



**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:**

**ISAAC ROBERTS and  
THE MOTOR DEALER COUNCIL OF BRITISH COLUMBIA dba  
THE MOTOR VEHICLE SALES AUTHORITY OF BRITISH COLUMBIA**

**COMPLAINANTS**

**AND:**

**MATRIX AUTO SALES LTD.  
(Dealer # 30590)**

**MOTOR DEALER**

**AND:**

**REZA MOHAMMAD FOROGHI  
(Salesperson # 108684)**

**SALESPERSON**

**AND:**

**HABIBOLLAH REZAPOOR  
(Salesperson #109382)**

**SALESPERSON**

**AND:**

**RAMIN KARAMALI  
(Unlicensed - Reference # 109444)**

**DECISION OF THE REGISTRAR OF MOTOR DEALERS**

Date and Place of Hearing:

March 25 and 26, 2010,  
May 12 and 13, 2010, and  
November 2, 2010,  
at Surrey, British Columbia.

Appearances for:

The Motor Vehicle Sales Authority	Denis Savidan, Manager of Compliance and Investigations
Isaac Roberts	In person
Matrix Auto Sales Ltd.; Reza Mohammad Foroghi; and Ramin Karamali	G.W. Bell Esq. BELL Lawyers
Habibollah Rezapoor	In person

### **INTRODUCTION:**

[1] The Notice of Hearing (Exhibit 1) in this matter details the allegations that are for consideration. For ease, I summarize those allegations below:

- (a) Did Matrix Auto Sales Ltd. (Matrix) and any of its employees commit a deceptive act or practice contrary to section 5(1) of the *Business Practices and Consumer Protection Act* S.B.C. 2004 c. 2 (BPCPA) in relation to a "consumer transaction" (as defined) with Mr. Isaac Roberts? If so, what steps should the Registrar of Motor Dealers (Registrar) take to address that conduct pursuant to sections 5, 6 and 8.1(4)(b) of the *Motor Dealer Act* R.S.B.C. 1996 c. 316 (MDA)?
- (b) Did Matrix fail to advise the Registrar of a change in its ownership and structure contrary to sections 12(b) and (c) of the MDA? If so, what action should the Registrar take to address that conduct?
- (c) Did Reza Mohammad Foroghi make a false statement to a Compliance Officer with the Motor Dealer Council of British Columbia dba the Motor Vehicle Sales Authority of British Columbia (the "Authority")? If so, what action should the Registrar take to address that conduct?
- (d) Did Matrix allow Ramin Karamali to sell motor vehicles without being a licensed salesperson as required by the *Salesperson Licensing Regulation* B.C. Reg. 241/2004? If so, what action should the Registrar take to address that conduct?

[2] Issue (b) above relates, as the Notice of Hearing expresses it, to Matrix's alleged failure to advise the Registrar that Habibollah Rezapoor transferred his entire shares (1,000) in Matrix, and that Reza Foroghi transferred 500 of his 1,000 shares to Madana Mansouri Tehrani "as part of the unrealized equity of Ramin Karamali's investment in the capital of the Company." It is not disputed that at the relevant time, Ms. Tehrani was Mr. Karamali's spouse. The Authority raises a

concern that Ramin Karamali is a silent owner of Matrix, the importance of which will be discussed further on.

[3] The Notice of Hearing makes it quite clear that the purpose of the hearing was to review all these issues and determine if "it is in the public interest to continue to register, suspend or cancel the registration of Matrix Auto Sales Ltd." and whether "it is in the public interest to continue to licence, suspend or cancel the licenses of Habibollah Rezapoor and Reza Foroghi or to licence Ramin Karamali and Mandana Mansouri Tehrani."

[4] During the hearing I struck out the provision seeking to review a licence for Mandana Mansouri Tehrani as she had not applied for a licence.

[5] At the conclusion of the hearing, Mr. Bell and Mr. Savidan agreed to a process of providing written closing submissions which took place over the month of December, 2010.

[6] There were some 35 exhibits presented at the hearing and several days of oral testimony. While I may not comment on all the evidence submitted during this hearing, I have reviewed all the evidence and given it all its due weight.

### **BACKGROUND FACTS**

[7] On or about January 9, 2009, Mr. Isaac Roberts bought a 2006 Toyota Tundra from Matrix. Matrix is located in New Westminster, B.C. and Mr. Roberts lives in Nelson, B.C. Mr. Roberts shopped for a vehicle online and responded to an internet ad from Matrix showing the Tundra. Mr. Roberts traveled to Metro Vancouver, looked at the Tundra and purchased it from Matrix. He asked Matrix to source out and install a canopy for the Tundra, which Matrix did. Mr. Roberts paid cash for the Tundra.

[8] Matrix had initially obtained the Tundra from the Insurance Corporation of B.C. (ICBC). The Tundra had been in an accident and ICBC wrote it off as a total loss. The Tundra was put up for sale as a salvage vehicle. Matrix purchased the Tundra from ICBC, had it rebuilt and inspected for compliance with the *Motor Vehicle Act* R.S.B.C. 1996 (MVA).

[9] After picking up the Tundra, Mr. Roberts traveled first to Whistler. He noted an issue with the heater, some driveability problems and a noise coming from the rear-end of the Tundra. Mr. Roberts called Matrix who advised him to bring the Tundra back. The heater was repaired by Matrix and the noise was ultimately determined by a mechanic used by Matrix, to be wheel bearing noise from the rear differential. Matrix alluded that the noise may also be tire noise. Mr. Roberts chose to take the Tundra to Nelson without repairing the wheel bearing noise indicating that if the repair was only about \$500, he would take care of it in Nelson.

[10] Mr. Roberts indicates he experienced continued driveability problems on his way to Nelson. Mr. Roberts eventually had the vehicle inspected by a Toyota dealer who indicated some issues with the Tundra. Mr. Isaacs says he called Matrix who advised him to bring the Tundra back to New Westminster and they would deal with it in New Westminster. They offered to put Mr. Roberts up in a hotel and pay his flight costs. Mr. Roberts instead complained to the Authority.

[11] The Tundra was inspected by an inspector employed with the B.C. Ministry of Transport's Commercial Vehicle Safety Enforcement (CVSE) branch in Nelson, B.C. The inspector found the vehicle non-compliant with the MVA and issued an order for repairs before the Tundra could be driven on the road. In short, a duly authorized servant of the Province of British Columbia said the Tundra was not fit to be driven in its then current state.

[12] During the time the Tundra was in Mr. Roberts' possession, he had a minor accident with the Tundra. He had been rear-ended causing some damage to the rear bumper of the Tundra. Mr. Roberts made a claim with ICBC.

[13] At the conclusion of the Authority's investigation, it was determined that a hearing before the Registrar of Motor Dealers was warranted. Matrix, Mr. Foroghi and Mr. Rezapoor were served with a Notice of Hearing as Mr. Foroghi and Mr. Rezapoor were listed as the owners of Matrix. Mr. Rezapoor then contacted the Authority to indicate he had sold his shares in Matrix several months prior. He provided a statement to that effect and a copy of the share purchase agreement. That Agreement noted that 75% of the shares in Matrix had been transferred to Mr. Ramin Karamali's wife, apparently to realize Mr. Karamali's investment in the capital

of Matrix. The Authority was not informed about this sale when it occurred. Matrix did advise the Authority of its ownership change about nine months later; after the Authority made inquiries of Matrix. During the course of the hearing, I was informed that Mr. Karamali's relationship with his wife had or was coming to an end. It was anticipated, or hoped, that the shares in Matrix held by the now or soon-to-be ex-wife would be transferred to Mr. Karamali's mother: see the closing submissions of counsel for Matrix.

[14] Before the hearing commenced, Matrix and Mr. Roberts came to a settlement. Matrix took back the Tundra and provided Mr. Roberts a refund plus some compensation for his time and travel costs. Mr. Roberts provided a letter to the Authority withdrawing his complaint. Therefore, by the time of the actual hearing, Mr. Roberts was no longer a complainant, but a witness for the Authority for the purpose of reviewing Matrix's conduct.

## **POSITION OF THE PARTIES**

### ***(a) Isaac Roberts***

[15] Mr. Roberts really takes no position in this matter. I note that he was compelled to attend by a Summons to a Witness issued by the Registrar pursuant to section 8.1 of the MDA, section 29 of the *Motor Dealer Act Regulation* B.C. Reg. 447/78 and section 151 of the BPCPA. Mr. Roberts' role at this hearing was really that of a witness for the Authority.

### ***(b) The Authority***

[16] The Authority's position is straightforward. The Authority states that Matrix committed a deceptive act or practice in a "consumer transaction" involving Mr. Roberts. Specifically, that Matrix represented the Tundra as meeting the requirements of the MVA; that it was suitable for transportation, when it was not.

[17] The Authority is also concerned that Matrix is attempting to hide the involvement of Mr. Karamali as an owner of Matrix. It has concerns with Mr. Karamali being an owner based on his past conduct as well as the decision of Registrar Smith dated April 23, 2007, which will be detailed below. It is also

concerned that Mr. Foroghi provided a false statement to a compliance officer of the Authority.

[18] The sale of Matrix's shares to Mr. Karamali's wife was of concern to the Authority, as Mr. Karamali had previously been convicted in the B.C. Provincial Court of selling motor vehicles while not registered as a motor dealer to do so, contrary to the *Motor Dealer Act*. Mr. Karamali also was found guilty of odometer tampering contrary to the *Motor Dealer Act* and for aiding and abetting consumers to evade payment of taxes in those motor vehicle transactions contrary to the then *Social Service Tax Act*. It should be noted that Mr. Karamali pled guilty to these charges: *R. v. Karamali* 2006 BCPC 454 (B.C. Prov. Crt). On appeal, Mr. Karamali had his sentence varied. At the hearing it was noted that Mr. Karamali's wife was also charged in relation to these transactions, which were later dropped: Exhibit 5.

[19] Also of concern to the Authority is the decision of Registrar Smith on April 23, 2007, denying Mr. Karamali a salesperson licence. The transcript of that hearing has Registrar Smith telling Mr. Karamali that he could not apply for a salesperson licence until April 23, 2010. Registrar Smith also advised Mr. Karamali that he would not be allowed to be registered as a motor dealer or be part of the ownership structure of a motor dealer, until after he had been licensed as a salesperson.

[20] The Authority says that Matrix has failed to discharge its burden of proof that it committed a deceptive act or practice contrary to section 5(1) of the BPCPA by representing that the Tundra met the requirements of the *Motor Vehicle Act*, was safe for use, when it was not. The Authority states it has established, through two witnesses, that Ramin Karamali was engaged in the selling of motor vehicles. The Authority says that the claim of illegality advanced by Matrix regarding Mr. Roberts' purchase of the Tundra is without basis. It says there is nothing illegal about paying cash for a motor vehicle and Matrix has accepted cash payments in the past for other vehicles. The Authority is of the view that Mr. Karamali is an owner of Matrix which it says has been established on the evidence.

**(c) Matrix, Foroghi and Karamali**

[21] Matrix, Mr. Foroghi and Mr. Karamali (hereinafter together called the "Respondents") raise various points.

**(i) Jurisdiction**

[22] The Respondents say the Registrar does not have jurisdiction over this matter as the transaction was not a "genuine consumer transaction" as contemplated by the BPCPA. They say that Mr. Roberts' payment for the Tundra in cash and that carrying large sums of cash is not a legitimate business practice that requires explanation to establish an innocent purpose. This is based on case law applying the federal *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* S.C. 2000 c.17. The Respondents state that Mr. Roberts has failed to establish the innocent purpose of the cash he used to pay for the Tundra and therefore there is a presumption of illegality in the cash he tendered. This, the Respondents say, makes this transaction not a genuine consumer transaction. The Respondents say that the transaction not being a genuine consumer transaction takes this matter outside the jurisdiction of the Registrar.

**(ii) Deceptive Act**

[23] The Respondents state the evidence shows the Tundra was properly repaired by Matrix and met the requirements of the *Motor Vehicle Act*. The respondents detailed the rebuilding steps including the provincially mandated inspection process. The Respondents say there is no evidence of damage to the left rear wheel of the Tundra when Matrix purchased the vehicle. There is no conclusive evidence that the damage in dispute pre-existed the sale to Mr. Roberts and it is as likely, or more likely, that the damage occurred after Mr. Roberts purchased the Tundra. The Respondents say they have provided evidence to suggest Mr. Roberts used the Tundra more than he stated and which is not properly accounted for by Mr. Roberts.

[24] The Respondents note that even if the damage pre-existed the sale of the Tundra to Mr. Roberts, the term of a deceptive act or practice connotes a level of intention or willful blindness. They say there is no evidence to suggest that Matrix intentionally misled or was willfully blind to the existence of any such damage. The Respondents state there is no absolute level of guarantee about used cars and consumers know there is always some risk in buying a used car. The Respondents state they should be allowed to rely on the inspections done by the licensed

inspectors in this case in order to represent that the Tundra met the requirements of the *Motor Vehicle Act* and was safe for the road.

**(iii) Mr. Karamali**

[25] Mr. Karamali and Matrix note that there is no evidence that Mr. Karamali acted as a salesperson. They say the evidence of the two witnesses is inconclusive and certainly does not rise to the level necessary to discharge the burden of proof that is on the Authority on this point. Mr. Karamali noted that his wife (or ex-wife) is the owner of the shares.

**THE LAW**

[26] In my decision of *Pirvulescu v. Parkwood Auto Sales Ltd. et al* (August 6, 2010: File No. 07-70285: Registrar of Motor Dealers), I went through in detail the general law that has similar application in this matter<sup>1</sup>.

**(a) Statutory Interpretation**

[27] For the discussion that follows, I apply the principals of statutory interpretation applicable to a B.C. statute: *Yeung (Guardian ad litem of) v. Au* 2006 BCCA 217 at paragraph 32 (5 panel Court of Appeal), aff'd 2007 SCC 45 (Supreme Court of Canada). I also keep in mind that the *Motor Dealer Act* R.S.B.C. 1996 c. 316 and its regulations are consumer protection legislation: *Fireman's Fund Insurance Co. of Canada v. Shoreline Auto Sales Ltd.* [1986] B.C.J. No. 1745 (B.C. Supreme Court); which influences how it is to be interpreted: *Prestige Toys Ltd. v. Ontario (Registrar, Motor Vehicle Dealers Act)* 2009 CarswellOnt 4743 (Ont. S.C.J. (Div. Crt.)). Those same legal principals apply to interpreting the BPCPA: *Seidel v. TELUS Communications Inc.*, 2011 SCC 15 (Supreme Court of Canada) at paragraph 37.

**(b) A Dealer's duty to make declarations under the *Motor Dealer Act Regulation***

[28] In *Rushak v. Henneken*, [1986] B.C.J. No. 3072 (B.C.S.C.), aff'd (1991), 59 B.C.L.R. (2d) 250 (C.A.), Gow J. was dealing with a claim from a consumer against a motor dealer under the then *Trade Practices Act*, since repealed and replaced by

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<sup>1</sup> <http://www.mvsabc.com/decisions/File07-70285PirvulescuvParkwoodAugust62010.pdf>



the BPCPA. In *Rushak*, Justice Gow noted the general philosophy of consumer protection legislation at paragraph 195:

**The philosophy and thrust of consumer legislation is** very different from that of the common law in sale of goods. The former proceeds on the footing **that a supplier** who makes his livelihood out of supplying personal property to consumers, **owes a positive duty of candour to the consumer and that duty embraces telling the consumer any material fact known to the supplier about the ware**, the disposition of which to the consumer he is promoting. What is a material fact will depend upon the circumstances. (Emphasis added)

[29] The B.C. Court of Appeal in *Brook v. Wheaton Pacific Pontiac Buick GMC Ltd.* (2000), 76 B.C.L.R. (3d) 246 (B.C.C.A.) stated that the purpose of the declaratory requirement of section 23(b)(ii) of the *Motor Dealer Act Regulation* was to place a duty on a motor dealer to advise a consumer about potential damage to a vehicle that would affect its value, so the consumer may investigate further and make an informed decision.

[30] B.C. courts have noted that section 23(b)(ii) of the *Motor Dealer Act Regulation* places a positive duty on a motor dealer to make its own reasonable inquiries about damage regarding the motor vehicle it intends to sell. A motor dealer may not solely rely on the representations of a prior owner, or even an ICBC damage history report:

- *Robillard v. Comox Valley Ford Sales (1964) Ltd. and Gordon Leo Rugg (Third Party) and Port Chevrolet Oldsmobile Ltd. (Fourth Party)* (1995), B.C.J. No. 436 (B.C. Court of Appeal)
- *Motley v. Regency Chrysler* 2002 BCSC 1885 (B.C. Supreme Court)
- *Key Lease Canada Ltd. v. Bott* 1994 CarswellBC 2555, 1994 CanLII 788 (B.C. Supreme Court)
- *Clark v. Abbotsford Imports (1983) Ltd.*, 1992 CarswellBC 2044, [1992] B.C.J. No. 471 (B.C. Supreme Court); add'l reasons as to costs 1994 CarswellBC 1933 (B.C.S.C.)
- *Fraser v. Richmond Imports Ltd. dba Richmond Honda* 2001 BCPC 0211 (B.C. Prov. Ct.).

[31] While the above discussion is centered on the statutory declaration of damage over \$2,000, it is consistent with all the statutory declarations a motor dealer must make under the *Motor Dealer Act Regulation*. In fact, the obligations

found under section 23 of that Regulation incorporate a reasonableness test that is not found in sections 21, 22 or 27 of the Regulation – discussed further below. As will also be discussed below, there is also no reasonableness test found in section 222 of the *Motor Vehicle Act* or section 8.01 of the *Motor Vehicle Act Regulation*.

[32] There is therefore a positive duty on a motor dealer to inform itself of those things material to the transaction and provide that information to the consumer, including those facts the law may impose as being material.

### **(c) Selling Unsafe Vehicles – “Unsuitable for Transportation”**

[33] Under section 21(2)(e) and (f), 22 and 27(b) of the *Motor Dealer Act Regulation*, a motor dealer has a positive duty to declare whether a used motor vehicle being sold is or is not safe for use on the roads – “unsuitable for transportation”:

21(2) Where a motor dealer makes a written representation in the form of a sales or purchase agreement respecting the sale by him of a used motor vehicle, he **shall** include the particulars required for a new motor vehicle under subsection (1) and

(e) a statement that the motor vehicle complies with the requirements of the *Motor Vehicle Act*, and

(f) in the case of a motor vehicle not suitable for transportation a statement to that effect.

22 A motor dealer **shall** ensure that any written representation including every purchase order, sales agreement or form of contract used in a consumer transaction for the purchase of a motor vehicle not intended for transportation contains a statement that the motor vehicle is not suitable for transportation and is sold for parts only or purposes other than transportation.

27 A motor dealer exhibiting or offering for sale a used motor vehicle **shall** affix to it in a clear and legible manner information concerning it as follows:

(b) where it is a vehicle that is not suitable for transportation, the statement "Not Suitable for Transportation".

[34] I emphasize that the above enactments use the word “shall” which makes these mandatory declarations: *Interpretation Act* R.S.B.C. 1996 c. 238, s. 29. I also

note that these sections do not use the language of reasonableness as found in section 23 of the *Motor Dealer Act Regulation*. By virtue of section 27(b) of the *Motor Dealer Act Regulation*, a vehicle that is not suitable for transportation is to be readily apparent to a consumer before purchase, without the need to ask the motor dealer.

[35] Section 222 of the *Motor Vehicle Act* R.S.B.C. 1996 c. 318, prohibits a motor dealer from even exhibiting a motor vehicle for sale, that is intended for use on the roadways, unless it complies with the safety requirements found in that Act's regulations:

222 A person **must not** sell, offer for sale, expose or display for sale or deliver over to a purchaser **for use** a motor vehicle, trailer or equipment for them that is not in accordance with this Act and the regulations.

[36] A motor dealer would be a "person" and the word "must" is to be read as imperative: *Interpretation Act* section 29. I would note that the reference to "regulations" in section 222 is plural.

[37] The words "for use" must be interpreted as for the ordinary use which a particular motor vehicle is put to. This means it must at a minimum be roadworthy and suitable for transportation. This interpretation would provide consistency with sections 21(2)(e) and (f), 22 and 27(b) of the *Motor Dealer Act Regulation* which allows a motor vehicle to be sold by a motor dealer that is unsuitable for transportation if it is properly declared and sold for "parts only or purposes other than transportation."

[38] Section 8.01 of the *Motor Vehicle Act Regulation* also prohibits a person in the business of selling motor vehicles from selling a motor vehicle unless it is equipped in compliance with that Regulation:

8.01 No person who is engaged in the business of selling motor vehicles shall keep for sale, or sell or offer for sale, any new or used motor vehicle unless the motor vehicle is equipped as required by these regulations.

[39] Section 219(1) and (3) of the *Motor Vehicle Act* prohibits an owner of a motor vehicle from operating or allowing another person to operate a motor vehicle that does not meet the requirements of that Act and its regulations:

219 (1) A person **must not** drive or operate a motor vehicle or trailer on a highway or rent a motor vehicle or trailer unless it is equipped in all respects in compliance with this Act and the regulations.

(3) An owner of a motor vehicle or trailer **must not** permit it to be driven or operated on a highway unless it is equipped in all respects in compliance with this Act and the regulations.

[40] Owner is defined in section 1 of the *Motor Vehicle Act*:

"owner" includes a person in possession of a motor vehicle under a contract by which he or she may become its owner on full compliance with the contract;

[41] "Owner" is broad enough to include a motor dealer who owns a motor vehicle and is offering it for sale, and could potentially include a prospective purchaser who is on a test drive. Again, "must" is to be read as imperative: section 29 of the *Interpretation Act*.

[42] The safety requirements for motor vehicles applicable to the Tundra at the time it was repaired, inspected and sold are found throughout the *Motor Vehicle Act Regulation*. More detailed information as to allowable tolerances for wearing parts such as brakes, tires and front-end components were found in the *Schedule* attached to the *Inspection Standards (Safety and Repair) Regulation* B.C. Reg. 103/2002 made under the *Motor Vehicle Act* (since repealed and replaced on August 30, 2010 by the *Vehicle Inspection Regulation* B.C. Reg. 256/2010).

[43] The then *Schedule* comprised the Vehicle Inspection Manual used by the designated inspection facilities in B.C. authorized to do safety inspections on behalf of the Province of British Columbia. The *Schedule* also set the appropriate equipment requirements such as lights, mirrors, body and frame tolerances (structural integrity) and power-train requirements.

[44] If a motor vehicle does not meet the minimum safety requirements of the *Motor Vehicle Act* and its regulations, it is illegal to operate it on the roads: section

219 MVA. If that were the case, the motor vehicle would legally be “unsuitable for transportation”: sections 21(2)(e) and (f), 22 and 27(b) of the *Motor Dealer Act Regulation*.

[45] Given the mandatory nature of the required declarations and the prohibitions noted above, if a motor dealer is silent about whether a motor vehicle is “unsuitable for transportation,” or if it meets the requirements of the *Motor Vehicle Act*; that silence should be resolved in the favour of the consumer. Such silence can be accepted by a consumer as an implied representation that the motor vehicle is suitable for transportation and compliant with the *Motor Vehicle Act*. A motor dealer’s conduct, such as allowing it to be test driven, or allowing a consumer to drive it off its lot, would further bolster this implied representation. The nature of the harm that could result by allowing an unsafe motor vehicle to be driven on the road is considerable – loss of life, personal injury and property damage. Any interpretation that would allow a motor dealer to remain silent about whether a motor vehicle is or is not suitable for transportation cannot be accepted and could never have been the legislative intent. Such an interpretation would not protect consumers. I would also state that selling a motor vehicle that is not suitable for transportation and non-compliant with the *Motor Vehicle Act* without informing the consumer of that fact would be grounds to cancel a contract, as the motor vehicle is not what was contracted for - a motor vehicle that can be driven on the road.

#### **(d) Section 12 of the Motor Dealer Act**

[46] Section 12 of the *Motor Dealer Act* requires motor dealers to advise the Registrar in writing of a change in its ownership or structure within 14 days. The purpose of this is straight forward.

[47] When a person applies for registration as a motor dealer or for renewal of their dealership, the Registrar has an opportunity to review the application to ensure the applicant does not pose a risk to the public interest: sections 3 to 7 of the *Motor Dealer Act*. There are times when a dealer’s ownership will change mid-registration. During this time, it is necessary for the Registrar to revisit the motor dealer registration and determine if the new structure and ownership poses a risk to the public interest. If it does, the Registrar has the authority to impose conditions

on the motor dealers registration, ask for additional security or if the risk is too great, to suspend or cancel the motor dealer's registration.

[48] The Legislature has made it very clear of the importance of advising the Registrar of such a change. The Legislature has set a 14 day window to so advise the Registrar. The importance is further highlighted by the Legislature making a failure to notify the Registrar of such a change an offence contrary to section 35(2) of the *Motor Dealer Act*. Such a breach can incur liability of imprisonment of up to six months or a fine of up to \$200,000: section 35.1 of the *Motor Dealer Act*.

### **(e) Deceptive Acts or Practices under the BPCPA**

[49] Section 5(1) of the BPCPA prohibits a "supplier" of goods or services from engaging in "deceptive acts or practices" during a "consumer transaction." The BPCPA is consumer protection legislation of general application – it applies to all merchants in B.C. who provide goods or services to consumers; including motor dealers: *Casillan v. 565204 B.C. Ltd. dba Daewoo Richmond* 2009 BCSC 1335 and *Cummings v. 565204 B.C. Ltd. dba Daewoo Richmond* 2009 BCSC 1009.

#### **(i) Deceptive Act or Practice - general**

[50] The Notice of Hearing indicates the BPCPA provisions being advanced here are:

Deceptive acts or practices

4 (1) In this Division:

"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.

(2) A deceptive act or practice by a supplier may occur before, during or after the consumer transaction.

(3) Without limiting subsection (1), one or more of the following constitutes a deceptive act or practice:

(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,

(iii) have a particular prior history or usage that they do not have, including a representation that they are new if they are not,

(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. (Emphasis added)

[51] Proof of a deceptive act or practice does not require proof of a deliberate intention to deceive. In the 1976 case of *Findlay v. Couldwell*, [1976] 5 W.W.R. 340 (B.C.S.C.), the plaintiff purchased a car that was represented as being "a good little highway car, economic and reliable". Five days later, the engine blew up while the plaintiff was driving the car along the freeway towards Chilliwack. In holding that the defendant could not escape liability for a deceptive act or practice "even had the defendant honestly believed the representations he was making," Ruttan J. stated:

I should note here that a deceptive act does not necessarily involve deliberate intention to deceive. Deception need only have the capability of deceiving or misleading and it may be inadvertent yet still sufficient to void the transaction under the Statute, which is directed to the welfare of the consumer, not the punishment of the vendor. (Emphasis added)

See also: *Mikulas v. Milo European Cars Specialists Ltd.*, [1993] B.C.J. No. 2818 (B.C.S.C.) at para. 42; aff'd: [1995] B.C.J. No. 638 (B.C.C.A.); and *British Columbia (Director of Trade Practices) v. Lansdowne Pontiac Buick GMC Ltd.* [1986] B.C.J. No. 2065 (B.C.S.C), affirmed [1987] B.C.J. No. 2325 (B.C.C.A.).

[52] In *Rushak v. Henneken* (1991), 59, B.C.L.R. (2d) 250 (C.A.) the appellate court's decision notes the following principles regarding deceptive acts or practices under the then *Trade Practices Act*, since repealed and replaced by the BPCPA:

- (1) 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;
- (2) A deceptive act is one "that tends to lead a person astray into making an error of judgment";
- (3) The Act must be construed so as to protect not only potential customers, but also those who are not alert, are unsuspecting and are credulous; and
- (4) The Act imposes a high standard of candour on a supplier of goods.

[53] 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 [2007] S.C.C.A. No. 464, 2007 CanLII 66731 (December 20, 2007, S.C.C. File No. 32248) Russell J. treated the deceptive act provisions of the *Trade Practices Act* and the BPCPA as the same, and applied *Rushak* to her Ladyship's consideration of a deceptive act or practice under the BPCPA. Thus, the principles in *Rushak* have application under the BPCPA. See also *Casillan* at paragraph 27.

[54] In *Cummings*, Madam Justice Gerow confirmed that liability under the BPCPA does not require a finding of "fault" or "carelessness," just as was the case under the predecessor *Trade Practices Act*:

[21] The deception may be inadvertent. A supplier cannot escape liability if the misleading act or statement leads to the purchaser's injuries, even if he honestly believes the representations: *Mikulas v. Milo European Cars Specialist Ltd.* (1993), 52 C.P.R. (3d) 1 (B.C.S.C.) [aff'd: [1995] B.C.J. No. 638 (B.C.C.A.)].

[22] In my view, a supplier should not be able to escape liability on the basis that he honestly believed the representations, or that he relied on an inspection done by others, when he is advised of a concern about the vehicle by a purchaser and takes no steps to discover whether the representation is true, and the purchaser is misled by the representation. (Emphasis added)



[55] In *Casillan* at paragraph 27, the Court stated:

The BPCP Act was recently considered by Gerow J. in *Cummings*. The learned Justice referred to the *Trade Practices Act*, R.S.B.C. 1996, c. 457 (the predecessor to the BPCP Act), and to cases decided under similar sections of the former legislation. In *Rushak v. Henneken* (1991), 84 D.L.R. (4th) 87, 59 B.C.L.R. (2d) 250 (C.A.), Taylor J.A. said that suppliers must “refrain from any sort of potentially misleading statement”, including the giving of an honest opinion in circumstances where giving the opinion without appropriate qualification may mislead. In *Cummings* at para. 21, Gerow J. said that even an inadvertent deception can found a deceptive practice leading to a claim for damages. Once an allegation of deceptive practice is made, the burden shifts to the supplier, in this case Daewoo, to show either that it did not make the misrepresentation as alleged or that the misrepresentation was in fact true. (Emphasis added)

***(ii) Deemed deceptive acts or practices – BPCPA sections 4(3)(a)(ii), (iii) and (b)(vi)***

[56] The conduct deemed deceptive acts or practices under section 4(3)(a)(ii) of the BPCPA seem straightforward. They relate to misrepresentations of a product’s physical characteristics. Section 4(3)(a)(iii) is also straight forward and relates to misrepresentations about an item’s history or past usage.

[57] Section 4(3)(b)(vi) of the BPCPA addresses conduct that misdirects a consumer about a particular good or service. That section prohibits using “exaggeration, innuendo or ambiguity about a material fact, if the effect is misleading.” In-other-words, a supplier is to provide the material facts to a consumer for consideration without playing-up or playing-down those material facts; either directly by exaggeration or indirectly by innuendo or by hiding or masking those material facts through ambiguity.

[58] Section 4(3)(b)(vi) also deems a “representation by a supplier ... that fails to state a material fact, if the effect is misleading” as a deceptive act or practice: *Applewood Motors Inc v. Ratte & The Registrar of the Motor Dealer Council of British Columbia* (S.C.B.C. Action No. S094126, Vancouver Registry, April 13, 2010) paragraph 34. Justice Willcock in *Applewood* was of the view that any representation coupled with a failure to state a material fact, the effect of which is misleading, can constitute a deceptive act: *Applewood* at paragraphs 35-36. The

representation need not be one of substance directly related to the omitted material fact. It is enough if any representation coupled with an omitted material fact has the effect of misleading a consumer. To Justice Willcock, anything else would “rob significant words in section 4(3)(b)(vi) of any meaning”: *Applewood* at paragraph 34.

***(iii) Relationship between the Motor Dealer Act, the BPCPA and other legislation***

[59] The Legislature and the Lieutenant-Governor-in-Council have brought certain provisions of the BPCPA under the authority of the Registrar of Motor Dealers involving the sale by motor dealers of motor vehicles: section 8.1 of the *Motor Dealer Act* and section 29 of the *Motor Dealer Act Regulation*. There is thus a statutory scheme involving two Acts and related regulations administered to this one industry by the Registrar. Therefore, each Act informs and influences the other Act, and they are to be read together harmoniously: *statutes in pari material*.

[60] By virtue of section 21(2)(e) of the *Motor Dealer Act Regulation* and the wording of section 222 of the *Motor Vehicle Act* and section 8.01 of the *Motor Vehicle Act Regulation*, the Registrar has jurisdiction to consider the law found under the provisions of the *Motor Vehicle Act* and its regulations, when it involves the conduct of motor dealers selling vehicles that are non-compliant with the *Motor Vehicle Act*. Further, in arriving at a just decision, the Registrar may look to other laws that can influence decisions on issues being considered to ensure consistency in the interpretation and application of the law. This could include consideration of the *Sale of Goods Act* which may have some influence on determining the rights and remedies involved in a particular transaction. Therefore, the Registrar may have regard to all of the law which may address the issues being considered: *Werbeski v. Ontario (Director of Disability Support Program, Ministry of Community & Social Services)* [2006] 1 S.C.R. 513 (S.C.C.) and see paragraphs 24-26.

[61] I would add that statutory duties placed on motor dealers by the *Motor Dealer Act* or its regulations, are not the limit of their duties to consumers. The duties placed on motor dealers are found in various sources of law, including the common law. Simply discharging a duty under the *Motor Dealer Act*, will not necessarily shield a motor dealer from all liability. The *Motor Vehicle Act*, the *Sale of*

*Goods Act* and the *Business Practices and Consumer Protection Act* can add to the duties of motor dealers found under the *Motor Dealer Act*. Those acts may even place a higher duty of care and disclosure on a motor dealer than does the *Motor Dealer Act*: *Ryan v. Victoria (City)* [1999] 1 S.C.R. 201 (S.C.C.) paragraph 29.

[62] In the present case, a motor dealer has a statutory duty to ensure a motor vehicle it is selling meets the requirements of the *Motor Vehicle Act*, or otherwise declares it as unsuitable for transportation. That is a duty imposed on the selling motor dealer, by the *Motor Dealer Act Regulation*, the *Motor Vehicle Act*, and its regulations and not on the inspector of a rebuilt motor vehicle. If a motor dealer chooses to hire or rely on a third party (such as an inspector) to help that dealer in discharging its duties and that third party acts negligently, recklessly or fraudulently; the motor dealer is still liable to the consumer: see for example *Cummings* at paragraph 22. The motor dealer may have a cause of action against the third party it relied on: *Robillard v. Comox Valley Ford Sales (1964) Ltd.*, (1995) 3 B.C.L.R. (3d) 374 (B.C. Court of Appeal).

[63] In short, a motor dealer may not pass off to third parties the statutory duties it owes to the consumers it deals with.

**(iv) Onus and Burden of Proof under the BPCPA**

[64] Where an allegation is made that a supplier of goods or services has committed a deceptive act or practice in a consumer transaction, section 5(2) of the BPCPA places the onus of proof on the supplier to prove it did not commit the deceptive act or practice:

5(2) If it is alleged that a supplier committed or engaged in a deceptive act or practice, the burden of proof that the deceptive act or practice was not committed or engaged in is on the supplier.

See *Cummings*, at paragraph 25 and *Casillan* at paragraph 27.

[65] The burden of proof is on a balance of probabilities, even for claims of deceptive acts or practices that would amount to civil fraud: *F.H. v. McDougall* [2008] 3 S.C.R. 41, 2008 SCC 53 (Supreme Court of Canada).

**(f) Burden of Proof regarding Mr. Karamali operating as a salesperson**

[66] The burden of proof is on the Authority to establish Mr. Karamali was operating as salesperson or based on the allegations, is an owner of Matrix. That burden is also on a balance of probabilities.

**(g) Assessing Witness Credibility**

[67] Where witness credibility may be at issue in these proceedings, I keep in mind the various factors 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); *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).

**DISCUSSION**

**(a) "Genuine Consumer Transaction"**

[68] The Respondents state that the large sums of cash Mr. Roberts used to pay for the Tundra is suspect. They say the onus was on him to establish the legitimate source and use of that cash to purchase the Tundra, which he failed to do. This, they say, makes this deal not a "genuine consumer transaction" as contemplated by the BPCPA and takes the transaction out of the jurisdiction of the Registrar.

[69] Consumer transaction is defined in section 1 of the BPCPA as:

**"consumer transaction"** means

(a) a supply of goods or services or real property by a supplier to a consumer for purposes that are **primarily personal, family or household**, or

(b) a solicitation, offer, advertisement or promotion by a supplier with respect to a transaction referred to in paragraph (a),

and, except in Parts 4 and 5, includes a solicitation of a consumer by a supplier for a contribution of money or other property by the consumer; (Emphasis added)

[70] The Affidavit of Larry Barteski #1 was entered as Exhibit 3. Page 85 attached to that Affidavit is Mr. Roberts' insurance certificate which notes he has basic insurance. There is a notation at the bottom of the insurance that pleasure use

was explained. Exhibit 33 is a record from ICBC regarding the claim made by Mr. Roberts for his minor accident. That document also notes the Tundra was “pleasure use” and not insured for business use.

[71] I find there is evidence here to say that the Tundra was purchased by Mr. Roberts for “purposes that are primarily personal, family or household.” There is no evidence to the contrary.

[72] For their position, the Respondents rely on the federal *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* S.C. 2000 c.17 (“PCTFA”) and the following cases applying that legislation to say the consumer transaction was not genuine:

*Hamam v. Canada (Minister of Public Safety & Emergency Preparedness)* 2007 FC 691, [2007] F.C.J. No. 940, 2007 CarswellNat 1878 (Federal Court)

*Tourki v. Canada (Minister of Public Safety & Emergency Preparedness)* 2007 CF 746, [2007] F.C.J. No. 995, 2007 CarswellNat 4312 (Federal Court)

*Dupre v. Canada (Minister of Public Safety & Emergency Preparedness)* 2007 FC 1177, [2007] F.C.J. No. 125, 2007 CarswellNat 3836 (Federal Court)

[73] Section 3 of the PCTFA sets out the objectives of that Act. None of the objectives make illegal the purchase of goods with cash, even large sums of cash. The PCTFA merely places reporting requirements on certain businesses, associations and individuals under certain circumstances with consequences for not doing so.

[74] In *Hamam*, *Tourki* and *Dupre*, all three of those individuals had failed to declare to an “officer”<sup>2</sup> that they were carrying large sums of cash across international borders, contrary to section 12(1) of the PCTFA. If it can be shown on reasonable grounds that section 12(1) of the PCTFA was breached, an “officer” may seize as forfeit the money under section 18(1) of the PCTFA. The Respondents rely on paragraph 38 of *Dupre*, however, paragraphs 36-37 provide the proper context:

36 It is important to recall that this is an administrative proceeding *in rem*. It concerns only the forfeited currency and whether there were reasonable grounds to

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<sup>2</sup> Section 2 of the PCTFA says this has the same meaning as “officer” under section 2(1) of the Customs Act which is : “officer” means a person employed in the administration or enforcement of this Act [*Customs Act*], the *Customs Tariff* or the *Special Import Measures Act* and includes any member of the Royal Canadian Mounted Police;

suspect that it is proceeds of crime. The jurisprudence of this Court establishes that focus on the source of the currency is appropriate.

37 Reasonable grounds to suspect is a lesser but included standard of reasonable and probable grounds to believe: *R. v. Monney*, [1999] 1 S.C.R. 652 (S.C.C.). In my view, in the circumstances, there was ample reason to suspect that the currency in Ms. Dupre's possession is proceeds of crime. Ms. Dupre created that suspicion by her conduct at the time of the seizure.

38 The onus then shifted to Ms. Dupre to dispel the suspicion. To accomplish that end, she had to persuade the ministerial delegate as to the lawful source of the funds. The imposition of this requirement is logical given that Ms. Dupre is best - placed to explain the origin of the currency that was in her possession. She simply failed to meet that onus. (Emphasis added)

[75] As the Court noted, there was evidence to suggest the cash, not declared to an "officer" at the time it was being transported across the international border, was the proceeds of crime. That evidence was articulated at paragraph 17 of *Dupre*, and only when similar such evidence has been established, along with a breach of section 12(1) of the PCTFA – failure to report cash over \$10,000 to an "officer", does a presumption of illegality in the cash arise.

[76] In short, the PCTFA does not create an all-inclusive and automatic presumption of illegality when paying for goods or services with large sums of cash in Canada. There must be a specific breach of that Act, coupled with evidence to suggest some sort of illegality in the cash. Further, Section 5 of the PCTFA and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transaction Reporting Regulations* (SOR/2001-317) set out the entities that are required to report suspicious transactions. There is no requirement for a motor dealer to report a large cash transaction from a consumer. A motor dealer's financial institution may request information from a motor dealer, however, that would be because of that financial institution's requirement to report a motor dealer's large cash deposit under the PCTFA.

[77] I find the transaction between Mr. Roberts and Matrix was a "consumer transaction" as defined by the BPCPA. I further find that Matrix was a "supplier" as defined in the BPCPA: *Casilian* and *Cummings*.

**(b) Deceptive Act or Practice**

[78] The core issue here is whether the findings of CVSE Inspector Richardson, that certain damaged parts of the Tundra that made it non-compliant with the *Motor Vehicle Act* and thus legally "unsuitable for transportation," pre-existed the sale by Matrix to Mr. Roberts or occurred after Mr. Roberts purchased the Tundra.

**(i) Mr. Richardson's evidence**

[79] Mr. Richardson was qualified as an expert in motor vehicle safety and assessing the mechanical condition of motor vehicles after they have been in an accident. Mr. Richardson conducted an inspection on the Tundra on April 15, 2009. He highlighted several damaged components on the Tundra which caused him to find the vehicle not compliant with the *Motor Vehicle Act*, namely:

- (i) damage to the transmission cross-member;
- (ii) damage to the rear leaf spring shackles and hangars;
- (iii) bent rear axles;
- (iv) incorrect tires which touched the frame and control arms and incorrect wheel lug nuts holding those tires onto the Tundra; and
- (v) wiring issues such as the third brake light not functioning as required by provincial and federal law.

Mr. Richardson's oral testimony on March 26, 2010, his report attached as Exhibit N (pages 55-59) to the Affidavit of Larry Barteski #1 (Exhibit 3 at the hearing); and Exhibit 19 at the hearing.

[80] The inspection report dated February 3, 2009 from Nelson Toyota about the Tundra indicates the same or similar concerns and that the "Vehicle is 'out of service' – should not be driven": Affidavit of Larry Barteski #1, Exhibit #3, pages 24 to 30.

[81] Mr. Richardson stated that the damage to the rear springs and shackle would require a tremendous amount of force, as would the bending of the rear axles. It was his opinion the damage was consistent with a major accident and a roll-over accident. He noted that if the vehicle had hit a curb, the aluminum wheels would break and not bend. He noted that the damage was consistent with the rear differential being pushed left to right, or with the frame and body of the Tundra being pushed right to left. He said this damage was not consistent with the Tundra

going over a boulder or log. He did say that the damage to the transmission cross-member could have been caused from going over a boulder or a log.

[82] Mr. Richardson's testimony about the wheels and wheel nuts on the Tundra was very clear. He was astonished that the 2006 Tundra had wheels on it from another vehicle other than a 2006 Tundra. Those wheels were bigger and caused the tires to touch "the frame and control arms of the vehicle when you turned it from side to side. And you can actually see in picture 7 where it was rubbing on the frame": March 26, 2010 Transcript of Proceedings, page 108, lines 17-24. The wheel nuts holding the tires and rims onto the Tundra were also incorrect for this vehicle.

[83] Overall, Mr. Richardson's conclusion about the Tundra's safety "Was it was totally unsafe": March 26, 2010 Transcript of Proceedings, page 109, lines 18-20. Mr. Richardson issued a Notice and Order requiring the Tundra to have a complete structural integrity and vehicle inspection. The Tundra was ordered to be "immediately removed from the highway until such time as it complies with the Motor Vehicle Act and Regulations (Division 25)": Exhibit 11 - Notice and Order No. 1396679.

***(ii) Sean Conway***

[84] Sean Conway was produced by the Respondents as a factual witness. He has repaired cars for some 20 years and has a general engineering degree from Simon Fraser University. He has had no formal training in auto body repairs.

[85] Mr. Conway was the person engaged by Matrix to repair the body of the Tundra. He detailed the repairs he did to the vehicle. He noted he replaced the roof and two complete doors and fixed the box side of the Tundra. He noted he did not do a visual inspection of the undercarriage of the Tundra for damage. He did a wheel base measurement only, which he says was within specifications and to him this indicated no undercarriage or frame damage. Under cross-examination, he admitted he could not recall all of the repairs he carried out on the Tundra.



[86] Mr. Conway detailed that after he is finished his repairs, the Tundra would go to a separate wheel alignment specialist and body inspector for final review. Afterwards, the Tundra would be returned to Matrix.

[87] Mr. Conway also gave evidence on the damage he saw on the Tundra when Matrix took it back from Mr. Roberts. He noted that the damage he saw would have been apparent to him even without visually inspecting the underside of the Tundra. He said the damage to the rear leaf spring shackles (he used the term perches) would take "some great force to do that" and "on the actual differential itself": Transcript of Proceedings May 12, 2010, page 28, line 2 to 23. He also noted that the Tundra had a new set of tires on it from when he repaired the vehicle, which he found odd.

[88] Finally, Mr. Conway cannot produce any paperwork on this vehicle as none was kept. All his time is accounted for in the cheque he receives from Matrix. Mr. Conway said he dealt with Mr. Karamali throughout the repairs.

***(iii) Jagjiven Ubhi***

[89] Mr. Jagjiven Ubhi is the owner of Gagnan Auto Repairs. He had obtained his auto body repair licence some 2-3 weeks prior to the hearing. Mr. Ubhi is a designated inspector for conducting the Provincial Private Vehicle Inspections (PVI). Mr. Ubhi had inspected the Tundra on October 26, 2009, after it was returned to Matrix by Mr. Roberts.

[90] Mr. Ubhi confirmed that the Tundra would not have passed the PVI with the damaged noted by Mr. Richardson. He suggested that the damage was "fresh" because the paint overspray on the transmission cross-member had been damaged and some rust was coming through. He focused his comments on overspray to the dent on the transmission cross-member. He said the axles were bent which can cause a vibration from the rear of the Tundra at high speed: Exhibit 23 and his oral testimony in direct examination: Transcript of Proceedings May 12, 2010, page 70 line 23, to page 71 line 12. He noted he did not inspect the Tundra after it had been repaired by Mr. Conway or before it was sold to Mr. Roberts.

[91] Mr. Ubhi was a bit vague in his evidence. He kept stating it had been a while since he saw the Tundra. It had been just over six months. He also, interestingly, stated he wanted nothing more to do with his report that was tendered as Exhibit 23 at this hearing: Transcript of Proceedings May 12, 2010, page 78 line 24, to page 79 line 5. Mr. Ubhi noted he dealt with counsel for the Respondents as well as Mr. Karamali.

***(iii) Balbir Pandher Singh***

[92] Balbir Pandher Singh is the owner of Carisma Auto Works. He is a red seal certified mechanic with some 20 years experience. His business repairs motor vehicles and his oral testimony indicates he does some inspections on the side. He inspected the Tundra after it was repaired by Mr. Conway. He issued a pass to the Tundra.

[93] Mr. Singh's evidence was somewhat vague. He relied on his report which was Exhibit 24 at the hearing. He said he could not really remember if the rear leaf shackle was damaged, but said he would not have passed the Tundra if it had been damaged. He noted that he relied on the report of the body integrity inspector Cale Bath in order to produce his report. He made it clear that Mr. Bath produced a separate report that was not part of Exhibit 24, and that Mr. Bath is responsible for inspecting the body repairs, welding and frame of the vehicle.

[94] Mr. Singh had an opportunity to look at the Tundra after Matrix took it back from Mr. Roberts. Mr. Singh could recall that the Tundra had different tires on it then when he first inspected the vehicle. He noted some damage to the transmission cross-member and the rear right leaf shackle. Mr. Singh also noted that Mr. Cale Bath was also there and looked at the Tundra. He said Cale Bath happen to be at Carisma's shop and he looked at the damage of concern and "he took a better look at it because it was more of a body thing.": Transcript of Proceedings, November 2, 2010, page 14 line 1 to page 15 line 5.

***(iv) Cale Bath***

[95] At the hearing, counsel for the Respondents noted difficulty in having Mr. Bath appear at this hearing, and noted there was some importance in his

attendance. I offered the assistance of a Registrar's Summons to a Witness to compel Mr. Bath's attendance which was, at least initially, accepted. Later in the hearing, I was advised by counsel for the Respondents that Mr. Bath's attendance was no longer needed as they felt they had sufficient evidence to go forward without his testimony.

[96] I note that the inspection done by Mr. Singh relied in part on the inspection and report of Cale Bath. Mr. Singh said that if Mr. Bath had failed the Tundra under his inspection, Mr. Singh could not have passed the Tundra: Transcript of Proceedings November 2, 2010, page 11, line 20 to page 12, line 25. Mr. Bath was, according to Mr. Singh, responsible for inspecting the body repairs and the Tundra's integrity, including its frame.

[97] Under questioning by myself, Mr. Singh tried to describe how Mr. Bath would inspect the Tundra for the completed welds to its roof and doors after the Tundra's repairs were complete and the body assembled. Mr. Singh could not explain how Mr. Bath could have conducted his inspection to the Tundra. Based on Mr. Singh's description, Mr. Bath did not actually view those welds as the Tundra came to Mr. Singh's shop fully assembled. Mr. Conway noted that no one inspected the Tundra during his repair process while at his shop: Transcript of Proceedings, May 12, 2010, page 36, line 16 to page 37, line 11. Section 8 of the *Schedule* is entitled "Body Structural Integrity Inspection Standards." It has two columns; one column identifies a component or repair. The other column "reject if" identifies when that component does not pass inspection. To ensure proper inspection, section 8 also states:

Those joints which are a part of a repair or replaced component must be accessible when the structural integrity inspection is made. No sealant, soundproofing or rustproofing compound must have been applied to the areas repaired or replaced prior to the inspection.

[98] There are also additional requirements noted in section 8 of the *Schedule* when a vehicle is being rebuilt after being a total loss, which is entitled "Body Integrity for Total Loss Vehicles". Within that section is also noted the following:

Repairable components of the body must be repaired in accordance with the methods, procedures and standards that will return the component to its original standard,

quality and properties in accordance with OEM [Original Equipment Manufacturer] or I-Car [Inter-Industry Conference On Auto Collision Repair] recommendations.

#### INSPECTION VISIBILITY

Joints which are part of a repair or replaced component must be visibly accessible for structural integrity inspection. The joint must not be covered with sealant, sound proofing material or rust proofing material that will inhibit visual reference of the joint or component prior to inspection.

[99] I note Mr. Conway admitted to having no formal training in body repairs and specifically no I-Car training: Transcript of Proceedings, May 12, 2010, page 49, lines 1 to 22.

[100] I note the evidence from Nelson Toyota that the Tundra's doors did not align properly and that the door frame was not repaired correctly: Affidavit of Larry Barteski #1, Exhibit #3 at the hearing, specifically pages 25-26. These repaired areas were for Mr. Bath to inspect. Section 8, item 6 (doors) of the *Schedule* notes:

Inspect	Reject if
a) operation	a) binds, jams, <i>closes insecurely</i> , missing
h) door panel	h) repaired in a manner that compromises structural integrity, repaired other than by approved standard and process

[101] Mr. Singh also noted that Cale Bath had a look at the Tundra after Matrix took it back from Mr. Roberts. As Mr. Singh said, "Yes, so he – he had – you know, he looked – he took a better look at it because it was more of a body thing.": Transcript of Proceedings November 2, 2010, page 14, lines 23-25.

[102] I find Mr. Bath was an important witness in this matter who was not produced by the Respondents. Mr. Singh's passing the Tundra under his inspection was dependant and relied on Mr. Bath's inspection. The description of Mr. Bath's inspection indicates it is suspect. Mr. Singh says Mr. Bath was responsible for checking the welds on the Tundra, (roof especially) but Mr. Singh's evidence, along with Mr. Conway's, indicates Mr. Bath inspected the Tundra when it was fully assembled and those welds were hidden by the decorative panels.

[103] There is also the evidence from Nelson Toyota of the improper repair of the door frame. This was an area Mr. Bath was responsible for inspecting. I do not have

evidence from Mr. Bath to explain how he passed the Tundra with the door frame being improperly repaired. According to Mr. Singh, Mr. Bath was the best person to provide evidence of the Tundra's damage, being "more of a body thing," when it was returned to Matrix by Mr. Roberts.

[104] Because of the dependency of these two inspections, if Mr. Bath's inspection and passing of the Tundra is suspect, then Mr. Singh's inspection and passing of the Tundra is also suspect and of little value.

***(v) Mr. Karamali***

[105] Mr. Karamali gave much oral testimony at this hearing related to various issues. Here I am concentrating on the tires installed by Matrix.

[106] Mr. Karamali's evidence was that the tires that came with the Tundra were winter tires. He says he was directed by Mr. Foroghi to put on different tires and he did so. The tires installed were "mag wheels" and the testimony of Mr. Karamali was that he installed "normal size tires" on one Tundra, but the Tundra sold to Mr. Roberts had off-road tires installed – inferring larger than normal tires. Mr. Karamali said the mag wheels did not need any special wheel bolts to secure the mag wheels to the Tundra. Mr. Karamali's oral testimony also notes the tires and mag wheels were installed after Mr. Singh had completed his inspection and passed the Tundra: Transcript of Proceedings, May 12, 2010, page 100 to page 101.

***(vi) Exhibits 27, 29 (pictures from the Respondents) 32 and 33 (ICBC reports and pictures)***

[107] Exhibit 27 was entered by the Respondents. It is six pictures Mr. Foroghi says shows the Tundra prior to sale to Mr. Roberts. Exhibit 29 is two pictures showing the Tundra with four tires on rims in the back of the Tundra. These later pictures were discovered while Mr. Savidan was cross-examining Mr. Foroghi. Mr. Savidan asked to see the envelope that Exhibit 27 was in, and when he examined the envelope, the two additional pictures were discovered inside.

[108] Exhibit 32 was tendered by Mr. Haywood, a special constable and investigator with ICBC. Exhibit 32 comprises the file of ICBC on the Tundra after its accident and prior to Matrix's purchase of the Tundra. It is clear from the report that

the Tundra was in a roll-over accident. The picture evidence shows damage to the roof and the passenger side of the vehicle cab and box. The picture evidence also shows damage to the driver's side running board, the driver side cab near the box is dented; the rear portion of the driver's rear door is dented as is the driver side box just in front of the left rear (driver's side) wheel.

[109] Exhibit 33 was also tendered by Mr. Haywood. It is ICBC's claim information involving the accident Mr. Roberts had with the Tundra. The Exhibit notes the loss date as January 28, 2009. Attached are several pictures of the Tundra from all angles. The pictures show both the left and right rear of the Tundra and there is no apparent damage to the truck box on both sides and the wheel rims look undamaged. Also a comparison of the pictures shows no displacement of the rear differential from left to right to the degree expressed by Mr. Conway. This does not mean that the differential is not displaced, but Mr. Conway's evidence was that the damage he saw when the Tundra was returned to Matrix by Mr. Roberts would have been very much apparent to him even without looking under the Tundra. The picture evidence in this case does not support Mr. Conway's assertion.

***(vii) Discussion on the evidence***

[110] Soon after Mr. Roberts bought the Tundra he described driveability problems with the Tundra and loud noises coming from the rear-end while driving to Whistler: Transcript of Proceedings, March 26, 2010 page 8. He called Matrix and was advised to come back for the Tundra to be inspected. There is no dispute that Matrix had the vehicle inspected and that Mr. Karamali stated that the noise was tire noise. The mechanic used by Matrix advised that the noise was rear wheel bearing noise. The heater was fixed and Mr. Roberts went to Nelson, B.C. on or about January 23, 2009.

[111] Five days later Mr. Roberts reports an accident with the Tundra. Pictures taken around that time show no exterior damage to the Tundra, or its wheels, of such force necessary to cause the damage found by Mr. Richardson or by Nelson Toyota.

[112] A further five days later, Mr. Roberts had the Tundra inspected by Nelson Toyota - Feb 3, 2009. The Toyota dealership noted the various problems that Mr.

Richardson soon also discovered for himself, including bent axles. Nelson Toyota reported that the wrong tire sizes were on the Tundra and the wheel nuts used were also wrong. Nelson Toyota also advised that the Tundra's doors did not align properly because the door frame had not been repaired properly: Exhibit 3, Affidavit of Larry Barteski #1, pages 25-26. This report from Nelson Toyota was not refuted. Again, I note that only a few days prior, the Tundra was in a small accident and the picture evidence from that ICBC claim does not show any external damage to the Tundra of such tremendous force as described by Mr. Richardson and Mr. Conway as necessary to cause the damage to the rear axles, to displace the rear differential and bend the spring shackle.

[113] The evidence shows that Mr. Roberts complained of a rear-end noise soon after purchase. He continued to complain. There is no evidence that the Tundra was in any significant accident to cause the damage to the rear differential – bent axles and leaf spring shackle – while in Mr. Roberts's possession. In fact, the picture evidence from the ICBC report shows the Tundra was in relatively the same condition as when Matrix says Mr. Roberts bought it.

[114] The Respondent's evidence falls short of saying the Tundra met the requirements of the *Motor Vehicle Act* at the time they sold it to Mr. Roberts. The evidence from Mr. Conway and Mr. Singh, if believed, at best says the Tundra was repaired and Mr. Singh passed the Tundra after his inspection. Mr. Singh's report is suspect for the reasons expressed above – being reliant on the report of Mr. Bath who did not give any evidence. Importantly, Mr. Conway's evidence and Mr. Singh's evidence only speak to the condition of the Tundra when it was delivered to Matrix, and not about its condition before it was sold to Mr. Roberts.

[115] The evidence indicated that Matrix put different tires on the Tundra, after Mr. Singh had completed his inspection and returned the vehicle to Matrix. The evidence is that Matrix installed the wrong wheel nuts on the Tundra. Mr. Karamali's evidence indicates Matrix put on larger tires and mag wheels. Both Mr. Richardson and Nelson Toyota stated the tires were too large, rubbed on the Toyota at full turn, and the wrong wheel nuts were used. Mr. Richardson's testimony says he was astonished at the wheel nuts that were being used. There is no evidence that Mr.

Roberts changed those wheel nuts, and the ICBC report indicates the wheels and tires were in the same condition as when Mr. Roberts purchased the Tundra from Matrix.

[116] The damage to the rear differential and rear axles being bent required a tremendous amount of force based on the testimony of both Mr. Richardson, an expert in this area, and the factual witness Mr. Conway. Mr. Richardson noted three possible scenarios for that damage to occur. First, that the left rear wheel hit a curb very hard. However, he noted the aluminum wheels would break as they do not bend. There is no evidence of the left rear wheel breaking. Mr. Karamali agreed that the wheel rims were not bent or cracked when Matrix took the Tundra back from Mr. Roberts. Matrix also sold the Tundra with the same rims on it as when they got it from Mr. Roberts: Transcript of Proceedings May 13, 2010, pages 30-31.

[117] Second, that the box and frame of the Tundra was pushed right to left. There is no evidence of damage to the box one would expect to see if there was an impact of such force as explained by Mr. Richardson. This is clear from the pictures from the ICBC Claim report: Exhibit 33.

[118] Third, Mr. Richardson believes the damage is consistent with a roll-over accident. The Tundra was involved in a roll-over accident before it was sold to Mr. Roberts as the ICBC report notes, Exhibit 32, and to which Mr. Karamali himself agreed: Transcript of Proceedings, May 12, 2010, pages 92-93.

[119] The evidence is also clear that there were intervening events between the time the Tundra was repaired by Mr. Conway and inspected by Mr. Singh and when it was sold to Mr. Roberts. The installation of the new tires highlights this.

[120] Also of curiosity are the odometer readings on the Tundra at various times. The Tundra is a USA vehicle and its odometer reads in miles. When Matrix bought the Tundra from ICBC, it had an odometer reading of 30977: Affidavit of Larry Barteski #1, Exhibit 3, page 34. When Mr. Singh inspected the now repaired Tundra its odometer reading was 30930: Exhibit 24. This is a loss of 47 miles. When the Tundra is sold to Mr. Roberts on January 9, 2009, the odometer reads 31,000 even: Affidavit of Larry Barteski #1, Exhibit 3, page 54. This means at least 70 miles had



been put on the Tundra between the time Matrix received the Tundra back from Mr. Singh and it sold the Tundra to Mr. Roberts.

[121] Another curiosity is the bill of sale between Matrix and Mr. Neuls for the same Tundra negotiated one month earlier on December 8, 2008. The bill of sale noted the Tundra's odometer reading as 36,000: Affidavit of Larry Barteski #1, Exhibit 3, page 45. This sale never completed. If believed, the Tundra had traveled some 5,000 miles between the time Mr. Singh inspected and gave the Tundra back to Matrix and when Matrix tried to sell it to Mr. Neuls. The Tundra then appears to have miraculously lost some 5,000 miles in one month's time, before Mr. Roberts purchased that vehicle. These odometer anomalies are not satisfactorily explained by Matrix.

[122] I would note that Mr. Singh inspected the Tundra on March 26, 2008, some nine months before Mr. Neuls bill of sale was completed, and almost ten months before Mr. Roberts purchased the Tundra.

[123] The evidence notes there was a significant time period between the repair and inspection of the Tundra and the sale of the Tundra to Mr. Roberts. There are also significant discrepancies in the odometer readings. Finally, Matrix has admitted that after Mr. Singh's inspection, it did some work to the Tundra, namely the tires. There is no evidence to account for the use of the Tundra during this time, nor the discrepancies in the odometer readings. It is possible that the Tundra suffered damage during this intervening time period of some 9-10 months and potentially several thousand miles placed on the odometer that were subsequently removed. That is a possibility.

[124] There is no evidence that some nefarious reason should be attributed to Mr. Roberts inability to recount with detail every mile he traveled with the Tundra. At least with his odometer readings, there is no unexplained loss of mileage as when Matrix had the Tundra.

[125] I find Mr. Singh's report is suspect, dependent as it is on Mr. Bath's report. Also, his inspection took place almost ten months prior to the sale of the Tundra to Mr. Roberts. There was evidence from the odometer readings of the Tundra having been used in that time period. Through Mr. Karamali and Mr. Foroghi, Matrix has

admitted they at least changed the tires on the Tundra during that time. For these reasons, Mr. Singh's report is insufficient to say the Tundra met the requirements of the *Motor Vehicle Act* at the time the Tundra was sold to Mr. Roberts.

[126] On all this evidence, I am satisfied on a balance of probabilities that Mr. Roberts did not cause the damage in question to the Tundra. I am satisfied that the damage pre-existed the sale of the Tundra to Mr. Roberts by Matrix. I am satisfied that the damage, as described, made the Tundra non-compliant with the *Motor Vehicle Act* at the time Matrix sold the Tundra to Mr. Roberts. This made the Tundra, legally, unsuitable for transportation. I am satisfied that Matrix, by words or by conduct, misrepresented the Tundra as suitable for transportation and meeting the requirements of the *Motor Vehicle Act* when it did not. I am also satisfied that Matrix has not met its burden of proof: *Casillan and Cummings*. I am satisfied on the evidence that Matrix committed a deceptive act or practice in the consumer transaction with Mr. Roberts involving the Tundra, contrary to section 5(1) of the BPCPA.

**Mr. Karamali an owner and/or salesperson with Matrix?**

[127] I am satisfied that the evidence shows Mr. Karamali acted as a salesperson as well as being an owner in Matrix.

**(a) Salesperson**

[128] A salesperson is defined in the *Motor Dealer Act* as:

**"salesperson"** means

- (a) an individual, other than a motor dealer, who, on behalf of a motor dealer and for or in the expectation of a fee, gain or reward,
  - (i) solicits, negotiates or arranges for the sale of a motor vehicle to a person, **or**
  - (ii) **in any way** participates in the soliciting, negotiating or arranging for the sale of a motor vehicle to a person, or
- (b) an individual who is a motor dealer and who
  - (i) solicits, negotiates or arranges for the sale of a motor vehicle to a person, or

(ii) in any way participates in the soliciting, negotiating or arranging for the sale of a motor vehicle to a person. (Emphasis added)

[129] Both Mr. Roberts and Mr. Neuls identified Mr. Karamali as the person they dealt with for the purchase of the Tundra. Both these witnesses independently identified Mr. Karamali and both independently referred to him as "Rick." Mr. Neuls did so out of a photo line-up of six individuals consisting of Mr. Karamali, Mr. Rezapoor, Mr. Foroghi and three others: Exhibit 7. Mr. Neuls did not identify Mr. Foroghi or Mr. Rezapoor as persons he dealt with at Matrix, even though their pictures were presented to him. Mr. Foroghi suggests he was the person that dealt with Mr. Neuls ("the guy from the Island"): Transcript of Proceedings, November 2, 2010, page 38, line 4 to page 39, line 21 and page 85, line 6 to page 86, line 4.

[130] Ross Coté, a VSA Compliance Officer, gave evidence about his involvement in the investigation leading to Mr. Karamali pleading guilty to the above noted offences. Mr. Coté identified many aliases that Mr. Karamali was identified as having used. Mr. Coté noted that Mr. Karamali has been reported as using the aliases Raymond, Mike, Ray and Rick, although Mr. Coté has only known Mr. Karamali by his legal first name of Ramin: Transcript of Proceedings, March 25, 2010, page 77.

[131] During the testimony of Sean Conway, he stated that he knows Mr. Karamali by the name Ray. However, at one point in cross-examination he called Mr. Karamali "Roy" then corrected himself. Without much prompting he followed up by saying "I call him Ray, I've known him as Ray since day one." I find that Mr. Conway over reacted to this slip and went out of his way to correct the slip. This comes not only from the words he said, but his demeanour when doing so, being very much agitated while correcting his slip: Transcript of Proceedings, May 12, 2010, page 35.

[132] I also note Mr. Karamali's oral testimony throughout the hearing. His knowledge of the transaction involving the Tundra went beyond that of an employee who was a technician and a "cab driver" as Mr. Coté described him. Mr. Karamali was the one who dealt with Mr. Roberts personally when Mr. Roberts returned with the Tundra due to heater and driving problems. Mr. Karamali also had knowledge

about the original tires on the Tundra being sold to an Asian couple and that there should be a receipt available. I would note that receipt was requested to be produced but never was.

[133] Under direct questioning Mr. Karamali was adamant that "... I don't talk to customers, I just do my own business." Transcript of Proceedings, May 12, 2010, page 60 lines 10 to 17. On further questioning by counsel for the Respondents, Mr. Karamali went on to say he would discuss the history of a vehicle with Mr. Foroghi in the presence of a customer. Further on in direct examination, Mr. Karamali stated he explained the history of the Tundra to Mr. Roberts when he was driving Mr. Roberts to the Skytrain station. According to Mr. Karamali, Mr. Roberts inquired where the Tundra was originally from, and Mr. Karamali said he believed it was from the U.S. because the Tundra's odometer is in miles: Transcript of Proceedings, May 12, 2010, page 107. This was after Mr. Roberts had apparently finished talking to Mr. Foroghi. I would note that sections 21(2)(c) and 23(d) of the *Motor Dealer Act Regulation* require a motor dealer to make certain declarations to consumers as to the jurisdiction that a motor vehicle was from, other than British Columbia. Explaining to a purchaser the history and origin of a used motor vehicle is certainly participating "in the soliciting, negotiating or arranging for the sale of a motor vehicle to a person." This is based on Mr. Karamali's own evidence.

[134] Mr. Karamali and Mr. Foroghi both stated that Mr. Karamali was "paid" for his work from the profits of Matrix. Therefore, Mr. Karamali had an expectation of gain from any sale of motor vehicles by Matrix, including the Tundra. On this point is also the evidence of Mr. Karamali and Mr. Foroghi that the cash received from Mr. Roberts for the Tundra was deposited into Mr. Karamali's personal bank account. During cross-examination, Mr. Foroghi could not answer whether or not Mr. Karamali then wrote a cheque to Matrix for this cash. Mr. Foroghi thought that money deposited in Mr. Karamali's account may have also been as payment towards the money owed to Mr. Karamali for the parts he purchased and who, apparently, used his own personal Visa credit card to purchase parts for Matrix: Transcript of Proceedings, November 2, 2010, pages 86 to 89.

[135] I also note the evidence of Mr. Foroghi. He stated he was not always at Matrix as he was splitting his time with his repair shop. When Mr. Foroghi was questioned about how he supervises Mr. Karamali to ensure he is not acting as a salesperson, the answer was basically, Mr. Foroghi would call Mr. Karamali at Matrix and check up on him: Transcript of Proceedings, November 2, 2010, Page 110 to 111. I am satisfied that there were opportunities when Mr. Karamali was not supervised on the Matrix lot.

[136] Based on all the above evidence and the definition of "salesperson" noted above, I am satisfied that Mr. Karamali acted as a salesperson at least in relation to the sale of the Tundra to Mr. Roberts and the attempted sale of the Tundra to Mr. Neuls.

**(b) Ownership of Matrix**

[137] Part of the function of the Registrar is to consider licensing (or registration) applications and determine whether or not it is in the public interest to grant a licence or register an applicant under the *Motor Dealer Act*. There is a process in place to review applicants and their prior history.

[138] Section 12 of the *Motor Dealer Act* requires a motor dealer to advise the Registrar within 14 days of a change in its ownership structure and beneficial ownership of its shares. This is so the Registrar can carry out his function of reviewing motor dealers to ensure they do not pose a risk to the public interest; a review he would normally do when there is a new applicant for registration, or an application for renewal: sections 5, 6 and 7 of the *Motor Dealer Act* and section 7 of the *Motor Dealer Act Regulation*. After a review, the Registrar may:

- (a) do nothing;
- (b) add conditions to a motor dealer's registration;
- (c) may require a letter of credit;
- (d) may require security;
- (e) may suspend a registration pending certain steps being taken; or
- (f) cancel a registration.

[139] A failure to advise the Registrar of a change in ownership structure deprives the Registrar from carrying out an important aspect of his mandate, that of

reviewing applicants for suitability to be registered as a motor dealer, or the ongoing suitability of currently registered motor dealers.

[140] The *Motor Dealer Act*, and case law, make it clear that I am not to blind myself to the underlying realities of an application or applicant. The fact that the shares of a company are in the name of one legal entity does not mean I cannot look behind the corporate veil to see what the true arrangement within the company is. This was summarized in *Re: Key Track Auto Sales & Detailing Ltd.* (File 10-013, May 11, 2010, Registrar of Motor Dealers)<sup>3</sup>:

...A licensing body may look to the whole of the facts surrounding an application for a licence, including relationships to third parties, to determine the applicant's *bona fides*. In fact, if a licensing body does not engage in such a review, it may act contrary to its statutory mandate and commit a reviewable error: *Wight v. Canadian Egg Marketing Agency*, [1978] 2 F.C. 260; (1977), 19 N.R. 529 (Federal Court of Appeal); *Syntex Pharmaceuticals International Ltd. v. Medichem Inc.* 1990 CarswellNat 636, [1990] 2 F.C. 499 (Federal Court of Appeal); and *Villetard's Eggs Ltd. v. Canada*, 1995 Carswell Nat 669, [1995] 2 FC 581, 181 N.R. 374 (Federal Court of Appeal).

[141] The Federal Court of Appeal in *Villetard's Eggs Ltd. v. Canada*, 1995 Carswell Nat 669, [1995] 2 FC 581 considered whether the Canadian Egg Marketing Agency could look behind the corporate veil and decide to withhold the granting of a licence. The corporation that was applying for a licence was a partnership of a father and sons who recently had their licences revoked by the Canadian Egg Marketing Agency. The Federal Court of Appeal said the Agency could look behind the corporate veil and intimated that not doing so may be a reviewable error. The court went on to say:

31 The question the Agency was entitled to ask itself was whether respondent's application was colourable, in the sense that it was made by a corporation controlled by persons whose licences had been very recently revoked. If the Agency had good grounds to find, on a balance of probabilities, that it was, it could then in its discretion decide not to issue the licence.

[142] The evidence of Mr. Karamali and his now ex-wife and Mr. Foroghi were clear. Mr. Karamali took the \$160,000 he said he was owed by Matrix along with \$97,000 cash from his ex-wife and purchased 75% of the shares in Matrix. Those 75% shares were placed in the name of his ex-wife Mandana Mansouri Tehrani. In

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<sup>3</sup> <http://www.mvsabc.com/decisions/File10-013KeyTrackAutoSales&DetailingLtdMay112010.pdf>

short, Mr. Karamali did what is often referred to as a debt for equity swap: "Contract of Sale" - Affidavit of Larry Barteski #2, page 1 of the exhibits, Exhibit 4 at the hearing; and Exhibit 9 at the hearing, page 1 of the exhibits attached to the Licensing Hearing Report of Kim Murphy.

[143] In the Contract of Sale, paragraph B of the recitals notes Mr. Karamali as the General Manager of Matrix. The Respondents say this was an error by the lawyer who drafted the Contract of Sale. When Matrix finally advised the Authority of the sale of shares and change in ownership structure, they supplied a Contract of Sale that had Ramin Karamali crossed off as general manager with a notation of "Error, typing mistake (Reza Foroghi)": Exhibit 9, page 28. During oral testimony, it was noted that Mr. Rezapoor did not sign or initial the changes to the recitals. Mr. Rezapoor stated in his testimony that the change did not reflect the original agreement. At the hearing the Respondents produced a new front page to the contract showing Reza Foroghi as the General Manager: Exhibit 25.

[144] Apparently no one noticed the drafting error by the lawyer in the original contract until after it was brought to the attention of the Respondents by the Authority; even though each page of the original contract was initialed by all the parties. It was suggested at the hearing that I could call the lawyer if need be to verify this. The Respondents never produced the lawyer to confirm it was that lawyer's error.

[145] Mr. Karamali is paid for his services as a "technician" from the profits of Matrix. If Matrix makes no profit, Mr. Karamali does not get paid. The evidence from Mr. Karamali, ostensibly an employee, and Mr. Foroghi, is that Matrix has, for a few years, never made a profit. Mr. Karamali is taking a great risk in participating in the company, with the money he is owed as an example. These types of risks are not usually an employee's, but that of an owner.

[146] The Contract of Sale, recital C says Mr. Karamali has "continuously invested monies in the capital of the Company." Mr. Karamali's oral testimony confirmed this was the case.

[147] Mr. Karamali's evidence and the submissions of counsel for the Respondents make it clear that Mr. Karamali is desirous of having the shares transferred from his

now ex-wife to his mother. There was no mention of him or his mother buying the shares from Ms. Tehrani. Mr. Foroghi's evidence indicates he is not contemplating buying any of those shares. It is clear that Mr. Karamali has the greatest interest in the shares of Matrix, and 75% of those shares as well.

[148] I am satisfied on the evidence that Mr. Karamali formed a partnership with his wife to obtain a 75% share in Matrix. He is an owner of Matrix: *Re: Key Track Auto Sales & Detailing Ltd.* (File 10-013, May 11, 2010, Registrar of Motor Dealers)<sup>4</sup> and the court cases cited within.

[149] I am satisfied on the evidence that Mr. Karamali became an owner of Matrix by January 2009 and the Authority was not officially advised of this fact until August 2009. Mr. Rezapoor unofficially advised the Authority sometime sooner. From the above evidence I am satisfied that Matrix deliberately tried to hide this sale from the Authority as it knew the potential consequences of Mr. Karamali being an owner of Matrix, which will be discussed further on.

## **DISPOSITION**

### **(a) Principles being Applied**

[150] I am reviewing the conduct of Matrix, Mr. Karamali, Mr. Foroghi and Mr. Rezapoor. In reviewing Matrix's conduct I am applying sections 5 and 8.1(4)(b) of the *Motor Dealer Act*. In reviewing the conduct of the others, I am applying section 6 of the *Salesperson Licensing Regulation*.

[151] I recently applied those provisions in *Re: Parkwood & Beune & Hawes* (File No. 07-70285A, 07-70263A, 08-70631A, and 08-70997A, August 6, 2010, Registrar of Motor Dealers).<sup>5</sup> I noted the following regarding section 8.1(4)(b) of the *Motor Dealer Act*:

[7] Under section 8.1(4)(b) of the *Motor Dealer Act*, a finding that a motor dealer has breached Part 2 or 5 of the BPCPA is grounds to cancel that motor dealer's registration. Part 2 of the BPCPA includes the prohibition against committing deceptive acts or practices:

(4) If the Lieutenant Governor in Council makes a regulation under subsection (2)

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<sup>4</sup> <http://www.mvsabc.com/decisions/File10-013KeyTrackAutoSales&DetailingLtdMay112010.pdf>

<sup>5</sup> <http://www.mvsabc.com/decisions/ReParkwoodAutoSalesLtdetalaugust62010.pdf>



(b) contravention of a prescribed provision of Part 2 or 5 of the *Business Practices and Consumer Protection Act* by a person is grounds for the registrar or director, as the case may be, to determine that it is not in the public interest for the person to be registered or to continue to be registered under this Act and, without limiting paragraph (a) of this subsection, the registrar or director, as the case may be, may exercise the rights and powers of the registrar under Part 1 of this Act that may be exercised in the event of that determination,

[8] The Lieutenant Governor in Council has prescribed to the Registrar the power to apply the deceptive act or practice provisions of the BPCPA which are found in Part 2 of that Act: section 29 of the *Motor Dealer Act Regulation*. Therefore, section 8.1(4)(b) of the MDA is applicable here.

[9] I note the language the B.C. Legislature has used in section 8.1(4)(b) of the MDA. A finding that a motor dealer has contravened a prescribed section of Part 2 of the BPCPA "is grounds for the registrar" ... "to determine that it is not in the public interest for the person to be registered or to continue to be registered under this Act." While the discretion to make such a determination continues to rest with the Registrar, I must take account of this legislative direction and I note the importance the Legislature has placed on motor dealers abiding by Parts 2 and 5 of the BPCPA...

[152] Section 5 of the *Motor Dealer Act* speaks of reviewing past conduct of a motor dealer. In *Re: Parkwood & Beune & Hawes* I noted the Ontario Superior Court of Justice has interpreted the meaning of "conduct" under Ontario's *Motor Vehicle Dealer Act*. I note similarities in the wording and purpose of section 5 of Ontario's Act to B.C.'s section 5 of the *Motor Dealer Act*. The Ontario Superior Court of Justice stated the following:

34 In my view, the term "conduct" under s. 5(1)(b) and (c) of the MVDA is broad enough to reasonably support the conclusion that the conduct of Prestige's officer and director was a basis upon which to revoke the registration of the car dealership. Conduct does not require evidence of deceit or even of wilful blindness. It encompasses any act or omission or course of behaviour that affords reasonable grounds to believe that the business will not be carried on in accordance with law, honesty and integrity. (Emphasis added)

*Prestige Toys Ltd. v. Ontario (Registrar, Motor Vehicle Dealers Act)* 2009 CarswellOnt 4743; see also *Ontario (Registrar, Motor Vehicle Dealers Act) v. Unity-A-Automotive Inc. (2009)*, 98 O.R. (3d) 468 (Ontario Superior Court of Justice (Div. Ct.)).

[153] In *Key Track*, supra, I also accepted and applied this interpretation of "conduct." I further added the following to the list from the Ontario Superior Court in *Prestige Toys*:

[21] I would add to that list the related concept of "transparency." In order to carry out their mandate, regulatory bodies need clear, concise, accurate and timely information. In my opinion, "transparency" encompasses these notions. Where a

regulated person is not transparent with its regulatory body, it raises a concern that the regulated person is willing to hide facts from that body - which is not in the public interest.

See also *Re: Mafcan and Cheema* (File 10-017, 10-018, July 2, 2010: Registrar of Motor Dealers)

[154] Information is the currency with which regulators operate. It is information that allows the Registrar to assess applicants or current registrants/licensees for potential risks to the public interest. Without access to timely and accurate information, the Registrar is deprived of carrying out one of his essential mandates of protecting the public interest and trying to prevent future harm. As I noted in *Re: Mafcan and Cheema*:

14. Mister Justice Cory of the Supreme Court of Canada made clear the purpose of regulation and by extension licensing/registration:

**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 ...**

**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)

*R. v. Wholesale Travel Group Inc.*, [1991] 3 S.C.R. 154 (Supreme Court of Canada); applied approvingly in *R. v. Fitzpatrick*, [1995] 4 S.C.R. 154; and see also *Zenner v. Prince Edward Island College of Optometrists*, [2005] 3 S.C.R. 645 (Supreme Court of Canada); and *Pugliese v. British Columbia (Registrar of Mortgage Brokers)* 2008 BCCA 130, (2008), 79 B.C.L.R. (4th) 283 (B.C. Court of Appeal).

[155] In *Parkwood & Beune & Hawes* as well as in *Mafcan and Cheema*, I noted these same principles apply to the review of conduct under the *Salesperson Licensing Regulation*.

**(b) Matrix**

[156] I have found Matrix to have committed a deceptive act or practice. I further find that Matrix was reckless whether the Tundra met the requirements of the *Motor Vehicle Act*. The evidence is clear that Matrix installed tires that were too large for the Tundra, causing the tires to rub on the frame and control arms. Matrix used the wrong wheel nuts to secure the tires to the Tundra. Mr. Karamali's evidence was that he did not think it was unsafe that tires touched the frame or bumper of the Tundra: Transcript of Proceedings, May 13, 2010, page 50, line 10 to page 51 line 11. Matrix did not have the Tundra re-inspected for compliance with the *Motor Vehicle Act* after it replaced the tires. Recklessness is sufficient to find intention to commit a deceptive act or practice: *Casillan*.

[157] I find that Matrix deliberately tried to hide Mr. Karamali's ownership. The evidence discussed previously regarding Matrix's doctored sale agreement shows an intention to hide that involvement.

[158] Mr. Karamali was told he was not to be an owner of a motor dealer until after he had been licensed as a salesperson by Registrar Ken Smith. Registrar Smith indicated that the then fairly recent convictions of odometer tampering, operating as an unlicensed motor dealer and aiding and abetting the evasion of taxes required a period of time to allow Mr. Karamali to rehabilitate himself and prove he was trustworthy to be licensed. Registrar Smith said he would "build a bridge" back into the industry for Mr. Karamali. First Mr. Karamali would wait three years to be licensed as a salesperson. After he was licensed as a salesperson, he would then be considered for a motor dealership. In *Mafcan and Cheema*, I noted the reasons for imposing such waiting periods:

39. The waiting period before considering licensing Mr. Cheema as a salesperson is to have some history to gauge Mr. Cheema's behaviour to ensure his conduct is no longer a risk to the public interest. Requiring Mr. Cheema to be a salesperson in good standing for two more years before considering any application for registration as a motor dealer is to have some history of Mr. Cheema's conduct that is directly under the jurisdiction of the Registrar to review. This allows the Registrar to compel information from industry members who have interacted with Mr. Cheema in order to better assess if he, and by extension his application for registration as a motor dealer, is a risk to the public interest.

[159] Mr. Karamali has clearly decided not to wait to become a motor dealer. He has done so without the knowledge or consent of the Registrar as was required of him under the laws of B.C. I find Matrix was attempting to hide very important facts from the Registrar which the law requires it to divulge: section 12 of the *Motor Dealer Act*.

[160] I also find that Matrix allowed Mr. Karamali to act as a salesperson knowing he was not licensed and would not be eligible to apply for a licence until April 23, 2010 at the earliest. Mr. Foroghi stated in his evidence he was aware that Mr. Karamali was denied a licence by Registrar Smith.

[161] Taking these facts into consideration, I am satisfied that it is in the public interest that the registration of Matrix as a motor dealer # 30590 be cancelled. Matrix has hidden information of importance from the Registrar. It has allowed someone to act as a salesperson who was not licensed to do so. It has acted recklessly by selling a vehicle that did not meet the requirements of the *Motor Vehicle Act*. Importantly, it has, as its majority owner, Mr. Karamali who was told very specifically he would have to be a licensed salesperson before being a motor dealer. Matrix has shown a disregard for the laws of B.C. applicable to it as a motor dealer and a disregard for the lawful order of Registrar Smith. In this case, I am satisfied that it would be very difficult indeed to regulate Matrix in a way to ensure future compliance and protect the public interest from future harm. I also have considered adding conditions to Matrix's licence and find adding conditions would be an insufficient regulatory measure considering these facts.

[162] Matrix's motor dealer registration #30590 is cancelled effective immediately.

**(c) Mr. Foroghi**

[163] I find Mr. Foroghi allowed Mr. Karamali to act as a salesperson while Mr. Karamali was unlicensed and he knew Mr. Karamali was unable to be licensed. Mr. Foroghi also failed to provide proper supervision: See *Prestige Toys* and Transcript of Proceedings, November 2, 2010, Page 110 to 111. Mr. Foroghi was also a party to a business transaction placing Mr. Karamali into control of a motor dealership. I also find Mr. Foroghi attempted to mislead the Authority by submitting a share purchase agreement "scratching out" Mr. Karamali's involvement as a general

manager. The original agreement, without the crossed-out portion, reflects the true nature of the Matrix ownership and business structure.

[164] I find on the evidence that Mr. Foroghi cannot be trusted to provide clear and accurate information to the Registrar. He has shown a willingness to hide facts that the law requires him to provide. I therefore find it necessary to cancel his salesperson licence # 108684. The only conditions I could add to his licence is to obey the law and provide clear and accurate information to the Registrar. These are already implied conditions on his licence and all salesperson licenses.

[165] The salesperson licence of Reza Mohammad Foroghi is canceled effective immediately. I find it necessary to impose a three-year ban on accepting any application for licensing as a salesperson from Mr. Foroghi. As in *Mafcan and Cheema* and *Re: Parkwood and Beune and Hawes*, I find some time must pass and some history from Mr. Foroghi must be established to show he is no longer a risk to the public interest: *Pugliese v. British Columbia (Registrar of Mortgage Brokers)* 2008 BCCA 130, (2008), 79 B.C.L.R. (4th) 283 (B.C. Court of Appeal).

[166] Whether or not Mr. Foroghi will be granted a salesperson licence will depend on the facts that exist on that future date.

[167] For the same above reasons I would refuse to accept any application for registration as a motor dealer where Mr. Foroghi is to be involved as an owner or a "directing mind" until two years after he has been re-licensed as a salesperson in good standing: *Mafcan and Cheema* at paragraph 39. Again, whether or not such an application would be granted will depend on the facts of the case that exist at that future date.

**(d) Mr. Karamali**

[168] Mr. Karamali is not licenced as a salesperson. However, I find it necessary to address whether Mr. Karamali could in the future be eligible to apply for a salesperson licence or to be registered as a motor dealer: *Pugliese v. British Columbia (Registrar of Mortgage Brokers)* 2008 BCCA 130, (2008), 79 B.C.L.R. (4th) 283 (B.C. Court of Appeal).

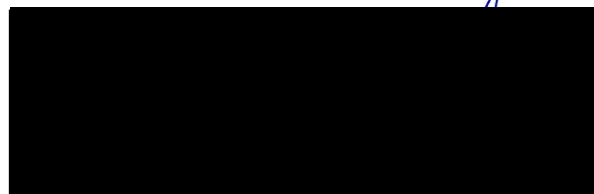
[169] Registrar Smith was unequivocal at the April 23, 2007 hearing. He told Mr. Karamali that if he was ever caught selling cars to consumers while not licensed, he would never be licensed. In this regard, I agree with Registrar Smith. Mr. Karamali has clearly shown a disregard for the order of Registrar Smith. He has shown a disregard for the regulatory process for becoming a salesperson and a motor dealer. I find on the various facts noted already that Mr. Karamali is ungovernable in that there can be no acceptable assurance that he will in the future conduct himself in accordance with the law, honesty, integrity or transparency. I find it necessary to protect the Registrar's process and to protect the public interest by ordering a lifetime ban on accepting an application for a salesperson licence or registration as a motor dealer from Mr. Karamali.

[170] For these same reasons I would refuse to accept any application for registration as a motor dealer where Mr. Karamali is to be involved. He has shown that he will participate in regulated conduct without the proper licensing if he is associated with a motor dealership. This too is a lifetime ban.

**(e) Mr. Rezapoor**

[171] Mr. Rezapoor was a party to these proceedings because he was listed with the Authority as an owner of Matrix. He had already sold his shares by the time these matters came to light. It was not incumbent on Mr. Rezapoor to advise the Authority he had sold his shares. The *Motor Dealer Act* places that duty on the motor dealer. There was also no evidence of Mr. Rezapoor's involvement in the Tundra sale. There was no evidence of Mr. Rezapoor's involvement in doctoring the Matrix sale agreement. I find it unnecessary to suspend or cancel Mr. Rezapoor's salesperson licence.

Dated May 4, 2011



Ian Christman LL.B.