



Neutral Citation: 2018-BCRMD-004

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

NANCY SCOTT

Consumer Complainant

MOTOR VEHICLE SALES AUTHORITY OF BRITISH COLUMBIA

Complainant

And

LAKE COUNTRY MOTOR SPORTS LTD.
(Motor Dealer Registration #9740)

Respondent Dealer

And

John Dumaine
(Salesperson Licence #103631)

Respondent Salesperson

DECISION OF THE REGISTRAR OF MOTOR DEALERS

Hearing dates and locations:

March 7, 2018, Surrey, British
Columbia

April 11, 2018, Kelowna, British
Columbia

Written submissions:

Motor Vehicle Sales Authority

April 16, 2018

Nancy Scott

April 27, 2018 and May 17, 2018

Lake Country and John Dumaine

May 11, 2018 and June 13, 2018

Appearances

Nancy Scott

Derek M. Schiessler, legal counsel

Motor Vehicle Sales Authority of British Columbia

Norm Felix, Manager of Compliance and Investigations

Lake Country Motor Sports Ltd. and John Dumaine

John Dumaine at the March 7 and April 11 hearings

Joseph R. Gordon, legal counsel, for the written submissions

I. Introduction

A. The consumer transaction and the allegations

[1] A hearing was called to review the allegations (as paraphrased from the Notice of Hearing) that Lake Country Motor Sports Ltd. (#9740), ("Lake Country"), and one of its owners, John Dumaine (#103631), entered into a consignment sale agreement with Nancy Scott, to sell her 2016 Dodge Challenger SRT (the "Dodge"), and that Lake Country and John Dumaine:

- (a) Were restricted from selling motor vehicles on consignment, in contravention of the terms on their registration and licence: section 4(4) of the *Motor Dealer Act*, R.S.B.C. 1996, c. 316 ("MDA");
- (b) Failed to prepare a written consignment agreement and provide same to Nancy Scott, as required by section 2 of the *Motor Dealer Consignment Sales Regulation*, B.C. Reg. 101/95 ("Consignment Regulation");
- (c) Failed to prepare and use a consignment purchase agreement, as required by section 4 of the Consignment Regulation;
- (d) Failed to process the proceeds of sale in the manner required by section 6 of the Consignment Regulation; and
- (e) Represented to Nancy Scott they would sell the Dodge and remit the sale proceeds to her, but have failed to do so, which is a deceptive act or practice, contrary to section 5(1) of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c.2 ("BPCPA").

[2] The following background facts are not contested:

- (a) Nancy Scott offered to sell the Dodge for a particular amount, given that she was still making loan payments on the Dodge;
- (b) An oral agreement existed, among Nancy Scott, Lake Country, and Mr. Dumaine to sell the Dodge on her behalf;
- (c) Lake Country and Mr. Dumaine sent the Dodge to an auto auction, in Washington State, through an intermediary dealership located in B.C.;
- (d) The Dodge was sold; and the proceeds of the sale were paid to the B.C. intermediary dealership in US funds;
- (e) Nancy Scott made a complaint with the Authority about the sale of the Dodge, by Lake Country and Mr. Dumaine; and
- (f) Lake Country and Mr. Dumaine asked the intermediary dealership to hold onto the funds until the consumer's complaint had been resolved.

B. Adjournment of the March 7, 2018, hearing

[3] The first day of the hearing was March 7, 2018, in Surrey, British Columbia. Most of the participants attended by teleconference, due to the diverse geographical locations of the parties. Technical difficulties arose at the conclusion of Ms. Scott's evidence. I was satisfied that all parties had heard Ms. Scott's testimony; and I adjourned the hearing to be reconvened in Kelowna, British Columbia, where Lake Country, Mr. Dumaine, and Ms. Scott's lawyer are located. I reconvened the hearing in Kelowna on April 11, 2018. Mr. Dumaine, Lake Country, Mr. Schiessler (lawyer for Ms. Scott) attended in person, with Ms. Scott and other witnesses appearing by phone.

II. Position of the Parties

A. Nancy Scott

[4] Ms. Scott's position can be summarized as follows:

- (a) Ms. Scott entrusted Lake Country and Mr. Dumaine to sell the Dodge;
- (b) Ms. Scott advised Lake Country and Mr. Dumaine of the amount owing on the Dodge and her desired selling price;
- (c) Ms. Scott did not receive a loan from Lake Country and Mr. Dumaine;
- (d) Mr. Dumaine had purchased marijuana grow-up equipment from Ms. Scott's husband's medical marijuana operation;
- (e) Ms. Scott received phone calls from friends and from the RCMP informing her that Mr. Dumaine - or an associate of Mr. Dumaine were "stunting" with the Dodge;
- (f) John Dumaine and Lake Country called to say that they would not be providing the proceeds of sale of the Dodge;
- (g) Ms. Scott would have to continue making payments on the Dodge; and
- (h) Due to this phone call - and the failure of Lake Country and Mr. Dumaine to pay the proceeds of sale - Ms. Scott made her complaint.

B. The Motor Vehicle Sales Authority

[5] The Motor Vehicle Sales Authority of British Columbia's (the "Authority") position is summarized in the allegations at paragraph [1] above.

C. Lake Country Motor Sports Ltd. and John Dumaine

[6] Lake Country and Mr. Dumaine take the following positions, regarding the consumer transaction:

- (a) This consumer transaction was a favour for a friend, Ms. Scott's husband, and not a true motor dealer transaction;
- (b) Lake Country and Mr. Dumaine lent Ms. Scott \$22,000, which was repayable from the proceeds of the sale of the Dodge;

- (c) When Ms. Scott made her complaint to the Authority, Lake Country and Mr. Dumaine asked the B.C. intermediary dealer to hold onto the proceeds of the sale, and tried to obtain the return of the Dodge; and
- (d) Lake Country and Mr. Dumaine deny that there was any “stunting” with the Dodge; and
- (e) The Dodge had low kilometers and newer vehicles, which are to be exported to the USA, require a certain number of kilometers on them, before they would be acceptable for export.

[7] In their written submissions, Lake Country and Mr. Dumaine also state that the Registrar should have adjourned the hearing, and that it would be procedurally unfair to Lake Country and Mr. Dumaine for them not to reconvene the hearing because:

- (a) Mr. Dumaine was suffering from a medical condition at the March 7, 2018 hearing and was incapable of proceeding with that hearing; and
- (b) At the April 11, 2018 hearing, Mr. Dumaine asked for an adjournment to obtain a lawyer.

[8] The Authority and Ms. Scott’s lawyer responded to these procedural claims noting that:

- (a) Mr. Dumaine never asked the Registrar for an adjournment on either of the above noted grounds;
- (b) The Notice of Hearing advised Lake Country and Mr. Dumaine to seek legal advice;
- (c) Mr. Dumaine and Lake Country had an opportunity to do so; and
- (d) Mr. Dumaine offered no evidence at either hearing that he had a medical condition.

III. The Law

[9] In my recent decision of *Partin & Glassco v. Carmel Custom Contracting Ltd. dba Mill Bay Motors* (July 6, 2018, Hearing File 18-03-001, Registrar), I reviewed the law, regarding consignment sales by motor dealers, including the interplay between the *Motor Dealer Consignment Sales Regulation*, B.C. Reg. 102/95 (“Consignment Regulation”) and the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 (“BPCPA”). I summarize that law in the following paragraphs.

A. Consignment Sales – motor dealer restrictions

[10] Under section 4(4) of the MDA, the Registrar restricts new motor dealers from conducting consignment sales. A motor dealer, selling a consumer’s motor vehicle on consignment, introduces greater risks to consumers. Motor dealers that conduct consignments have additional oversight concerns (such as their trust accounts) and must provide additional security such as letters of credit. They must comply with specialized legislation, covering motor vehicle consignment sales. There can be significant consumer losses, if a motor dealer conducting consignment

is dishonest or they go out of business. As such, if a motor dealer wishes to conduct consignment sales, they must seek approval from the Registrar and are reviewed for risks to the public, if granted that special privilege.

- *Southwest R.V. v. Registrar of the Motor Dealer Council of British Columbia* 2007 BCSC 1140 (BC Supreme Court)
- *Southwest RV and Sport Ltd. et al.* (November 20, 2009, File 08-70597, Registrar)
- *Re: LCB Autos Ltd.* (April 1, 2010, File 10-009, Registrar)

B. Written Consignment Agreement – section 2 of the Consignment Regulation

[11] If a motor dealer engages in consignment sales, they must complete a written consignment agreement and provide it to the consignor – the consumer: section 2 of the Consignment Regulation. Section 2 of the Consignment Regulation lists terms which must be contained in that consignment agreement and identifying certain rights and obligations of the consumer and of the motor dealer, such as, but not limited to:

- (a) The amount payable to the motor dealer for their services;
- (b) The duration of the consignment;
- (c) The minimum price the consignor (consumer) will accept for the sale of the motor vehicle;
- (d) That any proceeds are payable to the motor dealer in trust for the consignor;
- (e) A declaration of title from the consignor (consumer) including any outstanding liens;
- (f) Who is responsible for the insurance of the consigned vehicle;
- (g) The dealer must give notice of the sale, within one day of the sale's occurring; and
- (h) The proceeds of the sale will be given to the consignor within 14 days of the sale.

- Section 2 of the *Motor Dealer Consignment Sales Regulation*, B.C. Reg. 101/95
- Definition of "must" in section 29 of the *Interpretation Act*, R.S.B.C. 1996, c. 238
- *Mill Bay*, (Registrar)

[12] The purpose of this Consignment Regulation provision is to protect consumers, in recognition of the significant harm that a consumer could suffer, if a motor dealer is dishonest or goes out of business. The motor dealer is essentially acting as the consumer's agent in the sale of the motor vehicle, which requires the motor dealer to act in the consumer's best interest. These obligations are imposed on a motor dealer, regardless of their relationship to the consignor - be they a family member, friend, stranger, or otherwise.

C. Proceeds of Consignment Sale – section 6 of the Consignment Regulation

[13] Section 6 of the Consignment Regulation protects the consignor. Any money paid to a motor dealer in relation to a consigned vehicle belongs to the consignor and/or a lien holder. The motor dealer is obligated to deposit that money into a trust account within one day of the money's having been received. The money cannot be used for any other purpose and may only be withdrawn for:

6(4)

- (a) disbursing sale proceeds to a consignor or lien holder under a consignment agreement,
- (b) correcting an error caused by money deposited in the trust account by mistake, or,
- (c) making payments to the motor dealer as authorized in the consignment agreement after the payment of the disbursements described in paragraph (a).

[14] This provision is mandatory on motor dealers. The obligations are not diminished by familiar relationships

D. Deceptive Acts or Practices – the BPCPA

[15] I have discussed in detail the law, regarding deceptive acts or practices under the BPCPA in previous decisions. I summarize the pertinent legal principles, regarding deceptive acts or practices, under the BPCPA applicable to this case:

- (a) The BPCPA prohibits a supplier (a motor dealer or a salesperson) from committing a deceptive act or practice, in respect of a consumer transaction.
- (b) The motor dealer must refrain from such conduct, even if the consumer is a willing or instigating party to the deceptive conduct.
- (c) When acting for a consumer, such as in a consignment sale, the BPCPA requires the motor dealer and the salesperson to act in the consumer's best interest.
- (d) A deceptive act or practice is conduct, advertising, or any type of representation that has the capability or tendency to mislead someone.
- (e) A deceptive act or practice may occur innocently, negligently, recklessly, or deliberately.
- (f) A consumer, who can show damages, may be entitled to a remedy, even if the deceptive practice was innocent.
- (g) A deceptive act or practice can occur before, during, or after a consumer transaction.
- (h) A deceptive act or practice may occur by failing to state a material fact.
- (i) The mandatory disclosure requirements within the MDA and its regulations, and under the BPCPA, are material facts.
- (j) If it is alleged that a motor dealer or salesperson has committed a deceptive act or practice, the onus (burden of proof) is on the dealer and the salesperson to show that there was no deceptive act or practice.

- *Re: Best Import Auto Ltd. et al.* (November 28, 2017, Hearing File 17-08-002, Registrar) varied but not on this point *Best Import Auto Ltd. v Motor Dealer Council of British Columbia*, 2018 BCSC 834 (CanLII) (BC Supreme Court).
- *Breezy Webster v. Pioneer Garage Ltd. dba Fraser Valley Pre-owned et al.* (April 27, 2018, File 17-07-002, Registrar)
- *Harris & Harris v. Windmill Auto Sales & Detailing Ltd. et al* (April 10, 2013, Hearing File 12-030, Registrar), affirmed by *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers*, 2014 BCSC 903 (CanLII) (BC Supreme Court).
- *Knapp v. Crown Autobody & Auto Sales Ltd. et al* (September 21, 2009, File 08-70578, Registrar), affirmed by *Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia*, 2014 BCSC 894 (CanLII).

[16] In the event that the Registrar finds the commission of a deceptive act or practice, the Registrar is empowered to issue , among other things, a compliance order on terms that the Registrar deems necessary to address that breach and to gain the future compliance of the breaching person. The Registrar may also order the breaching person to pay the investigation and legal costs of the Registrar.

- Section 155 of the BPCPA
- *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers*

[17] Further, the Registrar is empowered to issue an administrative penalty of up to \$50,000 - against a company - or \$5,000 - against an individual - to deter any future non-compliance with the BPCPA.

- Sections 164 and 165 of the BPCPA
- *R. v. Samji*, 2017 BCCA 415 (CanLII), leave to appeal to the Supreme Court of Canada refused *Rashida Abdulrasul Samji v. Her Majesty the Queen*, 2018 CanLII 48394 (SCC)
- *Guindon v. Canada*, [2015] 3 SCR 3, 2015 SCC 41 (CanLII) (Supreme Court of Canada)
- *Re: Best Import Auto Ltd. et al.*
- *Breezy Webster v. Pioneer Garage Ltd. dba Fraser Valley Pre-owned et al.*

[18] Commission of a deceptive act or practice is sufficient grounds for cancelling a motor dealer's registration: section 8.1(4)(b) of the MDA. The discretion to cancel the registration is given to the Registrar by the Legislature

E. The Right to Legal Counsel at Administrative Hearings

[19] Under Canadian law, there is no absolute right to legal representation - except as guaranteed by section 10(b) of the Canadian *Charter of Rights and Freedoms*. That right, allows a person to retain and instruct legal counsel, upon arrest or detention. Absent any legislation, which mandates a right to legal counsel, whether such a right is triggered is dependent on the context of the case.

[25] Section 10(b) [of the *Charter*] does not exclude a finding of a constitutional right to legal assistance in other situations. Section 7 of the *Charter*, for example, has been held to imply a right to counsel as an aspect of procedural fairness where life, liberty and security of the person are affected: see *Dehghani v. Canada (Minister of Employment and Immigration)*, 1993 CanLII 128 (SCC), [1993] 1 S.C.R. 1053, at p. 1077; *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, 1999 CanLII 653 (SCC), [1999] 3 S.C.R. 46. But this does not support a general right to legal assistance whenever a matter of rights and obligations is before a court or tribunal. Thus in *New Brunswick*, the Court was at pains to state that the right to counsel outside of the s. 10(b) context is a case-specific multi-factored enquiry (see para. 86).

...

[27] We conclude that the text of the Constitution, the jurisprudence and the historical understanding of the rule of law do not foreclose the possibility that a right to counsel may be recognized in specific and varied situations. But at the same time, they do not support the conclusion that there is a general constitutional right to counsel in proceedings before courts and tribunals dealing with rights and obligations.

[Underlining added]

- *British Columbia (Attorney General) v. Christie*, [2007] 1 SCR 873, 2007 SCC 21 (Supreme Court of Canada).

[20] In the cited case of *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, 1999 CanLII 653 (SCC), [1999] 3 S.C.R. 46, the Supreme Court of Canada noted:

[86] I would like to make it clear that the right to a fair hearing will not always require an individual to be represented by counsel when a decision is made affecting that individual's right to life, liberty, or security of the person. In particular, a parent need not always be represented by counsel in order to ensure a fair custody hearing. The seriousness and complexity of a hearing and the capacities of the parent will vary from case to case. Whether it is necessary for the parent to be represented by counsel is directly proportional to the seriousness and complexity of the proceedings, and inversely proportional to the capacities of the parent.

[Underlining added]

[21] Under section 7.1 of the MDA, the Legislature has made certain provisions of the *Administrative Tribunals Act*, SBC 2004, c. 45 (“ATA”) applicable to the Registrar’s exercise of statutory powers, including conducting hearings. The Legislature chose not to include section 32 of the ATA - the right to legal representation.

[22] The Hearing Notice in this case advised Lake Country and John Dumaine that they should seek legal advice. It is the Registrar’s custom to allow legal representation at hearings. Therefore, there is a legitimate expectation that a person appearing before the Registrar should be allowed legal representation.

[23] The right to legal counsel means the right to access legal advice and representation at the election of the person seeking that advice. Such access requires a reasonable opportunity to obtain legal representation. That right cannot be used to subvert the administration of justice or the Registrar’s hearing process.

[24] The right to an adjournment to seek legal counsel is also not an absolute right. Under sub-section 39(2) of the ATA and Registrar’s Rule 35, a request for an adjournment is considered by balancing the rights of all the parties, in consideration of procedural fairness, the exigencies of the case, the complexities of the case, and the public interest in the expedient and cost-effective resolution of the allegations. Of course, before the Registrar can consider a request for an adjournment on any grounds, a party must make such a request.

F. Witness Credibility

[25] Where witness credibility and reliability are in question, I keep in mind the guidance of the courts in assessing the same. See:

- *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).

G. Burden of Proof

[26] The burden of proof is on a balance of probabilities, which is often reframed as “it is more likely than not” that the alleged conduct occurred: *F.H. v. McDougall* [2008] 3 S.C.R. 41, 2008 SCC 53 (CanLII) (Supreme Court of Canada) at para. 44. The balancing is based on the existence of sufficiently clear, cogent, and convincing evidence, establishing the fact that is being advanced: *F.H. v. McDougall* at para. 46.

IV. Discussion

A. Did the Registrar err in not adjourning the hearing?

1. Medical Condition of John Dumaine

[27] At the March 7, 2018 hearing in Surrey, the hearing commenced in its usual manner. The Authority presented Compliance Office Bryan Reid's investigation findings and Mr. Reid for questioning. Ms. Scott's evidence was also heard. Mr. Dumaine, for himself and Lake Country, participated *via* telephone. At no time did Mr. Dumaine or Lake Country ask for an adjournment or advise the Registrar that Mr. Dumaine had an extant medical condition. John Dumaine's conduct did not strike me as being "off." The hearing was adjourned, due to technical difficulties.

[28] When the hearing reconvened on April 11, 2018, in Kelowna, Mr. Dumaine was physically present at the hearing. Mr. Dumaine did not mention a health condition or ask for an adjournment, due to a health condition. Mr. Dumaine's demeanor and conduct did not indicate any medical condition. Mr. Dumaine arrived at the hearing with several witnesses ready to proceed. Mr. Dumaine was an active participant at the hearing, providing evidence and questioning witnesses.

[29] In their written submissions, Lake Country and John Dumaine state that they are putting together information to support that Mr. Dumaine was suffering a medical condition. Yet, a month after the last hearing date, evidence of Mr. Dumaine's medical condition was not made available.

2. Seeking legal representation

[30] In its first written submissions, Lake Country and John Dumaine state that they asked the Registrar for an adjournment, so they could get a lawyer and were denied that request. They were confronted with this statement in the written submissions of Ms. Scott, as there was no record of such a request. In surreply, and for the first time, Lake Country and John Dumaine stated the request was made when the hearing was not yet called and was off the record.

3. Discussion

[31] Mr. Dumaine could not have made an *ex-parte* request of me at the March 7, 2018 hearing as he appeared by telephone; and I was not in the Surrey hearing room, until all the parties were also present either personally in Surrey, or on the phone.

[32] At the April 11, 2018, Hearing in Kelowna, I did not enter the room, where the hearing was being held until all the other parties were present. Mr. Dumaine's witnesses were outside the room as I entered; and Mr. Dumaine was talking to

them. That was right by the doorway to the room; and the other parties would have seen any conversation.

[33] If a party communicates with me *ex-parte*, it is my practice to place the content of that discussion on the record, so that all parties are aware of that communication and can raise objections or make comments about that communication. This occurred, during the lunch break at the April 11, 2018 hearing in Kelowna, in which Mr. Dumaine made a comment to me and asked me a question during the lunch break as we exited the room. I placed the content of that discussion on the record and invited comments or asked if there were concerns; and there were none: April 11, 2018, Transcript of Proceedings, page 74, line 1 to page 75, line 7.

[34] Lake Country and Mr. Dumaine never requested an adjournment due to health reasons or to obtain the assistance of a lawyer. There was no *ex-parte* communication between myself and Mr. Dumaine, regarding an adjournment.

[35] As noted, the Hearing Notice dated February 2, 2018 specifically advises of a right to legal representation.

[36] Lake Country and John Dumaine cite court cases for my consideration. However, in those cases, a clear request for an adjournment was made to obtain legal counsel; which does not exist here. In the case of *Igbinosun v. Law Society of Upper Canada*, 2008 CanLII 36158 (Ontario Superior Court), Mr. Igbinosun had consistently stated that he wanted legal representation and was going through various lawyers, during his lengthy hearing process. In one instance, Mr. Igbinosun was amid replacing a lawyer and found one willing to appear at the next hearing date on short notice, so long as the lawyer could get a 2:00 pm adjournment, due to a scheduling conflict. The Law Society of Upper Canada (Ontario) denied this request and went ahead with the hearing. Mr. Igbinosun did not attend the hearing as he was unrepresented. The Ontario Superior Court said the Law Society should have granted the adjournment. That Court noted that the circumstances of that case militated in favour of granting the adjournment.

[37] The Ontario Court of Appeal agreed with the decision of the Superior Court noting the specific circumstances of that case:

[48] Igbinosun's original request for an adjournment was made well in advance of the scheduled hearing date. The fact that his motion was heard only four days before the hearing date was not due to any fault on his part. Igbinosun had counsel with him on September 18 who would have proceeded had he been given a recess at 2:00 p.m. that day. Miguna is not clear as to what he would have done about his motion in Barrie the following day. However, at the latest, he was prepared to proceed on September 20. These were very serious allegations and the potential consequence of a finding of misconduct was a loss of Igbinosun's livelihood. The desirability of having the matter determined on its merits was great. Igbinosun had clearly expressed his desire to be represented by counsel and exercised that

right in all the other proceedings. The Law Society's case had been presented. Igbinosun was expected to testify and he wanted counsel to assist him and to protect him from inappropriate cross-examination. As Molloy J. noted, there was no discernible prejudice to the Law Society or its witnesses in granting a brief adjournment. The Hearing Panel gave no indication that it would not have been able to accommodate Igbinosun's request to continue the hearing on September 20 or possibly earlier. The Hearing Panel was required to balance the public interest in having the hearing concluded expeditiously against the prejudice to Igbinosun of being forced to proceed at this point without counsel, taking into consideration the context and circumstances of the case. It did not do so.

[49] In these circumstances, I would not interfere with Molloy J.'s conclusion that Igbinosun was denied natural justice when Miguna's request for a brief adjournment on September 18 was denied...

- *The Law Society of Upper Canada v. Igbinosun*, 2009 ONCA 484 (CanLII) (Ontario Court of Appeal).

[38] There was no request for an adjournment. There was no indication that Mr. Dumaine, for himself and for Lake Country, was unable to proceed with the hearing on his own. In fact, Mr. Dumaine was an active participant, questioned witnesses, presented evidence, and presented his own witnesses. Under these facts there is no breach of procedural fairness; and Mr. Dumaine must accept his decision to represent himself: *Palonek v. Canada (National Revenue)*, 2007 FCA 281 (CanLII) (Federal Court of Appeal) at paragraphs 14 to 16.

B. The nature of the agreement between Nancy Scott and Lake Country Motor Sports Ltd. – Consignment Sale Agreement

[39] The evidence is clear that Lake Country and Mr. Dumaine agreed to sell Nancy Scott's Dodge on her behalf. This was accomplished by sending the Dodge through an intermediary dealer in British Columbia, so that the Dodge could be auctioned in the USA.

[40] Mr. Dumaine gave evidence of how they had to add kilometers on the Dodge to qualify it for export into the USA. This evidence was corroborated by Jessica Phan of Vancouver Auto Liquidation, the intermediary dealer. Jessica Phan also confirmed that only motor dealers may send motor vehicles through her dealership to the USA for auction.

[41] The text messages between Mr. Scott and Mr. Dumaine also confirm that the Dodge was left with Mr. Dumaine and Lake Country for sale into the USA.

[42] I am satisfied on the evidence that Ms. Scott consigned the Dodge to Lake Country: see the definition of "consignment", section 1 of the Consignment Regulation.

[43] The fact that Mr. Scott and Mr. Dumaine knew each other does not change the fact that this was a consignment agreement. Mr. Dumaine used his registered motor dealer, and his skill and knowledge in operating a motor dealership, to effect the sale of the Dodge. When this occurs, the legislation imposes certain terms and conditions on that sale, as well as on the relationship between the motor dealer and the consignor/consumer.

C. Was there a loan by Lake Country Motor Sports Ltd. to Ms. Scott, which was recoverable from the proceeds of the sale of the Dodge?

[44] This is the crux of Mr. Dumaine's and Lake Country's defence. They argue that Ms. Scott is not entitled to the full proceeds of sale for the Dodge, because Mr. Dumaine loaned \$22,000 to Ms. Scott; and that sum was recoverable from those proceeds. The evidence relied on by Lake Country and Mr. Dumaine are: (a) the oral testimony of Mr. Dumaine, (b) the oral testimony of Mr. Blake, (c) the oral testimony of Mr. Lerch, and (d) a photocopy of a ledger entry indicating a \$22,000 loan to Ms. Scott for the Dodge, with an additional notation of "loan on cars for Wayne." – "cars" in the plural.

[45] Nancy Scott and Wayne Scott say that the \$22,000 was not a loan, but payment for licensed medical marijuana grow equipment in the home Mr. Scott was renting and where Mr. Dumaine eventually took over renting. In support of their evidence are: (a) their oral testimony, (b) an RBC statement showing the deposit of \$22,000, (c) a text message indicating paying for the "house", and (d) noting that Mr. Dumaine has not included several text messages about the payment for the house and the money being deposited into Nancy's account.

[46] From the following discussion, I prefer the evidence of Nancy and Wayne Scott over that of Mr. Dumaine, Mr. Blake, and Mr. Lerch. From what follows, I find on a balance of probabilities, that there was no loan for the Dodge, but a payment for medical marijuana grow equipment.

1. Evidence of Nancy Scott

[47] Ms. Scott's evidence on this issue was clear and did not change under cross-examination. Ms. Scott produced the RBC statement showing \$22,000 paid and deposited into her account, which could be evidence against her own interest, if in fact it was for a loan. She could have refused to disclose that evidence and did not. This is an indication that Ms. Scott is not hiding facts. I also consider her evidence in conjunction with all the evidence she gave. Ms. Scott's evidence made sense and was supported by text messages or other documents.

[48] For example, there is a chain of text messages provided by Mr. Dumaine with a line that says, "cut me a check for the house."

[49] Another example is Ms. Scott testifying that she received complaints of Mr. Dumaine “stunting” with the Dodge. This is supported by a copy of a warning ticket issued by Constable Bellia of Lake Country RCMP: page 10 of the Affidavit exhibits. This is further supported by her written complaint form to the Authority, where she said she received a phone call from Princeton RCMP, regarding the Dodge driving erratically; and Ms. Scott provided the name of the Constable, Alan Cake, and RCMP file 2017-1558.

[50] Mr. Dumaine gave evidence that the \$22,000 was a loan to make payments towards the Dodge, as Ms. Scott was broke. The ledger entry indicates the loan was for “a loan on cars [plural] for Wayne.” If this were a loan to make a payment on the Dodge, then why would Ms. Scott deposit the \$22,000 into her RBC account (page 46 of the Affidavit exhibits), instead of into the Scotia account, where the loan on the Dodge was held (page 83 of the Affidavit Exhibits). The Scotia loan account information was provided to Mr. Dumaine, so he could direct deposit the proceeds of the sale from the Dodge to Ms. Scott’s loan.

[51] Ms. Scott’s evidence was corroborated by her ex-husband Wayne Scott. However, I am cautious in placing any weight on this corroboration, as both Nancy and Wayne Scott were present and heard each other’s evidence for the most part; and because of their relationship at the time of the transaction. Therefore, I place very little weight on this corroboration.

2. Evidence of Wayne Scott

[52] The evidence of Wayne Scott was straight forward, clear, and did not change under cross-examination. Mr. Scott did not falter or delay in answering questions when asked. Mr. Scott’s evidence that the \$22,000 was for the grow equipment at the house is also corroborated by the text message that says, “cut me a check for the house.”

[53] Mr. Scott gave evidence that the text messages Mr. Dumaine provided to the Authority are not complete. Missing are text messages about the sale of the medical marijuana grow up equipment at the house: pages 56 to 57 of the April 11, 2018, Transcript of Proceedings. Earlier in the hearing, Mr. Dumaine confirms he did not provide all the text messages to the Authority: page 17 line 18 to page 18, line 1, April 11, 2018 Transcript of Proceedings. At one point during the hearing, Mr. Dumaine took a very long time to search for a text message he said he had to support his position, but could not locate it, and eventually did not produce it at the hearing.

[54] Mr. Scott gave evidence that he had used Nancy Scott’s money to buy the medical marijuana equipment. The money was placed into her bank account as repayment to her.

3. Evidence of John Dumaine, Noah Lerch, and Howard Anthony Blake

[55] Mr. Dumaine's evidence was that he did buy the grow equipment for \$20,000. However, he said he paid cash for that equipment. When challenged under questioning, he was not sure if it was cash or a cheque that he used to buy the grow equipment: April 11, 2018, Transcript or Proceeding, page 144, line 15 to page 146, line 3. Mr. Dumaine was also very evasive in answering these series of questions, noting that he could not remember, as he does a lot of transactions, and it had been a year ago: April 11, 2018, Transcript or Proceeding pages, 147 to 148. Mr. Dumaine's evasiveness was clearly heightened when one of his witnesses, Mr. Blake, testified that Mr. Dumaine paid by cash, while Mr. Dumaine's other witness, Mr. Lerch, said Mr. Dumaine paid by cheque. Mr. Dumaine then tries to cover for this discrepancy by saying he thought he paid cash and becomes unsure how he paid. Mr. Lerch then tries to back track on his evidence, by saying Mr. Dumaine usually paid by cheque: April 11, 2018, Transcript of Proceedings, page 99.

[56] It is odd that Mr. Dumaine would not remember giving someone \$20,000, or there about, in cash even if it was one year ago. Mr. Dumaine may have done some motor vehicle transactions in that year, but this one involved buying medical marijuana grow equipment at a home Mr. Dumaine intended to rent, and had been occupied by Mr. Scott. That is a unique transaction only one year prior and apparently involving \$20,000 in cash – a significant sum of money. Such a lapse of memory, under these unique facts, is highly suspect and goes to Mr. Dumaine's credibility.

[57] The evidence of Mr. Lerch and Mr. Blake do not align in further areas. Mr. Lerch said the transaction, the handing over of the cheque, occurred at the dealership. Mr. Blake said the deal occurred at his home. When challenged, Mr. Blake said he was told about the deal by Mr. Dumaine, while Mr. Dumaine was at his home. While Mr. Blake was testifying, Mr. Dumaine motioned that Mr. Blake may have been drinking alcohol before giving his evidence. From the questioning of Mr. Lerch and Mr. Blake, it is apparent that their evidence is about what Mr. Dumaine told them happened.

[58] The photocopy of the ledger (page 73 of the Affidavit exhibits), showing a \$22,000 payment to "Nancy Scott," "ship US," "2016 Charger," and "loan on cars for Wayne," is contested by the Scotts. Wayne Scott testified about the vehicles he had obtained from Lake Country. However, the last vehicle he bought was from a dealer other than Lake Country. There was no "loan on cars for Wayne." Mr. Dumaine said the notation of "loan on cars for Wayne" meant the disputed loan to Nancy Scott. The notation simply does not make sense, when considered with the remainder of the evidence.

[59] During the investigation, a copy of the actual canceled cheque associated with the ledger entry was requested several times by the Authority. In his interview with Compliance Officer Chris Hoy of the Authority, Mr. Dumaine repeatedly says he had a copy of the cheque and would produce it: Transcript of Interview of John Dumaine, January 11, 2018, pages 2, 9 and 12. No cheque was ever produced by Mr. Dumaine or Lake Country. This is a key document going to their defence. No explanation was provided for why a copy of the cheque was not produced. I accept

that I may make an adverse inference from Mr. Dumaine, for himself and on behalf of Lake Country, for his not having produced the cancelled cheque in question.

[60] Finally, the evidence is also clear that when Wayne Scott and Mr. Dumaine agreed to the sale of the medical marijuana grow equipment, Mr. Dumaine expected the medical marijuana licence to also be in place. This did not occur. Mr. Dumaine was certainly unhappy about that situation. This evidence indicates a dispute over the money paid for the medical marijuana grow equipment. This suggests another reason for Mr. Dumaine to withhold the \$22,000.

[61] Overall, Mr. Dumaine's evidence changed when his witnesses' evidence did not align with each other. The evidence of Mr. Dumaine's witnesses was at odds with each other. They were testifying as to what Mr. Dumaine told them had happened. Mr. Dumaine became evasive when he could not reconcile his witnesses differing evidence. Mr. Dumaine admitted withholding important text messages from the investigation and hearing. Mr. Dumaine tried to locate text messages at the hearing on his phone, but could not find them. Mr. Dumaine did not produce the cancelled cheque, which is a key piece of his and Lake Country's defense, associated with the hand-written ledger note. The ledger says the loan was "on cars for Wayne," which was not adequately explained. I find on balance, that I cannot rely on the evidence of Mr. Dumaine, Mr. Blake, Mr. Lerch, or the hand-written ledger note. I find on a balance of probabilities that there was no loan to Nancy Scott. I find on a balance of probabilities that the \$22,000 payment was for the medical marijuana grow-up equipment.

D. Was there a breach of Lake Country Motor Sports Ltd.'s restriction against conducting consignment sales?

[62] I have found that Lake Country and Mr. Dumaine agreed to sell the Dodge on consignment. The motor dealer registration of Lake Country during the consumer transaction has the restriction of "No Consignment Permitted," on the registration. Lake Country was aware that it was not authorized to sell motor vehicles on consignment and is in breach of the restriction on its motor dealer registration: section 4(4) of the MDA.

E. Was there a breach of section 2 of the Consignment Regulation?

[63] When a motor dealer enters into a consignment agreement, sections 4 and 5 of the Consignment Regulation require that the motor dealer complete a written consignment agreement containing, at a minimum, the terms required by that Consignment Regulation. The motor dealer is also to provide a copy of that consignment agreement to the consumer. Lake Country did not do so; and Lake Country is in breach of section 4 of the Consignment Regulation.

F. Was there a breach of section 6 of the Consignment Regulation?

[64] An overall review of section 6 of the Consignment Regulation in consideration of the whole legislation, being consumer protection legislation, shows that the

intent is to protect the assets of the consignor and any lien holder, and only disburse the proceeds of sale as authorized by the legislation and by any written consignment agreement.

[65] Sub-section 6(3) of the Consignment Regulation was breached. The Dodge was sold; and Lake Country's agent, Vancouver Auto Liquidation Center Ltd. ("Vancouver Auto"), received the sale proceeds on or about October 19, 2017: Exhibit N (page 36 of the Exhibits) of the Affidavit. Vancouver Auto prepared a cheque for Lake Country on October 20, 2017: Exhibit O (page 37 of the Exhibits) of the Affidavit. I find that Vancouver Auto was acting as an agent for, and on behalf of Lake Country, in this transaction. Lake Country needed the services of Vancouver Auto to send the Dodge to the US for auction. Mr. Dumaine gave evidence that he instructed Vancouver Auto to hold onto the cheque; and they did so. As of the last day of the hearing, the sale proceeds had not yet been deposited into Lake Country's trust account.

[66] Lake Country and Mr. Dumaine claim that the proceeds of sale are reserved to repay a loan that he made to Ms. Scott. I have rejected that claim on the evidence. Even if this were the case, disbursing the sale proceeds to repay a loan made by a dealer must have been authorized in the written consignment agreement. There was no written consignment agreement; and therefore, this disbursement would not have been legally authorized: sub-section 6(4) of the Consignment Regulation. Technically, Lake Country has not breached sub-section 6(4), as it has not yet withdrawn or authorized the withdrawal of the trust funds for an unauthorized purpose.

[67] If a motor dealer does loan money or make an advance payment on the sale of a consigned vehicle to a consumer, it must document the consignor's agreement to repay that loan from the sale proceeds in the written consignment agreement. This is for the protection of the consignor as well as the protection of the motor dealer. Otherwise, the motor dealer is obliged to payout the sale proceeds as required by the Consignment Regulation or commence legal proceedings to secure those assets. A motor dealer may not unilaterally decide to withhold what the law deems to be the "beneficial property of the consignor and lien holder:" section 6(2)(a) of the Consignment Agreement.

G. Did Lake Country Motor Sports Ltd. and John Dumaine breach the BPCPA – deceptive acts or practices?

1. Conducting Consignment Sales

[68] From the forgoing, by words and by conduct, Lake Country and John Dumaine represented to Ms. Scott that they were lawfully authorized to conduct consignment sales. This was not true. This is a representation that Lake Country had an approval that they did not actually have and is deemed to be a deceptive act or practice: s. 4(3)(b)(i) of the BPCPA. By not advising Ms. Scott that Lake Country was restricted from conducting consignment sales, Lake Country also failed to state a material fact to Ms. Scott, which is also deemed to be a deceptive act or

practice: s. 4(3)(b)(vi) of the BPCPA. Lake Country and John Dumaine have not disproven this: section 5(2) of the BPCPA.

2. Failure to disclose the consumer's rights and the motor dealer's obligations

[69] Section 2 of the Consignment Regulation requires the motor dealer to make certain disclosures to a consignor, in the form of a consignment agreement, outlining the consignor's statutory rights and the motor dealer's statutory obligations. As the law requires their disclosure, they are material facts. As such, and because Lake Country and John Dumaine did not make those material fact disclosures to the Consumers, and in the manner required by the legislation, Lake Country and John Dumaine are deemed to have committed a deceptive act or practice: s. 4(3)(b)(vi) of the BPCPA. Lake Country and John Dumaine have not disproven this: section 5(2) of the BPCPA.

3. Misrepresenting payment of funds

[70] It is clear from the text messages that John Dumaine represented to Ms. Scott that Lake Country would sell the Dodge and remit to her the sale proceeds. This did not occur. John Dumaine and Lake Country advised Ms. Scott she would have to continue to make payments on the Dodge, after it was sold. John Dumaine and Lake Country then said Ms. Scott was not entitled to all the proceeds of sale as Mr. Dumaine was going to keep \$22,000 he said was a loan to Ms. Scott. I have found this was not in fact a loan, but payment for medical marijuana grow equipment.

[71] I find that John Dumaine and Lake Country made misrepresentations to Ms. Scott regarding the payment of the proceeds of sale, and especially after the consumer transaction, which are deceptive acts or practices, contrary to section 5(1) of the BPCPA. Lake Country and John Dumaine have not disproven this: section 5(2) of the BPCPA.

V. Compliance

A. Purpose of compliance action by a regulator

[72] A regulator has legislative tools at their disposal to remedy non-compliance and to ensure the future compliance of a breaching licensee or registrant. My focus here is not on punishing the non-compliance, but deterring future non-compliance by Lake Country and John Dumaine specifically, and the industry generally. If I am not reasonably assured that there will be future compliance by Lake Country or John Dumaine, my duty is to protect the public by removing them from the industry.

- *Harris & Harris v. Windmill Auto Sales & Detailing Ltd.* (April 10, 2013, File 12-030, Registrar), and affirmed by *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers*, 2014 BCSC 903 (BC Supreme Court)

B. Compliance Order – section 155 of the BPCPA

1. Consumer remedy - valuation of loss

[73] Ms. Nancy Scott's Dodge was sold at a United States wholesale auction. Ms. Nancy Scott knew the Dodge was being sent to the U.S. auction. There is currently \$34,375.00 USD being held by Vancouver Auto Liquidation Center Ltd. There is no written consignment agreement stating any fee to which Lake Country would be entitled. There is a lien holder, who has entitlement to those funds – Scotiabank.

[74] Based on the Consignment Regulation, those funds should have been released to Ms. Scott and Scotiabank by October 23, 2017. Based on the exchange rate at that date of 1.2646, this would yield \$43,470 in Canadian Funds.

[75] Evidence was advanced as to the Canadian Black Book wholesale values for this vehicle in a clean or extra-clean state to suggest a value for the Dodge between \$46,799.00 (clean vehicle) to \$54,828 (extra clean). Ms. Scott argues that her loss would be at least the clean vehicle estimate. Any loss in value due to the Dodge not being clean was because of Lake Country and Mr. Dumaine adding kilometers on the Dodge and there were cigarette butts in the Dodge. I heard evidence from Vancouver Auto, that newer model used vehicles had to have a certain number of kilometers on a vehicle being exported to the U.S.A.

[76] The problem with Ms. Scott's argument, relying on the Canadian Black Book wholesale value, is that the Dodge was sold in the U.S. market with Nancy Scott's approval. I cannot apply what the possible wholesale value of the Dodge would be in Canada, when it was sold in the U.S. with Nancy Scott's knowledge and approval. They are two different markets and it cannot be assumed that the same car would obtain the same price in both markets. Based on the evidence before me, I find that the actual selling price at auction, when converted to Canadian funds of \$43,470, is Ms. Scott's loss on the Dodge.

[77] The Authority and Ms. Scott suggest there should be an interest rate applied due to the non-payment of sale proceeds. They argue that the interest rate charged by the bank of 3.49% annual rate should be applied, as Ms. Scott continues to make payments to the bank. The interest rate is from October 23, 2017 to the date of the hearing – 6 months. Lake Country and John Dumaine made no submissions on this point. An interest rate charge is appropriate, as that is a loss associated with Lake Country and Mr. Dumaine's failure to pay the sale proceeds. In this case, Ms. Scott is entitled to an interest of $\$43,470 \times 0.0349 \times 6/12 = \mathbf{\$758.55}$.

[78] Ms. Scott argues for her disbursements for the use of a lawyer. She is not seeking legal fees. Ms. Scott provides a list of those costs in her written submissions. The Authority and Lake Country and Mr. Dumaine made no submissions on these costs. The disbursements amount to \$226.89; and a review of the invoice suggest that these are reasonable costs for photocopying, telephone charges, and a corporate search. They appear to be reasonable and are associated

with Ms. Scott's attempt to advance her claimed loss in this case. Ms. Scott will be entitled to recover \$226.89 as part of her loss in this consumer transaction.

[79] In summary, I find Ms. Scott has suffered the following losses from the breach of the BPCPA:

(a)	\$43,470.00	– Dodge's value,
(b)	\$ 758.55	– interest, and
(c)	\$ 226.89	- disbursements.
	\$44,455.44	Total

[80] In considering the relationship between Lake Country, John Dumaine, and Ms. Scott, I find it would be appropriate to order Vancouver Auto Liquidation Ltd. to issue a cheque payable jointly to Nancy Scott and the Bank of Nova Scotia for the \$34,375.00 US Funds, and have that cheque delivered to the Authority, who will forward it on.

[81] Once the US Funds are converted to Canadian Funds, any shortfall to pay the \$44,455.44 amount to Nancy Scott, remains a liability of Lake Country and John Dumaine, jointly and severally.

2. Protective Order - Compliance

[82] Given my below decision to cancel the motor dealer registration of Lake Country and the salesperson licence of John Dumaine, there is no need to issue a protective order in relation to each.

3. Costs

[83] I have found the allegations in this case as against Lake Country and John Dumaine have been proven. Generally, the Registrar can recover his actual costs including legal costs for investigating complaints: section 155(4)(d) of the BPCPA. I am unaware of any reason this should not occur in this case. The Authority can provide written submissions regarding costs to me within 30 days of this decision being issued, with a copy to Mr. Dumaine and Lake Country. Mr. Dumaine and Lake Country will have 30 days to provide a written response within 30 days of receiving, or being deemed to have received, the Authority's submissions.

C. Administrative Penalty

[84] At the time of the conduct under review, there was no administrative penalty regime for breaching the Consignment Regulation. That regime became law on January 1, 2018. I am unable to impose an administrative penalty as a deterrent on Lake Country and Mr. Dumaine, or the industry generally, for their breaching the Consignment Regulation prior to January 1, 2018: *Thow v. B.C. (Securities Commission)* 2009 BCCA 46 (BC Court of Appeal).

[85] For a breach of the BPCPA, I may order an administrative penalty to deter similar conduct in the future. These provisions were in place at the time of the conduct in question. Deterrence can be directed against the specific person or on the industry generally. Given my below decision to cancel the registration of Lake Country and the salesperson licence of John Dumaine, my focus is deterrence on the industry generally.

- *Partin & Glassco v. Carmel Custom Contracting Ltd. dba Mill Bay Motors* (Hearing File 18-03-001, Registrar, July 6, 2018)

[86] In assessing an administrative penalty, I am to have regard to the factors noted in section 164(2) of the BPCPA, and the whole of the case. I now turn to a consideration of those factors. I will apply the facts together on Lake Country and Mr. Dumaine.

1. Section 164(2)(a) – previous enforcement of a similar nature

[87] Lake Country entered into an Undertaking in relation to Case File 10-70005. Lake Country was alleged to have represented to a consumer that they had to make a \$200 deposit, but instead charged a \$2,000 deposit on the consumer's credit card. The dealer undertook to refund the \$1,800, take re-education, pay \$2,000 towards the investigation costs, and pay a \$500 administrative penalty for breaches of the *Business Practices and Consumer Protection Act*.

2. Section 164(2)(b) - the gravity and magnitude of the contravention

[88] The gravity – the seriousness – of the contravention is high. Lake Country and Mr. Dumaine agreeing to sell Ms. Scott's vehicle on her behalf and failing to pay her the proceeds is a breach of trust. It is a breach of trust that diminishes consumer's confidence in the industry. It is a breach of trust that impacts on the entire industry's reputation. The gravity is also high as Ms. Scott was and continues to make payments on the Dodge to the bank. A fact that Mr. Dumaine admitted knowing. She continues to suffer damages.

[89] The magnitude of the breach is high in relation to Ms. Scott. Ms. Scott owes a significant amount of money on the Dodge. The ability to pay \$43,470 towards that loan would have reduced her financial burden significantly. However, this case is not like a misrepresentation in mass marketing to thousands of persons. Overall, I find the magnitude of the contravention to be on the low end.

3. Section 164(2)(c) - the extent of the harm to others resulting from the contravention;

[90] On the evidence presented, the harm from this contravention is confined to Ms. Scott.

4. Section 164(2)(d) - whether the contravention was repeated or continuous;

[91] Lake Country and Mr. Dumaine continued to make the misrepresentations noted in this decision throughout the investigation, at the hearing of this case, and re-affirmed their positions in their written submissions. Lake Country and Mr. Dumaine's breaches have been continuous and repeated.

5. Section 164(2)(e) - whether the contravention was deliberate;

[92] On the evidence presented, the contravention was deliberate. On the facts, it is simply unbelievable that Mr. Dumaine or Lake Country made a mistake or was negligent about whether they loaned someone \$22,000.

6. Section 164(2)(f) - any economic benefit derived by the person from the contravention;

[93] Based on the facts presented, Lake Country and Mr. Dumaine have not benefited economically from this transaction. The proceeds of sale are held by Vancouver Auto. The attempt here was for Lake Country to keep \$22,000 of the sale proceeds.

7. Section 164(2)(g) - the person's efforts to correct the contravention;

[94] Lake Country and Mr. Dumaine took the position that they were owed \$22,000 from the proceeds of sale. When the dispute arose, they asked Vancouver Auto to hold the proceeds of sale. There was really no effort by Lake Country or Mr. Dumaine to correct the contravention.

8. Consideration of the whole case

[95] This case is about a breach of a consumer's trust and Lake Country's and Mr. Dumaine's misrepresenting the consumer's rights and the dealer's restrictions within the consumer transaction – a consignment sale.

[96] The case is not all that dissimilar from the recent case of *Partin & Glassco v. Carmel Custom Contracting Ltd. dba Mill Bay Motors*. In *Partin*, the dealer agreed to sell the consumer's vehicle on consignment, even though they were restricted from selling on consignment. There too, the dealer did not use a consignment agreement and failed to pay out all the proceeds of the sale. The dealer in *Partin* misrepresented the consumer's rights in a consignment sale. The section 164(2) BPCPA factors in *Partin* are almost identical to this case. Finally, the dealer and salesperson in that case were unlicensed; and the administrative penalty ordered was mostly focused on deterring the industry. The administrative penalty imposed was \$5,000. I see no reason why that precedent should not be followed.

[97] Lake Country Motor Sports Ltd. is assessed and ordered to pay a \$5,000 administrative penalty.

[98] I am declining to order the penalty against John Dumaine as his conduct, as a directing mind of Lake Country, is attributable to Lake Country. As in the *Partin* case, the cancellation of his salesperson licence noted below addresses his personal conduct in this case.

D. Lake Country Motor Sports Ltd.'s motor dealer registration

[99] Evidence presented by Mr. Dumaine shows that Lake Country is no longer operating as a motor dealer at its registered location. During a break at the hearing, the regional compliance officer issued Lake Country a violation ticket for failure to display a sign at its location. There is a different dealership name on the building. Section 10 of the *Motor Dealer Act* requires a motor dealer, who has ceased operating as such, to surrender their registration and request its cancellation. Failing to display a sign at the business premises is a good indication that the business is not operating.

[100] The Authority's written submissions highlight concerns with the past conduct of Lake Country, going to its governability. I also note that the conduct of Mr. Dumaine and Lake Country, during the hearing and in their written submissions. Especially stating that they had sought an adjournment, when they had not. This too places into question their governability and shows a disregard for the licensing regime within which they operate. There is no indication of remorse or of a desire to change their ways. It is my opinion that no condition on registration can effectively deter such future conduct. It is my opinion that no administrative penalty can deter such future conduct. Lake Country and Mr. Dumaine came to the hearing on notice that they could face conditions and administrative penalties. That did not deter their conduct, during the hearing or in their written submissions.

[101] The conduct displayed by Lake Country in this case is a breach of a consumer's trust. Knowing the conduct in question, the facts of the case, the dealer's history, and the dealer's conduct at and after the hearing, the consumers of British Columbia would not have faith that the dealership would continue to operate in accordance with the law, with honesty and with integrity.

[102] With the above in mind, it is my opinion that the motor dealer registration of Lake Country Motor Sports Ltd., dealer number 9740, should be cancelled to protect the public interest and is so ordered effective of the date of this decision.

E. John Dumaine's salesperson licence

[103] John Dumaine championed the consumer transaction and the case before the Registrar on behalf of Lake Country. Mr. Dumaine is an owner of Lake Country and a directing mind of the dealership. His conduct reflects not only on Lake Country, but on him personally.

[104] The discussions at paragraphs [99] to [102] above apply equally to Mr. Dumaine, personally. For those same reasons, and because he does not appear to be using his salesperson licence as his dealership is not operating, I find it necessary to cancel his salesperson licence number 103631 and is so ordered effective the date of this decision.

F. Lake Country's and John Dumaine's re-applying

[105] If Lake Country re-applies for registration as a motor dealer, the application is to be brought before the registrar, at a hearing, for consideration.

[106] If John Dumaine should re-apply for a salesperson licence, the application is to be brought before the registrar, at a hearing, for consideration.

[107] If John Dumaine should apply to register another legal entity as a motor dealership or have an ownership stake or become an officer or director of a motor dealership, any such applications are to be brought before the registrar, at a hearing, for consideration.

VI. Review of Decision

A. Reconsideration under the BPCPA

[108] The compliance order and administrative penalties issued under the authority of the BPCPA may be reviewed by requesting a reconsideration pursuant to sections 181 and 182 of the BPCPA. Such a request must be made within 30 days of receiving the later of this decision or a copy of the administrative penalty and compliance order. The request must identify the grounds for requesting reconsideration and be accompanied with the new evidence as required by those two sections.

B. Reconsideration under the Motor Dealer Act

[109] The determination to cancel Lake Country's registration as a motor dealer and John Dumaine's salesperson licence may be reviewed by requesting a reconsideration, pursuant to sections 26.11 and 26.12 of the *Motor Dealer Act*. That request must be made within 30 days of receiving these reasons or a Notice of Cancellation, whichever is later. The request must identify the error that is believed to have occurred or any other grounds for the request. The request must be accompanied with the new evidence as required by those sections of the Act.

C. Judicial Review

[110] The entirety of this decision may be reviewed by petitioning the B.C. Supreme Court for judicial review, pursuant to the *Judicial Review Procedure Act*. Filing such a petition must occur within 60 days of this decision being issued: section 7.1(t) of the *Motor Dealer Act*.

VII. Conclusion

[111] From the forgoing, I have found that:

- (a) Lake Country conducted a consignment sale of Nancy Scott's Dodge, contrary to the restriction on its motor dealer registration, in breach of section 4(4) of the *Motor Dealer Act*;
- (b) Lake Country did not complete and provide to Nancy Scott a written consignment agreement, in breach of section 2 of the *Motor Dealer Consignment Sales Regulation*;
- (c) Lake Country failed to disperse the proceeds from the sale of the Dodge in the manner required by section 6 of the *Motor Dealer Consignment Sales Regulation*;
- (d) Lake Country and John Dumaine committed a deceptive act or practice by failing to state a material fact by failing to advise Nancy Scott that Lake Country was restricted from conducting consignment sales, contrary to section 5(1) of the *Business Practices and Consumer Protection Act*;
- (e) Lake Country and John Dumaine committed a deceptive act or practice by failing to state a material fact, by failing to advise Nancy Scott of her statutory rights in the form of a consignment agreement as required by the *Motor Dealer Consignment Sales Regulation*, contrary to section 5(1) of the *Business Practices and Consumer Protection Act*; and
- (f) Lake Country and John Dumaine committed a deceptive act or practice by misrepresenting to Nancy Scott that she owed Lake Country and John Dumaine \$22,000 for a loan on the Dodge, which was untrue, and which would be deducted from the proceeds of the sale of the Dodge, contrary to section 5(1) of the BPCPA.

[112] A compliance order is issued, requiring Lake Country and John Dumaine to pay Ms. Scott, \$44,455.44 for her losses due to the breach of the *Business Practices and Consumer Protection Act*.

[113] Because of the above breaches of the *Business Practices and Consumer Protection Act* and the facts of this case, a \$5,000 administrative penalty is ordered against Lake Country.

[114] Because of the above findings, the concerning history regarding Lake Country's governability, and that it does not appear to be operating a motor dealership; the motor dealer registration of Lake Country is canceled.

[115] John Dumaine is the source of Lake Country's troublesome conduct. This speaks to his unsuitability to be licensed as a salesperson. Accordingly, his

salesperson licence is canceled for the same reasons that Lake Country's registration is canceled.

Date: August 10, 2018

Original Signed

Ian Christman, J.D.
Registrar of Motor Dealers