example, section 53(1) adopts SAE Standard J1703 and SAE Standard J1705 for hydraulic brake fluids. See sections 4 to 83 of the *Vehicle Inspection Regulation* for the entire list of standards and criteria.

The AMVIC website says that “The standards to be utilized when conducting a vehicle Mechanical Fitness Assessment is to use the original equipment manufacturers specified wear limits for compliance” (at para 13). However, there is nothing on that form or in the regulations that requires compliance with the manufacturer’s wear limits.

Because of the peculiar disconnect between the *Vehicle Inspection Regulation* and the Mechanical Assessment form, Judge Lamoureux determined that the Mechanical Fitness Assessment is not a representation that the engine and the powertrain of the vehicle are roadworthy or fit for the purpose of operating on a highway (at para12).

The Fast Lane was found guilty not because it relied upon the Mechanical Fitness Assessment and, by giving it to the customer, induced her to rely on it as well. They were found guilty because their salesman told the customer that the Mazda was “in roadworthy condition” and was “safe and roadworthy.” Therefore, the customer relied on both the Mechanical Fitness Assessment and The Fast Lane’s representations of roadworthiness. And it was the latter representations that were misleading and deceptive and therefore contrary to section 6(4)(a) of the *Fair Trading Act*.

For used car dealers, the lesson to be learned from this case is that they should not make any representations about the roadworthiness of their used cars. Not to be too cynical, but they should simply hand their customers the legally-required Mechanical Fitness Assessment and rely on that form’s long and official-looking list of “complies” and “non-compliant” components to give customers the impression their vehicles are fit for the purpose of being driven on the road. (And they should rely on a sales contract that excludes liability under the *Sale of Goods Act*, [RSA 2000, c S-2](#), section 16(2), which would otherwise imply a condition into the contract that the goods sold are reasonably fit for the particular purpose for which the goods are required.)

For customers buying vehicles from used car dealers, they should not be taken in by the seeming comprehensiveness and meaningfulness of the Mechanical Fitness Certificate. They should have an independent assessment done by their own mechanic. *The Vehicle Inspection Regulation* and the *Vehicle Equipment Regulation* do not provide much in the way of protection for the buyer of an ordinary used vehicle (not out-of-province and not salvage).

Why would AMVIC create a Mechanical Fitness Assessment form that must be completed and given to used car dealers and their customers and that includes powertrain and electrical components for marking as “complies” or “non-compliant” without stating what those components must comply with? The AMVIC is supposed to be the government’s watch dog. According to information on its website ([here](#)), the AMVIC is a not-for-profit organization that was incorporated in 1999 “for the purpose of administering motor vehicle industry regulations as

outlined in the *Fair Trading Act*”, [RSA 2000, c F-2](#). There is nothing in the *Fair Trading Act* about AMVIC and nothing in the *Fair Trading Act* that is specific to motor vehicles. However, under section 136(5) of the *Fair Trading Act*, the Director of Fair Trading may “delegate to a regulatory board any or all of the Director’s powers, duties or functions under this Act and the regulations, except the power to approve bylaws”. The delegation to AMVIC is made under Part II of the *Automotive Business Regulation*, [Alta Reg 192/1999](#) that is made under the *Fair Trading Act*. AMVIC operates through “a delegation agreement with the Minister of Service Alberta”, doing the government’s job.

However, it has not been doing the government’s job very well for quite a few years now. See, for example, Charles Rusnell, “[Alberta Motor Vehicle Industry Council sued for negligence: Class-action lawsuit involves failed consignment sales company](#)”, CBC News, 22 June 2015. The class action law suit claims AMVIC failed to effectively regulate the auto industry’s business practices. More interestingly, as Charles Rusnell notes, the lawsuit makes a broader claim that Service Alberta failed to properly oversee AMVIC when it did not make sure that AMVIC corrected the serious deficiencies in its policies and operational conduct identified in previous government reviews. The lawsuit claims that AMVIC failed to implement the recommendations made by Service Alberta in March 2009, February 2013 and August 2014. See also Charles Rusnell and Jennie Russell, “[LuAnne Sirdiak abruptly leaves Alberta Motor Vehicle Industry Council: Investigations manager left council on Thursday](#)”, CBC News, 3 April 2015; Charles Rusnell and Jennie Russell, “[AMVIC director acted like 'tyrant,' internal draft review says: Review says John Bachinski, Alberta Motor Vehicle Industry Council director, bullied staff](#)”, CBC News, 22 April 2015. The Investigative Review Findings of the Operational Review of Investigative Practices begun in August 2014 is available from Service Alberta [here](#).

AMVIC is now being reviewed for the fourth time in seven years, but this time by the province’s new NDP government. See David Boushy and Tony Tighe, “[Province announces review of Alberta Motor Vehicle Industry Council](#)” Global News, 11 August 2016; Reid Southwick, “[Alberta launches review of how well auto sales watchdog protects consumers](#)”, Calgary Herald, 11 August 2016. The government has appointed former mayor of Spruce Grove, George Cuff to conduct a review of AMVIC. The review is expected to take three to four months and then Cuff will recommend what, if any, changes the province should make to AMVIC. Whether this review by the NDP will lead to better results than did the previous three reviews by the Progressive Conservative government remains to be seen.

---

This post may be cited as: Jonnette Watson Hamilton “You Can’t Rely on a Motor Vehicle’s Mechanical Fitness Assessment” (28 November, 2016), online: ABlawg, [http://ablawg.ca/wp-content/uploads/2016/11/Blog\\_JWH\\_Fastlane\\_Nov2016.pdf](http://ablawg.ca/wp-content/uploads/2016/11/Blog_JWH_Fastlane_Nov2016.pdf)

To subscribe to ABlawg by email or RSS feed, please go to <http://ablawg.ca>  
Follow us on Twitter [@ABlawg](#)

