



Neutral Citation: 2013-BCRMD-047

**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:

JESSE MacDOUGALL

Complainant

AND:

**2258756 ONTARIO LTD. dba
AUTO/ONE LEASING LP
(Dealer #31113)**

Motor Dealer

AND:

**RALPH SCHONWETTER
(Salesperson# 107296)**

Salesperson

AND:

**CECILIA DENEGRI-JETTE
(Salesperson #116796)**

Salesperson

AND:

**WHITNEY McELROY
(Salesperson #107305)**

Salesperson

DECISION OF THE REGISTRAR OF MOTOR DEALERS

Date and Place of Hearing: December 11, 2013 at Surrey, British Columbia

Appearances for:

The Complainant	Jesse MacDougall, by videoconference
The Motor Dealer	Erich Schmidt
Ralph Schonwetter	In person
Cecilia Denegri-Jette	In person
Whitney McElroy	No one
Motor Vehicle Sales Authority of BC	Daryl Dunn, Manager of Compliance and Investigations Ross Coté, Compliance Officer

Introduction

[1] This hearing was called due to an allegation that 2258756 Ontario Ltd. *dba* Auto/One Leasing LP ("Auto/One") represented to Jesse MacDougall that he was receiving an extended warranty that he had paid for, when he did not. The allegations also allege that this conduct was done by Ralph Schonwetter, Cecilia Denegri-Jette along with Whitney McElroy. It was found that the premium for the extended warranty was not paid to the warranty company, Global Warranty ("Global"). It was further found that the 2008 BMW sold to Mr. MacDougall would not qualify for an extended warranty as it was a rebuilt vehicle. All parties, including Mr. MacDougall, knew that the 2008 BMW was a rebuilt vehicle before the transaction occurred.

Authority's Position

[2] From the Notice of Hearing and the evidence presented at the hearing, the Authority's position is that Jesse McDougall initially dealt with Whitney McElroy and his company, and Mr. McElroy sold Mr. McDougall the extended warranty. Needing the transaction to be financed in some way, Mr. McElroy sold the BMW to Auto/One who leased the BMW to Mr. MacDougall with the extended warranty. The Authority alleges that, by words or by conduct, Auto/One misrepresented that the BMW had an extended warranty and that Auto/One allowed Whitney McElroy to act as their agent.

Jesse MacDougall's Position

[3] Mr. MacDougall says that Whitney McElroy put the BMW deal together for him. It was Mr. McElroy who told Mr. MacDougall he should purchase the extended warranty. Mr. MacDougall says that all the paperwork, including the Global paperwork, was completed at Auto/One's office. Mr. MacDougall later inquired about the extended warranty and found out that Global had not received the premiums. When asked to honour the extended warranty, Global responded that they would normally do so, but they would never have approved the extended warranty as a rebuilt vehicle does not qualify for the warranty program. Mr. MacDougall paid \$1,999 plus taxes for the extended warranty and is claiming \$2,240.

Auto/One, Mr. Schonwetter and Ms. Denegri-Jette's Position

[4] Auto/One, Mr. Schonwetter and Ms. Denegri-Jette's position is straight forward. They say Mr. McElroy arranged the deal and the price of the BMW. Mr. McElroy had already pre-sold the extended warranty and Auto/One simply was financing the deal. They say Mr. McElroy and his company, Loan Masters Auto Financing Inc., was the motor dealer. They also say they tried what they could to deal with Global and Mr. McElroy, but ultimately they are not responsible. Loan Masters Auto Financing Inc. was and is not a registered motor dealer.

THE LAW

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

[5] Both the *Motor Dealer Act* (“MDA”) and the *Business Practices and Consumer Protection Act* (“BPCPA”) (along with their regulations) are consumer protection legislation and are to “be interpreted generously in favour of consumers”:

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

[6] 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) **BPCPA sections 4 & 5**

[7] 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.

[8] The BPCPA provisions applicable 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

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

(v) about the authority of a representative, employee or agent to negotiate the final terms of a consumer transaction if the representation differs from the fact,

(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)

[9] 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).

[10] In *Rushak v. Henneken* (1991), 59, B.C.L.R. (2d) 250 (C.A.) the B.C Court of Appeal noted 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.

Rushak has been 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).
- *Casillan v. 565204 B.C. Ltd. dba Daewoo Richmond* 2009 BCSC 1335
- *Cummings v. 565204 B.C. Ltd. dba Daewoo Richmond* 2009 BCSC 1009

[11] Making a representation about a motor vehicle while failing to state a material fact, the effect of which is misleading, is deemed a deceptive act. Justice Willcock in *Applewood Motors Inc. v. Ratte & Registrar of Motor Dealers* (April 13, 2010: SCBC Action No. S094126, Vancouver Registry) (BC Supreme Court) stated at paragraph 34:

...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.

[12] Section 5(2) of the BPCPA places the onus on a supplier to prove that an alleged deceptive act (misrepresentation) did not occur: *Casillan* and *Cummings*. The burden of proof is on a balance of probabilities: *F.H. v. McDougal* 2008 SCC 53 (Supreme Court of Canada).

(c) Motor Dealer, Leasing, Consumer Transaction and Supplier

(i) Motor Dealer & Leasing

[13] The term "motor dealer" is defined in section 1(1) of the *Motor Dealer Act* and states:

"motor dealer" means a person who, in the course of business,

- (a) engages in the **sale**, exchange or other **disposition** of a motor vehicle, whether for that person's own account or for the account of another person, to another person for purposes that are primarily personal, family or household,
- (b) holds himself, herself or itself out as engaging in the disposition of motor vehicles under paragraph (a), or
- (c) solicits, offers, advertises or promotes with respect to the disposition of motor vehicles under paragraph (a),

but does not include a person exempted by regulation or an individual referred to in paragraph (a) of the definition of "salesperson";

[14] The MDA deems a person to be a motor dealer even if they are selling someone else's motor vehicle to a consumer (ex. consignment). Even in this situation, under the BPCPA, the motor dealer remains responsible for the representations they make to the purchasing consumer. If the motor dealer has relied on someone else for information, or to activate a warranty as here, the motor dealer remains responsible to their consumer for any misinformation or a failure to activate a warranty, but may attempt to seek indemnification for any damages from that third party: *Robillard v. Comox Valley Ford Sales (1964) Ltd. et al* 1995 CanLII 494 (BC Court of Appeal).

[15] The term "sale" is defined in the *Motor Dealer Act*:

"sale" means a lease, exchange or other disposition or supply of a motor vehicle to an individual primarily for the individual's personal or family use;

[16] The term "disposition" found in the definition of "motor dealer" has the following corresponding meaning by virtue of sections 28(4) and 29 of the *Interpretation Act*:

"dispose" means to transfer by any method and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, divest, release and agree to do any of those things;

[17] I note that sections 30 and 31 of the *Motor Dealer Act Regulation* set disclosure requirements and deemed provisions in leases made by motor dealers.

[18] The combined effect of the legislation is that a person in the ordinary business of leasing a motor vehicle to persons for purposes that are primarily personal, family or household use, is a motor dealer.

(ii) Consumer Transaction & Supplier

[19] The *Business Practices and Consumer Protection Act* defines a "consumer transaction" as follows:

"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;

[20] The term "supply" in the definition of "consumer transaction" is also defined in the BPCPA:

"supply" includes, in respect of the supply of goods or services or real property to a consumer, a sale, lease, assignment, award by chance or other disposition;

[21] So a supply includes a lease or any other disposition of goods or services. I have already identified above the broad definition of disposition.

[22] Finally, the term "supplier" is defined in the BPCPA as follows:

"supplier" means a person, whether in British Columbia or not, who in the course of business participates in a consumer transaction by

- (a) supplying goods or services or real property to a consumer, or
- (b) soliciting, offering, advertising or promoting with respect to a transaction referred to in paragraph (a) of the definition of "consumer transaction",

whether or not privity of contract exists between that person and the consumer, and includes the successor to, and assignee of, any rights or obligations of that person and, except in Parts 3 to 5 [*Rights of Assignees and Guarantors Respecting Consumer Credit; Consumer Contracts; Disclosure of the Cost of Consumer Credit*], includes a person who solicits a consumer for a contribution of money or other property by the consumer;

[23] The BPCPA contemplates that there may be many suppliers who make representations to consumers in a consumer transaction all of whom may be liable to the consumer for breaching that Act. Liability is not limited to only the supplier with a direct contractual relationship with the consumer. Generally, a person who leases goods to a person for purposes that are primarily personal, family or household is a supplier engaged in a consumer transaction.

DISCUSSION

(a) Who is the motor dealer in this transaction?

[24] The lease agreement indicates the leased BMW was for business use (page 16). However, the insurance and declared use for the BMW shows it was not specifically insured for business use, but for driving to work and for pleasure (pages 11-12). At the hearing Auto/One did not advance any claim that the BMW was purchased for business use. I also note that the motor dealer proceeded with this

lease as if it was a regulated transaction under the MDA by making the required statutory declarations (page 22). I am satisfied on the evidence before me that the BMW was leased for personal, family or household use and satisfies the definition of consumer transaction under the BPCPA.

[25] The BMW was transferred amongst many businesses. The ultimate transfer was between Mr. McElroy's company, Loan Masters, and Auto/One as supported by the documents in evidence (page 35, 48 and 55 of the Exhibits attached to the Affidavit of Ross Cote). From there, Auto/One leased the BMW to Mr. MacDougall as supported by the documents and Ms. Denegri-Jette's evidence (pages 36 to 47 of the Affidavit Exhibits). In the lease between Auto/One and Mr. MacDougall, Auto/One was the registered motor dealer as defined by the *Motor Dealer Act* and I find it was a "supplier" as defined by the BPCPA.

(b) Did Auto/One make any misrepresentations (deceptive act) as defined in the BPCPA?

[26] A deceptive act can occur before, during or after a consumer transaction. It can occur by words, by conduct, or by silence about material facts when other representations are made.

[27] The evidence is that Mr. McElroy told Mr. MacDougall he had to have an extended warranty and sold it for \$1,999. This amount shows on the bill of sale between Mr. McElroy's business and Auto/One and Mr. MacDougall saw that invoice. Also on the bill of sale in bold letters is "REBUILT STATUS." Therefore, Auto/One was aware the BMW was a rebuilt vehicle. The evidence is that when Auto/One purchased the BMW from Mr. McElroy's business they paid for the extended warranty. Ms. Denegri-Jette admits Auto/One owns the BMW and Mr. MacDougall is leasing the BMW and will pay for the extended warranty through the lease payments. The lease agreement shows Auto/One will receive an annual interest of 7.9% on the \$1,999 warranty amount over the term of the lease and therefore will benefit from the sale of the warranty to Mr. MacDougall.

[28] The warranty paperwork was completed at the office of Auto/One and the warranty shows Auto/One as lien holder. This is a representation by Auto/One of the validity of the lease. The evidence is also clear that Auto/One never told Mr. MacDougall that he would not be receiving the extended warranty. The warranty was never activated and the BMW would never have qualified for the Global warranty. Auto/One made no representations, by words or by conduct, to Mr. MacDougall other than the extended warranty was valid. This satisfies the legal requirements for Auto/One having committed a deceptive act contrary to the BPCPA.

[29] If Auto/One intends to rely on the representations made by a third party and they are not true, or on a third party to activate a warranty and remit the premiums and they do not, Auto/One still remains liable to its customer and must seek indemnity from the third party it relied on, if it so chooses. A merchant generally cannot pass-off their responsibilities to their customers by saying they relied on someone else to provide accurate information or activate a warranty.

(c) Misrepresentations by the salespersons

(i) Ms. Denegri-Jette

[30] The evidence establishes that Ms. Denegri-Jette's role in this consumer transaction occurred after the lease agreement was executed. The Affidavit of Ross Cote includes emails from Ms. Denegri-Jette to Mr. MacDougal. In one email, dated January 11, 2013, Ms. Denegri-Jette stated to Mr. MacDougal that "Loanmasters sold you this warranty, not us"... "We simply funded the deal; we are the lender – not the dealer." Ms. Denegri-Jette has completed the Salesperson Certification Course and would know that as the lessor, Auto/One was the motor dealer in this transaction. Also, in an email to Mr. MacDougall dated January 8, 2013, Ms. Denegri-Jette indicates "Whitney" McElroy was the salesperson during the transaction and "Ralph" was only the lease representative. Ralph Schonwetter was not just a lease representative; if he participated in arranging the lease, he would also be the salesperson. I would note that during the hearing Auto/One, including Ms. Denegri-Jette, said Whitney McElroy was never a salesperson at Auto/One.

[31] These are misrepresentations on the part of Ms. Denegri-Jette that occurred after the consumer transaction and were clearly made to try and deflect Auto/One's responsibility in this transaction: sections 4(1) and 4(3)(b)(v) of the BPCPA.

(ii) Mr. Schonwetter

[32] Mr. Schonwetter was the salesperson in this transaction as stated in Ms. Denegri-Jette's email (although she describes him as the lease representative); by Mr. MacDougall's evidence at the hearing; and as the noted signatory for Auto/One on the lease documents in evidence. It was his direct conduct of completing the lease, which included the extended warranty, and ensuring Auto/One was noted as the lien holder on the extended warranty that represented to Mr. MacDougall the validity of the warranty. Mr. Schonwetter is directly responsible for his conduct while Auto/One is vicariously liable for Mr. Schonwetter's conduct. I would note that Mr. Schonwetter satisfies the definition of "supplier" in the BPCPA for the same reasons as does Auto/One.

[33] I accept Mr. Schonwetter's evidence that he relied on Mr. McElroy to ensure the extended warranty was valid and would be activated. However, there were clear indicators to Mr. Schonwetter and Auto/One that they should have questioned the validity of the extended warranty. That fact was that the BMW was declared as rebuilt status in clear capitalized and underlined letters on the purchase agreement. In the auto industry, a rebuilt vehicle will generally lose any remaining manufacturer's warranty and be disallowed any extended warranties. Global, who is well known in the industry, would not provide a warranty on a rebuilt vehicle. Mr. Schonwetter and Auto/One could have sought assurances from Global that any extended warranty on the BMW with rebuilt status would be honoured. Instead, they chose to rely on Whitney McElroy, when evidence suggested a concern with the warranty. In this regard, there was negligence on the part of Mr. Schonwetter and Auto/One.

(iii) Whitney McElroy

[34] Mr. McElroy's licence lapsed on January 19, 2014. I have heard evidence from Mr. MacDougall that Mr. McElroy told him that he had to purchase the extended warranty. Also, Auto/One also paid Loanmasters (Mr. McElroy's company) the \$1999 for the warranty. I am satisfied on the evidence that Mr. McElroy made a misrepresentation to Mr. MacDougall at the time Mr. McElroy was a licensed salesperson. I am also satisfied that Mr. McElroy would have known that a rebuilt motor vehicle would not qualify for an extended warranty and deliberately misled Mr. MacDougall. Finally, I note the Authority commenced its investigation and conducted the hearing in this matter before Mr. McElroy's licence lapsed. Under these facts, I continue to have jurisdiction: *Abouabdallah v. College of Dental Surgeons of Saskatchewan* 2010 SKQB 256 (CanLII) (Saskatchewan Queen's bench), *aff'd* 2010 SKCA 129 (Court of Appeal), leave to appeal to the SCC refused (SCC No. 34508, April 12, 2012). Mr. McElroy chose not to attend the hearing. I find it necessary to protect the public interest by ordering a prohibition against Whitney McElroy from being licensed as a salesperson or operating a registered motor dealer in the future.

REMEDY

[35] Mr. MacDougall is paying for an extended warranty that he does not have. Auto/One and Mr. Schonwetter, by conduct and by representations, confirmed to Mr. MacDougall the validity of the extended warranty. Mr. MacDougall is entitled to the cost of the extended warranty he paid of \$1,999, plus any applicable taxes. This is what Mr. MacDougall has claimed - \$2,240.

REGULATORY ACTION

(a) Compliance Order

[36] I make the following compliance order:

2258756 ONTARIO LTD. *dba* Auto/One Leasing LP and Ralph Schonwetter:

- (b) Are to abide by the Business Practices and Consumer Protection Act;
- (c) Are to refrain from making any misrepresentations including by conduct or by silence to consumers;
- (d) Are to pay to Jesse MacDougall \$1,999 plus applicable taxes, within 45 days; and
- (e) Review their policies and procedures and implement a policy of verifying the validity of extended warranties they offer on rebuilt vehicles with the warranty provider. A copy of that policy and procedure is to be provided to the Authority within 45 days to the attention of the Manager of Licensing, Hong Wong.

In accordance with section 155(6) of the BPCPA, 2258756 ONTARIO LTD. *dba* Auto/One Leasing LP and Ralph Schonwetter are jointly and severally liable to Jesse MacDougall.

(b) Administrative Penalties

[37] I have found the misrepresentation here was a negligent misrepresentation. If considering issuing an administrative penalty the BPCPA requires that I consider the whole of the transaction and specifically, the following factors noted in section 164(2):

- 2) Before the director [registrar] imposes an administrative penalty on a person, the director [registrar] must consider the following:
 - (a) previous enforcement actions for contraventions of a similar nature by the person;
 - (b) the gravity and magnitude of the contravention;
 - (c) the extent of the harm to others resulting from the contravention;
 - (d) whether the contravention was repeated or continuous;
 - (e) whether the contravention was deliberate;
 - (f) any economic benefit derived by the person from the contravention;
 - (g) the person's efforts to correct the contravention.

[38] I note the following:

- (a) No previous similar enforcement action against Auto/One or Mr. Schonwetter. Mr. Schonwetter's licensing record indicates he has renewed on time and taken all educational courses as required by his licence.
- (b) The contravention was confined to this one specific case and involving \$1,999 + taxes.
- (c) No other persons appear to have been harmed by the contravention.
- (d) The contravention was not repeated.
- (e) The contravention was not deliberate, but was negligent.
- (f) The lease and buy-in documents show Auto/One did not "mark-up" the vehicle price. The vehicle price to Mr. MacDougall is the same price that Auto/One paid to Loan Masters (Mr. McElroy). They are profiting from the interest earned, the \$475 registration fee and any profit obtained from the Guarantee of Residual Value of \$6,000; the amount of profit is yet to be determined.
- (g) Auto/One, through Ms. Denegri-Jette attempted to resolve this matter for Mr. MacDougall by trying to work with Global and by trying to contact Whitney McElroy. When those efforts failed, Ms. Denegri-Jette suggested Mr.

MacDougall apply to the Authority for compensation. Auto/One attempted to resolve this matter; except it did not itself offer a remedy.

[39] I also consider the whole of the transaction. As noted, there was clear evidence that the BMW was Rebuilt Status and an extended warranty was offered. There is no indication Auto/One took any steps to verify the validity of an extended warranty on a rebuilt vehicle. This is something that could be easily achieved. In this case the evidence is that Mr. McElroy deceived Auto/One in representing the validity of this warranty. Mr. McElroy chose not to attend the hearing, although served notice, and did not give any evidence to the contrary. Given all the circumstances, I am satisfied that my Compliance Order and requiring Auto/One to implement a policy to verify the validity of any warranty offered on a rebuilt vehicle is sufficient to regain compliance. No administrative penalty is ordered in this case.

(c) Conditions on Licence

[40] I find that Ms. Denegri-Jette's evidence indicates she is not clearly aware of the role of a motor dealer who conducts leases. The evidence also indicates she does not understand the role of a salesperson versus a lease representative. I find it necessary to place a condition on Ms. Denegri-Jette's licence that within 60 days of the date of this decision, she retake and successfully complete the Salesperson Certification Course at her own cost.

[41] I consider similar conditions for Mr. Schonwetter. It does not appear he has a misunderstanding of his legal obligations. It appears he trusted Whitney McElroy about the validity of the warranty, but failed to appreciate that it was going to be for a rebuilt status vehicle and question its validity. I believe this decision and the condition on Auto/One to implement the noted policy will sufficiently deal with this matter. No conditions are added to Mr. Schonwetter's licence.

SUMMARY

[42] In summary:

- (a) Auto/One and Mr. Schonwetter made a negligent misrepresentation to Mr. MacDougall by indicating he was purchasing a valid warranty when he did not.
- (b) Auto/One and Mr. Schonwetter are jointly and severally liable to refund Mr. MacDougall the \$1,999 +taxes he paid for the warranty.
- (c) Auto/One is required to implement a policy and procedure of verifying with the warranty company, the validity of any warranty being offered on rebuilt vehicles.
- (d) I find that Whitney McElroy misled Auto/One and Mr. Schonwetter but that Auto/One and Mr. Schonwetter could have taken steps to verify the validity of the warranty. I find in these circumstances, no administrative penalty is necessary to ensure future compliance.

(e) Ms. Denegri-Jette must successfully complete the Salesperson Certification Course within 60 days of the date of this decision, at her own cost.

(f) Whitney McElroy is prohibited from being licensed as salesperson or registered as a motor dealer in the future.

RECONSIDERATION

[43] Pursuant to sections 155(7), 166(2), 181 and 182 of the BPCPA, an application for reconsideration of the Compliance Order may be made within 30 days of receiving a copy. 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.

[44] The conditions placed on the licence of Ms. Denegri-Jette's 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 February 4, 2014



Ian Christman J.D.
Registrar of Motor Dealers

