



**RE: 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**

BETWEEN:

TOM CROWSTON

Complainant

AND:

**PLATINUM AUTO CORPORATION
(Dealer # 30842)**

Motor Dealer

AND:

**ALIZERA POURREZA
(Salesperson # 110865)**

Salesperson

AND:

**ALLEN HILL
(Salesperson# 109993)**

Salesperson

DECISION OF THE REGISTRAR OF MOTOR DEALERS

Date and Place of Hearing: February 9, 2012 at Surrey, British Columbia

Appearances for:

The Complainant	Tom Crowston
The Motor Dealer	Allen Hill, Dealer Principal
Alizera Pourreza	In person
Allen Hill	In person
Motor Vehicle Sales Authority of BC	Daryl Dunn, Manager of Compliance and Investigations Ross Coté, Compliance Officer

INTRODUCTION

[1] Tom Crowston purchased a 2003 Cadillac CTS from Platinum Auto Corporation ("Platinum") on July 26, 2010. He used his 1992 Cadillac as a trade-in. In September 2010, he started experiencing mechanical difficulties with the 2003 Cadillac.

[2] Mr. Crowston became dismayed at the continuous repairs he seemed to face with the 2003 Cadillac. Within three months of purchasing the 2003 Cadillac, he went to trade it in on another vehicle. He went to a Mazda dealer who did some research on the 2003 Cadillac and told him the 2003 Cadillac had been in two previous accidents where repairs were over

\$2,000. The Mazda dealer also advised him that the 2003 Cadillac was once registered outside of B.C. Mr. Crowston says Platinum never advised him of these facts.

[3] Platinum states Mr. Crowston was advised of the damage over \$2,000 and the out of province declaration. They say the purchase agreement shows these declarations and that Mr. Crowston's initials appear beside each. Platinum also says it showed Mr. Crowston a CarFax vehicle history report and an Adesa Auto Auction document for the 2003 Cadillac.

[4] Mr. Crowston does not deny that he signed the purchase agreement and admits that his initials appear beside each declaration. He says he never saw the CarFax or Adesa documents and notes his signature or initials do not appear on either document. His point is that the declarations on the purchase agreement are awkwardly worded and not clear. He also said the dealer never explained why it needed his initials on the purchase agreement. Mr. Crowston says the dealer just said sign here – initial here and initial here.

[5] Mr. Crowston purchased the 2003 Cadillac for around \$11,000. The Mazda dealer offered him \$4,000 as a trade-in three months after the purchase. Mr. Crowston is seeking the difference in price - \$7,000. Mr. Crowston stated that the damage to the 2003 Cadillac explains the constant need for repairs and especially the currently needed repairs to the front suspension.

ISSUES

[6] The issues are:

- 1) Did Platinum properly declare damage over \$2,000 as required by section 23(b)(ii) of the *Motor Dealer Act Regulation*?
- 2) Did Platinum properly declare the Cadillac as having been registered in a jurisdiction other than B.C. as required by sections 21(2)(b) and 23(d) of the *Motor Dealer Act Regulation*?
- 3) Did Platinum make a misrepresentation about the 2003 Cadillac in breach of the *Business Practices and Consumer Protection Act* ("BPCPA") by failing to state a material fact or generally by its conduct and representations?

THE LAW

(a) *Motor Dealer Act and the Business Practices and Consumer Protection Act – Consumer Protection Legislation*

[7] Both the *Motor Dealer Act* and the *Business Practices and Consumer Protection Act* (along with their regulations) are consumer protection legislation.

- *Seidel v. Telus Communications Inc.* 2011 SCC 15 (Supreme Court of Canada).
- *Fireman's Fund Insurance Co. of Canada v. Shoreline Auto* [1986] B.C.J. No. 1745 (B.C. Supreme Court).

[8] As such, those statutes are to "be interpreted generously in favour of consumers": *Seidel* (Supreme Court of Canada). Also, the two Acts are administered by the Registrar within this industry and they inform and influence each other and are to be interpreted harmoniously with each other: *statutes in pari material*.

[9] In *Rushak v. Henneken Auto Sales*, [1986] B.C.J. No. 3072 (B.C. Supreme Court), aff'd (1991), 59 B.C.L.R. (2d) 250 (Court of Appeal), 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)

[10] Recently, the Supreme Court of Canada made the following comment about Canadian consumer protection legislation generally:

[43] The measures to protect consumers from fraudulent advertising practices are one expression of a legislative intent to move away from the maxim *caveat emptor*, or "let the buyer beware". **As a result of these measures, merchants, manufacturers and advertisers are responsible for the veracity of information they provide to consumers and may, should such information contain falsehoods, incur the civil or penal consequences provided for in the legislation.** As Judge Matheson of the Ontario County Court explained in *R. v. Colgate-Palmolive Ltd.*, [1970] 1 C.C.C. 100, a case involving federal law, **the maxim caveat venditor [let the seller beware] is now far more appropriate to describe the merchant-consumer relationship...**

- *Richards v. Time Inc.* 2012 SCC 8 (Supreme Court of Canada)

(b) MDA Regulation sections 21(2)(b); 23(b)(ii) and 23(d)

[11] A motor dealer has a positive duty to make due enquiries about a motor vehicle it intends to sell, so that it may make its statutory declarations. The motor dealer may not solely rely on the representations of a prior owner or even an I.C.B.C. damage history report. It must do its own due diligence.

- *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.).

[12] 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.) discussed the purpose of the damage declaration provision which can be summarized as follows:

- (a) It provides a prospective purchaser with information about damage to a vehicle and alerts them to the possibility of hidden existing damage which would affect the value of the vehicle so they may investigate that fact.
- (b) Damage is not limited to accident damage but certainly also includes theft and vandalism.

[13] A motor dealer has a positive duty to inquire. It cannot adopt a process of inquiry that will shield it from obtaining the information it is to disclose to consumers. If a motor dealer adopts such a process, this is often called being willfully blind or reckless. Both willful blindness and recklessness are sufficient to find intentional attempts to misinform or mislead: *Casillan v. 565204 B.C. Ltd dba Daewoo Richmond* 2009 BCSC 1335 at paragraph 20 (BC Supreme Court); *Super-Save Enterprises v. 249513 B.C. Ltd.* 2003 BCSC 897 at paragraph 35, aff'd *Super-Save Enterprises v. Del's Propane* 2004 BCCA 183 (BC Court of Appeal).

(c) Statutory Duties

[14] A duty set out in one piece of legislation is not necessarily the fullest extent of one's legal duties. Illustrative of this point is the decision in *Ryan v. Victoria (City)* [1999] 1 S.C.R. 201 (Supreme Court of Canada). The Supreme Court of Canada found the railway company was negligent and liable for an accident because it built a railway crossing with a wide flange gap, even though the gap was within the regulatory requirements. The court said the regulatory requirement was a minimum and, in the circumstances, the railway could have and should have done better than the minimum.

[15] The point is that the declarations found in the *Motor Dealer Act Regulation*, are not the extent of a motor dealer's disclosure obligations to a consumer.

(d) BPCPA sections 4 & 5

[16] The declaratory requirements under the *Motor Dealer Act Regulation* are also representations about motor vehicles offered for sale. Therefore, they must be compliant with the requirements of the *Business Practices and Consumer Protection Act*. This requires that the declarations must be clear and unambiguous and the declarations cannot fail to state a material fact, among other things.

[17] 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.

[18] 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:**

(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)

[19] Proof of a deceptive act or practice does not require proof of a deliberate intention to deceive.

- *Findlay v. Couldwell*, [1976] 5 W.W.R. 340 (B.C.S.C.)
- *Mikulas v. Milo European Cars Specialists Ltd.*, [1993] B.C.J. No. 2818 (B.C.S.C.) at para. 42; affirmed: [1995] B.C.J. No. 638 (B.C. Court of Appeal)
- *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. Court of Appeal).

[20] In *Rushak v. Henneken* (1991), 59, B.C.L.R. (2d) 250 (C.A.) the B.C Court of Appeal 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.
- Applied to the BPCPA in *Casillan*, see above (BC Supreme Court)

- Applied to the BPCPA in *Cummings*, see above (BC Supreme Court)
- Applied to the BPCPA in *The Consumer's Association of Canada et al v. Coca-Cola Bottling Company et al.* 2006 BCSC 863, additional reasons 2006 BCSC 1233 (BC Supreme Court), affirmed by 2007 BCCA 356 (BC Court of Appeal), leave to appeal to the Supreme Court of Canada refused [2007] S.C.C.A. No. 464 (SCC).

[21] Making a representation about a motor vehicle while failing to state a material fact may be a deemed deceptive act potentially giving a consumer a right to a remedy. Justice Willcock in *Applewood Motors Inc. v. Ratte & Registrar of Motor Dealers* (April 13, 2010: SCBC Action No. S094126, Vancouver Registry) (BC Supreme Court) at paragraph 34 stated:

...The legislation permits a finding that there has been deception by silence, even where there has not been exaggeration, innuendo or ambiguity. There needs only to be a representation and non-disclosure of a material fact that has the effect of misleading the consumer.

[22] What is material is fact-specific determined objectively. It is generally information that is significant and that a person would weigh in their decision-making process. It is not necessary that the information would have changed a person's decision: *Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.*, 2011 SCC 23, [2011] 2 S.C.R. 175 (Supreme Court of Canada) at paragraph 61.

[23] Where there is an allegation of a deceptive act against a merchant, Platinum in this case, section 5(2) of the *Business Practices and Consumer Protection Act* reverses the onus, and it is up to Platinum to prove that the deceptive act alleged (misrepresentation) did not occur.

[24] The burden of proof is on a balance of probabilities: *F.H. v. McDougal* 2008 SCC 53 (Supreme Court of Canada).

[25] Witness credibility is alive in this matter. In assessing credibility, I am mindful of the guidance of *Faryna v. Chornya* (1951), [1952] 2 D.L.R. 354 (BC Court of Appeal) and see also *Fillion v. Fillion* 2011 BCSC 3414 (BC Supreme Court) at paragraphs 106-109.

DISCUSSION

(a) Declaration of damage over \$2,000

[26] Platinum's declarations of damage over \$2,000 is noted on the purchase agreement:

Pre-printed declaration	Hand written answer
2. The motor vehicle has never sustained damage requiring repairs costing more than \$2,000 except as disclosed herein:	False

[27] I find this declaration is confusing. A negatively worded declaration with a negative response is not how people normally speak. This declaration must be read in light of the directions from the courts that representations be clear and unambiguous. Declarations must be tailored to protect all consumers, not just those who carefully read documents and make inquiries. These written declarations/representations should easily convey their true

meaning to a consumer on their face, even to a consumer who is credulous. 'Credulous' is defined in the Webster's on-line dictionary as: *ready to believe especially on slight or uncertain evidence.*

[28] Compare Platinum's declaration to those on the Transfer/Tax Form (APV9T) required by ICBC when a vehicle is transferred (page 37 Affidavit Exhibits):

Pre-printed declaration	Check Box
PREVIOUS VEHICLE DAMAGE - SUSTAINED IN ANY ONE INSTANCE Used Vehicle damage over \$2,000	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes

[29] The ICBC transfer/tax form is used to transfer all motor vehicles in B.C. Motor dealers use this form daily in their operations and it has been in existence for many years.

[30] Platinum says it showed Mr. Crowston a CarFax Report. CarFax is a U.S.A. based company. That report is also clear on what it says about damage (Exhibit 5):

No accident/damage reported to CARFAX

[31] While I find that Platinum did not show Mr. Crowston the CARFAX report, discussed below, I find that the way in which CARFAX makes this declaration is imminently clearer than the disclosure made by Platinum.

[32] I find Platinum's declaration on the purchase agreement is ambiguous. At the end of the declaration are the words "except as disclosed herein." The simple answer of "false" discloses nothing, or very little. When one see words such as "except as disclosed herein" one naturally assumes to receive information, a disclosure, if there is in fact something to be said. The one-word answer of "false" could lead a person to believe there was nothing to disclose. I find the effect of the declaration, as worded, along with the one-word answer of "false" is to be ambiguous, confusing and misleading.

[33] There is no detail about the damage, which was easily obtained using an I.C.B.C. history report or a CarProof history report. The CarProof report is from a Canadian based company and it incorporates into its "BC Verified" car history report, ICBC vehicle damage history. Both the CarProof and ICBC reports found the two instances of damage over \$2,000 and the out-of-province registration of the 2003 Cadillac: [Exhibit 3 - Affidavit pages 19-27 of the Exhibits]. The Carfax report showed no damage, but did show the out-of-province report. The BC motor dealer industry is well aware of the utility of the CarFax versus CarProof reports and also as compared with ICBC vehicle damage history reports. The CarFax report (Exhibit 5), as provided by Platinum, has the following disclaimer:

This CARFAX Vehicle History Report is based only on information supplied to CARFAX and available as of 7/09/10 at 5:30 PM (EDT). Other information about this vehicle, including problems, may not have been reported to CARFAX. Use this report as one important tool, along with a vehicle inspection and test drive, to make a better decision about your next used car.

[34] The declaration of damage made by Platinum does fail to state a material fact. The fact is that the 2003 Cadillac had two instances of damage over \$2,000. The declaration of

"false" does not convey this information. For Platinum to rely on the U.S.A. based CarFax report only, and make no further inquiries of its own, fails to meet its duty as a motor dealer: *Motley v. Regency Chrysler*, (BC Supreme Court).

[35] Judge Romily of the Provincial Court of BC noted in *Fraser v. Richmond Imports et al*:

[54] I find that it is insufficient for the Defendant [a motor dealer] to claim that it relied on the representation of the Third Party who did not have access to the records of the Insurance Corporation of British Columbia at the time of the transfer. The fact remains that **this "positive duty" demanded by the legislation** was in effect prior to the general public having access to such records, and therefore **imposed on dealers the requirement to carefully examine vehicles for transfer for prior damage requiring repairs costing in excess of \$2,000.00**. I would suggest that access to the records of the Insurance Corporation of British Columbia, merely made it easier for dealers to find out the repair status of vehicles. **However the caution remained throughout that damages and repair are not always reported to the Insurance Corporation of British Columbia, and the "positive duty" remains regardless.**

[36] The same holds true for the CarFax report Platinum obtained as detailed in the CarFax report itself (see paragraph 33 above). I have no evidence before me of any attempts by Platinum to examine the 2003 Cadillac before it sold it to Mr. Crowston.

[37] I find the representation of damage over \$2,000 made by Platinum was not clear, was ambiguous and failed to state a material fact. These are deemed to be deceptive acts pursuant to section 4(3)(b)(vi) of the BPCPA. They would also constitute a deceptive act under section 4(1) of the BPCPA.

(b) Out of Province Declaration

[38] The pre-printed declaration on the purchase agreement regarding the out of province declaration is:

4. The motor vehicle has not previously been registered in any jurisdiction other than British Columbia and has not been brought into the province specifically for the purpose of sale, except as disclosed herein:	False
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[39] For largely the same reasons as noted above about the damage declaration, I find this declaration unclear and ambiguous. Again, the out-of-province declaration on the ICBC transfer/tax form is imminently clearer than the declaration on Platinum's purchase agreement:

Vehicle Previously Registered Outside of BC	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes
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[40] Platinum's declaration also fails to state a material fact for the following reason. Section 21(2)(c) of the MDA Regulation must be read in conjunction with section 23(d) of the MDA Regulation. This requires not only declaring if a vehicle is from another jurisdiction other than B.C., but also the name of the jurisdiction known to the dealer.

[41] The CARFAX report (Exhibit 5) presented at the hearing by Platinum clearly indicates that the 2003 Cadillac was registered in Ontario in 2002 and 2003. Platinum was aware of this fact, and said nothing. It merely said "false" on the purchase agreement, even though the law compelled Platinum to disclose that the 2003 Cadillac had been registered in Ontario. If Platinum had written "Ontario" in the purchase agreement, Mr. Crowston may have seen this and it may have been clearer that the vehicle had been registered outside of B.C.

[42] I find that Platinum was unclear and ambiguous about the 2003 Cadillac having been from out of province. I further find that Platinum failed to state a material fact, that the 2003 Cadillac was once registered in Ontario. It is a material fact because legislation requires its disclosure – a deemed material fact. Platinum admitted it was aware of the Ontario registration by submitting the CARFAX report it obtained regarding the 2003 Cadillac: Exhibit 5.

(c) Did Platinum show the CARFAX report and the Adesa Invoice to Mr. Crowston?

[43] I accept the evidence of Mr. Crowston that Platinum did not show him the CARFAX report or the Adesa invoice.

[44] Mr. Crowston's evidence was clear and straightforward. He made admissions against his own interest when he confirmed his signatures and initials on the documents. He also admitted that he was not paying as much attention to the transaction as he probably should have. Mr. Crowston's evidence appears wholly consistent with the documentary evidence.

[45] Importantly, I note Platinum went to great lengths to have Mr. Crowston initial each and every declaration on the purchase agreement signifying he had seen them. This includes the 2003 Cadillac he purchased and his own 1992 Cadillac he traded in. However, Platinum did not have Mr. Crowston sign or initial the CARFAX report or the Adesa invoice Platinum says it showed Mr. Crowston. Platinum's evidence on this point is inconsistent with the documentary evidence, its actions regarding the purchase agreement and common sense. If Platinum had showed Mr. Crowston the CARFAX and Adesa documents, it would have had Mr. Crowston acknowledge that fact by initialing or signing them. This type of acknowledgement was clearly important to Platinum, as evidenced by the initialed declarations on the purchase agreement.

[46] Even if Platinum had shown Mr. Crowston these documents, it would not have assisted them.

[47] As to the damage declaration, the CARFAX report says "[n]o accident/damage reported to CARFAX." This would only have confirmed Mr. Crowston's view that the declaration of "False," meant there was nothing to report. It would also have been inconsistent with what Platinum says it was declaring, that the 2003 Cadillac had damage. This would only have added to the confusion.

[48] The Adesa invoice (page 46 of the Affidavit exhibit) does not say anything about the 2003 Cadillac having damage over \$2000. Under the "Announcements" section of that invoice it notes:

Over \$2000CA

[49] To a consumer, this says nothing about damage to the 2003 Cadillac. A consumer cannot be taken to understand the industry jargon, or what this type of "announcement" means on an Adesa invoice. A motor dealer may understand this as he deals with this jargon and Adesa invoices regularly. Given the invoice does not show a price paid for the 2003 Cadillac, it could equally have meant the price for the Cadillac was over \$2000CA. Clearly, for the Adesa invoice to have meaning, it would need to have been explained to Mr. Crowston. Platinum did not say it explained the invoice to Mr. Crowston. Again, Mr. Crowston denies seeing the invoice. This also assists in my finding that Platinum did not show Mr. Crowston the Adesa invoice.

[50] If Platinum had shown Mr. Crowston the CARFAX and the Adesa invoice, taken together, Mr. Crowston may very well have been informed that the 2003 Cadillac was from Ontario. However, sections 21(2)(c) and 23(d) of the *Motor Dealer Act Regulation* require Platinum to declare these facts on the purchase agreement itself. Platinum did not properly do so. As I already stated, I find Platinum did not show Mr. Crowston the CARFAX and Adesa documents.

Damages

[51] In order for Mr. Crowston to be entitled to damages for Platinum's misrepresentation, a connection must be shown between the misrepresentation, Mr. Crowston's decision to purchase the 2003 Cadillac and the damages Mr. Crowston now claims. This makes inherent sense. For example, if a dealer out-right lies about a vehicle for sale, and the purchaser knows what the dealer has said is a lie, but the consumer purchases the vehicle anyway, can it be said that the consumer was "misled" by the dealer into making "an error in judgment?" No! In such a case, it would be hard to say the consumer should be awarded damages for the dealer's misrepresentation, as it did not mislead the consumer while buying the vehicle. Whether the Registrar should discipline the dealer's conduct is a separate question.

[52] In *Motley v. Regency Chrysler* the consumer claimed the dealer had misrepresented the vehicle to him. The BC Supreme Court agreed that the dealer's conduct was blatantly inadequate and misleading. However, the consumer could not prove that the dealer's conduct was the "cause" of the consumer's damage, and awarded nothing to the consumer.

[53] I have difficulty awarding Mr. Crowston the \$7,000 damages he claims from this transaction for three main reasons.

(a) Contracted out of the Sales of Good Act

[54] First, many of Mr. Crowston's concerns relate to mechanical difficulties and repairs with the 2003 Cadillac. This includes his belief that the 2003 Cadillac's value, and its need for repairs stems from the prior accidents.

[55] At the hearing, Platinum said it had reduced the price of the Cadillac by \$1,000 because Mr. Crowston did not want a warranty for the vehicle. Mr. Crowston did not deny this. This is further supported on the documentary evidence as stamped prominently in the middle of the agreement is a statement that there are no implied warranties of merchantability under the *Sale of Goods Act* sections 20(2) and 69. In law, Mr. Crowston agreed to be responsible for any mechanical repairs and maintenance for the 2003 Cadillac.

[56] However, this is subject to the legal requirement that Platinum sell motor vehicles meeting the safety requirements of the *Motor Vehicle Act* and its regulations, or otherwise declare on the purchase agreement, on all written representations and on the motor vehicle itself that the motor vehicle is "Not suitable from Transportation": section 222 of the *Motor Vehicle Act*; section 8.01 of the *Motor Vehicle Act Regulation*; and sections 21(2)(e) & (f), 22 and 27(b) of the *Motor Dealer Act Regulation*.

[57] The Purchase Agreement states: "[t]he Motor Vehicle complies with the requirements of the Motor Vehicle Act." There is no notation on the purchase agreement that the 2003 Cadillac is "Not Suitable for Transportation." Therefore, by words and by its conduct, Platinum represented that the 2003 Cadillac met all the safety requirements of the *Motor Vehicle Act* and its regulations at the time of sale.

[58] On September 2, 2010, the rear disc brakes are noted as below the legal safety limit required by the *Motor Vehicle Act*. The odometer readings show that the 2003 Cadillac had travelled 2,710 km between the July 26 purchase date and September 2, 2010. This is approximately the equivalent of two round trips between Vancouver and Prince George, B.C. I am not satisfied on the evidence that the rear disc brakes were below the legal safety limit as required by the *Motor Vehicle Act* at the time of purchase. The repair invoices do not suggest any other safety issues covered by the *Motor Vehicle Act*.

- Sections 219(1) and (3) and 222 of the *Motor Vehicle Act*
- Sections 5.08 and 8.01 of the *Motor Vehicle Act Regulation*
- *Item 12, section 3(c) of the Light Vehicle Inspection Manual which is part of the Schedule to the Vehicle Inspection Regulation B.C. Reg. 256/2010*
- September 2, 2010 G.I.B. Motors Ltd. repair invoice 36909 – Exhibit 4
- September 1, 2011 G.I.B. Motors Ltd. repair invoice 39189 – Exhibit 4

[59] I find Mr. Crowston's claim for damages is related in part to the repairs he is facing with the Cadillac. There is no evidence to show that the prior damage claims are the cause of the repairs. It is an assumption on Mr. Crowston's part. The ICBC report and the CarProof report do not indicate the type or severity of the prior damage claims.

(b) Mr. Crowston's evidence

[60] Mr. Crowston's evidence is very clear that he did not pay attention to the written declarations on the purchase agreement. During my questioning, he advised that he made declarations about his 1992 Cadillac trade-in, and it was the dealer who noted these on both the purchase agreement and the Transfer/Tax form. Mr. Crowston agreed he did initial his declarations about the 1992 Cadillac on the Purchase Agreement. He also stated that he filled out the address portion and signed the Transfer/Tax Form transferring the 1992 Cadillac from him to Platinum. It is clear from Mr. Crowston's evidence that he did not pay attention to what the dealer noted down about the 2003 Cadillac as well as his 1992 Cadillac used for a trade-in. He does not seem to have paid too much attention at all to this transaction:

17 MR. CROWSTON: Like I said, the less -- the lesson for
18 me here is to be more - - I guess to be more
19 specific. I've bought lots of cars over - - over
20 my - - over my time, and a lot of the times it's like
21 I said, its initial here, here, and here,

22 and sign here, and this is the dollars, and away
23 you go, and thank you very much, and that's - -
24 that was pretty much the attitude that - - that I
25 bought the car with, so -

- Transcript of Proceedings, page 20.

See also:

- Transcript of Proceedings, pages 25 to 30.
- Transcript of Proceedings, page 11.

[61] On this evidence, it is hard to accept that the declarations that Platinum was required to make, was or would have been a material consideration to Mr. Crowston's purchasing decision.

(c) The claim for \$7,000

[62] Mr. Crowston paid some \$11,000 for the 2003 Cadillac from Platinum. This is the retail price of the vehicle. It is commonly understood in the industry that when a dealer offers to take a vehicle in on trade, it is not buying the trade for retail. It is a "wholesale price" based on various factors, which include: the vehicles condition; the anticipated cost to recondition the vehicle to make it marketable; and other factors such as market conditions for that particular vehicle on that particular dealer's lot which affect how long the vehicle sits on the dealer's lot. Factored into all of this is a margin of profit for the dealer on resale. Therefore, it is incorrect to compare the retail price of \$11,000 Mr. Crowston paid for the 2003 Cadillac from Platinum with the "wholesale price" offered by the Mazda dealer. Certainly, the damage to the 2003 Cadillac was a factor, but it cannot be assumed to be the only factor.

[63] For a proper assessment, there needs to be some evidence that the 2003 Cadillac would have sold for less than the \$11,000 Mr. Crowston paid for it, had the damage been fully disclosed. There is no such evidence. Further, there is no evidence that the \$7,000 is the proper measure of the damages opposed to say recovery for repairs or some of the repairs.

(d) Summary on damages

[64] I cannot find that Mr. Crowston is entitled to \$7,000 in damages. First, he clearly understood the 2003 Cadillac came without a warranty. He had some notice that the repairs he did face were a real possibility. The fact the dealer would not provide a warranty should have said something to him. Second, I do not find that Mr. Crowston was paying attention to the declarations that were made. I am not satisfied that had the declarations been made clearly, that Mr. Crowston would have paid any more attention than he did by signing here and here and initialing there. Finally, the claimed measure of damages, \$7,000, has not been proven to be linked to the failure to declare damage over \$2,000, or to the damage at all. It is a guess or an assumption on Mr. Crowston's part. Assumptions about the effect of repaired damage on a motor vehicle's value are not a proper measure of damage: *Miles v. Mendoza* 1994 CanLII 419 (BC Supreme Court); *Cummings*, supra, *Chiu v. Kumar* 2006 CarswellBC 1902 (BC Prov. Ct.).

Platinum's Conduct

[65] I have found Platinum committed a deceptive act or practice contrary to the *Business Practices and Consumer Protection Act*. Under that Act, I may issue a compliance order to compel Platinum and its sales staff to abide by the BPCPA. I may also order an administrative penalty against Platinum and individually against their sales staff involved in this conduct as a means to deter future conduct by Platinum and the sales staff, or to deter the industry generally: *Chyplyk et al. v. Technique Auto Sales Corporation* (File 10-U039: June 21, 2011: Registrar of Motor Dealers)¹ paragraphs 50 to 53.

[66] The BC Legislature has stated that a motor dealer found to have committed even one deceptive act or practice contrary to the BPCPA, is grounds for the Registrar to cancel their registration: section 8.1(4)(b) of the *Motor Dealer Act*.

[67] Alternatively, I may also add conditions to a motor dealer's registration or salesperson's licence in order to correct conduct or suspend a motor dealer's registration and a salesperson's licence.

[68] It is not necessary to find that damages have been suffered in order to find that a deceptive act under the BPCPA has occurred: *Robson v. Chrysler Canada Oshaneck v. General Motors* 2001 BCSC 40 at paragraph 34 (BC Supreme Court).²

(a) Compliance Order - Platinum

[69] I find that a compliance order is necessary to compel Platinum to change its business process and the way it makes declarations. As part of the compliance order, a motor dealer may be required to pay investigation and hearing costs of the Registrar: section 155(4)(d) of the BPCPA and see *Technique Auto Sales Corporation*, supra.

[70] In this case, I believe Platinum should be responsible for 50% of the investigation and hearing costs. If they had made clear declarations on their purchase agreement, this complaint may never have happened. If there was a complaint, clear declarations probably would have alleviated the need for this hearing. I recognize that Mr. Crowston was not successful in obtaining a remedy in this matter reflecting that Platinum only pay 50% of the investigation and hearing costs: *Lamontagne v. Bill Howich Chrysler* (August 12, 2008: File 08-70064; Registrar of Motor Dealers).

[71] I make the following Compliance Order under the *Business Practices and Consumer Protection Act*:

- (a) Platinum Auto Corporation shall abide by the *Business Practices and Consumer Protection Act* of B.C.;
- (b) Platinum Auto Corporation shall ensure that all its representations, including its statutorily required declarations, meet all the requirements of the *Business Practices and Consumer Protection Act* of B.C.;

¹ http://www.mvsabc.com/images/pdf_files/ChyplykTrewhittvTechniqueRegistrarsdecisionJune2011Final.pdf

² Applying the deceptive act provisions of the *Trade Practices Act* of BC, which has been replaced by the *Business Practices and Consumer Protection Act*.

- (c) Platinum Auto Corporation shall refrain from making unclear and ambiguous representations;
- (d) Platinum Auto Corporation shall ensure it discloses material facts to consumers; and
- (e) Platinum Auto Corporation shall pay to the Motor Vehicle Sales Authority \$615.77 being 50% of the Registrar's investigation and hearing costs.

(b) Administrative Penalty – Platinum

[72] In considering an administrative penalty, I must consider the factors set out in section 164(2) of the *Business Practices and Consumer Protection Act*, and I may also consider the specific and general deterrent effect of such a penalty: *Technique Auto Sales Corporation, supra*, at paragraphs 50 to 53.

[73] Since April of 2008, Platinum has been the subject of eight complaints resulting in investigations. In investigation 10-71027, the complainant said Platinum had failed to declare damage over \$2,000. An investigation started, and Platinum ultimately decided to settle with the consumer by taking back the motor vehicle and providing a refund.

[74] Committing a deceptive act is a grave concern. The potential is to mislead people into making uninformed decisions which can result in major economic loss. While this contravention is regarding Mr. Crowston, the way Platinum makes its declarations is systemic, meaning almost all consumers dealing with Platinum receive the same misleading declarations.

[75] I find Platinum continued to try and mislead by saying it showed Mr. Crowston a CarFax report and the Adesa document.

[76] I find this conduct to have been deliberate because Platinum was reckless about its positive duty to inquire and disclose. It used the USA based CarFax report instead of an ICBC vehicle history report or the Canadian CarProof report. The accidents reported occurred while the 2003 Cadillac was insured by ICBC and the last part of the Cadillac's history was in B.C. Further, the ICBC report showed dollar amounts associated with the damage while the CarFax report did not. I find it no coincidence that Platinum obtained and had in its file for the 2003 Cadillac, the USA based CarFax report that showed no accident history, instead of a Canadian source such as ICBC or CarProof, which did show accident history and the dollar amounts. There is no evidence that Platinum inspected the 2003 Cadillac prior to sale.

[77] Platinum had other examples of how to make its declarations in a clearer manner, but continued to use its misleading methodology. The declarations are pre-printed on the form in a manner that could be confusing and this requires deliberation. Providing the written responses of "false" or "true" compounds the confusion when considering the declarations specifically say "except as disclosed herein." Saying "false" or "true" really does not disclose anything.

[78] The economic benefit to Platinum is unknown. Platinum made no efforts to correct this matter.

[79] Given the above and considering the whole of the case, and past precedents, I find an administrative penalty of \$5000 is appropriate. In *Connell v. Joe Cunningham Ford Ltd.*³ (Registrar: January 21, 2010: File 09-70581) a \$2,000 administrative penalty was issued for a negligent misrepresentation for failing to declare damage over \$2,000. A \$7,500 administrative penalty was issued for deliberately misrepresenting a vehicle as having no damage when it did in *Maliwiya et al v. Victoria Drive Auto Sales Ltd. et al* (Registrar: February 12, 2009: File 08-70380)⁴ and see also *Car v. Vancouver Auto et al* (Registrar: October 15, 2008: File 08-70094).⁵

(c) Condition on Registration - Platinum

[80] I am concerned that Platinum is not inspecting vehicles prior to sale. Section 222 of the *Motor Vehicle Act* and section 8.01 of the *Motor Vehicle Act Regulation* requires that a motor vehicle Platinum sells to consumers comply with the minimum safety requirements of that Act and its regulations. Further, a motor dealer is required to declare that a motor vehicle offered for sale either meets the requirements of the *Motor Vehicle Act* or is otherwise sold as "Not Suitable for Transportation": sections 21(2)(e) & (f); 22 and 27(b) of the *Motor Dealer Act Regulation*. Obtaining this knowledge can only be achieved by inspection of motor vehicles prior to sale. There was no evidence before me that Platinum inspected the 2003 Cadillac prior to selling it to Mr. Crowston. I therefore find it necessary to protect the public interest by adding the following condition on Platinum's registration:

Platinum Auto Corporation is to use a third party, arms-length designated inspection facility to inspect motor vehicles prior to their sale to consumers in order to ensure the motor vehicles meet the requirements of the *Motor Vehicle Act* and to assess each vehicle for prior damage.

[81] This condition is really a statement of Platinum's legal obligation under BC law in any regard. This condition will remain on Platinum's registration for one year after which it can be reviewed.

ALIZERA POURREZA & ALLEN HILL

[82] I find that there was not much evidence about Mr. Pourreza's involvement in this consumer transaction other than Mr. Crowston pointing him out as the salesperson he dealt with during the transaction. During the hearing, Mr. Hill gave most of the evidence about Platinum's version of events. Also during the hearing, Mr. Pourreza really did not get an opportunity to fully defend his position. In light of this, I find it would be unfair to take any action against Mr. Pourreza.

[83] Mr. Hill advanced the case that Mr. Crowston had been shown the CarFax and Adesa documents. I have found Mr. Crowston was not shown these documents. In addition, Mr. Hill is the owner of Platinum and its directing mind. He is the one responsible for adopting

³ [http://www.mvsabc.com/images/pdf_files/Connell-v-JoeCunninghamFordJan212010Final\].pdf](http://www.mvsabc.com/images/pdf_files/Connell-v-JoeCunninghamFordJan212010Final].pdf)

⁴ http://www.mvsabc.com/images/pdf_files/File08-70380Maliwiya_v_VictoriaDrive_and_%20DarvazehbanFeb12-2009.pdf

⁵ http://www.mvsabc.com/images/pdf_files/File08-70094Car-v-VancouverAutoMoghaddam.pdf

the business processes at the dealership. The administrative penalty Platinum must pay deals with the business process Mr. Hill adopted.

[84] In order to deal with misconduct of a salesperson, I may add conditions to their licence; suspend their licence or cancel their licence. In this particular case, I have found Mr. Hill gave false evidence to me at the hearing. In *Hurtubise v Massive Truck Sales Ltd.* (Registrar: August 18, 2008: File 08-70288)⁶ the salesperson who made a false statement to an investigator was suspended for three days. I believe a three days suspension in this matter is appropriate and Mr. Hill's salesperson licence is suspended from May 16, 2012 until the end of the day of May 18, 2012.

[85] I also find that Mr. Hill does not fully understand the law applicable to motor dealers selling in BC. During the hearing he said the onus was on Mr. Crowston to prove his case, when section 5(2) of the BPCPA reverses the onus and places it on the merchant, or motor dealer in this case. Mr. Hill took the Level I Salesperson Certification Course in November of 2007. Mr. Hill clearly needs to upgrade his education. I find it in the public interest that I place the following condition on Mr. Hill's licence:

Within 14 days of this decision, Mr. Allen Hill licence# 109993 is to register for the Salesperson Level II Certification Course and successfully complete that course by July 31, 2012. Mr. Hill is responsible for the costs for taking this course.

SUMMARY

[86] I have found the following:

- (a) Platinum has breached the *Business Practices and Consumer Protection Act* by misrepresenting the 2003 Cadillac and a compliance order will issue as noted in paragraph 71.
- (b) Mr. Crowston has not shown that the misrepresentation of the 2003 Cadillac caused him to make "an error in judgment" resulting in \$7,000 in damages.
- (c) Platinum is ordered to pay \$615.77 being 50% of the Registrar's investigation and hearing costs in this matter.
- (d) Platinum is ordered to pay an administrative penalty of \$5,000 for breaching the *Business Practices and Consumer Protection Act*.
- (e) A condition is placed on Platinum's registration to have all vehicles independently inspected by a third-party arm's length designated inspection facility prior to their sale to consumers.
- (f) No findings are made nor any action taken against Mr. Pourreza.
- (g) Mr. Allen Hill's licence is suspended for three days as noted in paragraph 84.

⁶ <http://www.mvsabc.com/compliance-decisions-2008/compliance-decisions-2008/18-08-2008-deceptive-act-hurtubise-v-massive-truck-sales-ltd-gurtej-sidhu-jastej-singh-sidhu>

(h) Mr. Allen Hill has a condition placed on his salesperson licence to successfully complete the Level II Salesperson Certification Course at his own cost by July 31, 2012 as noted in paragraph 85.

RECONSIDERATION

[87] Pursuant to sections 155(7), 166(2), 181 and 182 of the BPCPA, an application for reconsideration of the Compliance Order and Notice of Administrative Penalty may be made within 30 days of receiving a copy of them. Such an application must be in writing and there must be new previously unavailable evidence provided in support of that application. The written request must identify any errors or other grounds for the reconsideration. Any application should be addressed to the Manager of Compliance and Investigations, Motor Vehicle Sales Authority of B.C., #208 - 5455 152nd Street, Surrey B.C. V3S 5A5.

[88] The conditions placed on the registration of Platinum and Mr. Hill, and Mr. Hill's suspension are reviewable by petitioning the BC Supreme Court for judicial review pursuant to the *Judicial Review Procedure Act* R.S.B.C. 1996 c. 241.

Dated April 26, 2012



Ian Christman J.D.
B.C. Registrar of Motor Dealers