



MOTOR VEHICLE SALES AUTHORITY OF BRITISH COLUMBIA
(Previously known as the Motor Dealer Council of B.C.)

**IN THE MATTER OF THE *MOTOR DEALER ACT* R.S.B.C. 1996 C. 316 AND
THE *BUSINESS PRACTICES AND CONSUMER PROTECTION ACT* S.B.C. 2004 c. 2**

RE:

DAVID KNAPP

COMPLAINANT

AND:

CROWN AUTOBODY & AUTO SALES LTD.
(Dealer License #30290)

MOTOR DEALER

AND:

JAWEED JOOYA
(Salesperson License #104873)

SALESPERSON

DECISION OF THE REGISTRAR OF MOTOR DEALERS

Appearing for the Authority:	Denis Savidan, Manager of Compliance and Investigations Holly Childs, Compliance Officer Hong Wong, Manager of Licensing Bruce Forbes, Senior Compliance Officer (April 8, 2009)
Appearing for David Knapp	No one
Appearing for Crown Autobody & Auto Sales Ltd:	Jaweed Jooya, Dealer Principal
Appearing for Jaweed Jooya	Himself
Witnesses:	Lance Stevens by teleconference (April 8, 2009) Mike Srigley (May 27, 2009)
Dates and Place of Hearing:	April 8 and May 27, 2009, at Surrey, British Columbia.

INTRODUCTION

1. A hearing was held before me where it was claimed that Crown Autobody & Auto Sales Ltd., Dealer No. 30290 (Crown), and Jaweed Jooya, Saleperson License No. 104873 (Mr. Jooya) committed a deceptive act or practice on or about June 7, 2008, contrary to section 5(1) of the *Business Practices and Consumer Protection Act* S.B.C. 2004 c. 2 (the "BPCPA"). Specifically that in Surrey, British Columbia, Crown and Mr. Jooya sold a 2005 Toyota Prius with VIN # JTDKB22U753075055 (the "Prius") to David and Keturah Knapp and represented to them that the Prius was roadworthy when it was not. The Prius was a salvage vehicle that Crown subsequently rebuilt and sold to the Knapps. It was also alleged that Crown and Mr. Jooya misrepresented the true kilometrage travelled by the Prius.

2. Due to the alleged breach of the BPCPA, the Knapps seek to cancel the contract of sale, obtain a full refund and reimbursement for certain costs associated with investigating the Prius's roadworthiness and general state of repair.

3. A Notice of Hearing was sent on March 4 and a further one was sent on May 1, 2009, to attend this hearing. Those Notices set out the allegations being made, the potential outcomes of this hearing and the right of Crown and Mr. Jooya to have legal counsel present. Those Notices were entered as Exhibits 1 and 7 respectively. Also entered at the hearing as Exhibit 2 was the Affidavit of Ms. Childs sworn February 9, 2009. A copy of the Affidavit was provided to Crown and Mr. Jooya with the first Notice of Hearing and they admitted to such. The complaint and written statements from Mr. Knapp are contained within the Affidavit.

4. Mr. Lance Stevens and Mr. Mike Srigley provided opinion evidence about the structural integrity of the Prius and the quality of its repairs.

5. While I may not comment on all the evidence that was presented at the hearing, I have considered all that evidence and given it the proper due weight.

BACKGROUND FACTS

6. On June 7, 2008 the Knapps purchased the Prius from Crown for \$17,000 plus taxes. The purchase agreement declares the Prius as being a rebuilt motor vehicle and Crown provides the Knapps with a one-month bumper-to-bumper warranty. The purchase agreement records the kilometrage as 40,188 km.

7. Crown had purchased the Prius from the Insurance Corporation of British Columbia (ICBC) as a salvage vehicle. Crown subsequently rebuilt the Prius which required it pass two inspections; a B.C. Provincial Private Vehicle Inspection (PVI) and a Structural Integrity Assessment (SIA). Pages 30 to 31 of the Affidavit Exhibits, and the documents forming Exhibit I of the Affidavit shows the Prius passing both inspections which were conducted by J-Kam Auto Repairs Ltd. of Surrey, B.C.

8. On July 10, 2008, Mr. Knapp took the Prius to a Toyota dealer for servicing where the dealer noted that the Prius's service records indicated it had at least 114,163 km as of its last service in February 2008: see Exhibit B of the Affidavit. When Crown was informed about this; its response was that it relied on the ICBC invoice it received showing 40,000 km and provided a copy of that invoice to Mr. Knapp.

9. On July 14, 2008, Mr. Knapp filed a complaint with the Motor Vehicle Sales Authority of British Columbia (the "VSA"). An investigation was commenced by the VSA with Holly Childs being assigned its carriage. During the investigation, the Knapps moved to Ontario taking the Prius with them. By Ontario law, the Prius was required to pass a safety and structural integrity assessment before being registered and insured in that province.

10. The Ontario inspection was conducted by Miltowne Collision Inc. of Milton, Ontario. Lance Stevens was the person making the assessment on behalf of Ontario. The Prius failed that inspection. Mr. Knapp updated Ms. Childs that his complaint now included having been sold a motor vehicle that was not roadworthy and could not be repaired.

11. At the April 8, 2009, hearing I heard from Ms. Childs and Lance Stevens regarding their findings about the Prius. Mr. Stevens gave detailed evidence about the state and quality of the repairs Crown made to the Prius. In short, Mr. Stevens believes the repairs to the Prius are sub-standard, do not provide the passengers the protection from an impact which the manufacture specified, and that the Prius ought not to have been rebuilt in the first place and cannot be properly repaired to the manufacturer's specifications regarding its structural integrity. Mr. Jooya and Crown challenged and questioned him about that evidence, which I will discuss in more detail below.

12. I adjourned the April 8th hearing in order to obtain evidence on the proper way of making such repairs in British Columbia. I recognized that the Ontario standards Lance Stevens was

applying may not be the same standards as applied in B.C. The hearing was reconvened on May 27, 2009, to hear from Mike Srigley who had reviewed pictures of the Prius which were discussed at the April 8th hearing. Mr. Jooya and Crown were provided Mr. Srigley's written opinion well before the May 27th hearing date. Mr. Srigley's evidence was very similar to that of Mr. Stevens and Mr. Srigley also opined that the Prius was not safe for the road. Mr. Jooya and Crown also challenged and questioned Mr. Srigley about his evidence, which I will discuss in more detail below.

ISSUES

13. Did Crown and Mr. Jooya commit a deceptive act or practice by representing to Mr. and Mrs. Knapp that the Prius was roadworthy and suitable for transportation when it was not?

14. Did Crown and Mr. Jooya commit a deceptive act or practice by representing to Mr. and Mrs. Knapp that the Prius had travelled 40,188 km when it in fact had travelled at least 114,163 km?

THE LAW

(a) Deceptive acts or practices

15. Section 5(1) of the BPCPA prohibits a "supplier" of goods conducting a "consumer transaction" from committing a deceptive act or practice. The definition of "consumer transaction" in the BPCPA is applicable to the case before me. Crown and Mr. Jooya are "suppliers" as that term is defined in the BPCPA.

16. Section 4(1) of the BPCPA defines a deceptive act or practice and a representation as:

"deceptive act or practice" means, in relation to a consumer transaction,

- (a) an oral, written, visual, descriptive or other representation by a supplier, or
- (b) any conduct by a supplier

that has the capability, tendency or effect of deceiving or misleading a consumer or guarantor;

"representation" includes any term or form of a contract, notice or other document used or relied on by a supplier in connection with a consumer transaction.

17. Under section 4(3) of the BPCPA, the B.C. Legislature has deemed certain conduct to be deceptive acts or practices. The Notice of Hearing uses the language of section 4(3)(b)(vi) of the BPCPA which states:

(b) a representation by a supplier

(vi) that uses exaggeration, innuendo or ambiguity about a material fact or that fails to state a material fact, if the effect is misleading,

18. Section 4(3)(b)(iv) also states:

(b) a representation by a supplier

(iv) that a consumer transaction involves or does not involve rights, remedies or obligations that differs from the fact,

19. Another provision that may also be applicable is section 4(3)(a)(ii):

(a) a representation by a supplier that goods or services

(ii) are of a particular standard, quality, grade, style or model if they are not

Regarding this latter provision, a representation about the Prius's roadworthiness, either by words or by conduct, speaks to its quality.

20. The case law provides guidance in the application of these deceptive act or practice provisions. In *Rushak v. Henneken Auto Sales & Service* (1991), 59 B.C.L.R. (2d) 250, (B.C. Court of Appeal) the following principles emerge:

- (a) a deceptive act or practice need not be intentional, may be inadvertent and may arise even if the supplier has an honest belief in the accuracy of the information it relays;
- (b) a deceptive act is one "that tends to lead a person astray into making an error of judgment;"
- (c) the Act must be construed so as to protect not only alert potential customers, but also those who are not alert, are unsuspecting and are credulous; and
- (d) the Act imposes a high standard of candour on a supplier of goods.

21. *Henneken* was applied in *The Consumers' Association of Canada et al. v. Coca-Cola Bottling Company et al* 2006 BCSC 863; additional reasons 2006 BCSC 1233 (B.C. Supreme Court); affirmed by 2007 BCCA 356 (B.C. Court of Appeal); leave to appeal to the Supreme Court of Canada refused (December 20, 2007, S.C.C. File No. 32248, 2007 CanLII 66731); see

also *Cummings v. 565204 B.C. Ltd dba Daewoo Richmond* 2009 BCSC 1009 (B.C. Supreme Court).

22. A deceptive act or practice is another way of saying that a supplier has made a misrepresentation about their product which was reasonably relied on by the consumer causing the consumer to make an error of judgment. A misrepresentation may be innocent, negligent or deliberate (fraudulent): *Rushak* (B.C. Court of Appeal); *Cummings* (B.C. Supreme Court); and *Bain v. The Empire Life Insurance Company* 2004 BCSC 1577 (B.C. Supreme Court).

23. A finding that a dealer has committed a deceptive act or practice contrary to the BPCPA is grounds to consider whether to place a condition on, suspend, or cancel a motor dealer's registration under sections 5, 6 and 8.1(4)(b) of the *Motor Dealer Act* R.S.B.C. 1996 c. 316 ("MDA").

(b) Burden of Proof

24. Under section 5(2) of the BPCPA, where a consumer (Mr. Knapp) provides some evidence sufficient to establish that a deceptive act could have occurred, the evidentiary burden then shifts to the supplier (Crown and Mr. Jooya) to show that the alleged deceptive act or practice did not occur.

25. In this case, if Mr. Knapp provides evidence of the Prius not being roadworthy, it would be for Crown to establish that at the time it sold the Prius, it was roadworthy or it was represented as not being roadworthy: *Cummings* at paragraph 25.

26. This provision reduces the evidentiary burden that the general law places on a person advancing a claim. It should be noted that this shift of burden only relates to the deceptive act. The civil burden of proof for a deceptive act or practice, whether innocent, negligent or deliberate, is on a balance of probabilities: *F.H. v. McDougall* 2008 SCC 53 (Supreme Court of Canada).

(c) Witness Credibility

27. Where witness credibility may be in issue, it is important to consider the various factors and principles the courts have identified to assist in determining the credibility and reliability of the evidence being submitted – see for example: *R v. J.W.R.* 2007 BCCA 452 at paragraph 73 (B.C. Court of Appeal); *R. v. R.W.B.* [1993] B.C.J. No. 758 (Q.L.) at paragraph 29 (B.C. Court of

Appeal); *Faryan v. Chorney* [1952] 2 D.L.R. 354 at 356-7 (B.C. Court of Appeal); *R v. Essex* 2004 BCSC 445 paragraphs 9-11 (B.C. Supreme Court); and *R v. Kok* 2007 BCPC 0162 at paragraph 8 (B.C. Provincial Court).

(d) Motor Dealer's statutory duty to declare "unsuitable for transportation"

28. A motor dealer is obligated by law to declare whether a motor vehicle it is selling is "unsuitable for transportation": sections 21(2)(f), 22 and 27(b) of the *Motor Dealer Act Regulation* B.C. Reg. 447/78 (the "MDA-R"). These sections are not limited by the motor dealer's "best information and belief," meaning it is a mandatory requirement and the motor dealer must inform itself whether or not the motor vehicle is suitable for transportation, and declare that to the consumer.

(e) Statutory duty to declare accuracy of odometer readings

29. A motor dealer is obligated by law to declare "to the best of his knowledge and belief" that the odometer accurately reflects the true distance travelled by the motor vehicle it is selling: section 23(e) of the MDA-R.

(f) Expert opinion evidence

30. Mr. Stevens and Mr. Srigley provided opinion evidence about the repairs to the Prius's unibody and structure, and whether, as rebuilt, it is a safe vehicle from a structural perspective. I keep in mind the law regarding the admissibility of such evidence and specifically the criteria set out in *R. v. Mohan* [1994] 2 S.C.R. 9 (Supreme Court of Canada); and as applied in *MacEachern v. Rennie* 2009 BCSC 585 (BC. Supreme Court); and *Koeth v. Slack Lumber & Suppliers Ltd. dba Robert Folsum Auctioneer* 2008 CanLII 61236 (Ont. Superior Court of Justice). If admitted, I must decide the proper weight to be given to that opinion evidence.

THE EVIDENCE PRESENTED

I. The Prius's Structural Integrity

(a) The evidence of the Complainant

31. Mr. Knapp has provided evidence in the form of written statements such as emails. One such email is Exhibit R to the Affidavit where Mr. Knapp states:

The dealer told me that the only repairs done to the vehicle were the rear driver's side. He said that it had passed a full structural inspection and the frame was untouched by the accident (so he didn't have to fix it b/c apparently ICBC will not sell a car that has had structural damage to the frame, or so he told me). He told me all repairs were completed, and showed documentation for both a structural safety inspection, and general safety inspection (tires, brakes, horn etc...)

This evidence was not challenged by Crown or Mr. Jooya.

32. It is noteworthy that in B.C., a rebuilt motor vehicle must pass a Structural Integrity Assessment (SIA) and a B.C. Provincial Private Vehicle Inspection (PVI) before it may be registered and insured.

33. Mr. Knapp also provided written evidence about discovering the odometer having over 114,163 km on the Prius at the time of sale and not the 40,188 km as declared and represented to him by Crown and Mr. Jooya: see Exhibit's A, B, H, and N of the Affidavit for example.

34. I also note on the purchase agreement that Crown provides a one-month bumper-to-bumper warranty to Mr. Knapp on the Prius.

(b) The Evidence of Lance Stevens

35. In considering whether or not to admit Mr. Lance Stevens opinion evidence, I must consider the following four factors as set out in *Mohan*:

- (a) relevance;
- (b) necessity in assisting the trier of fact;
- (c) the absence of any exclusionary rule;
- (d) a properly qualified expert.

36. **Relevance:** The core issue before me is whether Crown and Mr. Jooya misrepresented the Prius as roadworthy when it was not. Mr. Knapp claims the Prius is not roadworthy due to the improper repairs to its structure and unibody performed by Crown and Mr. Jooya. Also, Mr. Knapp claims he was told the repairs were only to the rear driver's side and that no frame repairs were necessary. Mr. Lance Stevens's evidence describes the repairs made to the Prius, whether they meet industry standards for such repairs and the vehicle's overall safety based on those repairs. Mr. Lance Stevens's evidence is relevant.

37. **Necessity:** The Prius is in Ontario and I am unable to view the vehicle. Much of the damage being described is in picture evidence and of a technical nature. While I may understand the concept of a unibody construction and the purpose of “crumple-zones,” I do not have the technical expertise to know why a particular repair is or is not a safe repair, whether the repair is in conformity with a manufacturer’s specifications or how a proper repair is to be made. Mr. Stevens’s evidence is necessary in describing that technical information through the picture evidence.

38. **Exclusionary Rule:** There is no exclusionary rule prohibiting the receipt of the evidence.

39. **A Qualified Expert:** Mr. Stevens spoke of his qualifications as having some 30 years as a licensed auto body repair person. He also noted that for the past 10 years he has been licensed by the Government of Ontario to carry out structural safety inspections on motor vehicles. I accept that Mr. Stevens has experience in the industry and has satisfied the licensing requirements of both his profession and to the satisfaction of the Government of Ontario to opine on the structural safety of a motor vehicle. I am satisfied that Mr. Stevens is a qualified expert and will admit his evidence.

40. Mr. Stevens went through all the pictures attached to the Affidavit and provided a technical explanation on each. He identified the motor vehicle that he inspected as being the Prius.

41. Mr. Stevens states that there are many body splices where body parts have been welded in, but have not been spliced in at the manufacturer’s specified seams. Some of these joints he referred to as being spot-welded as opposed to a full-length weld. He also says that there are body parts which have not been fully repaired, noting sheet metal being dented and crumpled and not having been pulled out. One support post was noted as having such a dent and was crumpling. He opined that the used body part installed to repair the Prius was structurally unsound itself and should not have been used to repair the Prius; or that in installing the used body part, it had gone out of shape in order to make it fit.

42. Mr. Stevens also noted that none of the structural measurement points were in the right position. “The car is in very bad shape measurement wise.” Mr. Jooya questioned Mr. Stevens about those measuring points and it became apparent that Mr. Jooya was actually talking about wheel alignment. Mr. Stevens noted the Prius’s repaired damage was behind the rear wheels and

those measuring points affecting wheel alignment may not be affected. Also in response to questioning by Mr. Jooya, Mr. Stevens noted the back body panels and trunk did not line up properly and there was water leakage and water damage.

43. I also note from Mr. Stevens's testimony that the Prius had rear end and passenger rear damage repaired – and not just the driver's rear side as Mr. Knapp alleges was represented to him. Also, there is clear evidence the frame was repaired contrary to what Mr. Knapp was told by Mr. Jooya and Crown. Mr. Jooya and Crown did not deny they made these representations.

44. Mr. Stevens's opinion is that this vehicle is already "half-folded up" and has lost structural integrity. He opined that if the Prius was in a rear-end collision it would fold up prematurely. A manufacturer builds a vehicle with crumple-zones in mind. Crumple-zones are designed to "fold up" on impact in a pre-determined way in order to absorb the energy of an impact and dissipate that energy around the passenger compartment to protect its occupants. Mr. Stevens's opinion is about half that protection from the Prius's structure is missing due to the nature of the repairs – being substandard and not to the manufacturer's specification. Mr. Stevens also confirmed that in relation to the partially dented and crumpled support post; it too diminishes the vehicles ability to both dissipate energy from a rear end collision (unibody design), but also to protect the occupants if the vehicle was ever in a roll-over accident.

45. Mr. Stevens's evidence is that when he initially looked at the Prius, he believed it may be repairable. After removing several layers of external moldings, trunk linings and the bumper, it became apparent that the Prius was not structurally sound and could not be repaired to meet the manufacturer's specifications for structural integrity and safety. All of the damage which Mr. Stevens described as being improper; was hidden by the vehicles bumper, decorative moldings and internal trunk moldings and carpeting. In short, Mr. Stevens says the Prius could not, should not and should never have been repaired/rebuilt.

46. Mr. Jooya also questioned Mr. Stevens about the crinkled metal at the welds suggesting it was in fact just the sound deadener that was crinkled. Mr. Stevens said it was both, as the sound deadener takes the shape of the metal and the underlining welds. Finally, Mr. Jooya questioned Mr. Stevens on whether the wrinkling of the sheet metal really made any difference. Mr. Stevens explained that it does as it forms part of the unibody design and is part of the crumple-zones. The

sheet metal is designed with a specific shape so that it collapses in the right order. Mr. Stevens's opinion is that the sheet metal forms part of the structural integrity of the Prius.

(c) The evidence of Mike Srigley

47. Again, applying the factors in *Mohan*, I find that Mr. Srigley's evidence is both relevant and necessary for the same reasons as Lance Stevens's evidence and also to highlight the British Columbia industry repair standards relevant to the issues in this matter. There is no exclusionary rule preventing the admission of Mr. Srigley's evidence.

48. I find Mr. Srigley a qualified expert in this field. Mr. Srigley has 34 years of experience in the collision repair industry within British Columbia. He has years of extensive training including training regarding automotive structural integrity having taken advanced courses on that topic in California as well as more recent training modules conducted by the Insurance Corporation of British Columbia. Mr. Srigley was a past Chair of the Collision Repair Division of the Automotive Retailers Association of B.C as well as being one of its past presidents. Mr. Srigley is also the past Chair of the Advisory Council for the Apprenticeship Training Authority of British Columbia; Auto Collision Repair and Finishing, having occupied that position for some 9 years. During his tenure as the Advisory Council Chair, he assisted in putting the training program on collision repair into the B.C. Institute of Technology (BCIT).

49. I find that I may admit Mr. Srigley's evidence. The fact that Mr. Srigley viewed pictures regarding the unibody repairs on the Prius in arriving at his opinion does not make that opinion inadmissible. However, I must note that it affects the weight I should place on his evidence: *Koeth v. Slack Lumber & Suppliers Ltd. dba Robert Folsom Auctioneer* 2008 CanLII 61236 (Ont. Superior Court of Justice).

50. Mr. Srigley noted that the manufacturer's seams were not utilized in splicing in new body parts on the Prius. He also noted that certain welds did not appear to be reinforced as required when splicing a part in somewhere other than at the manufacturer's seam. It was noted that one weld on the frame rail did not appear to have been completed and he agreed. Mr. Srigley said this is not how a weld should be done and is an example of when reinforcing should be used. Under questioning by Mr. Jooya, Mr. Srigley admitted that he could not see the reverse side of this particular weld to see if it was reinforced. However, Mr. Srigley also noted he would expect to see certain markings or patterns on the metal if that had occurred. He said he saw none. It is to be

noted that Mr. Jooya's questioning about this frame repair indicated that Crown had properly made that repair. This is contrary to the representation to Mr. Knapp that there were no frame repairs. A representation Crown and Mr. Jooya did not deny making to Mr. Knapp.

51. Mr. Srigley continued to highlight where the Prius was not fully repaired, sheet metal was not in the proper form nor was an inner fender properly repaired. All these degraded the ability of the Prius's crumple-zones to absorb impact energy and dissipate it around the passenger compartment. Mr. Srigley stated, "[h]aving all those damaged areas in there, there again will result if it was hit again. It doesn't have the structural integrity to hold its shape as well, so it would fold up. Much easier" ... in comparison with the factory specifications.

52. Mr. Srigley also noted a concern with the long jagged welds in the Prius. He expressed concerns about the completeness of those welds, and whether there had been proper penetration of the metal. He also noted that corrosion had started on some of the welds and thus were not properly treated with anti-corrosion compounds as required by the manufacturer's specifications. Under questioning from Mr. Jooya he agreed such corrosion may be as a result of the vehicle sitting at Milltowne Motors in its current dismantled state.

53. Mr. Srigley summarized his concerns with the Prius's repairs as ... "I don't believe the vehicle is safe. If it was ever in another collision, it would not stand up to a [sic] factory intended it to because of the nature of where the splices were done, the way the splices were not reinforced, the amount of damage that is still visible to the panels. It's not structurally sound." Mr. Srigley stated he was confident in this opinion even having only reviewed the picture evidence.

54. Mr. Srigley also stated these repairs are not up to the manufacturer's specifications and are not to the B.C. industry standards. Mr. Srigley noted these types of repairs are not how students are taught to repair motor vehicles in the B.C. collision repair industry, and specifically at BCIT.

(d) The evidence of Crown and Jaweed Jooya

55. Mr. Jooya did not deny that Crown did the repairs to the Prius nor deny they sold the Prius to the Knapps. He admitted to his personal involvement in both the sale of the Prius to the Knapps as well as rebuilding the Prius.

56. Mr. Jooya questioned Mr. Stevens and Mr. Srigley as outlined above. Through that questioning, Mr. Jooya made the above noted inferences about his and Crown's conduct. The direct evidence he provided on his behalf and for Crown focused primarily on the Prius passing the two inspections a rebuilt motor vehicle is required to pass in B.C.; the PVI and the SIA. Regarding the kinked metal noted in the pictures which both Mr. Stevens and Mr. Srigley expressed concern over, Mr. Jooya said that the kinking is just the seam sealer having dried in that form, an explanation both Mr. Stevens and Mr. Srigley disagreed with during questioning.

57. Mr. Jooya also noted that ICBC sold this vehicle to Crown and attempted to infer that if it was not in a condition to be rebuilt, ICBC would not have, or should not have sold the vehicle to Crown.

II. Evidence of Incorrect Odometer reading

58. The allegation on this point is that Crown sold the Prius declaring the kilometrage as 40,188 km when a CarProof report and the service records of Toyota indicated the Prius had traveled some 114,163 km before coming into Crown's possession.

59. The evidence in the Affidavit is that the adjuster for ICBC recorded 40,000 km as a guess of the Prius's kilometrage after its accident and before being sold to Crown. Apparently, the Prius has a digital odometer and after the accident its electrical system was not operative.

60. Crown's evidence is that the ICBC document showed 40,000 km and after they repaired the Prius and the odometer came on, it read 40,000 km just as ICBC reported. They infer that something must have happened between ICBC taking in the Prius and selling it to Crown. Mr. Jooya said he and Crown do not know how to alter a digital odometer, nor did Crown locate another used digital odometer that read 40,000 km and install it in the Prius.

ANALYSIS

I. The Prius's Structural Integrity

61. From the evidence presented, I am satisfied that the Prius was not rebuilt/repared to a state consistent with the manufacturer's structural integrity specifications and that as rebuilt the vehicle is unsafe for the road. I further find that the vehicle was in this state when Crown and Mr. Jooya sold the Prius to Mr. and Mrs. Knapp.

62. In arriving at this decision I have considered the evidence of Mr. Stevens and Mr. Srigley. I have placed more weight on Mr. Stevens's evidence as he has physically inspected the Prius. I find Mr. Srigley's evidence establishes that the repairs to the Prius do not meet the B.C. collision industry standards, and specifically as taught by B.C.I.T. in its collision repair courses. Mr. Jooya admitted he had completed the BCIT collision repair program.

63. Mr. Srigley confirmed that in B.C., repairs to structural integrity must meet the specifications of the manufacturer. Mr. Jooya's and Crown's evidence was basically that they relied on the two inspections done in British Columbia to determine the vehicles fitness for the road. Mr. Jooya and Crown's evidence fell far short of explaining how the repairs as depicted in the pictures and as expressed by Mr. Stevens and Mr. Srigley were in fact properly done, meet the manufacturer's specifications for structural integrity and have not compromised the structural integrity of the Prius.

64. I also find compelling Mr. Stevens's evidence that reliance on a wheel alignment report to show that the vehicles angles are within factory specifications is not an indicator of structural integrity. Specifically, the Prius's damage and repair is behind the rear wheels and wheel alignment may not be effected by such damage. When confronted with this, Mr. Jooya then tried to defend the repairs by speaking of the alignment of the Prius's body panels, which Mr. Stevens also noted did not align properly and there was water ingress into the Prius. I accept Mr. Stevens's evidence as it is consistent with the picture evidence and is similar to Mr. Srigley's evidence. I find when confronted with the wheel alignment explanation, Mr. Jooya and Crown tried to deflect addressing the shortcomings of this explanation by instead referencing body panel alignment.

65. I note the unrepaired dent to the roof brace (picture 60) which Mr. Stevens said is part of the crumple-zone protection on the Prius and provides it protection in the event of roll-over. Mr. Stevens noted this dent compromises the Prius's structural integrity. Crown and Mr. Jooya provided no explanation on this damage.

66. Of interest is that Crown and Mr. Jooya did not contest the issue of those body splices not being at factory seams. Mr. Stevens and Mr. Srigley gave evidence that not being at the factory seams diminished the Prius's structural integrity.

67. The evidence is clear that certain other aspects of the Prius's repairs were incomplete diminishing the ability of the Prius's manufactured crumple-zones to do their job of absorbing impact energy and dissipating that energy around the passenger compartment. In fact, it was the various kinks and dents throughout the trunk area, wheel wells and other areas that Mr. Stevens and Mr. Srigley stated showed the Prius was already partially folded up. Mr. Jooya described these as just sheet metal. Both Mr. Stevens and Mr. Srigley disagreed, noting that they form part of a unibody design and such wrinkled sheet metal does diminish the Prius's crumple-zones from doing their job. Mr. Stevens believed that half that protection is missing on the Prius. Mr. Srigley did not quantify the loss of protection, but was confident that the Prius was unsafe. I do not find it necessary to rely on Mr. Stevens's assertion that half the protection is lost in the Prius. I do accept Mr. Stevens's and Mr. Srigley's evidence that such unrepaired damage has diminished the ability of the Prius' crumple-zones to protect its passengers to the point that the vehicle is unsafe. Both were consistent with the picture evidence and this evidence also makes common sense, considering the purpose of crumple-zones.

68. Another repair of interest is to the driver's frame rail which was noted as having an incomplete weld (pictures 3 and 4 in the report of Mr. Srigley – Exhibit 8). Mr. Srigley noted that the frame rail should have been reinforced. Mr. Jooya questioned him and said you cannot tell if the weld is reinforced from the underside. Mr. Srigley said he would expect a weld pattern to that affect which he did not see in these pictures. Picture 5 of that report is a side shot of this frame rail repair, and no reinforcement is visible from this side shot. I would also note that the incomplete weld to the frame rail is apparent from looking at the top of the vehicle down. Normally this area is covered by the floor/trunk pan and cannot be seen without dismantling the metal part of the trunk liner. The side shot (picture 5 of Exhibit 8) also shows a heavy amount of either seam sealer or sound deadener which appears to hide this repair from the underside of the vehicle. Even setting aside the issue of reinforcing this repair; Mr. Jooya provided no explanation for the incomplete weld to the frame rail. Again, I note Mr. Knapp's evidence that he was told there were no frame repairs to the Prius because ICBC would not sell a motor vehicle needing such repairs. This representation was not addressed or contradicted by Mr. Jooya or Crown.

69. Mr. Jooya and Crown clearly rely on the inspections done to the Prius after it was rebuilt. The first inspection, the Private Vehicle Inspection report, assesses the Prius from a mechanical

safety perspective – brakes, suspension, lights, and etcetera. The Prius's mechanical safety was not in issue before me.

70. The second report is the SIA report completed by J-Kam Auto Repairs Ltd.: Exhibit I to the Affidavit. I note from the report that the frame, welds and unibody structure are to be checked. Rust proofing must be to the original specifications and it and sound deadening may not be applied prior to the welds being inspected. Unrepairable structural components are to be replaced and assembly joints of the body are to be in the proper locations. It is clear that much of the SIA inspection missed the above noted deficiencies. I have insufficient evidence to comment on why that is so.

II. Odometer Reading

71. A motor dealer is “to the best of its information and belief” disclose the true kilometrage travelled by a motor vehicle it sells: section 23(e) of the MDA-R. In making such a declaration, a motor dealer cannot rely on the representations of a prior owner, including ICBC, and must make its own reasonable inquiries: *Clark v. Abbotsford Imports (1983) Ltd.*, [1992] B.C.J. No. 471 (B.C. Supreme Court) and *Motley v. Regency Plymouth Chrysler Inc.* 2002 BCSC 1885 (B.C. Supreme Court). Failing to make reasonable inquiries in order to discharge this duty is negligence and can constitute a negligent misrepresentation: *Motley*. If such a negligent misrepresentation about the odometer reading has occurred, the purchaser would generally be entitled to damages only and not to cancel the contract: *Balderston v. Cheng et al* 2006 BCPC 0064 (B.C. Provincial Court) at paragraph 10.

72. Mr. Knapp has provided evidence from two sources to show that the Prius had over 114,163 km on it when it came into the possession of Crown. Crown has provided no evidence that the 40,188 km it declared to the Knapps was true. Its defense on this point is that it relied on ICBC's written representation of 40,000 km. This representation has turned out to be a guess on the part of ICBC, the owner of the Prius at the time it was sold to Crown. Crown made no inquiries on its own to determine the true kilometrage of the Prius.

73. Crown and Mr. Jooya admit that the odometer was not working when it purchased the Prius. However, they did not question the accuracy of the ICBC representation of 40,000 km. Crown, as owner of the Prius, could have inquired with Toyota about the service history of the

Prius as Mr. Knapp did when he became the owner. Had they done so, they would also have discovered the 114,163 km travelled by the Prius up to February 2008.

74. I find it too much of a coincidence that the 40,000 km declaration made by ICBC, which was a guess, in fact registered on the Prius's odometer when it was finally repaired. Especially as it should have read over 114,163 km when the odometer first came on after repair.

III. Deceptive Act or Practice

75. Representing a motor vehicle as being roadworthy, when it is not, is a ground to repudiate (cancel) a contract of sale: *Balderston v. Cheng et al* 2006 BCPC 64 at paragraph 10 (B.C. Provincial Court).

76. A motor dealer that represents a vehicle as safe, when it is later found not to be safe, has the onus of proving that at the time of the sale, the motor vehicle was in a safe condition: *Cummings* (B.C. Supreme Court). Selling an unsafe vehicle and representing it as being safe is a deceptive act or practice under the BPCPA: *Cummings* (B.C. Supreme Court).

77. Where it is shown that a motor dealer deliberately misrepresented the motor vehicle to the consumer, the consumer is entitled to cancel the contract and obtain a full refund, even if the motor vehicle cannot be returned to the dealer in the same condition as when it was sold: *Bahry v. Lindell Beach Holiday Resort Ltd.*, 2009 BCSC 632 (B.C. Supreme Court); *Brown & Root v. Aerotech Herman Nelson Inc. et al.*, 2004 MBCA 63 (Manitoba Court of Appeal); *Lasby v. Royal City Chrysler Plymouth* (1987), 59 O.R. (2d) 323 (Ont. H.C.J.), leave to appeal to the Ontario Court of Appeal was refused (Blair, Goodman and Cory J.J.A.) April 27, 1987; and also see *Halleran v. O'Neil Brothers Auto Ltd.* (1971), 1 Nfld. & P.E.I.R. 455 (Nfld. Court of Appeal).

78. Where a motor dealer relies on a Structural Integrity Assessment report to represent a motor vehicle as roadworthy, when it is not, it can still be liable to the consumer for an innocent misrepresentation: *Cheema v. Mario Motors Ltd.* 2003 BCPC 416 (B.C. Provincial Court). In *Cheema* the motor dealer had purchased a motor vehicle from an auto body shop who had rebuilt that motor vehicle. The dealer professed little understanding about structural integrity which the court accepted. However, the court still held the motor dealer liable to the consumer. That is not the case here as Crown and Mr. Jooya are in the specific business of collision repair. Mr. Jooya admitted attending BCIT's collision repair program although he was never licensed. I find that

Mr. Jooya would know the proper way to rebuild a motor vehicle to ensure its structural integrity is returned to the manufacturer's specifications.

79. It is also to be noted that in *Cheema*, the defendant agreed to pay for the repairs to the motor vehicle in order to make it roadworthy. This diminished the liability of the motor dealer in that case. When Mr. Knapp initially discovered the Prius did not meet Ontario's requirements for structural integrity, he authorized an exploration of the costs to repair the Prius. Upon finding the vehicle could not be repaired and made roadworthy, he was entitled to seek to cancel the contract. Mr. Stevens has stated the Prius cannot be repaired and by law he cannot repair the Prius and risk his license in Ontario.

80. I am satisfied on the evidence that Crown and Mr. Jooya represented the Prius as roadworthy. I note on the purchase agreement there is a 30-day bumper-to-bumper warranty. A reasonable person would expect that to mean the motor dealer has confidence in the mechanical soundness and roadworthiness of the motor vehicle being sold.

81. As a motor dealer, Crown also had a specific and positive duty to inform Mr. Knapp if the Prius was "unsuitable for transportation" by marking the purchase agreement as such: section 21(2)(f) of the MDA-R. Crown would also have been obligated to note the Prius as "unsuitable for transportation" on all written representations about the Prius. This would include that portion of the I.C.B.C. Transfer/Tax Form (APV9T) it would have to complete as the seller of the Prius: section 22 of the MDA-R. I note no such notations on any written representation about the Prius by Crown, such as on the purchase agreement or the APV9T. It would be reasonable for Mr. Knapp to accept no such statutory disclosure meant the Prius was in fact suitable for transportation.

82. I am satisfied on the evidence that Crown and Mr. Jooya rebuilt the Prius in a manner that did not restore its structural integrity to the manufacturer's specifications. I am also satisfied on the evidence that as rebuilt, the Prius is unsafe for use as it has a severely diminished ability to protect its passengers from an impact, and that it cannot be repaired to make it roadworthy. I am satisfied that Crown and Mr. Jooya represented to Mr. Knapp by words and by conduct, that the Prius was roadworthy, when it was not. I find that Crown and Mr. Jooya have committed a deceptive act or practice as defined by the BPCPA.

83. I also find that Crown was negligent in making its statutory declaration of the kilometers travelled by not making any reasonable inquiries about the true kilometrage travelled by the Prius. The evidence falls short of suggesting Crown and/or Mr. Jooya deliberately manipulated the odometer reading. I find that Crown and Mr. Jooya made a negligent misrepresentation about the Prius's kilometrage: *Motley*. I find this negligent misrepresentation constitutes a deceptive act or practice under the BPCPA as it is a misrepresentation of the Prius's history and quality that formed part of the Knapps's decision to purchase the Prius, to their detriment.

COMPLIANCE ORDER

84. Under section 155(4) of the BPCPA, I may make a compliance order that remedies a deceptive act or practice by a motor dealer. A damage award alone is insufficient to remedy this breach as the Prius cannot be rebuilt to be roadworthy. I therefore make the following compliance order:

- (a) Crown and Mr. Jooya are to abide by the *Business Practices and Consumer Protection Act*;
- (b) Crown and Mr. Jooya are to ensure they do not by words or by conduct misrepresent the quality of the goods they sell to consumers, and specifically, they are not to misrepresent a motor vehicle as roadworthy when it is not;
- (c) Crown and Mr. Jooya are joint and severally liable to refund David and Keturah Knapp the total purchase price paid for the Prius of \$19,040.00, and Crown and Mr. Jooya must arrange to take back the Prius at their own expense;
- (d) Crown and Mr. Jooya are jointly and severally liable to reimburse David and Ketruah Knapp for any costs associated with the inspection of the Prius by Milltowne Motors Ltd., which is to also include the Ontario Provincial Vehicle Inspection and the cost to disassemble the Prius to investigate its ability to be repaired; and
- (e) Crown and Mr. Jooya are jointly and severally liable to reimburse the Motor Vehicle Sales Authority's inspection, investigation and hearing costs in the amount of \$2,831.11. An invoice will be provided.

ADMINISTRATIVE PENALTY

85. Under section 164 of the BPCPA I may order an administrative penalty for an infraction of that Act. In doing so I must take into consideration the factors set out in section 164(2) of the BPCPA and consider the whole of the case. The maximum administrative penalty that may be applied to a corporation is \$50,000.00 and \$5,000.00 to an individual. When considering the appropriate disciplinary approach, or amount of a penalty, its deterrent effect is a factor for consideration: *Cartaway Resources Corp. (Re)*, [2004] 1 S.C.R. 672 (Supreme Court of Canada); *Hogan v. British Columbia Securities Commission* 2005 BCCA 53 (B.C. Court of Appeal); and *The British Columbia College of Teachers v. P.E.M.* 2005 BCCA 76 (B.C. Court of Appeal).

(a) Crown

86. I note the following regarding the factors set out in section 164(2) of the BPCPA:

- (a) There have been no other enforcement actions taken against Crown.
- (b) This contravention was very serious as it had the potential of causing bodily harm or death to the Knapps and any passengers they carried.
- (c) The actual harm to the consumers was monetary and lost time and inconvenience.
- (d) There is no evidence this was a repeat of previous conduct.
- (e) The repairs on the Prius were undertaken in a deliberate manner and I find the representation of the Prius as being roadworthy was a deliberate deceptive act.
- (f) Crown benefited from the sale of the Prius.
- (g) Crown has offered to refund the consumers their money, however, it does not believe it is responsible to pay for the Prius to be shipped back to B.C, and that it should be returned in the same state they sold it to the Knapps.

87. In *Hurtubise v. Massive Truck Sales Ltd & Sidhu & Sidhu* (Registrar's Decision of August 18, 2008; File 08-70288) and in *Millar v. Hare Motors Ltd. & Naidu* (Registrar's Decision of March 2, 2009; File 08-70508) I ordered administrative penalties in the amount of \$20,000.00 for those dealers having sold motor vehicles that were unsafe and misrepresenting them as safe. Those two cases involved mechanical deficiencies which were discoverable by a visual inspection by a qualified mechanic. This case is different as Crown and Mr. Jooya took a vehicle that was severally damaged and rebuilt it and the repairs they made I find were deliberate. Mr. Jooya was trained at B.C.I.T. in collision repair which would have instructed him in the proper

methods of repairing motor vehicles for structural damage. I find that Crown deliberately repaired the Prius to its unsafe state and those repairs were hidden, such that only a thorough inspection after dismantling part of the Prius revealed its unsafe condition.

88. I specifically note this is the first compliance activity taken against Crown. In Crown's favour I also take into consideration its offer to take back the Prius and refund the consumer the purchase price. However, that was subject to the Prius being returned to Crown in the same state it sold it to the Knapps. Even so, it cannot be ignored that I have found Crown to have repaired the Prius to an unsafe condition; concealed that unsafe condition; made representations to suggest the Prius was roadworthy and used government mandated inspections to convince the Knapps that the Prius was roadworthy.

89. In considering all the above factors, the past precedents noted and my determination below regarding Crown's registration as a motor dealer, it is my opinion that an administrative penalty of \$20,000.00 is appropriate as a general deterrent and is so ordered against Crown.

(b) Mr. Jooya

90. In accordance with section 164(2) of the BPCPA, I note the following about Jaweed Jooya:

- (a) There have been no other enforcement actions taken against Mr. Jooya.
- (b) This contravention was very serious as it had the potential of causing bodily harm or death to the Knapps and any passengers they carried.
- (c) The actual harm to the consumers was monetary and lost time and inconvenience.
- (d) There is no evidence this was a repeat of previous conduct.
- (e) The repairs on the Prius were undertaken in a deliberate manner and I find the representation of the Prius as being roadworthy was a deliberate deceptive act on the part of Mr. Jooya.
- (f) Crown benefited from the sale of the Prius. What Mr. Jooya's benefit was is uncertain.
- (g) Crown and Mr. Jooya have offered to refund the consumers their money, however, they do not believe they are responsible to pay for the Prius to be shipped back to B.C, and that it should be returned in the same state they sold it to the Knapps.

91. The salespersons in *Massive Truck* and *Hare* received administrative penalties varying from \$750 for the conduct of a mere employee to \$1,250.00 for an employee and directing mind who was very active in the deceptive act. I find Mr. Jooya deliberately rebuilt the Prius in such a way that he had no regard for the safety of those who would ride in it and hid the inadequacy of repairs so as not to be discovered. I also find that the repairs were such that a visual mechanical repair would not detect them. I find this conduct deserving of a more severe penalty than issued to the salespersons in *Hare Motors* and *Massive Trucks* and in considering all the above factors I order Mr. Jooya to pay an administrative penalty of \$2,000.00.

Sections 5, 6 and 8.1 of the Motor Dealer Act

92. If a motor dealer has been found to have contravened Parts 2 or Part 5 of the BPCPA, that is grounds to consider cancelling their motor dealer registration: section 8.1(4)(b) of the MDA. In considering canceling a registration, I must first consider whether a suspension or adding conditions to its registration would be an appropriate alternative. I must also consider whether the administrative penalty already issued acts as a sufficient deterrent to address and regulate Crown's conduct and the potential for future harm. I am mindful of the importance of being able to properly regulate Crown's sales of motor vehicles to consumers, especially when safety is in question. Mister Justice Cory of the Supreme Court of Canada stated it thusly in *R. v. Wholesale Travel Group Inc.* [1991] 3 S.C.R. 154:

The objective of regulatory legislation is to protect the public or broad segments of the public (such as employees, consumers and motorists, to name but a few) from the potentially adverse effects of otherwise lawful activity. Regulatory legislation involves a shift of emphasis from the protection of individual interests and the deterrence and punishment of acts involving moral fault to the protection of public and societal interests. While criminal offences are usually designed to condemn and punish past, inherently wrongful conduct, regulatory measures are generally directed to the prevention of future harm through the enforcement of minimum standards of conduct and care.

...

It is difficult to think of an aspect of our lives that is not regulated for our benefit and for the protection of society as a whole. From cradle to grave, we are protected by regulations; they apply to the doctors attending our entry into this world and to the morticians present at our departure. Every day, from waking to sleeping, we profit from regulatory measures which we often take for granted. On rising, we use various forms of energy whose safe distribution and use are governed by regulation. The trains, buses and other vehicles that get us to work are regulated for our safety. The food we eat and the beverages we drink are subject to regulation for the protection of our health.

In short, regulation is absolutely essential for our protection and well being as individuals, and for the effective functioning of society. It is properly present throughout our lives. The more complex the activity, the greater the need for and the greater our reliance upon regulation and its enforcement. For example, most people would have no idea what regulations are required for air transport or how they should be enforced. Of necessity, society relies on government regulation for its safety.[emphasis added]

93. Cancelling a motor dealer's registration generally deprives it of a source of revenue not only affecting the company, but its employees' livelihoods. In considering whether to cancel a motor dealer registration, I am mindful of the cautions stated in various court decisions such as *Pacific International et al v. B.C. Securities Commission* 2002 BCCA 421 at paragraphs 11-13 and also see *Zenner v. College of Optometrists (Prince Edward Island)*, [2005] 3 S.C.R. 645 (Supreme Court of Canada). Even so, the public interest is paramount: *Pacific International et al.*

(a) Placing a condition on Crown's Registration?

94. In both *Hare* and *Massive Truck* I found that balancing the public interest with a motor dealer's desire to continue to operate could be achieved by placing a condition on their registration requiring the motor vehicles they sell pass a Provincial Private Vehicle Inspection (PVI) by a provincially designated independent inspection facility. By doing this, those mechanical safety issues that could be visually identified by a mechanical inspection would be identified and repaired. This was the core issue in both *Hare Motors* and *Massive Truck* – mechanical safety. In this instance, the repairs are structural and are not assessed by a PVI. Further, the structural issues here were hidden and were only discovered by a partial tear down of the rear of the Prius. I note the evidence of Mr. Stevens that a vehicle may outwardly look structurally sound when it is in fact not sound. I also note that Crown had both a PVI and a SIA done on the Prius – passing both. It is apparent that repairs can be done in order to meet the SIA, but the vehicle is in fact still unsafe. In this instance both a PVI and SIA failed to find the unsafe state of the Prius. I find adding a condition that Crown has the vehicles it sells properly inspected is of no utility in ensuring the public interest is met – that Crown is selling safe motor vehicles, or it is not misrepresenting a motor vehicles safety to consumers.

(b) Suspending Crown's Registration?

95. I have considered whether a suspension of Crown's motor dealer registration would be an effective means to protect the public interest of ensuring it sells safe motor vehicles, or discloses

the unsafe nature of a motor vehicle. For the same reasons that adding a condition is insufficient in this regard, I find a suspension simply cannot provide a reasonable measure of certainty that Crown will stop this conduct. There is simply no reasonable and cost effective means of ensuring, such as through regulatory inspections, that Crown will not commit a similar deceptive act in the future through a suspension of its registration.

(c) Canceling Crown's Registration?

96. Before considering canceling Crown's registration, I have considered whether the administrative penalty and my findings in these reasons would provide enough assurances that Crown will not repeat this conduct in the future. It is my view that a monetary penalty is simply insufficient to provide the necessary level of assurance that Crown will not again sell an unsafe motor vehicle or misrepresent a motor vehicle as safe when it is not. In *Hare Motors* and *Massive Truck*, the monetary penalty was coupled with conditions of registration that would provide that measure of assurance, in order to give those dealers at least one last opportunity to correct their conduct. That option is clearly unavailable here, as independent inspections were conducted on the Prius which failed to discover its hidden unsafe condition.

97. I note in the case of Crown that operating as a motor dealer is but one aspect of its operations. It is a collision repair shop generating income from that part of its business. (I have no jurisdiction over that aspect of its operations.) I must also consider the public interest in ensuring that only safe vehicles are sold by motor dealers, or if they are unsafe, that consumers are made aware of that fact. B.C. motor dealers have a statutory duty to so inform consumers. As shown by this case, the public interest goes beyond British Columbia as a motor vehicle can be moved from place-to-place and is often owned by many people during its operational life. In considering the above analysis, the severity of the issue here of selling a vehicle that was not structurally sound, and misrepresenting it as being roadworthy; plus the real possibility of harm to the general public and individual consumers; I find it in the public interest that the Motor Dealer Registration of Crown Autobody & Auto Sales Ltd. Dealer Registration #30290 be cancelled effective immediately; and I so order it cancelled.


RECONSIDERATION

98. The Compliance Order and Administrative Penalties may be reconsidered in accordance with sections 180 and 181 of the BPCPA. If Crown and Mr. Jooya wish to ask for

reconsideration, they must do so in accordance with those sections and within 30 days of receipt of the Compliance Order and Administrative Penalties. Any such application for reconsideration should be forwarded to the attention of Denis Savidan, Manager of Compliance and Investigations at the Motor Vehicle Sales Authority.

99. The decision to cancel Crown Autobody & Auto Sales Ltd. Motor Dealer Registration #30290 is reviewable by way of Petition for Judicial Review to the B.C. Supreme Court.

Date: September 21, 2009



[Handwritten signature]

Ian Christman B.A., LL.B.