



Neutral Citation: 2015 BCRMD 002

**RE: THE *MOTOR DEALER ACT* R.S.B.C. 1996 C. 316 and the  
*BUSINESS PRACTICES AND CONSUMER PROTECTION ACT* S.B.C. 2004 C. 2**

**WEN LI XU, dba GOLDEN YEAR AUTO BROKER  
(Dealer #30468)**

Motor Dealer

AND:

**BO (BILL) PAN  
(Salesperson #107597)**

Salesperson

**DECISION OF THE REGISTRAR OF MOTOR DEALERS**

**Date and Place of Hearings:** February 18, 2015, at Surrey, British Columbia

**Appearances for:**

Wen Li Xu, dba Golden Year  
Auto Broker

Wen Li Xu

Bo (Bill) Pan

In person

Vehicle Sales Authority

Daryl Dunn, Manager of Compliance and  
Investigations

Carrie Vandokkumburg, Compliance Officer

Larry Barteski, Compliance Officer

Chris Coleman, Consumer Services Officer

**Introduction**

[1] A hearing was called to review the motor dealer registration of Wen Li Xu, dba Golden Year Auto Broker (“Golden Year”) and the salesperson license of Bo (Bill) Pan for infractions of the *Business Practices and Consumer Protection Act* (“BPCPA”), infractions of the *Motor Dealer Act Regulation* (“MDA-Regulation”) and their conduct for failure to ensure two vehicles offered and advertised for sale met the minimum safety requirements of the *Motor Vehicle Act* (“MVA”).

[2] Summarizing the allegations in the Hearing Notice (Exhibit 1) provided to Golden Year and Bo (Bill) Pan (collectively the “Respondents”); that in relation to a 2014 Mazda CX-5 (the “Mazda”) and a 2012 Toyota Camry (the “Toyota”), the Respondents did misrepresent the Mazda and Toyota by:

- (a) advertising the Mazda as in “new car condition” and the Toyota as “like new” and displayed them for sale on the dealer’s lot, and
- (b) advertising and representing the Mazda and Toyota as suitable for transportation when they were not contrary to the BPCPA, the MDA-Regulation and the MVA.

### **Preliminary Matter - Jurisdiction**

[3] The hearing in this matter was originally scheduled for January 7, 2015. On December 15, 2014, by email to Mr. Dunn, the Respondents requested an adjournment of the January 7, 2015 hearing because they would be out of the country. In their email, the Respondents noted they would be voluntarily surrendering Golden Year’s motor dealer registration on Monday December 22, 2014.

[4] Mr. Dunn for the Authority did not object to the adjournment but noted the Vehicle Sales Authority (the “Authority”) intended to continue with the hearing as the Respondents had signed an Undertaking in a previous matter in regards to selling unsafe vehicles.

[5] On December 16, 2014, I granted the adjournment and made clear that the safety of consumers was paramount. The adjournment was granted based on the dealer voluntarily cancelling its motor dealer registration; which they eventually did. I also noted that as the Authority had commenced an investigation and a hearing was set, I would retain jurisdiction to complete the hearing process: *Abouadallah v. College of Dental Surgeons of Saskatchewan* [2011 SKCA 99](#) (Saskatchewan Court of Appeal), leave to appeal to the SCC refused (April 12, 2012, SCC No. 345080), [2012 CanLII 18864](#) (Supreme Court of Canada).

[6] On January 1, 2015, the salesperson licence of Bo (Bill) Pan, licence #107597 expired and was not renewed.

[7] I continued with the hearing of February 18, 2015 on this basis.

### **Basic Facts**

[8] On October 23, 2014, Peace Officer Jim MacMillan, a supervisor with the Commercial Vehicle Safety and Enforcement branch of the B.C. Ministry of Transport contacted the Authority advising of their concern that Golden Year was offering for sale and selling vehicles to the public that were not safe. By not safe, the motor vehicles were not in compliance with the minimum safety standards of the MVA.

[9] On that same day, VSA Compliance Officer, Carrie Vandokkumburg, and Officer, Jim MacMillan, attended the lot of Golden Year and spoke with Bo (Bill) Pan, who is the husband of Wen Li Xu, requesting to inspect four vehicles Golden Year had on display for sale. After some back and forth about allowing the inspection at a facility with a vehicle hoist, Golden Year agreed to the inspections which were conducted at the designated inspection facility - Key West Ford.

[10] After the four vehicles were inspected, the Mazda and the Toyota failed their inspections (they were not compliant with the MVA), and the other two vehicles passed the inspection. The inspections on both the Mazda and the Toyota indicated a few issues including potential frame issues evidenced by a difference in the length of their wheel base.

[11] Officer MacMillan hand-delivered to Bo (Bill) Pan two Notices and Orders issued to Golden Year to:

- (a) Have the Mazda inspected by West Coast Frame and Alignment, and
- (b) Have the Toyota inspected by West Coast Frame and Alignment or an OEM [Original Equipment Manufacturer i.e. Toyota Dealer].

Officer MacMillan noted that Mazda generally does not have the facilities to complete an inspection or repairs where frame issues are noted. A Notice and Order is issued under the authority of the *Motor Vehicle Act*. It is an offence to operate a vehicle contrary to the Notice and Order and to disobey a Notice and Order

[12] Golden Year did not have the Toyota and Mazda inspected at the facilities noted in the Notices and Orders. Bo (Bill) Pan said it was too expensive to have the Mazda and Toyota inspected at the noted facilities, and instead had them inspected at Ram's Auto Body which was the collision repair facility that rebuilt the Mazda and the Toyota from salvage.

[13] Since the December 2014 adjournment of this matter and the surrendering of Golden Year's motor dealer registration, the Authority became concerned Golden Year was continuing to sell motor vehicles while not registered as a motor dealer contrary to the *Motor Dealer Act* ("MDA"). On January 21, 2015, Chris Coleman, VSA Consumer Services Officer, posed as a potential buyer and conducted a "secret shop" at Golden Year's lot.

## **Issues**

[14] Based on the allegations and the basic facts noted above, the issues to be decided are:

- (a) Did Golden Year and Bo (Bill) Pan advertise and display for sale the Toyota and Mazda contrary to the MDA Regulation when they were unsuitable for transportation because they were not compliant with the *Motor Vehicle Act*?
- (b) Did Golden Year and Bo (Bill) Pan breach the BPCPA by representing the Toyota as "like new" and the Mazda as in "new car condition" without qualifying those representations by noting they were rebuilt vehicles?
- (c) Are Golden Year and Bo (Bill) Pan in breach of their Undertaking dated September 24, 2013?
- (d) Did Golden Year and Bo (Bill) Pan act as a motor dealer while unregistered?
- (e) If I find Golden Year and/or Bo (Bill) Pan were in non-compliance for any of these reasons, what is the appropriate enforcement measure to protect the public interest?

## The Law

### (a) Motor Vehicle Act and MDA Regulation – Not Suitable for Transportation

[15] No person (including motor dealers) may offer for sale, display for sale or sell to another person a motor vehicle for use on the roads unless it meets the minimum safety requirements of the *Motor Vehicle Act* and **all** its regulations:

#### Motor Vehicle Act

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.

[16] One of those regulations is the *Vehicle Inspection Regulation* B.C. Reg. 256/2010. The Schedule attached to that Regulation is the Vehicle Inspection Manual which contains the required standards, criteria and guidelines regarding components of a motor vehicle and their inspection.

[17] Section 8.01 of the *Motor Vehicle Act Regulation* places a similar burden on a person in the business of selling motor vehicles (such as a motor dealer) to ensure a motor vehicle meets the minimum requirements of that Regulation:

## 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.

[18] It is an offence to operate a motor vehicle on the roads that is not in compliance with the MVA. If a vehicle is not compliant with the MVA at the time of the sale (or when displayed for sale), the vehicle is legally "Not Suitable for Transportation".

[19] A motor dealer is under a positive duty to ensure a motor vehicle being offered for sale meets the safety requirements of the MVA and **all** its regulations. A motor dealer who does not ensure the safety of a motor vehicle, may lose its registration especially where there are repeated instances of selling unsafe vehicles without disclosing "Not Suitable for Transportation": [Re: Parkwood Auto Sales Ltd. et al.](#) (Registrar, August 6, 2010, File Nos. 07-70285A, 07-70263A, 08-70631A and 08-70997A).

[20] If a motor dealer sells a used motor vehicle, it must declare on the purchase agreement that the motor vehicle meets the requirements of the *Motor Vehicle Act*: section 21(2)(e) MDA Regulation.

[21] If a motor dealer intends to sell a motor vehicle that is not compliant with the MVA, then it must do so by giving notice:

- (a) in every written representation about the motor vehicle including, advertisements, purchase agreements, contracts, transfer documents or any other written representation about the motor vehicle that it is "*not suitable for transportation and sold for parts only or purposes other than transportation*": section 22 MDA-Reg., **and**
- (b) on the motor vehicle itself by using the words "*Not Suitable for Transportation*": section 27(b) MDA-Reg.

[22] Given the legislative landscape, and simple common sense, whether or not a vehicle is legally suitable for transportation is a material fact. See the common law test for materiality in [Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.](#) 2011 SCC 23, [2011] 2 SCR 175 (Supreme Court of Canada) and applied in [Sovereign v. Nanaimo Chrysler et al](#) (Registrar, June 12, 2013, Hearing File 12-029, Investigation File 12-70282) at para. 17.

[23] A consumer may assume that if nothing is said about a motor vehicle being offered for sale, that it is suitable for transportation, especially given the legislative landscape noted above: [Androssoff v. Parkwood Auto Sales Ltd.](#) (Registrar, August 6, 2010, File # 08-70631) and see [Applewood Motors Inc. v. Ratte and The Registrar of the Motor Dealer Council of B.C.](#) (April 13, 2010, SCBC No. S094126, Vancouver Registry) (B.C. Supreme Court) at paragraph 34. As stated by Judge Gulbransen:

[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.)

#### **(b) Misrepresentations under the BPCPA**

[24] A motor dealer and a salesperson are to refrain from making misrepresentations which are deceptive acts or practices under the *Business Practices and Consumer Protection Act*. A deceptive act or practice can occur innocently, negligently or deliberately.

[Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia](#), 2014 BCSC 894 (BC Supreme Court) at paragraphs 28 – 30

[Cummings v. 565204 B.C. Ltd. dba Daewoo Richmond](#), 2009 BCSC 1009 (BC Supreme Court) at paragraphs 20 – 22

[Mikulas v. Milo European Cars Specialist Ltd.](#) 1993 CanLII 183 (BC Supreme Court), affirmed by [1995 CanLII 2431](#) (BC Court of Appeal)

[25] If it is alleged that a deceptive act or practice has been committed by a motor dealer or a salesperson, the onus is on them to prove they did not commit the deceptive act or practice: section 5(2) of the BPCPA and see [Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia](#) 2014 BCSC 894 (B.C. Supreme Court) and [Cummings v. 565204 B.C. LTD dba Daewoo Richmond](#) 2009 BCSC 1009 (BC Supreme Court).

[26] It is a deceptive act or practice in breach of the BPCPA to indicate a vehicle is suitable for transportation and compliant with the MVA when it is not: [Cummings v. 565204 B.C. LTD dba Daewoo Richmond](#) 2009 BCSC 1009 (BC Supreme Court), and [Androssoff v. Parkwood Auto Sales Ltd.](#) (Registrar, August 6, 2010, File # 08-70631).

[27] It is not necessary for a consumer to have suffered a loss for a deceptive act or practice to have occurred: [Sovereign v. Nanaimo Chrysler et al](#) (Registrar, June 12, 2013, Hearing File 12-029, Investigation File 12-70282) and [Robson v. Chrysler Canada, Oshaneck v. General Motors](#) 2001 BCSC 40 (BC Supreme Court) at paragraph 34.

[28] If a motor dealer or salesperson has been found to have committed a deceptive act or practice, an administrative penalty of up to \$50,000 can be levied on a company and a penalty of up to \$5,000 can be levied on an individual: section 165 of the BPCPA.

[29] If a motor dealer has committed a deceptive act or practice, it is a ground to cancel their registration: section 8.1(4)(b) *Motor Dealer Act*. This same seriousness applies to a salesperson.

### **(c) Undertakings under the BPCPA**

[30] An undertaking is provided for in section 154 of the BPCPA. It is an instrument to allow a regulated person to voluntarily comply with certain conditions to ensure compliance with that Act, compensate consumers for any loss they have suffered, reimburse investigation or hearing costs or any other term or condition deemed appropriate by the Registrar.

[31] An undertaking can be filed in the B.C. Supreme Court and once filed is an order of that court.

[32] If a motor dealer or salesperson is in breach of an undertaking, an administrative penalty may be imposed as noted in sections 164-165 of the BPCPA. Further, the Registrar may take other steps to deal with the breach such as add conditions to the motor dealer registration or a salesperson licence, suspend their registration/license or cancel their registration/license: section 5 *Motor Dealer Act* and section 6 *Salesperson Licensing Regulation* B.C. Reg. 241/2004.

**(d) Operating as a motor dealer while unregistered**

[33] If a person is acting as a motor dealer (as defined in the MDA), then they must be registered pursuant to the *Motor Dealer Act*. The definition of "motor dealer" is broad:

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

(a) engages in the sale, exchange or other disposition of a motor vehicle, whether for that person's own account or for the account of another person, to another person for purposes that are primarily personal, family or household,

(b) holds himself, herself or itself out as engaging in the disposition of motor vehicles under paragraph (a), **or**

(c) solicits, offers, advertises or promotes with respect to the disposition of motor vehicles under paragraph (a),

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

[34] Displaying or advertising a vehicle for sale is captured by this definition.

[35] Operating as a motor dealer, while not registered, is an offence punishable by a \$200,000 fine for a corporation or a \$100,000 fine and/or 6 months incarceration for an individual: section 35.1 *Motor Dealer Act*.

[36] A person who acts as a motor dealer while not registered, especially knowing they have to be registered, is a concern for the public interest as it indicates a willingness to break the law, and gives the Registrar concern that the person will not act in accordance with the law, will be ungovernable and will not act with honesty and integrity: [Re: Peter Fryer](#) (Registrar of Motor Dealers, December 13, 2013, File No. 13-11-005) affirmed by [Fryer v. Motor Vehicle Sales Authority](#) 2015 BCSC 279 (B.C. Supreme Court).

**(e) Assessing Witness Credibility**

[37] I keep in mind the guidance of the courts when assessing the credibility of witness testimony: [Bradshaw v. Stenner](#), 2010 BCSC 1398 (BC Supreme Court) at paragraphs 186 – 187.



## Discussion

### (a) *Motor Vehicle Act* and MDA Regulation – Not Suitable for Transportation

[38] Golden Year purchased the Mazda from ICBC as salvage and purchased the Toyota from Impact Auto as salvage. Both vehicles were rebuilt by Ram's Auto Body: Inspection Reports attached as Exhibits C and D of the Affidavit of Vandokkumburg (the "Affidavit").

[39] The provincially mandated inspection of the rebuilt Mazda is noted as being performed at Gord's Auto (Facility # S4215) and the inspector # was M02613. The structural integrity declaration was made by a R. Rahan, and the wheel alignment with printout shows Gord's Auto Repair: Exhibit C of the Affidavit.

[40] The provincially mandated inspection of the rebuilt Toyota is noted as being performed at Gord's Auto (Facility # S4215), and the inspector # was M02613. The structural integrity declaration was made by a R. Rahan and the wheel alignment with printout shows Gord's Auto Repair: Exhibit D of the Affidavit.

[41] Officer MacMillan of the CVSE requested that the Toyota and Mazda and two other vehicles be re-inspected for compliance with the *Motor Vehicle Act* at a designated inspection facility. After those inspections were completed, two vehicles passed the re-inspection and the Mazda and Toyota failed. A Notice and Order for a full re-inspection was issued for the Toyota and for the Mazda and hand-delivered by Officer MacMillan to Bo (Bill) Pan: Exhibit G of the Affidavit and the testimony of Officer MacMillan. Bo (Bill) Pan indicated he received those Notices.

[42] The Mazda was ordered to be inspected at West Coast Frame and Alignment with the following issues noted as being not compliant with the *Motor Vehicle Act*:

- (a) Wheelbase has 8 mm difference,
- (b) Kink at right frame rail, and
- (c) Front bumper stiffener missing.

Officer MacMillan indicated in his testimony that Mazda dealers typically do not look at these types of issues.

[43] The Toyota was ordered to be inspected at West Coast Frame and Alignment or OEM [original equipment manufacturer] with the following issues noted as not compliant with the *Motor Vehicle Act*:

- (a) 10 mm difference in wheel base
- (b) Right upper strut tower not repaired improperly [sic], and
- (c) Front door jams have more than 3 mm space between door and fender.

[44] The reverse of both Notices and Orders make it clear that the re-inspection must be completed at a designated inspection facility by an authorized inspector. It also notes that non-compliance with the two Notices and Orders is an offence.

[45] Mr. Bo (Bill) Pan raised concerns with the inspections done at Key West Ford and overseen by the B.C. Ministry of Transportation's CVSE.

[46] First, he says the four inspections were done in about 4 hours which is too fast considering having to ferry vehicles back and forth. I have no evidence to suggest how much time it does take to do an inspection for compliance with the *Motor Vehicle Act*. This is simply Mr. Bo (Bill) Pan's opinion without an evidentiary foundation. I cannot accept that argument.

[47] Second, Mr. Bo (Bill) Pan says the use of a tape measure to check wheel base differences is inappropriate. You need to use computers and lasers. Again, this is an opinion of Mr. Bo (Bill) Pan with no evidentiary foundation. I cannot accept that argument.

[48] Third, Mr. Bo (Bill) Pan tendered evidence that the conclusions by the inspector at Key West Ford, overseen by the Ministry of Transport's CVSE, were wrong. Exhibit 8 is a letter ostensibly from Ram's Auto Body and signed by an unidentified person (the signature is not legible) with some attachments. That letter is in relation to the Mazda and states:

- (a) Wheel base difference – 0 mm
- (b) No kinks found on frame. A small dent was found on front rebar bracket (which was originally indicated and marked by the CVSSA [sic] inspectors);
- (c) Front bumper stiffener originally missing: This part has been replaced (Supplier: Metrotown Mazda; Invoice #: 28288; Parts #: KD53-50-0S0).

The attachments to the letter are:

- (a) The Metrotown Mazda invoice for the bumper stiffener,
- (b) An exploded parts diagram of the front bumper of a 2014 Mazda CX-5,
- (c) The original Provincial Vehicle Inspection for the Mazda found in Exhibit C of the Affidavit,

- (d) The original Gord's Auto Repair alignment printout found in Exhibit C of the Affidavit, and
- (e) The original Structural Integrity Declaration Report found in Exhibit C of the Affidavit.

[49] This letter from Ram's Auto Body (Exhibit 8) does not meet the requirements of the Notice and Order. That Order requires the Mazda be re-inspected by a designated inspection facility and by an authorized inspector. Section 25.13 of the *Motor Vehicle Act Regulation* requires the inspection to be completed on a form approved by the CVSE. That form (CVSE0013) requires identifying the designated inspection facility and its facility number along with the authorized inspector and the inspector's number: see the CVSE0013 in Exhibit C of the Affidavit. The letter provided by Bo (Bill) Pan (Exhibit 8) is not a proper re-inspection as required by B.C. law. The person who completed the re-inspection at Ram's Auto Body has not been identified in the letter and shown to be qualified to do a re-inspection. Officer MacMillan did provide evidence of those who inspected the Mazda at Key West Ford: the Notice and Order identifies the qualified inspector.

[50] Mr. Bo (Bill) Pan stated wheelbases should be measured with a laser and computer system. If the wheelbase difference was 0 mm as the letter (Exhibit 8) suggestions, why did the letter attach the original wheel alignment report of Gord's Auto found in Exhibit C of the Affidavit (which shows a wheel base difference of -2 mm) and not the one from Ram's Auto Body showing the 0 mm the letter states? Doing so would make common sense.

[51] I simply cannot accept this letter (Exhibit 8) as proof that the Notice and Order issued for the Mazda was in some way in error as the letter itself is not a valid provincial private vehicle inspection as required by the *Motor Vehicle Act*. It also does not allow me to look behind the letter at the qualifications of the writer expressing the opinions, nor inquire about the methods used to inspect the Mazda or determine what in fact was inspected (ex. alignment using lasers).

[52] I note the letter admits the bumper stiffener had to be replaced on the Mazda. This would actually confirm the Notice and Order that the Mazda was legally "Not Suitable for Transportation" at the time it was displayed and advertised for sale.

[53] Mr. Bo (Bill) Pan tendered as evidence a letter from Ram's Auto Body (Exhibit 9) indicating there were no issues with the Toyota as identified by the Key West Ford inspection and overseen by the Ministry of Transport. As with Exhibit 8, Exhibit 9 attached the original inspection report, structural integrity declaration and wheel alignment report found in Exhibit D of the Affidavit. The signature of the

person giving the opinion is not legible, nor does their name appear in the letter. As to wheelbase differences, the letter from Ram's (Exhibit 9) indicates the wheel base difference is 3 mm. The difference noted by Gord's Auto (Exhibit D) is 4 mm.

[54] As with the letter from Ram's about the Mazda (Exhibit 8), the letter from Ram's about the Toyota (Exhibit 9) is not compliant with B.C. law for a private vehicle inspection as required under the *Motor Vehicle Act*. It is just a letter expressing an opinion and attaching previous inspection findings and no indication of an actual re-inspection. The writer expressing the opinion is unknown as are his or her qualifications to make the opinion. Again, why would Ram's attach the wheel alignment report from Gord's Auto instead of the one that shows 3mm which based on the letter (Exhibit 9) Ram's itself must have done and presumably on a laser and computer system. For the same reasons that I cannot accept the letter from Ram's about the Mazda's re-inspection (Exhibit 8), I cannot accept the letter from Ram's about the Toyota's re-inspection (Exhibit 9) as somehow indicating the inspection done by Key West Ford and overseen by the Ministry of Transportation was somehow in error.

[55] Mr. Bo (Bill) Pan has admitted to not having the Mazda and Toyota inspected at the facilities indicated in the Notices and Orders. He said he felt those facilities (specifically, West Coast Frame and Alignment) charged too much. The rationale for specifying the re-inspection facility is obvious. One inspection facility (Gord's Auto) had passed these vehicles, and the inspector at Key West Ford failed them. Having a person, other than those persons, or the rebuilder, conduct the re-inspection avoids any issue of conflict of interest especially if any enforcement proceedings were to be undertaken.

[56] Mr. Bo (Bill) Pan also said that since receiving the Notices and Orders, and before the hearing, he transferred the Toyota to himself although it is not insured. The Mazda was transferred to a "friend of a friend." Mr. Bo (Bill) Pan says both vehicles passed a re-inspection compliant with the requirements of the *Motor Vehicle Act*, but he did not produce those reports at the hearing. That is very odd as one would expect Golden Year would produce copies of those reports as they would assist its position.

[57] I also find it very odd that Mr. Bo (Bill) Pan took the Mazda and the Toyota to the person who rebuilt the vehicles to have them re-inspected as indicated in Exhibits 8 and 9. Given we are dealing with vehicle and public safety and the potentially serious liability on Golden Year, if the rebuilder missed something, it seems more logical to have an independent person re-check the rebuilder's work and the inspection by Gord's Auto.

[58] Wen Li Xu provided a written statement at the hearing (Exhibit 10). The letter notes Wen Li Xu made this statement to her daughter in Mandarin Chinese, and her daughter translated the statement to English. In the statement, Wen Li Xu says the person at Ram's who re-inspected the Mazda and the Toyota was Raj Rahan. The statement notes that Raj Rahan is an ICBC licensed auto-body repairman, and that Ram's is an ICBC licensed auto body repair shop. Using my knowledge and experience in regulating the industry, I know that ICBC does not licence auto body repairers. Auto body repairers receive a qualification and certification as an auto body repair person through the Industry Training Authority of B.C. (ITA), if the person meets the standards and completes the training set by the ITA. However, auto body repairs are not a licensed industry. ICBC may certify a body shop as a Valet repair shop, but ICBC is not a licensing body. Even so, the Notices and Orders required that a designated inspection facility and a designated inspector re-inspect both the Toyota and the Mazda, but the statement of Wen Li Xu does nothing to confirm this took place.

[59] In her written statement, Wen Li Xu states they (Golden Year) require high standards and the highest quality when the body shops perform the rebuild repairs "without concern for keeping costs low." However, when questioned briefly at the hearing about why the Mazda and the Toyota were not taken to West Coast Frame and Alignment (or an OEM) for re-inspection as required by the Notices and Orders, Wen Li Xu said they were too expensive: Transcript of Proceedings, page 49. Earlier, Mr. Bo (Bill) Pan said West Coast Frame and Alignment was going to charge \$500 which was "too much for me. I just spent -- just spent three-fifty for inspection already": Transcript of Proceeding, page 46.

[60] The written statement of Wen Li Xu also states that the CVSE told them to have the Toyota and Mazda re-inspected after giving them the Notices and Orders because the CVSE said the results may not be completely accurate. This is the only time this evidence was provided. This was not corroborated by the evidence from Officer MacMillan or by Bo (Bill) Pan. Officer MacMillan was very clear in his testimony that the Mazda and Toyota did not meet the requirements of the *Motor Vehicle Act* upon the inspection done at Key West Ford and by the designated inspector at that location. There was no qualification made by Officer MacMillan in his testimony nor is any qualification noted in the Notices and Orders for the Toyota and the Mazda. I cannot accept this evidence of Wen Li Xu as it is contrary to the other oral and documentary evidence. It may be that Wen Li Xu misunderstood why the CVSE asked that the Mazda and the Toyota undergo a full re-inspection by a specialist in frame and structure, such as West Coast Frame and Alignment.

[61] I find on a balance of probabilities that at the time the Mazda and Toyota were displayed and advertised for sale by Golden Year, they did not meet the

minimum standards required by the *Motor Vehicle Act* and were legally “Not Suitable for Transportation”.

**(b) Misrepresentation under the BPCPA**

[62] Both the Mazda and the Toyota were advertised by Golden Year on Canadatrader.com: see pages 55 and 56 of the Affidavit exhibits.

[63] The Mazda was advertised as being in “new car condition.” The advertisement does not mention the Mazda was a rebuilt vehicle from salvage. The advertisement does not say the Mazda is “Not Suitable for Transportation” as is required by section 22 of the *Motor Dealer Act Regulation*.

[64] The Toyota was advertised as being “like new.” The advertisement does not mention the Toyota was a rebuilt vehicle from salvage. The advertisement does not say the Toyota is “Not Suitable for Transportation” as is required by section 22 of the *Motor Dealer Act Regulation*.

[65] When considering the impact of or message conveyed by an advertisement, it is the initial general impression that a credulous and unsophisticated consumer would have when seeing the advertisement. In reviewing the advertisement, I am to take into account the words used and their normal meaning, any emphasis placed on particular words by the advertisement and the general layout of the advertisement. The advertisement is not reviewed in detail as if it were a commercial contract.

[56] ...The courts must not approach a written advertisement as if it were a commercial contract by reading it several times, going over every detail to make sure they understand all its subtleties. Reading over the entire text once should be sufficient to assess the general impression conveyed by a written advertisement, and it is that general impression that will then make it possible to determine whether a representation made by a merchant constitutes a prohibited practice.

[Richard v. Time Inc.](#) [2012] 1 SCR 265, 2012 SCC 8 (Supreme Court of Canada)

[66] In the context of the *Fair Trade Act's* misrepresentation (deceptive act or practice) provisions, which has since been replaced by the *Business Practices and Consumer Protection Act*, the BC Court of Appeal reviewed past decisions and agreed with the following:

...In my view, the provisions of the Act must be construed so as to protect not only alert potential customers, but also those who are not alert, are unsuspecting and are credulous...

...I am of the view that the section must be taken to require that suppliers involved in the defined transactions refrain from any sort of potentially misleading statement, and that this must include an honestly-held opinion given in circumstances in which the supplier knows that giving the opinion without appropriate qualification may mislead...

...It was not, in my view, open to the defendant to describe the car as "a good vehicle", "one of the best of its kind" and "very nice", without appropriate qualification, when he had reason to suspect that there might be extensive rust, and that the rust had been coated over with brushed-on undercoating so as to render it incapable of discovery by ordinary examination...

...In describing the car as "a good vehicle", "one of the best of its kind" and "very nice", without saying that there might be extensive rust which could not be discovered except by stripping off the undercoating, Mr. Henneken must be said to have made a statement having "the capability, tendency or effect of misleading" within the meaning of s. 3(1)(b).

...It seems to me that where a seller has factual evidence gained from inspection suggesting that the thing offered may have a latent defect of great importance to the potential buyer, then to express a commendatory opinion without qualification must be "conduct having the capability of misleading", within the meaning of the section, because to adopt the words of Mr. Justice Hutcheon, cited above, such a statement must tend to lead the potential purchaser "astray into making an error of judgment".

[Rushak v. Henneken Auto Service and Sales](#), 1991 CanLII 178 (BC Court of Appeal)

The case of *Rushak* has been applied to the *Business Practices and Consumer Protection Act*; see for example [Cummings v. 565204 B.C. LTD., dba Daewoo Richmond](#) 2009 BCSC 1009 (BC Supreme Court) and *The Consumers' Association of Canada et al v. Coca-Cola Bottling Company et al*, [2006 BCSC 863](#), affirmed by [2007 BCCA 356](#) (BC Court of Appeal), leave to appeal to the SCC refused [2007 CanLII 66731](#) (Supreme Court of Canada).

[67] Finally, the BC Supreme Court noted that making a representation about a vehicle, and failing to state a material fact about that vehicle, which has the tendency or capability to mislead, is a deceptive act contrary to the *Business Practices and Consumer Protection Act*:

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

[\*Applewood Motors Inc. v. Ratte and The Registrar\*](#) (S.C.B.C. No. S094126, April 13, 2010, Vancouver Registry) (BC Supreme Court).

[68] In this matter, both the Mazda and the Toyota were legally not suitable for transportation and the advertisements failed to state that fact. Being not legally suitable for transportation is a material fact for a consumer to know. Further, both the Mazda and Toyota were advertised respectively as in “new car condition” or “like new” with no qualification that they were both rebuilt vehicles from salvage. A vehicle that has been written-off by an insurer due to extensive damage and then rebuilt is certainly a material fact that is important for a consumer to know before making a decision to purchase, or to even attend the dealership lot: [\*Sharbern Holding Inc. v. Vancouver Airport Centre Ltd.\*](#) defining “materiality”.

[69] I find on the evidence that Golden Year’s advertising the Mazda as in “new car condition” and the Toyota as “like new” without proper qualification was deliberately designed to attract consumers to the lot of Golden Year for these vehicles under a false impression about their condition or quality. By advertising the Mazda and Toyota in this manner, Golden Year failed to state material facts and committed deceptive acts or practices as defined in the *Business Practices and Consumer Protection Act*.

### **(c) Breach of Undertaking**

[70] On September 24, 2013, Golden Year (Wen Li Xu) and Bo (Bill) Pan entered into an Undertaking (see pages 57-59 of the Affidavit exhibits) that required they, among other things:

- (a) Comply with the *Business Practices and Consumer Protection Act* and the regulations made there under;
- (b) To ensure all material facts are disclosed to consumers prior to purchase of any motor vehicle;
- (f) To inspect all motor vehicles offered for sale prior to sale at an independent Government Licensed Inspection Facility for a period of six months from the date of this undertaking and to maintain records of inspections in the dealer file. (All used vehicle to be inspected prior to sale).



[71] The issues covered by the Undertaking were:

- (a) Selling a 2007 Honda Civic to a consumer which was found to be legally unsafe for transportation, representing to the consumer that the Honda was safe and Golden Year knew the vehicle was a rebuilt from salvage vehicle, contrary to the *Business Practices and Consumer Protection Act*.
- (b) Selling a 2011 Mazda 3 to a consumer which was found to be legally unsafe for transportation, representing to the consumer that the Honda was safe and Golden Year knew the vehicle was a rebuilt from salvage vehicle, contrary to the *Business Practices and Consumer Protection Act*.

[72] In relation to the Mazda and the Toyota advertisements, I have found Golden Year has made misrepresentations (deceptive acts or practices) contrary to the *Business Practices and Consumer Protection Act*. I have specifically found Golden Year has failed to state material facts in their representations of the Mazda and the Toyota. I find that Golden Year (Wen Li Xu) is in breach of the Undertaking dated September 24, 2013.

**(d) Operating as a motor dealer while unregistered**

[73] On Monday December 22, 2014, Golden Year's motor dealer registration was voluntarily canceled.

[74] A person may not act as a motor dealer, as defined in the *Motor Dealer Act*, unless they are registered. Doing any of the following constitutes acting as a motor dealer:

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

(a) engages in the sale, exchange or other disposition of a motor vehicle, whether for that person's own account or for the account of another person, to another person for purposes that are primarily personal, family or household,

(b) holds himself, herself or itself out as engaging in the disposition of motor vehicles under paragraph (a), **or**

(c) solicits, offers, advertises or promotes with respect to the disposition of motor vehicles under paragraph (a),

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

[75] The staff of the VSA became concerned that Golden Year was selling motor vehicles while unregistered. On January 21, 2015, Consumer Service Officer Chris Coleman was asked to conduct a secret shop on Golden Year. Mr. Coleman was accompanied by Compliance Officer Larry Barteski who did not go on to Golden Year's lot. Both Mr. Barteski (Exhibit 7 at the hearing) and Mr. Coleman (Exhibit 5 at the hearing) submitted written reports and provided oral testimony.

[76] Mr. Coleman reports that he went on to Golden Year's lot to look at the vehicles on display. The gate to the lot was open and an Asian lady was in the business office and approached him. They had a short discussion where the Asian lady said they were closed and would be open in a month. Mr. Coleman said he needed a vehicle sooner and at this time, Mr. Bo (Bill) Pan arrived. Mr. Coleman recognized Mr. Pan from the profile picture of Mr. Pan on file at the VSA. The Asian lady and Mr. Pan spoke to each other in a language unfamiliar to Mr. Coleman and then Mr. Pan took over the conversation.

[77] Mr. Coleman said the following conversation with Bo (Bill) Pan took place (Exhibit 5):

- (a) Mr. Coleman said he was thinking of a Honda Accord or Toyota Camry that he showed interest in with the Asian lady. Mr. Bo (Bill) Pan suggested Mr. Coleman purchase a Toyota Camry hybrid over the Honda Accord as the Toyota would save him \$1,000 on fuel.
- (b) At this point, Mr. Coleman asked if Mr. Pan could actually sell the vehicle now as the lady (Wen Li Xu) said they could not. Mr. Pan said yeah and nodded his head.
- (c) Mr. Bo (Bill) Pan said the price was \$14,999 for the Camry and it had about 83,000 km and the vehicle had been rebuilt and showed Mr. Coleman areas of repair. Mr. Coleman asked if the price was negotiable and Mr. Pan said yes.
- (d) Mr. Coleman asked if he could test drive the vehicle. Mr. Pan said yes and walked towards the street. Mr. Coleman stated not at this time, he would like to have his wife at the dealership to also take the test drive. Mr. Bo (Bill) Pan provided Mr. Coleman a business card for Gold Year Auto Broker, noting "Bill Pan" as sales representative (Exhibit 6 at the hearing).

[78] After Mr. Coleman left Golden Years' location, he debriefed with Compliance Officer Larry Barteski. Mr. Barteski and Mr. Coleman (along with Compliance

Support Officer Bedi) returned to Golden Year to confront them with the results of the secret shop. Mr. Barteski notes that Bo (Bill) Pan and Wen Li Xu were surprised to see the three. The two became argumentative. According to Mr. Barteski's report, Bo (Bill) Pan and Wen Li Xu stated if Mr. Coleman wanted the car, they would have sold it to another dealer first, and then that dealer would have sold the car to Mr. Coleman. Bo (Bill) Pan and Wen Li Xu believed that way Golden Year would only be wholesaling the vehicle.

[79] Wen Li Xu's written statement does not mention the secret shop incident and she provided no additional evidence on this point at the hearing.

[80] Bo (Bill) Pan provided the following direct evidence at the hearing:

- (a) Mr. Coleman suggested he was in a rush and wanted his wife present for the deal.
- (b) Mr. Bo (Bill) Pan did show Mr. Coleman the vehicles as Mr. Coleman was in a rush.
- (c) When Mr. Coleman said he'd like his wife to look at the cars, Bo (Bill) Pan said he had to make an appointment as the dealership is closed until it opens in a month, and maybe next month as someone may be taking over the shop by then.

Transcript of Proceedings, pages 34-36.

[81] Under questioning from Mr. Daryl Dunn, and a few clarifying questions from myself, Bo (Bill) Pan stated, and I observed:

- (a) Golden Car Auto was applying for a motor dealer registration for the location occupied by Golden Year: Transcript of Proceedings, page 52.
- (b) When asked if Golden Year had transferred all its vehicles to Golden Car Auto at the time Mr. Coleman did his secret shop, Mr. Bo (Bill) Pan was evasive in answering the question and conferred with Wen Li Xu in a language unfamiliar to me before answering they had transferred all but two vehicles to Golden Car Auto by that time: Transcript of Proceedings, pages 53-54.
- (c) While Golden Year had wholesaled all but two of its vehicles to Golden Car Auto, they had no receipts, invoices or bills of sale as of yet: Transcript of Proceedings, page 54.
- (d) When Mr. Coleman looked at the Honda Accord and the Toyota Camry hybrid, they had already been wholesaled to Golden Car Auto: Transcript of Proceedings, page 55.

- (e) Mr. Bo (Bill) Pan would arrange to sell the Toyota Camry to another dealer in order to sell the Toyota Camry to Mr. Coleman if he wanted it quickly: Transcript of Proceedings, pages 56-57. This is in contrast to his direct evidence that he told Mr. Coleman to come back in a month.
- (f) Mr. Bo (Bill) Pan admitted he told Mr. Coleman the Toyota Camry was \$14,999: Transcript of Proceedings, page 58. When asked how he can set the price as the vehicle no longer belonged to Golden Year, he said the owner of Golden Car Auto would ask for the same price if he is allowed to sell retail: Transcript of Proceedings, page 58.
- (g) On a clarifying question from me, Mr. Bo (Bill) Pan said he did not have authorization from the new owner of the vehicles to speak about those vehicles or to sell them. Mr. Bo (Bill) Pan said he was just trying to be helpful: Transcript of Proceedings, page 59.

[82] Regarding whether Mr. Bo (Bill) Pan said Mr. Coleman had to wait a month or buy the vehicle through another dealer, I prefer the evidence of Mr. Coleman than the evidence of Bo (Bill) Pan for the following reasons:

- (a) Mr. Coleman's evidence was straight forward. It did not waiver and was mostly corroborated by the evidence of Mr. Bo (Bill) Pan. In contrast, Mr. Bo (Bill) Pan's evidence was evasive at times and was provided after consulting with Wen Li Xu.
- (b) Mr. Bo (Bill) Pan admitted the Toyota could be purchased for \$14,999. He did not contest Mr. Coleman's evidence that the price was negotiable. This is in contrast to other evidence suggesting the dealer said Mr. Coleman would have to wait a month when they re-opened.
- (c) Mr. Bo (Bill) Pan did not contest that Mr. Coleman received the business card from him at the end of their conversation about the Toyota Camry.
- (d) Mr. Bo (Bill) Pan provided a price of \$14,999 even though Golden Year did not own the vehicle and said the new owner would charge the same price. The price would also be the same even if Golden Year or Golden Auto Cars had to sell it to another dealer who would then resell it to Mr. Coleman. All this was possible when Mr. Bo (Bill) Pan does not have authorization to speak about or sell the vehicles owned by Golden Auto Cars. This simply does not make any sense. The evidence came across as manufactured in order to meet the facts and attempt to show Golden Year was not trying to sell to a consumer.

[83] In this case, Mr. Bo (Bill) Pan has admitted he spoke to Mr. Coleman about the Toyota Camry and provided him a price of \$14,999. This is certainly soliciting or offering a vehicle for sale as defined in paragraph (c) of the definition of "motor dealer."

[84] Mr. Bo (Bill) Pan provided Mr. Coleman a business card saying Golden Year Auto Broker and identifying Bo (Bill) Pan as a sales representative. This was provided after they had talked about the Toyota Camry and Mr. Coleman was provided a price of \$14,999. This is certainly holding Golden Year out as engaging in the disposition of motor vehicles as defined in paragraph (b) of the definition of motor dealer. An actual sale (or lease) of a motor vehicle is not necessary for a person to fall under the definition of "motor dealer."

[85] For the above reasons, I find on a balance of probabilities that Golden Year held itself out and solicited or offered a motor vehicle for "sale" satisfying the definition of "motor dealer" in the *Motor Dealer Act*. I find they did so while not registered under that Act. Golden Year and Bill (Bo) Pan certainly know they would have to be registered as motor dealers when acting as one.

### **(e) Compliance**

[86] There are four main issues to deal with based on my above findings. First, what action should be taken for advertising the Toyota as "like new" and the Mazda as in "new car condition"? Second, what action should be taken for offering vehicles for sale that do not meet the requirements of the *Motor Vehicle Act* – "not suitable for transportation"? Third, what action should be taken for breaching the Undertaking dated September 24, 2013? Fourth, what action should be taken for Golden Year selling while an unregistered motor dealer and failing to abide by the Notices and Orders?

#### **(1) Advertising the Toyota "like new" and the Mazda as in "new car condition" & failing to state "not suitable for transportation"**

[87] I have found Golden Year advertised the Toyota as "like new" and the Mazda as in "new car condition" without qualifying that those vehicles were rebuilt from salvage. I found this to be a deceptive act or practice as it could lead consumers to believe their quality and past history were better than they were. This could lead consumers to attend the dealership only to discover the vehicles were not as advertised. I also have found Golden Year did not provide notice in the advertisements that the Toyota and Mazda were "not suitable for transportation."

[88] As noted, Golden Year has surrendered their registration as a motor dealer. Therefore, adding conditions to its registration, suspending or canceling Golden Year's registration is not a viable enforcement option. In this case, there is a need not only for specific deterrence on Golden Year, but also general deterrence for the industry. In this regard, I believe an administrative penalty is appropriate to achieve these goals.

[Cartaway Resources Corp. \(Re\)](#), [2004] 1 SCR 672, 2004 SCC 26 (Supreme Court of Canada)

[Walker v. British Columbia \(Securities Commission\)](#), 2011 BCCA 415 (BC Court of Appeal)

[89] In assessing an administrative penalty, I am to consider the factors in section 164(2) of the *Business Practices and Consumer Protection Act*, as well as look at the facts of the whole case: [Knapp v. Crown Autobody & Auto Sales Ltd.](#) (Registrar, September 21, 2009, File 08-70578) affirmed by [Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia](#), 2014 BCSC 894 (BC Supreme Court).

**(a) *previous enforcement actions for contraventions of a similar nature by the person [s. 164(2)(a)];***

[90] Golden Year signed an Undertaking in 2013 regarding its offering unsafe motor vehicles for sale to consumers. However, there is no incident on record regarding advertising rebuilt motor vehicles as “like new” or “in new car” condition without qualifying that statement.

**(b) *the gravity and magnitude of the contravention [s. 164(2)(b)];***

[91] Both the Toyota and Mazda were misrepresented and there was no qualifier that these vehicles were rebuilt. This had the potential to mislead any consumer who saw Golden Year’s advertisement on the internet at Canadatrader.com. The magnitude of the misrepresentations is great, potentially reaching all British Columbians searching internet advertising for a used vehicle. The gravity of this is significant. Not only were the advertisements misleading about the quality of the two vehicles, the advertisements said nothing about the Toyota and Mazda being legally not suitable for transportation.

**(c) *the extent of the harm to others resulting from the contravention [s. 164(2)(c)];***

[92] In this case, there is no evidence that consumers were harmed due to the misleading advertising. The Toyota and the Mazda were identified by the CVSE for inspection prior to a consumer purchasing them.

**(d) whether the contravention was repeated or continuous [s. 164(2)(d)];**

[93] There is no evidence regarding how long these advertisements ran, whether they were reposted several times, or if this was the first and only time they were posted to the internet. I note that under section 9 of the *Business Practices and Consumer Protection Act Regulation*, an administrative penalty can be imposed on a daily basis for continuing contraventions, including each day a misleading advertisement runs.

**(e) whether the contravention was deliberate [s. 164(2)(e)];**

**(i) representations “like new” and “in new car condition”**

[94] The evidence is clear that Golden Year knew the Toyota and the Mazda were rebuilt from salvage. Mr. Bo (Bill) Pan noted he does not understand why the ads saying “like new” or in “new car condition” are wrong as the ads did not say they were new cars: Transcript of Proceeding, page 44. I would note that from the evidence, and the manner in which Bo (Bill) Pan defended the actions of Golden Year, it is clear he is a guiding mind of Golden Year.

[95] A dealer is taken to know the rules applicable to running their dealership and to have accepted to abide by those rules, as noted by the Supreme Court of Canada in a case involving a different licensed industry:

40 ...The licensing argument postulates that regulated actors entering a licensed field should be presumed to know of, and to have accepted, the terms and conditions relevant to the regulated area, and should therefore be held liable for breaching these terms and conditions. At page 229 of his judgment in *Wholesale Travel*, Cory J. described the licensing argument as follows:

The licensing concept rests on the view that those who choose to participate in regulated activities have, in doing so, placed themselves in a responsible relationship to the public generally and must accept the consequences of that responsibility. Therefore, it is said, those who engage in regulated activity should, as part of the burden of responsible conduct attending participation in the regulated field, be deemed to have accepted certain terms and conditions applicable to those who act within the regulated sphere. Foremost among these implied terms is an undertaking that the conduct of the regulated actor will comply with and maintain a certain minimum standard of care.

The licensing justification is based not only on the idea of a conscious choice being made to enter a regulated field but also on the concept of control. The concept is that those persons who enter a regulated field are in

the best position to control the harm which may result, and that they should therefore be held responsible for it.

Later, at pp. 239-40, he continued on the same theme:

The regulated actor is allowed to engage in activity which potentially may cause harm to the public. That permission is granted on the understanding that the actor accept, as a condition of entering the regulated field, the responsibility to exercise reasonable care to ensure that the proscribed harm does not come about. As a result of choosing to enter a field of activity known to be regulated, the regulated actor is taken to be aware of and to have accepted the imposition of a certain objective standard of conduct as a pre-condition to being allowed to engage in the regulated activity.

[R. v. Fitzpatrick](#), [1995] 4 SCR 154, 1995 CanLII 44 (Supreme Court of Canada)

[96] It is also incumbent on a motor dealer and a salesperson to become aware of their legal obligations. As a condition of obtaining a salesperson licence, all salespersons, including Mr. Bo (Bill) Pan, must attend a two day course on the legal obligations in selling a motor vehicle, including a module on advertising. That training, and specifically the advertising module, explains the impact of both the *Business Practices and Consumer Protection Act* and the federal *Competition Act* on advertising. Also, to assist the industry, the VSA produces plain language advertising guidelines and publishes it on its website. As Mister Justice Skolrood noted:

[59] In my view, it is incumbent upon a party that operates within a regulated industry to develop at least a basic understanding of the regulatory regime, including its obligations under the regime, as well as the obligations, and the authority, of the regulator.

[Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers](#), 2014 BCSC 903 (BC Supreme Court)

In a hearing before the Registrar, Acting Registrar Baker noted:

[106] ...The Advertising Guidelines are helpful for the industry in understanding its responsibilities under the legislation through the use of concrete examples, and provide useful guidance which dealers and salespeople ought to incorporate into their conduct to avoid possible contravention of the relevant legislation.



[MVSA v. AutoCanada Northtown Auto GP Inc., a general partner of Northtown Auto LP dba Northland Chrysler Jeep Dodge](#) (Registrar, Hearing File 13-08-001, May 23, 2014)

[97] Golden Year must be taken to know their legal obligations in advertising vehicles for sale, and Golden Year has been provided resources and training to aid it in doing so in a compliant manner. Bo (Bill) Pan's evidence confirms they knew what was being advertised, but simply feel there is nothing wrong with how the Toyota and the Mazda were advertised. I find the wording used in the ads for the Toyota and the Mazda were a deliberate choice.

***(ii) failing to state "unsuitable for transportation"***

[98] On the evidence, I do not find that Wen Li Xu dba Golden Year Auto Broker and Bo (Bill) Pan knowingly had the Toyota and Mazda rebuilt to a lesser standard than the one required by the *Motor Vehicle Act*. The evidence shows those vehicles were rebuilt at a repair facility with only a commercial affiliation with Golden Year and inspected at an independent designated inspection facility after they were rebuilt and inspected in accordance with BC law. Of the four vehicles inspected under the supervision of the Ministry of Transport's CVSE branch, two vehicles passed inspection. Based on the evidence before me, the best indication is the rebuilder may have been negligent in rebuilding the Mazda and Toyota, but there is insufficient evidence to say Wen Li Xu and Bo (Bill) Pan were aware of this or directed the sub-standard repairs.

[99] Under these facts, advertising the Toyota and the Mazda without noting they were not suitable for transportation would still be a breach of the *Business Practices and Consumer Protection Act* for failing to state a material fact: *Applewood Kia*. However, the evidence does suggest Golden Year acted in a due diligent manner by initially having an independent inspection completed at a designated inspection facility on the Toyota and the Mazda in order to ascertain whether they were suitable for transportation. For this reason, no administrative penalty can issue for failing to disclose "not suitable for transportation": section 10 of the *Business Practices and Consumer Protection Regulation* B.C. Reg. 294/2004.

***(f) any economic benefit derived by the person from the contravention [s. 164(2)(f)];***

[100] There was no evidence that Golden Year financially benefited from the advertisements for the Toyota and Mazda. In testimony, Bo (Bill) Pan stated the Toyota was transferred into his name, and the Mazda was sold to a friend of a friend after it was ostensibly re-inspected. There is no evidence of any economic benefit from the misrepresentations noted in this case.

***(g) the person's efforts to correct the contravention [s. 164(2)(g)]***

[101] The contravention was not corrected. In testimony, Golden Year and Bo (Bill) Pan do not believe their advertisements were wrong.

***(h) Overall considerations***

[102] Overall, the impression left by Bo (Bill) Pan and Golden Year was that they have not done anything wrong. Their testimony and actions show a lack of understanding of their legal obligations when it comes to advertising motor vehicles for sale even though Bo (Bill) Pan has completed training on this topic and there is a resource available to the Respondents to use. This fact and their admitted unwillingness to comply with the Notices and Orders for the Mazda and the Toyota, to save a few hundred dollars, left the very real impression that Bo (Bill) Pan and Golden Year feel that complying with the law was a burden to be resisted rather than to be abided by.

[103] In considering the amount of an administrative penalty, I also take into consideration the following decisions and undertakings:

- (a) The Undertaking of Golden Year of September 24, 2013 to abide by the BPCPA, disclose all material facts to consumers, and to, essentially, not sell unsafe vehicles. The agreed to administrative penalty was \$1,000 for two incidents plus costs of the investigation. An Undertaking is voluntary, is arrived at without a hearing (with the requisite cost savings) and on agreed facts. This impacts the amount of an administrative penalty flowing from an Undertaking, and is generally less than if a hearing occurs in order to encourage early settlement of regulatory issues.
- (b) The decision in [\*Ratte v. Applewood Kia\*](#) (Registrar, April 16, 2008) affirmed [\*Applewood Motors Inc. v. Ratte & Registrar \(B.C.\)\*](#) (April 13, 2010, S.C.B.C. No. S094126, Vancouver Registry) (BC Supreme Court). In *Applewood* the dealer was found to have committed a deceptive act contrary to the BPCPA by representing the truck had a remaining manufacturer's warranty on the vehicle but failed to state that the remaining warranty could be void as the truck had been rebuilt, which was in fact the case. The Registrar also found the consumer was not financially or otherwise harmed due to the misrepresentation and ordered a \$2,000 administrative penalty against the dealer plus costs of the investigation.

- (c) The decision in [\*Hurtubise v. Massive Truck Sales Ltd. & Sidhu & Sidhu\*](#) (Registrar of Motor Dealers, File 08-70288, August 18, 2008). In this case, the dealer and two salespersons were found to have deliberately sold an unsafe vehicle to a consumer. In that case, the dealer had similar prior enforcement actions and was assessed a \$20,000 administrative penalty, one salesperson who had no prior action was assessed \$1,000, and the other salesperson, who did not cooperate with the investigation, was assessed \$1,250.
- (d) In the cases of [\*Registrar v. Vancouver Chrysler\*](#) (Registrar, December 20, 2007, oral decision); [\*Registrar v. AutoCanada MR. Motors Inc. dba Maple Ridge Chrysler Jeep Dodge\*](#) (Registrar, December 11, 2007, oral decision) and [\*Registrar v. Bay City Kia\*](#) (Registrar, November 30, 2007, oral decision); the Registrar issued each dealer a \$10,000 administrative penalty for deceptive advertising. No consumers were involved in those cases.

[104] I also note that Golden Year has again breached the BPCPA even though it undertook not to do so, and the \$1,000 administrative penalty that was levied for the Undertaking has not acted as a sufficient specific deterrence.

[105] The manner in which the Toyota and the Mazda were advertised by Golden Year provided Golden Year an unfair competitive advantage over those dealers who properly advertise and declare vehicles.

[106] Finally, I note that Golden Year is a small independent dealer often called a “mom and pop” store within the industry. In considering the amount of an administrative penalty, an appropriate factor, out of the many to consider (including general deterrence), is its potential impact relative to the business’ approximate revenues and ability to pay. This individualizes the specific deterrent consideration of an administrative penalty.

[107] Overall, it is my opinion that a \$5,000 administrative penalty is sufficient to act as both a specific and general deterrent in this case. This amount is the highest allowed against an individual by legislation, but I note that Wen Li Xu was acting in her capacity as a business and not as just an individual like a salesperson. This amount does not reach the level of the \$10,000 penalties levied on the corporate new car dealers noted in paragraph 103(d) who could have been subject to \$50,000 administrative penalties, but it does reflect on this particular dealer’s ability to pay, and the legislated maximum. The sum of \$5,000 is still a substantial amount to act as a general deterrent on the industry. It addresses that the past \$1,000 administrative penalty did not have the desired deterrent effect on Golden

Year. It also addresses that this is the second breach of the *Business Practices and Consumer Protection Act* within 2 years, this breach is in relation to advertising issues, and that no individuals were actually placed in jeopardy of financial and physical harm as in the case of *Hurtubise*. I emphasize that the \$5,000 amount is not in any way addressing the failure to give notice of “not suitable for transportation” as no penalty can issue for that breach for the reasons noted in paragraphs 98 and 99 above.

[108] A Notice of Administrative Penalty in the amount of \$5,000 is ordered against Wen Li Xu doing business as Golden Year Auto Broker.

## **(2) Breach of Undertaking**

[109] Golden Year is in breach of its Undertaking for failing to abide by the BPCPA, which constitutes a separate breach from the deceptive advertising of the Toyota and the Mazda. This separate breach can attract its own separate administrative penalty: section 164(1)(f) of the BPCPA. In setting an appropriate administrative penalty, the same section 164(2) factors, a consideration of the need for specific and general deterrence and an assessment of the whole case, as detailed above, continue to be considerations for the administrative penalty for a breach of an Undertaking. I will not reproduce those considerations here.

[110] A further consideration is the importance to be placed on motor dealers abiding by the lawful undertakings they make under the BPCPA. Undertakings provide for an efficient, timely and cost effective means to remedy non-compliance, regain compliance, and ensure future compliance. This is not only beneficial to the industry, to the individual dealers who are the subject of an undertaking and to the VSA, but to the individual consumers who are seeking a remedy. It is also about confidence and trust that a motor dealer will honour its commitments in an Undertaking. If motor dealers are not properly held to account for breaches of their Undertakings, the efficacy of Undertakings will quickly erode as will consumer confidence in the utility of Undertakings, and the faith that consumers may have in the dealer’s promises contained within them.

[111] There are currently no comparator Registrar decisions involving administrative penalties for a breach of an Undertaking.

[112] Undertakings can be filed in the B.C. Supreme Court and be enforced as court orders. A breach of an undertaking can also be prosecuted as an offence: section 189(5)(c)(i) of the BPCPA. If prosecuted, an individual could be liable to a fine of \$10,000 or 12 months imprisonment or both. A corporation can be liable to a

fine of up to \$100,000. These factors help to understand the seriousness the BC Legislature places on breaches of an Undertaking.

[113] Given that Wen Li Xu is an individual operating as Golden Year Auto Broker, this means the \$5,000 administrative penalty amount is the upper limit that can be imposed. If the motor dealer was a corporation, the maximum administrative penalty would be \$50,000.

[114] It is important to note that while Wen Li Xu is a sole proprietor and an individual, she was acting as a business, and it was in the capacity of carrying on as a business that the breach of the Undertaking occurred. The Undertaking included a \$1,000 administrative penalty, which did not appear to have the desired specific deterrent effect. As Golden Year is no longer in business, I consider general deterrence is the more important factor to consider than specific deterrence. Given the factors noted above, the need for specific and general deterrence, the importance to be placed on motor dealers abiding by their Undertakings, and the small nature of this dealer and its expected ability to pay, I believe a \$3,500 administrative penalty is in order for the breach of the Undertaking. This represents a significant amount given the maximum available under these facts is \$5,000 (it is 70% of the maximum), but it does reflect the importance to be placed on abiding by Undertakings.

### **(3) Compliance Order**

[115] For the breaches of the *Business Practices and Consumer Protection Act* as noted above, I make the following compliance order under section 155 of that Act:

- i. Wen Li Xu dba Golden Year Auto Broker and Bill (Bo) Pan are to abide by the *Business Practices and Consumer Protection Act*, so long as that Act is applicable to them;
- ii. Wen Li Xu dba Golden Year Auto Broker and Bill (Bo) Pan are to refrain from making misleading statements in advertisements, including failing to state material facts or failing to properly qualifying representations;
- iii. Wen Li Xu dba Golden Year Auto Broker and Bill (Bo) Pan are to reimburse the Registrar's investigation and hearing costs in this matter of \$1,018.29.

**(4) Conduct of Golden Year and Bo (Bill) Pan - selling while unregistered and failing to abide by the Notices and Orders**

[116] I am concerned about the conduct of Bo (Bill) Pan and Wen Li Xu dba Golden Year Auto Broker in this case. When provided with lawful orders to have the Toyota and the Mazda inspected, Bo (Bill) Pan and Golden Year choose not to abide by those orders. The reason given for not abiding by the terms of those orders was the inspections would cost too much. While I have considered the written statement of Wen Li Xu, I consider that statement with some skepticism as it states they repair vehicles to the highest standards without concern for costs, but in oral testimony Wen Li Xu confirmed the Toyota and the Mazda were not re-inspected in the manner ordered because it would cost too much (a few hundred dollars).

[117] I also have found Wen Li Xu dba Golden Year Auto Broker to have acted like a motor dealer while not registered under the *Motor Dealer Act*. This is an offence under that Act.

[118] A motor dealer and a salesperson that disobey a lawful order is a concern to the public interest. The fact that it would cost money to abide by an order is not a reason to disobey that order. This type of conduct raises a concern that the dealer and salesperson feel they may pick and choose which lawful orders or laws to abide by. The governability of the dealer and salesperson gets called into question. There is a real concern the Respondents may feel it too costly to ensure a vehicle's safety or to take the necessary steps to become informed of a vehicle's history to make the required statutory declarations to consumers. It raises a concern that the Respondents may not comply with the lawful orders of the Registrar conducting an investigation, would not be governable and not act lawfully or with integrity: [Fryer v. Motor Vehicle Sales Authority of British Columbia](#), 2015 BCSC 279 (BC Supreme Court) at paragraph 31.

[119] What is the appropriate action to take for this conduct given Wen Li Xu dba Golden Year Auto Broker has surrendered its motor dealer registration and Bo (Bill) Pan's salesperson licence has lapsed? Given the failure to abide by orders was significant, the history of the dealer and Bo (Bill) Pan, I find it appropriate to state that the Registrar would not accept an application for a salesperson licence or renewal of a licence; nor an application for registration or renewal of registration as a motor dealer from either Wen Li Xu or Bo (Bill) Pan, or from any dealer where Wen Li Xu or Bo (Bill) Pan are affiliated, for a period of five years: see [Re Stephen Ironside](#) (Registrar, May 27, 2011, File 11-026); [Re: Bruce Ironside](#) (Registrar, May 27, 2011, File 11-025) and [Pugliese v. Clark as Registrar of Mortgage Brokers](#) 2008 BCCA 130 (BC Court of Appeal).

[120] Whether or not any future salesperson licence or motor dealer registration will be issued will depend on the facts that exist at that future date, including but not limited to, evidence that Wen Li Xu and Bo (Bill) Pan understand the importance and responsibility of being in a regulated industry and abiding by the law.

## **Conclusion**

[121] The following findings of fact were made:

- (a) Wen Li Xu dba Golden Year Auto Broker committed a deceptive act or practice contrary to the *Business Practices and Consumer Protection Act* by advertising a 2014 Mazda CX-5 as in "new car condition" and a 2012 Toyota Camry as "like new" without qualifying those statements to indicate they were rebuilt.
- (b) Wen Li Xu dba Golden Year Auto Broker failed to comply with the terms of two Notices and Orders issued under the authority of the *Motor Vehicle Act* regarding the 2014 Mazda CX-5 and the 2012 Toyota Camry.
- (c) Wen Li Xu dba Golden Year Auto Broker is in breach of its Undertaking dated September 24, 2013.
- (d) Wen Li Xu dba Golden Year Auto Broker and Bo (Bill) Pan acted as a motor dealer while unregistered, contrary to the *Motor Dealer Act*.

[122] Based on the findings of fact, the following compliance action is taken:

- (a) An administrative penalty of \$5,000 is ordered against Wen Li Xu dba Golden Year Auto Broker for the advertising breaches summarized in paragraph 121(a).
- (b) An administrative penalty of \$3,500 is ordered against Wen Li Xu dba Golden Year Auto Broker for breaching the Undertaking of September 24, 2013.
- (c) A compliance order under the *Business Practices and Consumer Protection Act* is ordered on the following terms:
  - i. Wen Li Xu and Bill (Bo) Pan are to abide by the *Business Practices and Consumer Protection Act*, so long as that Act is applicable to them;

- ii. Wen Li Xu and Bill (Bo) Pan are to refrain from making misleading statements in advertisements, including failing to state material facts or failing to properly qualifying representations, including in advertisements;
  - iii. Wen Li Xu and Bill (Bo) Pan are to reimburse the Registrar's investigation and hearing costs in this matter of \$1,018.29.
- (d) The Registrar will not accept a motor dealer application or application of renewal; or an application for a salesperson licence or renewal of a salesperson licence from Wen Li Xu or Bill (Bo) Pan, or from any motor dealer in which they are affiliated, for a period of five years.

[123] The administrative penalties and the compliance order may be reconsidered in accordance with the *Business Practices and Consumer Protection Act*, Part 12. A request for reconsideration must be submitted in writing within 30 days of receiving these reasons. A request for reconsideration may be submitted to the VSA to the attention of Daryl Dunn, Manager of Compliance and Investigations.

[124] The decision to refuse to accept an application from Wen Li Xu or Bo (Bill) Pan for a period of five years may be reviewed by applying to the B.C. Supreme Court for judicial review pursuant to the *Judicial Review Procedure Act*.

Dated: April 28, 2015

"Original is signed"

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Ian Christman J.D.  
Registrar of Motor Dealers