



Neutral Citation: 2017-BCRMD- 017

**IN THE MATTER OF THE *MOTOR DEALER ACT*, R.S.B.C. 1996, C. 316
AND THE *SALESPERSON LICENSING REGULATION*, B.C. REG. 241/2004**

RE:

**BEST IMPORT AUTO LTD.
(Registration # 30670)**

Dealer

And

**MAHYAR (MATHEW) ANVARI
(Licence # 121337)**

Salesperson

And

**FARIDOOON (FRED) ZOLFAGHARKHANI
(Licence # 112992)**

Salesperson

DECISION OF THE REGISTRAR OF MOTOR DEALERS

Dates and place of hearing: September 21, 26 and October 4, 2017, in Surrey,
British Columbia

Written submissions delivered: October 18, 2017 at Surrey, British Columbia

Date and place of decision: November 28, 2017 at Surrey, British Columbia

Appearances for:

The Vehicle Sales Authority of B.C. D. Dunn, Manager of Compliance and
Investigations

Best Imports A. Sodagar, legal counsel
M. Bertoldi, legal counsel

Mahyar (Mathew) Anvari Himself

Faridoon (Fred) Zolfagharkhani Himself

INTRODUCTION

[1] This hearing was to review allegations against Best Import Auto Ltd. ("Best Import"); Mahyar (Mathew) Anvari; and Faridoon (Fred) Zolfagharkhani that they breached sections 4 and 5 (committed deceptive acts or practices) of the *Business Practices and Consumer Protection Act* S.B.C. 2004 c.2 (the "BPCPA") by having engaged in the following conduct (paraphrased):

- (a) Advertised and displayed for sale motor vehicles that were not suitable for transportation,
- (b) Sold motor vehicles that did not comply with the requirements of the Motor Vehicle Act,
- (c) Misrepresented the amount of damage of the motor vehicles, and
- (d) Had an unlicensed salesperson conducting business at Best Import.

- See the Hearing Notice dated August 17, 2017 (Exhibit 1 at the Hearing)

[2] On September 1, 2017, the Authority sought an interim order suspending Best Imports' registration as a motor dealer. The reason for requesting the interim order was that evidence suggested Best Imports was selling motor vehicles that were not compliant with the safety requirements of the *Motor Vehicle Act*, contrary to conditions that were placed on Best Imports' motor dealer registration. On that same day, I suspended Best Import's registration, as I found that the Authority had established a *prima facie* case that Best Import was in breach of the conditions of its registration and was offering motor vehicles for sale that were not compliant with the *Motor Vehicle Act*. See my separate decision of September 1, 2017.

BACKGROUND FACTS

[3] On July 17, 2017, the Authority initiated an investigation on its own initiative, after having received several previous consumer complaints that Best Import was selling unsafe vehicles. On that date, the Authority, along with the B.C. Ministry of Transport's Commercial Vehicle Safety Enforcement Branch ("CVSE"), went to Best Imports lot, where the CVSE inspected six motor vehicles. Five of those motor vehicles were found to be not compliant with the *Motor Vehicle Act*; and the CVSE ordered those five vehicles to be inspected at a designated inspection facility. One vehicle was found not compliant with the *Motor Vehicle Act* and considered of such concern that the CVSE ordered it removed from the highways until such time as it

complied with the requirements of that Act. The sixth motor vehicle passed the inspection by the CVSE.

[4] Advertisements were taken from Best Imports website, which showed the five vehicles that failed inspections were advertised for sale. In three of those cases, laudatory remarks such as “excellent running condition, very clean inside and out” or “excellent condition, very clean inside and out” were part of the advertisements.

[5] Based on the above findings, a hearing before the Registrar was set for September 21, 2017. On July 24, 2017, in order to protect the public, the Authority added the following conditions to Best Import’s registration:

- (a) motor vehicles at Best Import had to be inspected by a red seal mechanic or designated inspection facility; and
- (b) consumers, who purchased vehicles from Best Import, were to be given a copy of the inspection report.

[6] On August 18, 2017, the Authority did a follow-up inspection. The inspection determined several concerns as noted in my September 1, 2017 decision at paragraph 7. Some of those concerns were:

- (a) motor vehicles ordered to be inspected by the CVSE were being offered for sale without having been inspected;
- (b) Best Imports was not having its vehicles inspected by a red seal mechanic or designated inspection facility, as required by the conditions of its registration;
- (c) one consumer had not received the vehicle inspection report as required by the conditions of Best Import’s registration; and
- (d) one vehicle, a Nissan Altima, was sold to a consumer even though an inspection report in the records of Best Import indicated a loose ball joint. A subsequent inspection of that vehicle by a red seal mechanic at a Nissan dealership noted several safety concerns with the Altima.

[7] The above concerns led to the September 1, 2017, hearing at which Best Import’s registration was suspended to protect the public interest.

[8] I now turn to the main allegations.

THE LAW

(a) The interpretation and application of consumer protection legislation

[9] The *Business Practices and Consumer Protection Act* (BPCPA) and the *Motor Dealer Act* are consumer protection legislation. As such, their interpretation and application are to be in favour of protecting consumers.

- Section 8 of the *Interpretation Act*.
- *Seidel v. Telus Communications Inc.*, 2011 SCC 15, [2011] 1 S.C.R. 531 (Supreme Court of Canada) at paragraph 37.
- *Stanway v. Wyeth Canada Inc.*, 2012 BCCA 260 (BC Court of Appeal) at paragraphs 78 – 79.
- *Fireman's Fund Insurance Co. of Canada v. Shoreline Auto Sales Ltd.* [1986] B.C.J. No. 1745 (BC Supreme Court).

[10] Applying these same principles to the *Motor Vehicle Act*, the provisions of that Act addressing vehicle safety are to be interpreted and applied in order to best achieve their goal of promoting motor vehicle safety and the protection of the public.

(b) Business Practices and Consumer Protection Act sections 4 and 5

[11] Sub-section 5(1) of the *Business Practices and Consumer Protection Act* (BPCPA) prohibits a supplier from committing deceptive acts or practices. If it is alleged that a supplier, such as a motor dealer, has committed a deceptive act or practice, then sub-section 5(2) of the BPCPA places the onus on the motor dealer to prove its representation was not deceptive or misleading.

- *Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia*, 2014 BCSC 894 (BC Supreme Court) at paragraph 26.
- *Cummings v. 565204 B.C. Ltd. dba Daewoo Richmond*, 2009 BCSC 1009 (BC Supreme Court) at paragraph 25.

[12] Sub-section 4(1) of the BPCPA provides a general definition of a deceptive act or practice, including defining how a "representation" can be made:

"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; [and]

"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.

In essence, a deceptive act or practice is a misrepresentation committed by a supplier.

[13] Sub-section 4(2) of the BPCPA notes that a deceptive act or practice can occur before (such as in advertising), during, or after the consumer transaction.

- *Motor Dealer Council of B.C. v. AutoCanada Northtown Auto GP Inc.* (Hearing File 13-08-001, August 13, 2015, Registrar).

[14] Sub-section 4(3) of the BPCPA is a legislative deeming provision. That sub-section lists several types of conduct that are deemed to be deceptive acts or practices. Caselaw notes that a deceptive act or practice can occur innocently (a dealer may honestly believe what they are saying is true), negligently, or be deliberate. Where a motor dealer is reckless in making representations - and those representations end up being untrue - that reckless conduct is considered to be a deliberate or fraudulent deceptive act or practice.

- *Harris v. Windmill Auto Sales & Detailing Ltd et. al* (Registrar, Hearing File 12-030, April 10, 2013); affirmed by *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers*, 2014 BCSC 903 (BC Supreme Court).
- *Cummings v. 565204 B.C. Ltd. dba Daewoo Richmond*, 2009 BCSC 1009 (BC Supreme Court).
- *Motor Dealer Council of B.C. v. AutoCanada Northtown Auto GP Inc.* (Hearing File 13-08-001, August 13, 2015, Registrar).

[15] A deceptive act or practice may also occur by failing to state a material fact.

- Ss.4(3)(b)(vi) of the BPCPA.

- *Stanway v. Wyeth Canada Inc.*, 2012 BCCA 260 (BC Court of Appeal) at paragraphs 80 – 81.
- *Applewood Motors Inc. v. Ratte & Registrar of the Motor Dealer Council of B.C.* (Vancouver SCBC Action No. S094126, April 13, 2010) (BC Supreme Court).

(c) Legislated disclosure requirements

[16] The *Motor Dealer Act* and its regulations require motor dealers to make certain disclosures to consumers before a consumer purchases or leases a motor vehicle. Key in this case are those required disclosures about prior damage to a motor vehicle and whether or not a motor vehicle is compliant with the safety requirements of the *Motor Vehicle Act*.

i. Damage over \$2,000

[17] Section 23(b)(ii) of the *Motor Dealer Act Regulation* states:

23 A motor dealer shall ensure that in every written representation in the form of a sale or purchase agreement respecting his offering to sell or selling a motor vehicle he discloses, to the best of his knowledge and belief:

...

(b) whether the motor vehicle has

...

(ii) in the case of a used motor vehicle, sustained damages requiring repairs costing more than \$2 000...

[18] The case law is clear that section 23(b)(ii) of the *Motor Dealer Act Regulation* places a positive duty on a motor dealer to make its own duly diligent inquiries about the damage history of a motor vehicle. A motor dealer may not solely rely on the assurances of a past owner or even on the contents of a vehicle history report.

- *Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia*, 2014 BCSC 894 (BC Supreme Court).

ii. Compliance, or not, with the safety requirements of the Motor Vehicle Act

[19] Section 222 of the *Motor Vehicle Act* sets a general prohibition against displaying for sale, offering for sale, or selling a motor vehicle that is not compliant with that Act and its 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. (Emphasis added.)

[20] Section 8.01 of the *Motor Vehicle Act Regulations* further emphasizes this prohibition for persons in the business of selling motor vehicles:

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.

[21] Section 219 of the *Motor Vehicle Act* makes it an offence for a person to operate a motor vehicle and an owner of a motor vehicle to allow another person to operate it, if that vehicle does not comply with the requirements of that Act. A motor vehicle that does not meet the safety requirements of the *Motor Vehicle Act* may not be driven legally on the highways; and it is therefore legally “not suitable for transportation.”

[22] The safety requirements for motor vehicles are found throughout the *Motor Vehicle Act's* regulations. For instance, see Division 4 (lamps) and Division 5 (brakes) in the *Motor Vehicle Act Regulation*. The Schedule attached to the *Vehicle Inspection Regulation* is the Vehicle Safety and Inspection Standards Manual. That Manual contains information about vehicle safety components, how those components are to be inspected and when certain safety components fail an inspection. These provisions of the *Motor Vehicle Act* are tied into the *Motor Dealer Act* and its regulations through three important provisions.

[23] First, sub-sections 21(2)(e) and (f) of the *Motor Dealer Act Regulation* requires a motor dealer to declare on a purchase agreement that a used motor vehicle is compliant with the safety requirements of the *Motor Vehicle Act*. Alternatively, the dealer must otherwise declare to the consumer that the vehicle is “not suitable for transportation:”

- (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. (Emphasis added.)

[24] Second, section 22 of the *Motor Dealer Act Regulation* requires a motor dealer making any written representation about a motor vehicle that is "not suitable for transportation" contain a statement to that effect. A written representation includes any type of advertisement. This is important so as to avoid a dealer's enticing a consumer onto their lot to purchase a vehicle, only to be told later that the vehicle is "not suitable for transportation:"

- 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. (Emphasis added.)

[25] The word "written" includes any medium used that allows words to be in visible form, including by electronic means: section 29 of the *Interpretation Act*.

[26] Third, sub-section 27(b) of the *Motor Dealer Act Regulation* requires a motor dealer, who is displaying for sale a motor vehicle, which is not suitable for transportation, to affix to that vehicle the statement "not suitable for 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." (Emphasis added.)

[27] I note here that section 29 of the *Interpretation Act* states that the words "must" and "shall" are to be read as imperative. I would also note the difference in language used in sections 21, 22, and 27 of the *Motor Dealer Act Regulation* as compared to the disclosure requirements under section 23 of that Regulation. Section 23 imposes a due diligence standard on motor dealers to make those declarations. In the case of the disclosures regarding compliance with the safety requirements of the *Motor Vehicle Act*, the dealer must get those declarations correct.

[28] This differentiation makes sense. The disclosures mandated by section 23 of the *Motor Dealer Act Regulation* require knowing the history of a vehicle, which may be difficult to determine on a used vehicle as it is passed along from one owner to another. In contrast, determining if a motor vehicle meets the safety requirements of the *Motor Vehicle Act* can be determined through an inspection, using the standards set by that Act and its regulations. Ensuring a motor vehicle being offered for sale meets those safety standards is also an important policy goal of reducing death and injuries on the roadways, as well as the related financial harm that can occur from accidents. Knowing the safety status of a motor vehicle allows a consumer to properly assess its asking price. Knowing whether or not a motor vehicle is compliant with the *Motor Vehicle Act* is a material fact. Therefore, a consumer need not inquire about these facts, as there is a positive duty on the motor dealer to make the declaration one way or another:

[70] Most people who buy a car from a used car dealer rely on his skill or judgment in that they assume that the dealer has been selective in choosing which cars he will acquire and sell. They also rely upon the dealer to disclose relevant information about the vehicles.

[71] It is also reasonable to assume that most purchasers of used cars want to buy a reliable vehicle for use in

driving in safety on the roads. Used car dealers know this without a need for a customer to specifically state it as a specific purpose.

- *Sugiyama v Pilsen dba Southgate Auto Sales* 2006 BCPC 265 (BC Prov. Ct.).

See also:

- *Re: Wen Li Xu dba Golden Year Auto Broker and Bo Pan* (Hearing File 14-11-004, April 28, 2015, Registrar).

iii. The BPCPA, MVA and MDA working together

[29] Sub-section 23(b) of the *Motor Dealer Act Regulation* places a positive duty on a motor dealer to make due diligent inquiries about the vehicle's damage history. That sub-section also deems cumulative damage over \$2,000 to be a material fact requiring disclosure to the consumer. The BPCPA adds to this a requirement that the disclosure to the consumer be clear, unambiguous, and not fail to state a material fact: ss. 4(3)(b)(vi) of the BPCPA. Merely making a declaration that a vehicle has damage over \$2,000 and saying no more is insufficient to meet the requirements of the BPCPA or of the Regulation. Where the damage is known, the dealer must not withhold information from the consumer. This includes if the vehicle has been rebuilt, which can indicate significant past hidden damage. The information must be disclosed so the consumer can assess the value of the vehicle offered for sale and so they can make appropriate inquiries about the vehicle.

- *Brook v. Wheaton Pacific Pontiac Buick GMC Inc.*, 2000 BCCA 332 (CanLII) (BC Court of Appeal).
- *Harris v. Windmill Auto Sales & Detailing Ltd.* (April 10, 2013, Hearing File 12-030, Registrar) affirmed by *Windmill Auto Sales & Detailing Ltd v. Registrar of Motor Dealers*, 2014 BCSC 903 (BC Supreme Court).
- *Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia*, 2014 BCSC 894 (BC Supreme Court) at paragraphs 42 to 52.
- *Knapp v. Crown Auto Body and Auto Sales Ltd.* (File 08-70578, September 21, 2009, Registrar), affirmed by *Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia*, 2014 BCSC 894 (BC Supreme Court).
- *Pirvulescu v. Parkwood Auto Sales Ltd. et al.* (File 07-70285, September 23, 2009, Registrar).

[30] Sub-sections 21(2)(e) and (f), 22, and 27(b) of the *Motor Dealer Act Regulation* compel a motor dealer to represent to consumers whether or not a motor vehicle meets the safety requirements of the *Motor Vehicle Act*. Whether a vehicle does or does not meet the requirements of the *Motor Vehicle Act* is a material fact. The BPCPA requires that such representations be clear, unambiguous, and not fail to state a material fact: ss. 4(3)(b)(vi) of the BPCPA. A consumer is entitled to know this of the motor vehicle they are considering buying. Advertising or selling a motor vehicle that is not compliant with the *Motor Vehicle Act*, and not advertising that fact - including on the vehicle itself - and not advising the consumer of that fact are all deceptive acts or practices, contrary to the BPCPA.

- *Cummings v. 565204 B.C. Ltd. dba Daewoo Richmond*, 2009 BCSC 1009 (BC Supreme Court).
- *Re: Wen Li Xu dba Golden Year Auto Broker and Bo Pan* (Hearing File 14-11-004, April 28, 2015, Registrar).

[31] Section 8.1(4)(b) of the *Motor Dealer Act* states that, where a motor dealer has committed a deceptive act or practice contrary to the BPCPA, that conduct is grounds for the Registrar to cancel the motor dealer's registration. That section only requires a single occurrence of such a breach to trigger a cancellation. Whether or not a registration is canceled is left to the discretion of the Registrar. This section of the *Motor Dealer Act* provides direction from the Legislature that the Registrar is to consider such a breach as a serious one such that revocation of registration is appropriate to protect the public.

- *Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia*, 2014 BCSC 894 (BC Supreme Court) at paragraphs 42 to 52.
- *Knapp v. Crown Auto Body and Auto Sales Ltd.* (File 08-70578, September 21, 2009, Registrar), affirmed by *Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia*, 2014 BCSC 894 (BC Supreme Court).
- *Pirvulescu v. Parkwood Auto Sales Ltd. et al.* (File 07-70285, September 23, 2009, Registrar).

(d) Review of a motor dealer and a salesperson's conduct

[32] Reviewing a motor dealer's conduct or a licensed salesperson's conduct to see if that conduct is contrary to the public interest is found in section 5 of the *Motor Dealer Act* (motor dealers) and section 6 of the *Salesperson Licensing Regulation*. The type of conduct that can be reviewed is not confined by type, time,

or by geographic location. It is an assessment undertaken to ensure a registrant or a licensee does not pose an unacceptable risk when dealing with the public:

[23] The Registrar states that the requirement to examine a person's past conduct demonstrates an overarching concern with public safety. Past conduct is the statutory tool by which the Registrar can determine if applicants will be governable, act in accordance with the law, and conduct themselves with honesty and integrity. Salespersons are in a position of trust with the buying public, which relies on them to give clear and honest information about buying motor vehicles. The public also expects safety to be a priority, if taking a test drive with a salesperson. Lastly, integrity is important because salespersons may be privy to customer's confidential personal information including home address and financial information.

- *Fryer v. Motor Vehicle Sales Authority of British Columbia*, 2015 BCSC 279 (BC Supreme Court); affirming *Re: Peter Fryer* (Registrar, December 13, 2013, Hearing File No. 13-11-005).
- Applied to motor dealers in *Re: A Vancouver Auto Ltd. and Shahram Moghaddam* (April 3, 2017, Hearing File 17-02-002, Registrar) at paragraph 8.

[33] Section 5 of the *Motor Dealer Act* specifically contemplates looking behind the corporate veil. Common law principals also note that a regulator needs to look at the realities surrounding a licensee or an applicant for a licence, if it is going to meet its public mandate of protecting the public from potential future harm. A licensing body is not blinded by the legal doctrine of the corporate veil.

- *Re: Key Track Auto Sales & Detailing Ltd.* (May 11, 2010, Hearing File 10-013, Registrar) at paragraphs 16 -19.

[34] The desire of a person to be registered as a motor dealer or licensed as a salesperson in the motor dealer industry must be balanced with protecting the public from potential future harm. The protection of the public is the paramount concern.

- *British Columbia (Securities Commission) v. Pacific International Securities Inc.*, 2002 BCCA 421 (BC Court of Appeal).
- *A Vancouver Auto Ltd. and Shahram Moghaddam* (Registrar, Hearing File 17-02-002, April 3, 2017).

(e) Witness Credibility

[35] I keep in mind the guidance provided by the courts in the assessment of witness credibility.

- *Bradshaw v. Stenner* 2010 BCSC 1398 (BC Supreme Court); affirmed 2012 BCCA 296 (BC Court of Appeal); leave to appeal to the SCC refused 2013 CanLII 11302 (Supreme Court of Canada).
- *Crest Realty Westside Ltd. v. W & W Parker Enterprises Ltd.*, 2014 BCSC 1328 (BC Supreme Court); affirmed 2015 BCCA 447 (BC Court of Appeal).

(f) Burden of Proof

[36] The burden of proof is on a balance of probabilities. That balancing is based on the existence of “sufficiently clear, convincing and cogent” evidence to establish “whether it is more likely than not that the event [alleged conduct] occurred.”

- *F.H. v. McDougall*, [2008] 3 SCR 41, 2008 SCC 53 (Supreme Court of Canada) at paragraphs 44 and 46.

DISCUSSION

(a) Advertising and displaying for sale motor vehicles not compliant with the Motor Vehicle Act

(i) Best Imports

[37] Best Imports is a supplier as defined in the BPCPA.

[38] The evidence shows that Best Imports advertised and offered motor vehicles for sale that were not compliant with the *Motor Vehicle Act* on at least two occasions.

[39] The first occasion involved the following five vehicles being offered for sale that did not pass the July 17, 2017, inspection by the CVSE:

- (a) 2013 Mercedes C300W,
- (b) 2006 Audi A4,
- (c) 2004 Honda Civic,

(d) 2000 Honda Civic, and

(e) 1998 Honda CR-V.

- Affidavit of Compliance Officer Dan McGrath Sworn August 4, 2017, Exhibit 5 at the September 21 hearing (the "Affidavit") at paragraphs 13 and 16.

[40] The evidence that these five vehicles were not compliant with the *Motor Vehicle Act* comes from the following:

(a) oral testimony from CVSE Inspector and Peace Officer J. Kendall;

(b) oral testimony from CVSE Inspector and Peace Officer F. Grossling;

(c) oral testimony from CVSE Inspector and Peace Officer G. Neal;

(d) Notice and Order issued by Peace Officer Grossling for the 2013 Mercedes Benz and requiring the Mercedes to be inspected by a Mercedes Benz dealer – page 73 of the Affidavit Exhibits;

(e) Notice and Order issued by Peace Officer Kendall for the 2006 Audi A4 and requiring the vehicle pass an inspection at an Audi dealer– page 86 of the Affidavit Exhibits;

(f) Notice and Order issued by Peace Officer Grossling for the 2004 Honda Civic – page 99 of the Affidavit Exhibits;

(g) Notice and Order issued by Peace Officer Neal for the 2000 Honda Civic – page 100 of the Affidavit Exhibits; and

(h) Notice and Order issued by Peace Officer Kendall for the 1998 Honda CR-V – page 112 of the Affidavit Exhibits.

[41] The evidence of Compliance Officer Dan McGrath was that the CVSE advised Best Import that these vehicles could not be put up for sale, until those vehicles successfully passed the ordered inspection: Affidavit of Dan McGrath at paragraph 14. This caution is also noted on the Notice and Order for the 1998 Honda CR-V: Affidavit of Dan McGrath, page 112 of the exhibits. This is simply a restatement of section 222 of the *Motor Vehicle Act*.

[42] The evidence that these vehicles were advertised and offered for sale is as follows:

- (a) The 2013 Mercedes C300W was advertised for sale at \$23,800 in an advertisement taken from Best Import's website on July 18, 2017. In that ad the Mercedes was advertised as "Excellent Condition, Very Clean in and out." There are no representations in that advertisement that the Mercedes was "not suitable for transportation." The pictures of the Mercedes do not show any notation affixed to the vehicle itself that it is "not suitable for transportation." page 74 of the Affidavit Exhibits.
- (b) The 2006 Audi A6 was advertised for \$9,800 in an advertisement taken from Best Import's website on July 18, 2017. In that ad the A6 was advertised as "Very Clean in and out. Excellent Condition." There are no representations in that advertisement that the A6 was "not suitable for transportation." The pictures of the A6 do not show any notation affixed to the vehicle itself that it is "not suitable for transportation." page 88 of the Affidavit Exhibits.
- (c) The 2004 Honda Civic was advertised for \$4,800 in an advertisement taken from Best Import's website on July 18, 2017. In that ad the 2004 Honda Civic was advertised as "Excellent Condition, Very Clean in and out." There are no representations in that advertisement that the 2004 Honda Civic was "not suitable for transportation." The pictures of the 2004 Honda Civic do not show any notation affixed to the vehicle itself that it is "not suitable for transportation." page 58 of the Affidavit Exhibits.
- (d) The advertisement for the 2000 Honda Civic was obtained from Google cache as it appeared on June 27, 2017 on Best Import's website. There was no advertised price noted in the cache copy. The advertisement states that the 2000 Honda Civic was in "Good Running Condition." The advertisement does not note that 2000 Honda Civic was "not suitable for transportation." The one picture of the vehicle does not indicate there is a notation attached to the vehicle that it is "not suitable for transportation." However, you cannot see all sides of the motor vehicle: page 101 of the Affidavit Exhibits.
- (e) The 1998 Honda CR-V was advertised for \$3,800 in an advertisement taken from Best Imports website on July 18, 2017. In that ad the CR-V was advertised as "Excellent Running Condition, Very Clean in and out." There are no representations in the advertisement that the CR-V was "not suitable for transportation." The pictures of the CR-V do not show any notation affixed to the vehicle itself that it is "not suitable for transportation." page 88 of the Affidavit Exhibits.

[43] There is sufficient evidence to show that the five noted motor vehicles were not compliant with the *Motor Vehicle Act*. There is sufficient evidence to show that the five noted motor vehicles were advertised for sale; and there was no notation that these vehicles were “not suitable for transportation” in the advertisements. Best Imports has not shown that these five vehicles were, in fact, compliant with the *Motor Vehicle Act*. Best Imports advertised five motor vehicles for sale without stating a material fact, in breach of section 5(1) of the BPCPA and as deemed by sections 4(3)(b)(vi) of that Act. Further, Best Import used laudatory remarks such as “excellent condition” and “excellent running condition” to describe these vehicles when they were “not suitable for transportation,” which is also a breach of section 5(1) of the BPCPA and as deemed by section 4(3)(a)(ii) of that Act.

[44] I further find that Best Imports was reckless in the manner in which they advertised these vehicles in relation to their compliance with the *Motor Vehicle Act*. The evidence is clear that Best Import did not inspect any of its motor vehicles for sale unless a perspective purchaser requested one. Even then, it was a cursory inspection. Fred Zolfagharkhani noted that, if a consumer wanted to take a vehicle for a test drive, he would arrange a quick inspection of the motor vehicle before the test drive to check for some things like the brakes. This reckless conduct makes these misrepresentations deliberate conduct.

[45] The second occurrence was discovered on August 18, 2017, with the Authority’s follow-up inspection of Best Import. During this inspection the Authority noted that some of the vehicles ordered inspected within thirty days by the CVSE were still being offered for sale, without those inspections having been completed. I heard no evidence that the vehicles were advertised as “not suitable for transportation” either in print media or on the motor vehicles themselves.

- Oral testimony of Dan McGrath, September 1, 2017 Hearing Transcript at page 12, entered as Exhibit 2 at the September 21, 2017 hearing date.
- Licensing Hearing Report of Dan McGrath dated August 29, 2017 and entered as Exhibit 4 at the September 21, 2017 hearing date.

[46] I also heard no evidence from Best Import that these motor vehicles were compliant with the *Motor Vehicle Act* at the time they were re-offered for sale. Best Import offered these motor vehicles for sale, without stating a material fact, which is a breach of section 5(1) of the *Business Practices and Consumer Protection Act* as deemed by section 4(3)(b)(vi) of that Act. Best Imports clearly knew these motor vehicles were not compliant with the *Motor Vehicle Act*, as told to them by the B.C. Ministry of Transport CVSE, and failed to advertise them as “not suitable for transportation.” Best Import’s conduct was deliberate.

[47] In its submissions, Best Import noted that for this allegation, the Authority's Notice of Hearing referenced section 22 of the *Motor Dealer Act*. Section 22 of the *Motor Dealer Act* relates to the cost of administering the Motor Dealer Customer Compensation Fund. Best Import argues that no breach of that section was proven by the Authority and the Authority did not amend its Notice to reference another provision of the legislation, and therefore the allegation should be dismissed.

[48] The Notice of Hearing on this allegation states:

1. On or about July 17, 2017, at our new Burnaby in the Province of British Columbia, Best Import Auto Ltd. (Dealer #30670), Mahyar (Mathew) Anvari (Salesperson #121337) and Faridoon (Fred) Zolfagharkhani (Salesperson #112992) (collectively the "Suppliers") did in relation to a consumer transaction contravene sections 4 and 5 of the *Business Practices and Consumer Protection Act* (BPCPA) by making an oral, written, visual, descriptive or other representation or conduct by the Suppliers to a consumer that had the capability, tendency or effect of misleading several consumers during the purchase of motor vehicles. Specifically, the Suppliers:

- (a) Advertised Motor Vehicles that were not suitable for transportation: contravention of section 22 of the *Motor Dealer Act*...

[49] The allegation speaks of a breach of sections 4 and 5 of the BPCPA (misrepresentations) by advertising motor vehicles that were "not suitable for transportation." As noted, this has been proven. The Notice of Hearing does also reference a breach of section 22 of the *Motor Dealer Act*, when the correct provision is section 22 of the *Motor Dealer Act Regulation*. Section 22 of the *Motor Dealer Act Regulation* places a statutory duty on motor dealers to disclose in advertisements when a motor vehicle is "not suitable for transportation."

[50] Even though the Notice of Hearing referenced section 22 of the Act and not the Regulation, I am not satisfied that Best Import was somehow taken by surprise. The question to be asked is whether Best Import knew the case it had to meet. The allegation and the Affidavit of Compliance Officer Dan McGrath with its attached exhibits are clear. The allegation against Best Import was that it breached the BPCPA by advertising vehicles that were "not suitable for transportation." In this case, section 22 of the *Motor Dealer Act Regulation* is part of that analysis by

showing Best Import's statutory duties and showing that disclosing "not suitable for transportation" is a statutorily deemed material fact. I also note that Best Import had the benefit of two lawyers to review this allegation, who questioned the CVSE witnesses on this point. It is clear the lawyers for Best Import were prepared to address this allegation and not taken by surprise.

(ii) Mathew Anvari

[51] Mr. Anvari is a supplier as defined by the BPCPA.

[52] Mr. Anvari gave evidence that the ownership of Best Import directs the operations: Transcript of Proceedings, September 1, 2017, at page 61 and 67 to 69; and Transcript of Proceedings September 21, 2017 at page 155. Mr. Hamid Mirmotahari was the manager at Best Import before Mr. Anvari. Mr. Mirmotahari also said that it was the owners who set the policy of Best Import and that the managers had very little say in the operations. Mr. Mirmotahari specifically noted that it was Best Import's policy not to inspect motor vehicles prior to sale: Transcript of Proceedings September 26, 2017, pages 46 - 48. Mr. Mirmotahari's evidence is somewhat corroborated by the evidence of Mr. Fred Zolfagharkhani, who spoke of having vehicles inspected for things like brakes prior to test drives. Best Import never really contradicted this evidence. The fact that this policy spanned the tenures of both Mr. Mirmotahari and of Mr. Anvari as managers at Best Import shows this was a company policy and not a policy set by one particular manager.

[53] Mr. Anvari admitted he was responsible for typing up the advertisements for Best Import's website. Mr. Anvari also noted that he was told by the ownership of Best Import what to write. This was not successfully challenged by Best Imports. Mr. Anvari is a licensed salesperson. Mr. Anvari has admitted to typing up the advertisements for the dealership, which includes the noted five vehicles that were not suitable for transportation. I also find Mr. Anvari has made misrepresentations about the noted five motor vehicles by failing to state a material fact when he wrote their advertisements on Best Import's website, which is contrary to section 5(1) of the *Business Practices and Consumer Protection Act* as deemed by section 4(3)(b)(vi) of that Act. Mr. Anvari's conduct is also reckless for the same reasons as Best Import's conduct was reckless in advertising these five vehicles.

[54] I also heard evidence from Mr. Anvari about how he was helping the Authority where he could. For instance, Mr. Anvari said that when an Authority's compliance officer came to inspect Best Import he advised that officer of concerns with how Best Import was being operated. Mr. Anvari came forward to the

Authority and gave evidence at these proceedings. This is also taken into consideration in my deliberations.

(iii) Fred Zolfagharkhani

[55] I heard no evidence that Fred Zolfagharkhani made any misrepresentations in the advertising or displaying for sale of the five noted motor vehicles. This allegation against Mr. Zolfagharkhani is dismissed.

(b) Sold a motor vehicle that was not compliant with the Motor Vehicle Act

(i) Best Import

[56] The Licensing Hearing Report of Compliance Officer Dan McGrath dated August 29, 2017 (Exhibit 4 at the September 21 Hearing) notes that the motor vehicle in question was a 1999 Nissan Altima. Attached to that Licensing Hearing Report are the results of the inspection and notations from the red seal mechanic who did the inspection. At the September 1 Hearing, the VSA intended to call the mechanic, but stated that it was relying on the report and that the mechanic was available if Best Import wished to question the mechanic. Best Import declined to question the mechanic. The mechanic did not give evidence at the September 1, 2017, hearing or the subsequent hearing dates.

[57] Best Import was provided with a copy of the Licensing Hearing Report of Dan McGrath on September 1, 2017, and heard oral evidence from the consumer and Compliance Officer Dan McGrath on this point. Given that the allegation was made on August 17, 2017, and Best Import was provided the evidence to base that allegation on September 1, 2017, I find that Best Import would not have been taken by surprise at the September 21, 2017 Hearing date. Best Import also did not ask for an adjournment of the September 21, 2017 hearing date and was represented by two lawyers by that time. I am satisfied Best Import knew the case to be met on this allegation.

[58] The red seal mechanic's inspection report (Exhibit B attached to the Licensing Hearing Report) notes various concerns with components on the 1999 Nissan Altima. One of those concerns is that the inner tie rod ends are worn out. The legislation says that a motor vehicle is not compliant with the *Motor Vehicle Act* if this is the case:

Safety component	See the <i>Schedule</i> attached to the <i>Vehicle Inspection Regulation</i> B.C. Reg. 256/2010 made under the <i>Motor Vehicle Act</i>
(a) inner tie rod ends worn out	reject if wear is evident or worn -s. 4 – Steering; item 4(b) in the Vehicle Inspection Manual 2016 sub-manual Light Vehicle Inspection Manual)

[59] The uncontested evidence is that Best Import sold this vehicle to consumer G.M. on August 7, 2017: see purchase agreement and ICBC Transfer/Tax Form APV9T attached to the Licensing Hearing Report. The uncontested evidence is that there was a notation from an inspection report completed on August 5, 2017 for the 1999 Nissan Altima, noting that the A/C and vent system were not working and that the left ball joint was loose: see August 5, 2017, Dealer Vehicle Inspection Report by Auto Service Depot attached to the Licensing Hearing Report. Best Import was on notice that the 1999 Nissan Altima had issues that needed to be addressed; and the evidence shows that they were not addressed before Best Import sold the vehicle to consumer G.M. The evidence is that, after the inspection at Morrey Nissan, Best Import took the 1999 Nissan Altima for repairs and provided consumer G.M a 2002 Honda Civic to drive, while Best Import had the Nissan Altima repaired: see Transcript of Proceeding, September 1, 2017, at page 33. By its conduct, Best Import has acknowledged its duty to Consumer G.M. and did not contest the Morrey Nissan mechanic’s finding.

[60] There is no notation on the purchase agreement that the 1999 Nissan Altima was “not suitable for transportation.” In fact, under declaration 6 of the purchase agreement, it states “The Motor Vehicle complies with the requirements of the Motor Vehicle Act.” This was untrue. Consumer G.M. was able to purchase the 1999 Nissan Altima; and Best Import’s conduct of selling that vehicle and transferring ownership to consumer G.M. is also a representation by conduct that the 1999 Nissan Altima was suitable for transportation when it was not. The combined effect of the untrue declaration on the purchase agreement and Best Import’s selling and transferring ownership of the Altima to Consumer G.M., when it was not suitable for transportation, is a deceptive act contrary to section 5(1) of the BPCPA as deemed by section 4(3)(b)(vi) of that Act.

[61] I also find the conduct of Best Import to have been reckless, and therefore deliberate, for the following reasons.

[62] By August 5, 2017, Best Import had the above noted conditions on its licence that all motor vehicles were to be inspected by a red seal mechanic or by a

designated inspection facility. The 1999 Nissan Altima was inspected at Auto Service Depot. The owner of Auto Service Depot is JP. JP was called as a witness by Best Import. JP noted that at the time of the inspection of the 1999 Nissan Altima, he did not have a red seal mechanic. He had two technicians working for him, who were working towards their red seal designation. JP also noted that he could not become a designated inspection facility until he had a red seal mechanic working at the shop.

- Transcript of Proceedings, October 4, 2017, pages 33 to 34, and 37 to 38.

[63] JP was asked to look at page 26 of the Affidavit Exhibits. That document is a form CVSE0013 Private Vehicle Inspection Report created by the BC Ministry of Transportation. It is the inspection form used to complete an inspection of a motor vehicle to assess compliance with the *Motor Vehicle Act*: see the *Schedule* attached to the *Vehicle Inspection Regulation* B.C. Reg. 256/2010 made under the *Motor Vehicle Act*; being the Vehicle Safety and Inspection Standards Manual; sub-manual: the Vehicle Inspection Manual 2016 – Vehicle Inspection Guide 2016, section 6 Forms - eForms, page 6.1. JP stated he had not previously seen this document. He commented that many items on the form appear to be superficial. JP was asked if the inspection he did for Best Import covered the items in the Form CVSE0013. He said no. JP said that they were asked to do a general inspection only. In questions from Mr. Dunn, JP said that the inspection his shop provided would not inspect for things such as fraying seat belts or for a check engine light not cycling on.

- Transcript of Proceedings, October 4, 2017, pages 44 to 52.

[64] Jim McMillan is the area manager, a peace officer and an inspector with the CVSE. He was asked to look at a copy of the Auto Service Depot inspection report. He noted that the report does not show an inspection that would assess a motor vehicle for compliance with the *Motor Vehicle Act*.

- Transcript of Proceedings, September 1, 2017.

[65] I am satisfied that the inspection requested by Best Import on the 1999 Nissan Altima did not assess motor vehicles for compliance with the *Motor Vehicle Act*. I further find that Best Import did not abide by the conditions of its registration of having motor vehicles inspected by a red seal mechanic or by a designated inspection facility. I also find Best Import was specifically aware that the 1999 Nissan Altima had safety concerns that required addressing. I find the conduct of selling the 1999 Nissan Altima was - at a minimum - reckless amounting to a deliberate breach of the BPCPA.

[66] In its submissions, Best Import argues that evidence from CVSE Inspectors and Peace Officers Kendall and Neal noted that repairs to vehicles that are under a CVSE Notice and Order do not have to be completed by a red seal mechanic. I do not think that is an issue here. The condition on Best Import's registration related to inspections of motor vehicles by a red seal mechanic or designated inspection facility. The conditions were silent on who had to complete repairs. Further, the Notices and Orders required the five noted vehicles to be inspected for compliance with the *Motor Vehicle Act* at a designated inspection facility. The Notices are also silent as to who had to complete the repairs.

[67] Under section 4(4) of the *Motor Dealer Act*, the Registrar or their delegate, may impose conditions on a motor dealer's registration he or she deems necessary to protect the public interest. The conditions to have an inspection done by a designated inspection facility or red seal mechanic were an exercise of statutory authority and mirror the requirements of an inspection done under an order of the CVSE. If Best Import did not believe the conditions were appropriate, they had to seek a review of those conditions and not disregard them.

[68] In its submissions, Best Import argues that the Authority has not indicated the specific provisions of the *Motor Vehicle Act* that address the various safety issues. The allegation was that the subject motor vehicles were advertised and sold to consumers, when they were not suitable for transportation in a way that constituted a deceptive act or practice under the BPCPA. As noted, that has been proven through the testimony of the CVSE Inspectors and the Notices and Orders they issued. Those Notices and Orders detail what safety components had a "violation present."

(ii) Mathew Anvari

[69] Mathew Anvari gave evidence that, when the Authority placed conditions on Best Import to have vehicles inspected by a red seal mechanic, he made those arrangements with a garage called Tune X. Mr. Anvari stated that Best Import's ownership told Mr. Anvari to instead use Auto Service Depot as they were cheaper. Best Import tried to paint a picture that this decision was Mr. Anvari's and that this was an issue of mismanagement on Mr. Anvari's part.

[70] I found Mr. Anvari's evidence on this point credible. His evidence was straight forward and did not falter under cross-examination. Mr. Anvari's evidence that the ownership directs the operations is corroborated by the evidence of Mr. Mirmotahari, who stated the same. As earlier noted, it was Best Import's policy not

to inspect motor vehicles prior to sale. That policy was in place during Mr. Mirmotahari's time as manager at Best Import and Mr. Anvari's time as manager.

[71] I have no evidence that Mr. Anvari was involved directly in the sale of the Nissan Altima.

(iii) Fred Zolfagharkhan

[72] The consumer in this transaction stated the salesperson was a "Rene," who was later identified as Jose, a licensed salesperson. I have no evidence that Fred Zolfagharkhani participated in this transaction. The allegation against Fred Zolfagharkhani on this point is also dismissed.

(b) Misrepresented the amount of damage of motor vehicles

[73] The Authority alleges that Best Import, Mr. Anvari and Mr. Zolfagharkhan misrepresented the amount of damage on motor vehicles. The allegation is based on the evidence found in the Affidavit of Compliance Officer Dan McGrath (page 4 of 11 and Exhibit H of the Affidavit), identifying a 2012 Mercedes CLS55. In the case of the Mercedes, there was an online advertisement that says that it is a "no accident" vehicle. However, an ICBC Vehicle Claims History Report found in the motor dealer's files shows damage history of \$4,887.60 in 2016 and \$1,797.69 in 2015. In the Affidavit, the dealer's response apparently was that the \$4,887.60 was vandalism damage and the \$1,797.69 damage was under the \$2,000 damage declaration amount set by section 23(b)(ii) of the *Motor Dealer Act Regulation*.

[74] In its written submission, Best Import has accepted that it failed to make the correct declaration on the Mercedes.

[75] The vandalism damage is damage for the purpose of the declaration required by section 23(b)(ii) of the *Motor Dealer Act Regulation*:

[33] Accepting these dictionary definitions, it seems to me that when component parts of a vehicle are stolen, the vehicle has sustained "damage" in the sense that to restore it to its original condition it must be repaired, by replacing the stolen parts. When the vehicle in question was taken from its owner it was stripped of various parts. It was left resting on its undercarriage without its tires or wheels. It was inoperable in such condition. The "repairs" to the vehicle included fixing the damage to the quarter panels and replacing the wheels and tires.

...

[36] In my view the Legislature has determined, in its wisdom, to qualify the meaning of damage only by the amount of money it costs to repair it. Once the price of repairs reaches \$2,000 the possibility exists that the vehicle has sustained some type of hidden or even permanent damage. The prospective purchaser should be made aware of this fact so that he or she is free to investigate it.

[Emphasis added]

- *Brook v. Wheaton Pacific Pontiac Buick GMC Inc.*, 2000 BCCA 332 (CanLII) (BC Court of Appeal).

[76] Importantly, the advertisement for the Mercedes says “no accident” which is untrue. The ICBC Vehicle Claims History Report specifically says that the \$1,797.59 repair amount is related to a collision. Even if one ignores the vandalism damage, the Mercedes has a history of being in an accident. For Best Import to represent in an advertisement that the Mercedes has had “no accident” is misleading, contrary to section 5(1) of the *Business Practices and Consumer Protection Act* as deemed by section 4(3)(iii), prior history, of that Act. Given that Best Import had The ICBC Vehicle Claims History Report in its files, the misrepresentation was - at a minimum - reckless, which legally amounts to a deliberate misrepresentation.

[77] There was no evidence as to who specifically placed this advertisement on Best Import’s website. I heard evidence that salespersons, such as Fred Zolfagharkhani, do not post advertisements on the dealer’s website. I have no evidence of Fred Zolfagharkhani participating in this breach. This allegation against him is dismissed.

[78] Mr. Anvari has admitted he would post all the advertisements on the website but would do so as directed by the ownership. The Affidavit of Compliance Officer Dan McGrath indicates it was Mr. Anvari, who made the response on behalf of Best Import, that vandalism was not really damage. There is sufficient evidence that Mr. Anvari participated in this breach and that he has committed a deceptive act or practice contrary to section 5(1) of the BPCPA as deemed by section 4(3)(iii), prior history, of that Act. This conduct was also at a minimum reckless, amounting to deliberate conduct.

(c) Unlicensed salesperson

[79] The allegation is that Best Import was in breach of section 13.1 of the *Motor Dealer Act* by using an unlicensed salesperson. Specifically, that Mehran Shokohi Manesh, the son Bob Shokohi, the owner of Best Import, was acting as a salesperson while unlicensed.

[80] This is an allegation against a motor dealer and not an allegation against an individual person, such as Mr. Anvari and Fred Zolfagharkhani. This allegation as against them is dismissed.

[81] In its submissions, Best Import's notes the definition of "salesperson" in the *Motor Dealer Act* requires: (a) a person receive compensation for acting as a salesperson, and (b) the person must be involved in the sale of a motor vehicle. Best Import's submits that discussions that take place with a consumer after a sale occurs is not conduct captured by the definition of a salesperson.

[82] However, the Motor Dealer Act defines "salesperson" as:

(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...

[83] Paragraph (a) of the definition of salesperson captures individuals, who provide work for a motor dealer. That individual need not be an employee and can

be a contractor or any person, who “in the expectation of a fee, gain or reward ... in any way participates in the soliciting, negotiating or arranging for the sale of a motor vehicle to a person.” (Emphasis added.)

[84] Paragraph (b) captures an individual who is a motor dealer and “in any way participates in the soliciting, negotiating or arranging for the sale of a motor vehicle to a person.”(Emphasis added.). They need not be expecting a fee, gain, or reward. Paragraph (b) captures a sole proprietor and solo operation, where the individual acting as a motor dealer must be registered as a motor dealer and also licensed as a salesperson.

[85] The definition of salesperson also speaks of the “expectation” of a “fee, gain or reward.” The use of “expectation” addresses the commission sales method of paying most “salespersons.” They get paid if a sale occurs. In attempting to make a sale, a salesperson will be making representations about motor vehicles; and those representations must comply with the *Motor Dealer Act* and the BPCPA. Therefore, as a licensed person, a salesperson’s conduct is reviewable, even if there is no actual sale or compensation. The use of the words “solicit” and “soliciting” in the definition of salesperson reinforces this interpretation.

[86] The word “sale” is also a defined term 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; (Emphasis added.)

[87] The word “disposition” is further defined as having the following corresponding meaning:

“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;

- S. 28(4) and 29 of the *Interpretation Act*.

[88] The phrase “in expectation of a fee, gain or reward” is very broad. It encompasses any type of “reward” or “gain.” It need not be cash or its equivalent.

[89] Finally, in arriving at a proper interpretation, regard may be made to the BPCPA, which states that a deceptive act or practice may occur before, during or after a consumer transaction: s. 4(2) of the BPCPA.

[90] A review of the legislative scheme makes it clear that those persons who may influence a consumer's decisions, regarding the purchase of a motor vehicle, are to be accountable for their representations. A "sale" need not occur; and compensation need not have been made to the person making the representations to consumers.

[91] I further find that the phrase "in any way participates" was used to capture discussions both before and after a "sale", especially when considering section 4(2) of the BPCPA. Often consumers have questions or concerns arising after the motor vehicle's ownership has been transferred to the consumer. This requires engaging with the motor dealer and the salesperson on issues relating to the initial sale of the motor vehicle. If there are mechanical or safety concerns, then discussions may lead to compensation by way of a partial refund to the consumer. There may be discussions regarding repairs to the motor vehicle. A motor dealer may try to convince a consumer that there is nothing wrong, by misrepresenting the facts. The motor dealer may misrepresent the dealer's and consumer's rights and obligations, arising from the original transaction, which would be deemed to be a deceptive act or practice by s. 4(3)(b)(iv) of the BPCPA. There may be discussions to have the motor vehicle "exchanged" for another motor vehicle. Further, the definition of a sale includes a lease. In a lease, there is an ongoing relationship between the consumer and the dealer until the lease is concluded. At any time during the lease period, a motor dealer or salesperson may make misrepresentations regarding that lease for which they are accountable.

[92] The Legislature's intention was that individuals, who may influence a consumer's decisions with respect to a potential motor vehicle sale, lease or other disposition, should be licensed and held accountable for their conduct and their representations. This necessarily includes any conduct or representations that take place, if there is a sale, and after the ownership of the motor vehicle is transferred to the consumer. Consumer protection does not stop once ownership of a motor vehicle is transferred to the consumer and consideration exchanged. It must also include protecting a consumer from misconduct and misrepresentations by a salesperson or a motor dealer after the transfer of ownership occurs.

[93] Mr. Anvari gave evidence that Mehran Shokohi Manesh interacted with consumers regarding the sale of a motor vehicle. Mr. Anvari's evidence was corroborated by that of Mr. Mirmotahari who said that Mr. Manesh's dealings with consumers was more frequent near the end of Mr. Mirmotahari's tenure at the dealership.

[94] The evidence of Mr. Anvari and Mr. Mirmotahari withstood cross-examination. Much of Best Import's cross-examination of Mr. Anvari and Mr. Mirmotahari was to show them as disgruntled ex-employees. Mr. Bob Shokohi gave evidence to suggest Mr. Anvari was being coerced by the Authority and Mr. Dunn to testify against Best Imports, including locking Mr. Anvari in a room and not allowing him to have lunch. Mr. Anvari gave evidence that he was not coerced or held against his wishes. Mr. Anvari explained that he received a phone call during the lunch break at the hearing and was asked to join the owners of Best Import for lunch. Mr. Anvari said that he could not speak, because he was with the VSA. I find the evidence from Mr. Anvari and Mr. Mirmotahari, regarding Mr. Manesh's involvement with consumers at the dealership to be credible.

[95] Fred Zolfagharkhani gave evidence that, while Bob Shokohi was away, Mr. Zolfagharkhani was to call Mehran Shokohi Manesh, if there were an emergency. Mr. Zolfagharkhani said that he did call Mr. Manesh on one occasion, as it looked like Mr. Anvari was not able to handle one particular consumer complaint. Mr. Zolfagharkhani said that Mr. Manesh and Mr. Anvari met with the consumer in a closed room. Mr. Zolfagharkhani further said that, after about 45 minutes or one hour, they came out of the room; and the consumer said that Best Import was going to give them their money back: Transcript of Proceedings, October 4, 2017, pages 61 to 63.

[96] The documentary evidence contains an ICBC Transfer/Tax Form APV9T at page 104 of the Affidavit exhibits. That form shows Best Import as a purchaser of a 2010 Honda Civic. In the signature line is noted "Mehran owner." On other APV9Ts the name "Bob(owner)" appears in the signature block: see for example page 121 of the Affidavit exhibits. Mr. Manesh was questioned on this document. His evidence was that he did not sign this; and someone noted on the form "Mehran" as a joke. Mr. Manesh also said that Mehran is a common Iranian name. It seems odd that someone would specifically note Mehran when other APV9Ts show "Bob(owner)" or similar. Also, even if Mehran is a common Iranian name, it is a name associated with this specific dealer and is the name of the owner's son.

[97] I found Mehran Shokohi Manesh's evidence less than credible. He was evasive in answering questions about interacting with consumers. Mr. Manesh said that he is a social guy and may talk to people about cars including at the gym; but he then back tracked on that statement, by saying that he would not discuss the price or anything with consumers: Transcript of Proceedings, September 26, 2017, pages 12-13. Mr. Manesh was also evasive answering questions about using Best Import vehicles and Best Import dealer plates. He said that he would only use them to drive his father. However, he also said that he did use a Best Import truck and

Best Import dealer plates to go to Rona: Transcript of Proceedings, September 26, 2017, pages 16 to 18.

[98] Compliance Officer Dan McGrath gave evidence that he attended Best Import on July 20, 2017, and found Mehran Shokohi Manesh in the sales manager office with two laptop computers with notices and booklets from the Adesa (noted as Odessa in the Transcript) Auto Auction. Mr. McGrath states that Mr. Manesh identified himself as Dan and left the dealership getting into a car driven by another employee of Best Import outside the dealer's lot. Mr. McGrath was able to identify Mr. Manesh from a picture on file with the Authority: Transcript of Proceedings, September 21, 2017 at pages 27 to 35.

[99] Mr. Manesh denies being at the dealership and said that he only met Mr. McGrath for the first time at the hearing. Again, I have concerns with the credibility of Mr. Manesh's evidence as noted above. In answering the question of meeting Mr. McGrath at the dealership, Mr. Manesh responded "no" and added that he has not met anyone present at the hearing "except Ross" and asked for the name of a person observing the hearing. Mr. Manesh then offered that he has never seen the older lady, who was a previous inspector at the dealership: Transcript of Proceedings, September 26, 2017, pages 19 to 20. Mr. Manesh's answer to this question came across as embellished and an attempt to deflect, by focusing attention on others in the hearing room.

[100] Mr. Anvari gave further evidence about Best Import responses to complaints against the dealer after Best Import's registration was suspended. Bob Shokohi was asked whether he was aware that Best Import was sending responses to the Authority on consumer complaints after the dealer was suspended. Mr. Shokohi said that he was not aware of any such responses. Mr. Anvari stated he was sending the responses at the request of Mehran Shokohi Manesh. Mr. Anvari stated it was Mr. Manesh who had indicated what to say in the responses and that Mr. Anvari would be the one to send them. I would note this evidence was not really challenged.

[101] Based on the above evidence, I am satisfied on a balance of probabilities that Mehran Shokohi Manesh acted as a salesperson, as defined in the *Motor Dealer Act*, at Best Import. I have the evidence of two former managers that Mr. Manesh interacted with consumers prior to the purchase of a motor vehicle. I have the evidence of a current salesperson that Mehran Shokohi Manesh interacted with a consumer to resolve a complaint. Mr. Anvari gave evidence that, through Mr. Anvari, Mr. Manesh was responding to consumer complaints on behalf of the dealership. There is also the APV9T, which notes "Mehran," his first name, as the purchaser on behalf of Best Import, even though other APV9Ts notes the first name of "Bob." I also have the evidence of Compliance Officer Dan McGrath. The evidence

of Mr. Anvari and Mr. Mirmotahari and Mr. Zolfagharkhani is supported by documentary evidence and the evidence of Compliance Officer Dan McGrath.

[102] As to the requirement that there must be an “expectation” of a “fee, gain, or reward,” there is sufficient evidence that Mehran Shokohi Manesh benefited from his father’s dealership by at least using Best Import motor vehicles and dealer plates for his own purpose. Specifically, Mr. Manesh explained how he would use dealer plates to move vehicles when Mr. Manesh was wholesaling vehicles and how he used a Best Import truck and dealer plates to go to Rona.

(d) Overall conduct by Best Import and its Guiding Mind Bob Shokohi

[103] I have concerns with the conduct of Best Import and specifically Bob Shokohi during the course of the hearing.

(i) Representations about the RCMP

[104] At the September 21, 2017, hearing, counsel for Best Imports advised me that Mehran Shokohi Manesh was not attending the hearing that day, even though he had been issued a summons to attend. I was advised that Mr. Manesh had met with Constable Emery of the Burnaby RCMP the day before the hearing on a related matter and advised Mr. Manesh not to attend the hearing. I was advised this information was coming from Bob Shokohi. Constable Emery of the Burnaby RCMP gave evidence. Constable Emery stated he did not tell Mr. Manesh not to attend the hearing.

(ii) Ownership of the property

[105] Bob Shokohi was asked who owned the property on which Best Import was located. Mr. Shokohi stated:

“The owner of the property is a foreigner, and I have to ask my accountant about the name.”

- Transcript of Proceedings, September 26, 2017, at page 93.

[106] Mr. Bob Shokohi was asked if his son Mike (Mehran Shokohi Manesh) was involved in the ownership of that property. Mr. Bob Shokohi said no: Transcript of Proceedings, September 26, 2017, at page 93.

[107] Entered as Exhibit 15 at the hearing was a print off from the Land Titles Office and a BC Company Search obtained by Compliance Office Dan McGrath. These documents show the land occupied by Best Import is owned by Palm Island Investments, Inc. No. BC0823052. The Corporate Registry search shows the sole director of Palm Island Investments to be Mehran Shokohi (a.k.a. Mehran Shokohi Manesh) with no officers listed. Palm Island Investments, Inc. has its registered and records office listed as the law firm representing Best Import at the hearing. Mr. Bob Shokohi was recalled as a witness and these documents were placed before him. Mr. Shokohi stated that his son does not own the property and that the company owns the property.

[108] The evidence is clear that Mehran Shokohi Manesh is involved in the ownership of the property. The evidence is clear that the owner of the property is not a foreigner. I find it quite unbelievable that Mr. Bob Shokohi would have to ask his accountant about who owned the property, when his own son is a director of the company, which is listed as the owner of the property. Bob Shokohi's answer that it is the company and not his son that owns the property was an attempt to back track on his earlier evidence.

(iii) Apparent attempted kidnapping

[109] During the course of the hearing, Bob Shokohi was discussing the day Compliance Officer Dan McGrath delivered the Notice of Suspension on Best Import. Mr. Bob Shokohi stated that Compliance Officer Dan McGrath ordered the dealership's lot attendant to get into a car. Mr. Bob Shokohi stated the lot attendant felt as if he was going to be kidnapped: Transcript of Proceedings, September 26, 2017, at page 86. This evidence is simply incredible. Compliance Officers have no power of arrest or detention and there would be no need to "hold" a lot attendant in a car.

[110] Overall, I do not find Mr. Bob Shokohi is credible as a witness. I also find he is willing to mislead his regulator and do so in the course of a regulatory hearing. By extension, this makes it difficult to govern Best Import.

(iv) No vehicle inspections or incomplete inspections

[111] During the hearing it became clear that Best Import had a policy of not inspecting motor vehicles prior to selling them to consumers. If a consumer wanted an inspection, then the consumer could arrange one. There is sufficient evidence that motor vehicles were being offered for sale that were not compliant with the *Motor Vehicle Act*. This is a grave concern for public safety. Even when Best Import had a condition placed on its registration to have vehicles inspected, it did not

follow those conditions and instead had an inadequate inspection done, because it was less expensive.

[112] Further, Best Import offered for sale motor vehicles that were not compliant with the *Motor Vehicle Act*, after being told so and ordered to have those vehicles inspected at a designated inspection facility prior to re-offering them for sale.

[113] These choices by the dealer are attributable to Mr. Bob Shokohi as the noted owner of Best Import and this policy reflects on him personally.

FINDINGS

[114] Based on the forgoing, I make the following findings:

- (a) Best Import advertised five motor vehicles for sale without representing them as “not suitable for transportation” in its advertisement as required by the legislation. This is a failure to state a material fact contrary to section 5(1) of the BPCPA. I have found that conduct to be reckless amounting to deliberate conduct.
- (b) Best Import re-advertised motor vehicles for sale, which were not compliant with the *Motor Vehicle Act* and after being advised by the Ministry of Transportation’s Commercial Vehicle Safety Enforcement Branch of that fact. This conduct was also a breach of section 5(1) of the BPCPA and was deliberate conduct.
- (c) Best Import misrepresented a motor vehicle as having “no accident” when it knew that to be untrue. This conduct was also a breach of section 5(1) of the BPCPA and was deliberate conduct.
- (d) Best Import allowed an unlicensed person to act as a salesperson contrary to section 13.1 of the *Motor Dealer Act*.
- (e) I find that Best Import was in breach of the conditions placed on its registration to have motor vehicles inspected by a red seal mechanic or a designated inspection facility.
- (f) I find that Bob Shokohi, the directing mind of Best Import, intentionally tried to mislead the Registrar during the course of the hearing.

(g) I find that the cumulative conduct of Best Import disregarding lawful orders and Bob Shokohi attempting to mislead the hearing, make Best Import ungovernable.

DISPOSITION

(a) Best Import

[115] Given the findings, I must consider the best way to address these contraventions with a view to protecting the public from potential future harm.

[116] The tools at my disposal to try to regain the motor dealer's future compliance and to deter non-compliance are to impose conditions on its registration, suspend the dealer for a time, or issue administrative penalties. If I am not reasonably satisfied that Best Import will comply with the law in the future and will continue to pose a risk to the public, then revocation of its registration will be necessary to protect the public.

[117] I am not satisfied that adding conditions to its registration, suspending its registration, or even imposing administrative penalties on Best Import's registration is sufficient deterrence and assurance of Best Import's future compliance.

[118] Best Import did not follow the conditions placed on its registration by the Authority on July 24, 2017. CVSE Peace Officer and Inspector Grossling gave evidence that Best Import did not have the Mercedes inspected at a Mercedes dealership as required by the Notice and Order. Peace Officer and Inspector Grossling had to reissue the Notice and Order for the Mercedes.

[119] Best Imports has also received at least two prior warning letters for misrepresenting the condition of motor vehicles. Both warning letters were recently issued in December of 2016: pages 132 and 133 of the Affidavit Exhibits.

[120] Best Import essentially is saying that it will now abide by the law and has hired a new person to manage Best Import. I would note that at the September 1, 2017 hearing Best Import advised me that it had fired Mr. Anvari as manager and hired Ahmad Rezaei as Best Import's manager. On October 4, 2017, I was informed that Sid Mirhashemy was now to be the manager of Best Import. Mr. Anvari had been with Best Import's only 18 months before he was let go. It appears Best Import does not have stability in the manager's position.

[121] Best Import had every opportunity to abide by the law for some time now, but refused to do so. It deliberately disregarded lawful orders of its regulator and

orders from the Ministry of Transportation's Commercial Vehicle Safety Enforcement branch. Simply because it has now appeared before me, I am to believe that it has had a change of heart. A promise to obey the law and the passage of time alone (especially only a few short months) is not sufficient evidence to overcome the worrisome past conduct noted in this case. What is necessary is evidence of rehabilitation and of good conduct over a period of time: see *Re: A Vancouver Auto Ltd. and Shahram Moghaddam* (April 3, 2017, File 17-02-002, Registrar).

[122] Best Imports has shown a propensity for not obeying warning letters, conditions placed on its registration, and lawful orders of the Ministry of Transportation - all within the past year. I have found the conduct of Bob Shokohi, the guiding mind of Best Import, during the hearing troublesome. I specifically note his attempt to mislead the hearing, regarding the ownership of the property occupied by Best Import. I find that this evidence shows Best Import to be ungovernable.

[123] Based on Best Import's past conduct, it is my opinion that adding conditions to the registration of Best Import, suspending the registration of Best Import, or issuing administrative penalties against Best Import will not achieve future compliance and deter non-compliance. Given the nature of the transgressions of advertising and offering motor vehicles for sale that were not suitable for transportation and not compliant with the *Motor Vehicle Act* and failing to state that material fact, the potential harm to consumers is very high – death, personal injury and/or financial damages.

[124] In order to protect the public from future harm, I hereby revoke Best Import's motor dealer registration effective the date of this decision. I do not need to consider Best Import's use of an unlicensed salesperson in arriving at this decision. Best Import's willingness to (a) ignore lawful orders – being ungovernable, (b) failing to state material facts in breach of the BPCPA, and (c) place consumers at risk of financial and personal harm by making motor vehicles available to consumers for purchase that are not compliant with the *Motor Vehicle Act* are sufficient grounds. See:

- *Knapp v. Crown Auto Body and Auto Sales Ltd.* (September 21, 2009, File 08-70578, Registrar) affirmed in *Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia*, 2014 BCSC 894 (BC Supreme Court).
- *Pirvulescu v. Parkwood Auto Sales Ltd. et al.* (File 07-70285, September 23, 2009, Registrar).
- s. 8.1(4)(b) of the *Motor Dealer Act*.

(b) Mr. Anvari

[125] I have found that Mr. Anvari committed deceptive acts or practices contrary to the BPCPA. I have accepted his evidence that he was following the directions of Best Import's ownership. I also accept that Mr. Anvari came forward to the Authority to bring these issues to light and cooperated with the Authority's investigation. In ordering a regulatory response, the goal is to regain compliance of the regulated person and deter future non-compliance.

[126] In this particular case, Mr. Anvari posted advertisements, which had the capability of misleading consumers on whether vehicles were or were not compliant with the *Motor Vehicle Act* and regarding prior accidents. These topics are covered in the Salesperson Certification Course, which all new licensees must take. I believe Mr. Anvari would benefit from retaking the Salesperson Certification Course to reinforce his understanding of the legislation and his duties as a salesperson. The following condition is added to the salesperson licence of Mr. Anvari:

To retake, at his cost, and successfully pass the Salesperson Certification Course within 90 days of this decision being issued.

[127] I have also considered a suspension of Mr. Anvari's licence until he completes the condition of his licence. However, I believe Mr. Anvari does not pose a significant risk of breaching the legislation based on his assistance in this case and that he was following the direction of his employer.

[128] I have also considered imposing administrative penalties for the breaches of the BPCPA. I consider the need of deterring Mr. Anvari and the industry generally of committing similar conduct. I have also considered the impact of imposing penalties on someone who has come forward and assisted in an investigation and the chilling effect that may have on others doing the same. It is also in the public interest that licensees come forward to their regulator, when they see non-compliance with the legislation. Balancing these competing interests and given Mr. Anvari's cooperation, I do not believe an administrative penalty is warranted under these facts.

[129] In arriving at my decision regarding action against Mr. Anvari, I have considered the case of *Re: Parkwood Auto Sales et al* (August 6, 2010, 07-70285A, Registrar). In *Parkwood*, the salesperson was found to have committed a deceptive act or practice in relation to two transactions. One involved a misrepresentation of a vehicle's past damage and the other involved misrepresentations about the odometer of a motor vehicle. The salesperson received a 30 day suspension and two administrative penalties of \$500 and \$750. Like in this case, it was found in *Parkwood* that the salesperson was following the policy and direction of his

employer. The distinction between *Parkwood* and the instant case is that the salesperson's testimony at the hearing in *Parkwood* was found to have been coached by the owner of Parkwood to which the salesperson acquiesced. That did not occur in Mr. Anvari's case. Also, Mr. Anvari cooperated with the Authority to bring these matters to light, which did not happen with the salesperson in the *Parkwood* case.

(c) Fred Zolfagharkhani

[130] None of the allegations against Fred Zolfagharkhani were proven; and all were dismissed. Therefore, no compliance action is necessary in relation to Fred Zolfagharkhani.

FUTURE APPLICATIONS

[131] The *Motor Dealer Act* would allow Best Import to re-apply for registration at any time. In order to protect the Registrar's process, to save administrative time and costs, and to provide certainty regarding the cancelation of Best Import's registration, I find it necessary to set a length of time during which I would not accept such an application from Best Import or its principle Bob Shokohi: *Pugliese v. Clark*, 2008 BCCA 130 (BC Court of Appeal), and see *B.C. College of Optics Inc. v. The College of Opticians of British Columbia*, 2016 BCCA 85 (BC Court of Appeal).

[132] In setting that time period, I take into consideration that the nature of the transgression was serious, placing consumers at risk of personal injury and financial injury. I further note the recency of the transgressions and that an attempt to mislead the hearing was made by Bob Shokohi. I have also considered the following cases:

- (a) *Re: A Vancouver Auto Ltd. and Shahram Moghaddam* (April 3, 2017, File 17-02-002, Registrar).
- (b) *Re: Peter Fryer* (December 13, 2013, Hearing File No. 13-11-005, Registrar), affirmed by *Fryer v. Motor Vehicle Sales Authority of British Columbia*, 2015 BCSC 279 (BC Supreme Court).
- (c) *Fellner v. Pinnacle Car Sales & Leasing Ltd. dba Pinnacle Motors et al.* (November 7, 2016, File 16-05-005, Registrar).

[133] In *Re: A Vancouver Auto Ltd. et al*, a period of two years was set before an application would be accepted. In that case, there was no issue of offering vehicles for sale that were not compliant with the *Motor Vehicle Act*; nor was there any issue of the dealer being ungovernable or providing misleading information during a hearing.

[134] In *Re: Peter Fryer*, Peter Fryer was barred for life from re-applying for a licence. The evidence showed an extensive history of crimes and of disobeying court orders and no indication he would ever rehabilitate. Mr. Fryer was viewed as ungovernable.

[135] In *Fellner v. Pinnacle Car Sales & Leasing Ltd. dba Pinnacle Motors et al.* there was history of disobeying previous undertakings and not paying administrative penalties. The dealer in that case was found to have sold a motor vehicle that was not suitable for transportation. There was no evidence that the motor dealer attempted to mislead the hearing. In that case, the motor dealer was barred from re-applying for six years.

[136] Given my finding that Best Import is ungovernable, attempted to mislead the hearing, and willfully disobeyed orders from its regulator and the Ministry of Transportation, I would set a time of ten years before I would even accept an application and consider registering Best Import as a motor dealer. Additionally, I would set the same time bar against any motor dealer application in which Mr. Bob Shokohi is involved. Whether a registration will be granted in the future is dependent on the facts that exist at the time a future application is made.

REVIEW OF THIS DECISION

[137] If there is disagreement with this decision, it may be reviewed by petitioning the B.C. Supreme Court for judicial review pursuant to the *Judicial Review Procedure Act*. A person has 60 days from the date this decision is issued to file such a petition: section 7.1(t) of the *Motor Dealer Act*.

November 28, 2017

Original Signed
Ian Christman, J.D.
Registrar of Motor Dealers