Investigation File No.: C-21-05-038
Hearing File No.: H-22-02-002

IN THE MATTER OF THE *MOTOR DEALER ACT*, RSBC 1998, c 316 and THE *BUSINESS PRACTICES AND CONSUMER PROTECTION ACT*, SBC 2004, c 2

BETWEEN:

THE VEHICLE SALES AUTHORITY OF BRITISH COLUMBIA
(the "VSA")

COMPLAINANT

AND:

TRAVELAND RV SUPERCENTRE LANGLEY
(Dealer License #9588)

RESPONDENT/MOTOR DEALER

AND:

ADAM MOORE
(Salesperson License #122264)

RESPONDENT/SALESPERSON

DECISION OF THE REGISTRAR OF MOTOR DEALERS

Date and Place of Decision: January 23, 2023 at Langley, British Columbia.

By way of written submissions

1. The following is the decision of the Registrar of Motor Dealers from the Vehicle Sales Authority (the "Authority") which addresses a complaint made by Mitieli Craig Renner and Victoria Lynn Renner, (together, the "Renners") that on July 2015 they had purchased a 2015 RV trailer with license No. 427 BHS (the "Vehicle") from the Respondent, Traveland RV Supercentre Langley, ("Traveland"), which had been misrepresented.

2. The Renners seek an Order for the return of the purchase price.

3. Neither party has challenged the jurisdiction of the Registrar to decide this matter (the Authority, of course, supports it) but for the sake of completion, I refer to paragraphs 19 through 24 of the Reasons for Judgment of Mr. Justice Skolrood in *Windmill Auto Sales and Detailing Ltd*. v *Registrar of Motor Dealers*, 2014, BCSC 903:

> [19] The retail motor vehicle sales industry in British Columbia is regulated pursuant to the terms of the . On July 21, 2003, the Motor Dealer Council of British Columbia (the "Council") was established as a society for the purpose of receiving delegated authority to administer the *MDA* [*Motor Dealer Act]* and all regulations made thereunder. The Council, which operates as the MVSA [Motor Vehicle Sales Authority], is defined as the "authority" in s. 1 of the *MDA*. I will refer to it as the MVSA for the purposes of these Reasons.

[20] As contemplated by ss. 1.1 and 24.1 of the *MDA*, the MVSA entered into an administrative agreement with the provincial Crown dated March 24, 2004 which sets out the scope of the MVSA's authority in carrying out its delegated administrative function in relation to the *MDA* and its accompanying regulations.

[21] Section 2 of the *MDA* provides for the appointment of the Registrar who functions as the chief administrative officer for the regulatory regime established under the *MDA* and its regulations.

[22] One of the Registrar's central functions is to deal with applications for registration as a motor dealer under the *MDA*, as well as suspensions and terminations of registration. Pursuant to s. 3 of the *MDA*, a person must not carry on business as a motor dealer unless registered under the *MDA*.

[23] Pursuant to s. 8.1 of the *MDA* and s. 29 of the *Motor Dealer Act Regulation,* B.C. Reg. 447/78 (the "*MDA Regulation*"), the Registrar may exercise authority under certain prescribed provisions of the *BPCPA*, including ss. 4 - 6 which deal with deceptive acts or practices and ss. 7 - 10, which deal with unconscionable acts or practices.

[24] Under s. 29 of the *MDA Regulation*, the Registrar is empowered to investigate alleged deceptive or unconscionable acts or practices and, where such acts or practices are established, to issue compliance orders under s. 155 of the *BPCPA* and to impose administrative penalties under s. 164 of the *BPCPA*

4. Both the Authority and Traveland have made extensive written submissions. To do justice to their respective submissions, it is not possible to compress or paraphrase them. Therefore, I reproduce the submissions in full beginning with the submissions of the Authority in the following 93 paragraphs:

PART 1 – FACTS

The Parties

1. Mitieli Craig Renner ("Mr. Renner") and Victoria Lynn Renner ("Ms. Renner") are in this matter and are collectively referred to as the "Renners".

2. Traveland RV Supercentre Langley ("Traveland") is a Respondent in this matter and a Motor Dealer as defined by the Motor Dealer Act ("MDA") and was licensed at all material times with the Vehicle Sales Authority of British Columbia (the "Authority") under license number #9588.

3. Adam Moore ("Mr. Moore") is a Respondent in this matter and a Salesperson as defined by the MDA and was licensed at all material times with the Authority under license number #122264.

4. Mr. Moore was at all material times employed as a salesperson with Traveland.

The Complaint

5. The Renners submitted their complaint to the Authority on June 8, 2021. The complaint arises out of their purchase of a new 2015 Open Range Fifth Wheel Recreational Vehicle ("the Vehicle") on July 26, 2015 from Traveland. Mr. Moore was the salesperson who assisted the Renners with the purchase of the Vehicle.

6. In their complaint, the Renners allege that Traveland and Mr. Moore failed to advise them prior to their purchase of the Vehicle that its length exceeded the maximum legally

allowable for towing in British Columbia and they further allege that on that basis the sale was misrepresented.

7. *With their complaint, the Renners provided copies of the following documents:*

   a. *The July 26, 2015 purchase agreement (the "Purchase Agreement");*
   b. *A TD Auto Finance loan agreement (the "Loan Agreement");*
   c. *A Certificate of Property Insurance (the "Insurance Certificate");*
   d. *An email dated June 4, 2021 from Traveland's manager Kristopher Howes ("Mr. K. Howes");*
   e. *A four-page brochure describing the various 2015 model year Open Range fifth wheels (the "Brochure"); and*
   f. *A May 2007 Commercial Vehicle Safety and Enforcement Branch ("CVSE") "Recreational Vehicle Towing in British Columbia" Fact Sheet which was attached to Mr. K. Howes' June 4, 2021 email (the "Fact Sheet").*

The Evidence

The Renners

8. *As noted above, the Renners purchased the Vehicle from Traveland on July 26, 2015. The Purchase Agreement indicates that the Vehicle was purchased new, that it was purchased for personal use and that it "Complies with the requirements of the Vehicle Act of the Province of BC." The total sale price was $102,466.90.*

9. *As part of their purchase, the Renners traded in a 2011 Primetime Tracer recreational vehicle which they had previously towed behind their Toyota Sequoia SUV.*

10. *At the time of their purchase of the Vehicle, the Renners lived in Alberta and they advised Mr. Moore that they intended to park it at an RV park for summer seasonal use and that they would eventually tow it behind a personal truck and travel with it to Arizona in the winter months.*

11. *While the Renners did not own a vehicle that was suitable to tow the Vehicle at the time of the purchase, they intended on acquiring a one-ton pickup for that purpose at a later date. Mr. Renner's father-in-law owned a truck that was suitable for towing the Vehicle and Mr. Renner had access to it.*

12. *Upon taking possession of the Vehicle and because they did not yet have a truck to tow it, the Renners engaged a driver who was recommended by Traveland to transport the Vehicle from its lot to the Pacific Border RV Park located in White Rock, BC.*

13. *At the time of their purchase, Mr. Moore did not discuss the overall length of the Vehicle with the Renners and he did not advise the Renners that the Vehicle was too long to be legally towed in British Columbia.*

14. *Mr. Moore did not provide the Renners with a copy of the Fact Sheet prior to or at the time of their purchase of the Vehicle.*

15. *In the spring of 2021, the Renners were advised by multiple consignment dealers that the Vehicle's length – 12.7 metres – exceeded the legal maximum allowable length for towing in British Columbia. This advice was confirmed in additional discussions that the Renners had with ICBC, with the CVSE and the Valley Driving School located in Langley, BC.*

16. *On May 17, 2021, Mr. Renner contacted Traveland and spoke with one of their employees named Kyle Hadwin. Mr. Renner advised Mr. Hadwin that he had learned that the Vehicle exceeded the legal maximum allowable length for towing in British Columbia. The next day, a Traveland representative named Cameron Scouten contacted Mr. Renner and offered to consign the Vehicle for $50,000. The Renners rejected this offer.*

17. *On May 21, 2021, Mr. Renner spoke with Mr. K. Howes who advised him that many similar vehicles of similar length had been imported from the United States and sold and that "train length was a factor." Mr. Renner advised Mr. K. Howes that the Vehicle's length was illegal, that the purchase had been misrepresented and he requested a full refund of the purchase price.*

18. *On May 28, 2021, Mr. Renner emailed Mr. K. Howes and asked that he provide written confirmation that the Vehicle was legal to tow in Canada. In response, Mr. K. Howes emailed Mr. Renner on June 4, 2021 and attached the Fact Sheet which indicated, in part, as follows:*

    Maximum lengths for Recreational Vehicles
    - *Maximum total length for a motorhome is 14.0 metres (45.93 feet).*
    - ***Maximum length for a towed recreational vehicle is 12.5 metres (41 feet).***
    - *Maximum overall length for a combination is 20.0 metres (65.6 feet).*

    (Emphasis added)

19. *In his June 4, 2021 email, Mr. K. Howes stated as follows:*

    a. *Referring to the Fact Sheet, "Maximum overall length for a combination is 20.0 metres (65.6 feet) is where your fifth wheel would fall under."*
    b. *"…there is a difference between a trailer pulling behind a vehicle and a fifth wheel where several feet are absorbed sitting within the box of the truck."*
    c. *"There are no issues pulling this down the road."*
    d. *"Even under the strictest interpretation of the new guidelines, these vehicles can still be towed by a tow truck and setup [sic] as long-term camping solutions."*

20. *In addition to the information set out above, Mr. K. Howes further advised Mr. Renner in his June 4, 2021 email as follows:*

    > *You may explain this ongoing length debate to any potential buyers if you feel so inclined, but you are under no legal obligation to do so. For private sellers, the rule is "buyer beware", which is why many people choose to purchase through a dealer. As you are not a dealer, you are not accountable to the [Authority], which is the governing body that we deal with for these matters.*

21. *Mr. K. Howes offered to purchase the Vehicle back from the Renners for $55,000 or to consign it for $60,000 less repair costs. He ended the email by advising Mr. Renner that if he did choose to sell the Vehicle privately, Traveland "cannot sign off on any aspect of the sale including a desire to assume any liability that may arise from said sale."*

CVSE Inspection

22. *On December 17, 2021, Jim Kendall, an Area Vehicle Inspector with the Ministry of Transportation and Infrastructure's CVSE branch performed an inspection of the Vehicle*

at the request of the Authority. The inspection was undertaken to determine whether the Vehicle's length complied with the Motor Vehicle Act ("MVA") and the Motor Vehicle Act Regulations ("MVAR"). Following the inspection, Mr. Kendall prepared a report.

23. *The Vehicle was inspected by Mr. Kendall at a storage yard in Squamish B.C.*

24. *In his report at page 8, Mr. Kendall sets out the statutory requirements when determining the maximum allowable length of a trailer in British Columbia. At page 8 of the report under the heading "Legal Reference" he first refers to section 19.02(1) of the MVAR which adopts certain provisions of the Commercial Transport Act Regulations ("CTAR"), specifically with respect to size and dimensions of vehicles as follows:*

Provisions of Commercial Transport Regulations adopted

19.02(1). Sizes and dimensions as quoted in Division 7 of B.C. Reg.30/78, made under the Commercial Transport Act, as amended from time to time, are hereby adopted as subsection (1) and made a regulation under this Act.

25. *He goes on to cite section 7.08(6)(b) of the CTAR that sets out a vehicle's maximum allowable length as follows:*

Vehicle length
7.08(6) A person must not, without a permit, drive or operate
…

> *(b) a trailer having an overall length in excess of 12.5 m, but not including the following as part of that length:*
>
> > *(i)an air deflector, heater or refrigerator unit attached to the front of the trailer;*
> >
> > *(ii)the draw bar of the trailer if the draw bar articulates in the horizontal plane relative to the main load-carrying structural component of the trailer;*
> >
> > *(iii)auxiliary equipment or devices that are not designed or used to carry cargo and do not extend more than 30 cm beyond the front or 10 cm beyond the rear of the vehicle, including, but not limited to, air connectors, electrical connectors, hydraulic connectors, rollers, pickup plates, bumpers, ladders, glad hands, load securement devices or dangerous goods placards;*
> >
> > *(iv)a platform mounted on the front upper portion of the trailer if the platform is used exclusively to assist in the installation or securing or both of load securement devices,*

26. *Mr. Kendall measured the Vehicle's overall length from the most forward part of the hitch assembly to the rearmost part of the ladder situated behind the rear bumper. His findings are set out in his report at page 9 under the heading "Length Summary" as follows:*

> *The overall length for this trailer not exempted from regulations is 13.08m, minus the 10cm allowance for the rear bumper and ladder which equals 12.98m. This length exceeds the maximum legal length of 12.50m by .48m (48cm) and as such DOES NOT conform to the requirements of the [Motor Vehicle Act Regulations]*

making it not legal for licensing or operation within the Province of British Columbia.
(emphasis added)

Traveland

27. *Traveland provided a response to the Renners' complaint to the Authority on July 22, 2021. In its response, prepared by Brad Howes, Traveland submits as follows:*

> *As you are already aware, this issue pertaining to over length 5th wheels was not on anyones [sic] radar in 2015. These 5th wheels have been imported, sold and insured in Canada for decades and there are thousands of them being used in Canada. As this was not a known issue at the time, there was no misrepresentation in selling the vehicle to the customer. We can't inform about what is not known and there is strong precedent that this is acceptable to sell in Canada.*

28. *Traveland further stated in its response that the Renners did not have a truck, that they would not be towing the Vehicle on the road and that "the purpose for which it was bought and the customers [sic] use of it is perfectly fine even under the harshest interpretation of the length requirement."*

Adam Moore

29. *On February 28, 2022, Mr. Moore took part in a telephone interview conducted by VSA Investigation Officer Tim Gallo ("I/O Gallo"). Mr. Moore's answers during that interview are as follows:*

    a. *He did not recall the transaction with the Renners;*
    b. *He did not recall the Vehicle's length;*
    c. *He did not remember what the Renners' stated plans for the use of the Vehicle were;*
    d. *He did not remember whether the Renners planned to tow the Vehicle;*
    e. *He did not remember whether the Renners asked him how they could transport the Vehicle;*
    f. *He did not remember what the Renners' intended use of the Vehicle was;*
    g. *He did not know who wrote "No Truck" on the Towing Equipment Requirements document but thought it could have been him or "any number of people at the dealership" and that this would have been written if a purchaser did not have a truck or if they were having the vehicle delivered.*

PART II – ARGUMENT

Jurisdiction

30. *Prior to addressing the allegations in the Amended Notice of Hearing, the Authority first submits that the Registrar has the statutory jurisdiction to consider this matter.*

31. *Traveland is a motor dealer as defined by section 1 of the MDA and is licensed by the Authority. It advertises itself as a family-owned and operated business and one of the largest recreational vehicle dealers in Canada. Traveland has been in business since 1977 and sells and consigns recreational vehicles in multiple locations in Western Canada.*

32. *Section 1 of the MDA defines a "motor dealer" in part as 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).
(emphasis added)

33. *Section 1 of the MDA also includes the definition of a "motor vehicle" as follows:*

***"motor vehicle"** means a self-propelled vehicle designed or used primarily for travel on a highway as defined in the Highway Act, and includes a trailer, as defined in the Motor Vehicle Act, designed or used primarily for accommodation during travel or recreation, but does not include:*

(a) an all-terrain vehicle, as defined in section 1 of the Motor Vehicle Act Regulations,
(b) a farm tractor, motor assisted cycle or regulated motorized personal mobility device, as those terms are defined in the Motor Vehicle Act,
(c) machinery primarily intended for construction, mining or logging purposes, or
(d) a vehicle exempted by the regulations; (emphasis added)

34. *Section 1 of the MVA defines a trailer as a vehicle that is at any time drawn on a highway by a motor vehicle, except:*

(a) an implement of husbandry;
(b) a side car attached to a motorcycle; and
(c) a disabled motor vehicle that is towed by a tow car,

and includes a semi-trailer as defined in the Commercial Transport Act.

35. *Applying the legislation as noted above, Traveland, a licensed motor dealer, sold a motor vehicle to the Renners for purposes that were primarily personal, family or household. Traveland is therefore subject to the legislation administered and enforced by the Authority, namely, the MDA and its Regulations and Parts 2, 4 and 5 of the Business Practices and Consumer Protection Act ("BPCPA"). On this basis, the Authority submits that the Registrar has jurisdiction to consider this matter.*

The Vehicle

36. *After their purchase, the Renners learned that the Vehicle's length exceeded the legal maximum allowable length for towing in British Columbia. This was first communicated to them in the spring of 2021 by other motor dealers, ICBC, the CVSE and a local driving school and it was later confirmed by Mr. Kendall in his report following an inspection of the Vehicle.*

37. *The Renners brought this to the attention of Traveland who responded by emailing Mr. Renner a copy of the Fact Sheet and taking the position that "maximum overall length for a combination is 20.0 metres (65.6 feet) is where your fifth wheel will fall under" and that there are "no issues pulling this down the road." The Authority respectfully submits that this is an incorrect interpretation of the Fact Sheet and the applicable underlying legislation by Traveland.*

38. *As noted above, the CTAR provides that the maximum length for a towed recreational vehicle is 12.5 metres. This restriction is adopted by section 19.02(1) of the MVAR and reflected in the Fact Sheet which Traveland was aware of. While the Fact Sheet also indicates that the maximum allowable overall length for a combination is 20.0 metres, the Authority submits that combining vehicles does not eliminate the requirement that a trailer not exceed 12.5 metres in length. A towed recreational vehicle that is included in a combination with another vehicle must still meet the requirements of the CTAR. In other words, it must still be no longer than 12.5 metres, even if it is part of a combination of vehicles.*

39. *The advice that the Renners received prior to attempting to return the Vehicle to Traveland is consistent with the Fact Sheet, the legislation and with Mr. Kendall's opinion in his report. The Vehicle cannot be legally towed in British Columbia because its length exceeds 12.5 metres.*

Breach of section 22 of the MDAR

40. *It is alleged by the Authority in the Amended Hearing Notice that Traveland contravened section 22 of the MDAR by failing to declare on the purchase agreement that the Vehicle was not suitable for transportation due to its length exceeding the maximum legal length allowable in British Columbia. Section 22 of the MDAR provides as follows:*

> ***Motor vehicles not suitable for transportation***
>
> *22. A motor dealer must ensure that any written representation including every purchase order, sales agreement or form of contract used in a consumer transaction for the purchase of a motor vehicle not intended for transportation contains a statement that the motor vehicle is not suitable for transportation and is sold for parts only or purposes other than transportation.*

41. *The starting point for the analysis of this allegation is section 222 of the MVA which states as follows:*

> *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.*

42. *This prohibition is further reflected by section 8.02 of the MVAR which applies to motor dealers:*

> *8.02. No person who is engaged in the business of selling trailers shall sell for use on the highway any new or used trailer unless the trailer is equipped as required by these regulations. (emphasis added)*

43. *As noted previously in these submissions, section 19.02(1) of the MVAR adopts the size and dimension restrictions of the CTAR. Therefore, where a trailer exceeds those dimensions, including length, it may not be operated on a highway as it is not compliant with the MVA and MVAR.*

44. *This issue was canvassed by the Registrar in Best Import Auto Ltd. v. Anvari et al. That case involved a motor dealer advertising and selling numerous vehicles that were not suitable for transportation. After discussing the compliance requirement of section 222 of the MVA and section 8.01 of the MVAR, the Registrar made the following comment at paragraph 21:*

> *Section 219 of the **Motor Vehicle Act** makes it an offence for a person to operate*

a motor vehicle and an owner of a motor vehicle to allow another person to operate it if that vehicle does not comply with the requirements of that Act. A motor vehicle that does not meet the safety requirements of the ***Motor Vehicle Act*** *may not be driven legally on the highways; and it is therefore legally "not suitable for transportation."*

45. *In the subsequent decision of Pham and Pham v. Super Sale Auto Ltd. et al., the Registrar provided a useful summary of the legal requirements discussed in Best Import Auto Ltd., supra, that must be met by a motor dealer in respect of vehicles that are not suitable for transportation. That summary, found at paragraph 6 is as follows:*

    (a) *The MVA prohibits any person, including a motor dealer, from displaying for sale, advertising for sale or selling a motor vehicle that is intended to be operate on the highways, where certain safety components of that vehicle do not meet the minimum standards in that Act or its Regulations: section 222 of the MVA.*

    (b) *The [MVAR] specifically prohibits anyone in the business of selling or leasing motor vehicles from doing so unless certain safety components of the motor vehicle meet the minimum standards of that Regulation: section 8.01 of the MVAR.*

    (c) *The MVA prohibits a person from operating a motor vehicle on the highways unless it is compliant with the MVA and its regulations. The MVA also places a duty on the owner of a motor vehicle not to allow its operation on the highways unless the motor vehicle is compliant with the MVA. If a motor vehicle is not compliant with the MVA, it may not legally be operated on the highways and is therefore legally "not suitable for transportation" as that term is found in the MDAR: section 219 of the MVA. (emphasis added)*

    (d) *For a motor dealer to sell a motor vehicle that is "not suitable for transportation" it must ensure it is not sold for use on the highways by declaring the motor vehicle as "not suitable for transportation" and is sold for parts only or for another purpose other than transportation on:*

        (i) *any advertisement for the motor vehicle;*
        (ii) *the purchase agreement;*
        (iii) *the motor vehicle itself; and*
        (iv) *any other written representation about the motor vehicle.*

    Sections 21(2)(e) and (f), 22 and 27(b) of the MDAR.

    (e) *A failure to properly advertise and inform a consumer that a motor vehicle is "not suitable for transportation", can be viewed as a misrepresentation, also known as a deceptive act or practice under the BPCPA.*

46. *When the Renners attended at Traveland's place of business, they relied on Traveland's and Mr. Moore's experience to guide them in their purchase. It was incumbent upon Traveland and Mr. Moore, in the business of selling and consigning recreational vehicles, to know the statutory requirements and restrictions for the goods that they sold. This is reflected in the Fact Sheet, a document in Traveland's possession, that pre-dated the Renner's purchase by 8 years and specifically addressed issues related to towing recreational vehicles in British Columbia.*

47. *The Vehicle did not conform to the requirements of the MVA or the MVAR due to its length exceeding the legal maximum for towing in British Columbia. As a result, the Vehicle could not be legally operated and was therefore not suitable for transportation. The Authority submits that section 22 of the MDAR obligated Traveland to provide a*

statement to that effect on the purchase agreement and as they failed to do that, the Authority submits that Traveland breached section 22 of the MDAR.

Deceptive Act or Practice

48. *Deceptive acts and practices are broadly defined in section 4 of the BPCPA and are prohibited under section 5(1) of the BPCPA.*

49. *Generally, a deceptive act or practice is anything "that has the capability, tendency or effect of deceiving or misleading a consumer or guarantor". The salient parts of section 4 are as follows:*

> ***Deceptive acts or practices***
>
> *The Law - General*
>
> *4 (1) In this Division:*
>
> *"deceptive act or practice" means, in relation to a consumer transaction,*
>
> *(a) an oral, written, visual, descriptive or other representation by a supplier, or*
>
> *(b) any conduct by a supplier that has the capability, tendency or effect of deceiving or misleading a consumer or guarantor;*
>
> *"representation" includes any term or form of a contract, notice or other document used or relied on by a supplier in connection with a consumer transaction.*
>
> *(2) A deceptive act or practice by a supplier may occur before, during or after the consumer transaction.*
>
> *(3) Without limiting subsection (1), one or more of the following constitutes a deceptive act or practice:*
>
> *…*
>
> *(b) a representation by a supplier*
>
> *…*
>
> *(iv) that a consumer transaction involves or does not involve rights, remedies or obligations that differs from the fact,*
>
> *(vi) that uses exaggeration, innuendo or ambiguity about a material fact or that fails to state a material fact, if the effect is misleading. (emphasis added)*

A Failure to State a Material Fact May be a Deceptive Act or Practice

50. *As set out above, section 4(3)(b)(vi) of the BPCPA provides that a failure to state a material fact may constitute a deceptive act or practice if the effect of that failure is misleading.*

51. *Deception by silence will constitute a deceptive act or practice when the omission arises in the context of any general representation made by a supplier, if the effect is misleading. See: Applewood Motors Inc. v. Ratte and The Registrar of the Motor Dealer Council of British Columbia (13 April 2010), Vancouver Registry, No. S094126 (BCSC) at paragraph 34.*

A Deceptive Act or Practice Does Not Require an Intention to Mislead

52. *Similarly, proof of a deceptive act or practice does not require proof of a deliberate intention to deceive. In Findlay v. Couldwell, the plaintiff purchased a car that was represented as being "a good little highway car, economic and reliable". Five days later the engine failed while the plaintiff was driving the car along the freeway. In holding that the defendant could not escape liability for a deceptive act or practice "even had the defendant honestly believed the representations he was making", Ruttan J. stated at page 325:*

> *I should note here that a deceptive act does not necessarily involve deliberate intention to deceive. Deception need only have the capability of deceiving or misleading and it may be inadvertent yet still sufficient to void the transaction under the Statute, which is directed to the welfare of the consumer, not the punishment of the vendor. (emphasis added)*

See also: Mikulas v. Milo European Cars Specialists Ltd., [1993] B.C.J. No. 2818 (B.C.S.C.) at page 17; aff'd: [1995] B.C.J. No. 638 (B.C.C.A.)

53. *In Rushak v. Henneken, Gow J. quoted with approval from Findlay, supra, and went on to state at paragraph 195:*

> *The philosophy and thrust of consumer legislation is very different from that of the common law in sale of goods. The former proceeds on the footing that a supplier who makes his livelihood out of supplying personal property to consumers, owes a positive duty of candour to the consumer and that duty embraces telling the consumer any material fact known to the supplier about the ware, the disposition of which to the consumer he is promoting. What is a material fact will depend upon the circumstances. (emphasis added)*

54. *Rushak, supra, was affirmed by the British Columbia Court of Appeal. In that decision, Taylor J.A. delivered the Court's unanimous Reasons for Judgment, commenting at page 6 on "the standard of candour" owed by a supplier of goods to a consumer in the context of section 3(1) of the Trade Practice Act, the predecessor to the BPCPA:*

> *There is, however, a decision in this province, cited but not explored on the appeal, which seems to me of potential assistance. In Director of Trade Practices v. Household Finance Co. of Canada, [1976] 3 W.W.R. 731 (B.C.S.C.) [upheld [1977] 3 W.W.R. 390 (B.C.C.A.)] Mr. Justice Hutcheon said (at p. 736):*
>
> > *Having in mind the examples of deceptive acts given in s. 2(3), I conclude that an act having the tendency of deceiving or misleading a person is one that tends to lead that person astray into making an error of judgment.*
>
> *I think those words helpful in defining the scope of the section as it applies to this case.*

55. *Considering both the trial and appellate courts' reasoning in Rushak, the Authority submits that the following principles emerge:*

    (a) *A deceptive act or practice need not be intentional, may be inadvertent and may arise even if the supplier has an honest belief in the accuracy of the information it relays;*

(b) *A deceptive act is one "that tends to lead a person astray into making an error of judgment";*

(c) *The act must be construed so as to protect not only potential customers, but also those who are not alert, are unsuspicious and are credulous; and*

(d) *The act imposes a high standard of candour on a supplier of goods.*

56. *In The Consumer's Association of Canada et al. v. Coca-Cola Bottling Company et al, Russell J. treated the deceptive act provisions of the Trade Practices Act and the BPCPA as the same at paragraph 68 while applying Rushak at paragraph 86 to her Ladyship's consideration of a deceptive act or practice under the BPCPA. Thus, the Authority submits that the principles in Rushak have application under the BPCPA.*

57. *In Cummings v. 565204 B.C. Ltd., 2009 BCSC 1009, Madam Justice Gerow confirmed at paragraphs 21 and 22 that liability under the BPCPA does not require a finding of "fault" or "carelessness", just as was the case under the predecessor Trade Practices Act:*

> *The deception may be inadvertent. A supplier cannot escape liability if the misleading act or statement leads to the purchaser's injuries, even if he honestly believes the representations: Mikulas v. Milo European Cars Specialist Ltd. (1993), 52 C.P.R. (3d) 1 (B.C.S.C.).*
>
> *In my view, a supplier should not be able to escape liability on the basis that he honestly believed the representations, or that he relied on an inspection done by others, when he is advised of a concern about the vehicle by a purchaser and takes no steps to discover whether the representation is true, <u>and the purchaser is misled by the representation</u>. (emphasis added)*

58. *In Casillan v. 565204 B.C. Ltd., the Court commented further on Cummings and Rushak, stating at paragraph 27:*

> *The BPCP Act was recently considered by Gerow J. in Cummings. The learned Justice referred to the Trade Practices Act, R.S.B.C. 1996, c. 457 (the predecessor to the BPCP Act), and to cases decided under similar sections of the former legislation. In Rushak v. Henneken (1991), 84 D.L.R. (4th) 87, 59 B.C.L.R. (2d) 250 (C.A.), Taylor J.A. said that suppliers must "refrain from any sort of potentially misleading statement", including the giving of an honest opinion in circumstances where giving the opinion without appropriate qualification may mislead. In Cummings at para. 21, Gerow J. said that even an inadvertent deception can found a deceptive practice leading to a claim for damages.*

Reverse Onus

59. *If it is alleged that a supplier committed or engaged in a deceptive act or practice, the burden of proof that the deceptive act or practice was not committed or engaged in is on the supplier. See: BPCPA, s. 5(2). See also: Cummings, supra, at paragraph 25 and Casillan, supra, at paragraph 27.*

<u>Deceptive Acts Committed by the Respondents</u>

i. Material Fact – Length of Vehicle and Inability to Tow

60. *The Authority submits that Traveland and Mr. Moore failed to state a material fact when neither advised the Renners prior to their purchase of the Vehicle that it could not be*

legally towed in British Columbia due to its length exceeding the maximum allowable under the MVA and MVAR. That failure, which was relied upon by the Renners, was contrary to section 4(3)(b)(vi) of the BPCPA.

61. *Mr. Renner's evidence is that at when he and Ms. Renner purchased the Vehicle, they advised Mr. Moore that they initially intended to park it and use it seasonally but eventually they planned to tow it behind a personal truck and travel with it to Arizona. They discussed the overall weight of the Vehicle and its "pin weight" which is the weight that presses down on the fifth wheel hitch situated in the bed of a truck by the trailer. This discussion of their intended use of the Vehicle is consistent with their previous use of the trailer that they traded in, insofar as they had towed it behind a vehicle. Simply put, their intended use of the Vehicle was clearly conveyed to Mr. Moore.*

62. *Despite the information provided by Mr. Renner about the intended use of the Vehicle, Mr. Moore did not tell the Renners that the Vehicle could not legally be towed in British Columbia and he did not provide them with a copy of the Fact Sheet prior to or at the time of their purchase. The Authority submits that his constituted a failure to state a material fact.*

63. *In his interview with I/O Gallo on February 28, 2022, the following exchange occurred with Mr. Renner:*

> *I/O Gallo: Were you provided with a copy of the RV Towing in British Columbia Fact Sheet – May 2007 (Form MV3230)?*
>
> *Mr. Renner: No, if we had been provided that, <u>we would have questioned it</u> as it's clear about maximum length. (emphasis added)*

64. *While Traveland says in its response to the Renner's complaint that the question of whether the Vehicle's length exceeded the legal maximum allowable for towing in British Columbia was "not a known issue at the time" of the purchase, this is contradicted by the Fact Sheet which is dated May 2007, more than eight years prior to the Renners' purchase, and which specifically addresses towing requirements for recreational vehicles which Traveland has sold for many years. The Authority submits that it is reasonable to expect that Traveland either knew, or should have known the provincial rules and regulations that apply to the products that they sell to the public.*

65. *Traveland further argues in its response to the Renner's complaint that "the purpose for which [the Vehicle] was bought and the customers [sic] use of it is perfectly fine even under the harshest interpretation of the length requirement." The Authority submits that this is an untenable position for which there is no evidentiary basis. Mr. Renner's evidence is that in his discussions with Mr. Moore, he advised him of the intended use of the Vehicle. On the other hand, Mr. Moore's evidence is that he has no recollection whatsoever of the transaction or of the Renners' purpose for buying the Vehicle. More specifically, Mr. Moore provided the following answers to questions from I/O Gallo:*

> *I/O Gallo: Once the consumers identified the trailer as the unit they wished to purchase, did they tell you what they planned to do with it?*
>
> *Mr. Moore: I don't remember.*
>
> *I/O Gallo: Did they plan to tow it?*
>
> *Mr. Moore: I don't remember.*
>
> *I/O Gallo: Did they ask you about how they could transport it?*

Mr. Moore: I don't remember.

I/O Gallo: What was your understanding about their intended use of the trailer?

Mr. Moore: I don't remember.

66. *The Renners attended at Traveland, intending to purchase a fifth-wheel style of recreational vehicle that they could tow behind a truck. While they did not have a truck available for that purpose at that time, they planned on purchasing one and this was communicated to Traveland. As part of their purchase, they traded in a used trailer which they had previously towed behind their existing vehicle. The purchase of the Vehicle was significant in that its price exceeded $100,000.*

67. *As noted above in Rushak, supra, Traveland and Mr. Moore owed a positive duty of candour to the Renners. That duty included telling them any material fact known about the Vehicle. The Authority submits that the fact that the Vehicle, a recreational vehicle that was specifically designed to be towed from location to location on a highway, could not in fact be legally towed in British Columbia, was a material fact that was not disclosed to the Renners despite Mr. Renner advising Traveland and Mr. Moore about its intended use. Traveland's silence in that respect was relied upon by the Renners insofar as they completed their purchase without questioning the Vehicle's length. Mr. Renner's evidence is that if he had been provided a copy of the Fact Sheet prior to the purchase he would have questioned the length restrictions.*

68. *The purpose for which the Renners intended to use the Vehicle was clearly communicated to Mr. Moore. Despite that, and despite clear guidance in the Fact Sheet, Traveland and Mr. Moore failed to advise the Renners that the Vehicle could not legally be towed in British Columbia. The Authority submits that this constitutes a deceptive act by failing to state a material fact, the effect of which was misleading, contrary to section 4(3)(b)(vi) of the BPCPA.*

ii. Material Fact – Failure To Advise of Non-compliance with MVA and MVAR

69. *The Authority further submits that because the Vehicle did not meet the safety requirements of the MVA and MVAR, the Vehicle was not suitable for transportation which constituted a material fact. Failure by Traveland and Mr. Moore to advise the Renners of that material fact, the effect of which was misleading, constituted a deceptive act contrary to section 4(3)(b)(vi) of the BPCPA.*

70. *In Best Import Auto Ltd., supra, the Registrar commented at paragraph 30 on the relationship between various sections of the MDAR, including section 22, and the deceptive practice provisions of the BPCPA:*

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

71. *As noted previously, in his interview with I/O Gallo, Mr. Renner clearly stated that if he had been provided a copy of the Fact Sheet prior to the purchase of the Vehicle, he would have questioned the length restrictions which were mandated by the MVA and MVAR. The Authority therefore submits that there is evidence to support a finding that the failure to state a material fact misled the Renners.*

72. *The Authority submits that Traveland's and Mr. Moore's failure to advise the Renners that the Vehicle was not suitable for transportation based on it not meeting the requirements of the MVA and MVAR constituted a failure to state a material fact, the effect of which was misleading, contrary to s.4(3)(b)(vi) of the BPCPA.*

iii. Material Fact – Ambiguity Regarding Compliance with MVA and MVAR

73. *The Authority further submits that the inclusion of language on the Purchase Agreement by Traveland that the Vehicle complied with "The Requirements of the Vehicle Act of the Province of British Columbia" constituted a representation by a supplier that uses exaggeration, innuendo or ambiguity about a material fact where the effect is misleading, contrary to section 4(3)(b)(vi) of the BPCPA.*

74. *The Purchase Agreement states in very plain language that "THIS VEHICLE COMPLIES WITH THE REQUIREMENTS OF THE VEHICLE ACT OF THE PROVINCE OF BC." As noted above, the Authority submits that this was not true at the time of the sale as the Vehicle's length exceeded the legal maximum for towing in British Columbia and as such, did not meet the requirements of the MVA and MVAR.*

75. *While the "Vehicle Act of the Province of BC" is a non-existent statute, if one assumes that it is meant to refer to the Motor Vehicle Act, the Authority submits that it is reasonable to conclude that Traveland included this language in the Purchase Agreement to convey to the Renners that the Vehicle met the requirements of the MVA and MVAR.*

76. *The Authority submits that as the Vehicle in fact did not comply with the MVA and the MVAR, the statement to the contrary by Traveland on the Purchase Agreement was a representation that used exaggeration, innuendo or ambiguity about a material fact contrary to section 4(3)(b)(vi) of the BPCPA.*

iv. Misrepresentation - Compliance with MVA and MVAR

77. *The Authority further submits that by indicating on the Purchase Agreement that the Vehicle complied with the "Vehicle Act of the Province of BC," a non-existent statute, and considering the evidence that the Vehicle did not comply with the requirement of the MVA and MVAR, Traveland committed a deceptive act when it made the following misrepresentations in respect of the Vehicle:*

    (a) that it had approval, namely, compliance with provincial legislation, that it did not have, contrary to section 4(3)(a)(i) of the BPCPA; and
    (b) that it was of a particular standard, namely, in compliance with provincial legislation, when it was not contrary to section 4(3)(a)(ii) of the BPCPA.

78. *The Authority submits that by selling the Vehicle to the Renners, Traveland and Mr. Moore, both suppliers as defined in the BPCPA, participated in a consumer transaction with the Renners who were consumers. Based on the aforementioned, the Authority respectfully submits that the evidence supports a finding that Traveland and Mr. Moore have breached section 5(1) of the BPCPA by engaging in deceptive acts or practices in respect of a consumer transaction.*

PART III - STATEMENT OF RELIEF SOUGHT

79. The Authority respectfully submits that the following findings should be made:

(a) That Traveland and Mr. Moore breached section 22 of the MDAR by failing to ensure that the purchase agreement entered into with the Renners for the purchase of the Vehicle included a statement that the Vehicle was "Not Suitable for Transportation" and was sold for parts only or purposes other than transportation;

(b) That Traveland and Mr. Moore committed a deceptive act contrary to section 5(1) of the BPCPA by failing to advise the Renners of a material fact where the effect was misleading, namely, that the Vehicle's length exceeded the maximum legal length allowable for towing in British Columbia;

(c) That Traveland and Mr. Moore committed a deceptive act contrary to section 5(1) of the BPCPA by failing to advise the Renners of a material fact where the effect was misleading, namely, that the Vehicle was not suitable for transportation based on it not meeting the requirements of the MVA and the MVAR;

(d) That Traveland committed a deceptive act contrary to subsection 5(1) of the BPCPA by using exaggeration, innuendo or ambiguity about a material fact when it stated on the Purchase Agreement that the Vehicle complied with the requirements of the "Vehicle Act of the Province of British Columbia," a non-existent statute, when the Vehicle in fact did not comply with the requirements of the MVA or the MVAR; and

(e) That Traveland committed a deceptive act contrary to subsection 5(1) of the BPCPA when it misrepresented on the Purchase Agreement that the Vehicle had approval that it did not have and that it was of a particular standard that it was not by being in compliance with the requirements of the "Vehicle Act of the Province of British Columbia," a non-existent statute.

<u>Regulatory Action – Compliance Order Sought</u>

80. The Registrar is authorized by section 26.02 of the MDA and section 155 of the BPCPA to issue a Compliance Order in respect of either or both of the Respondents. Section 26.02(6) of the MDA and section 155(6) of the BPCPA provide that where a Compliance Order is made against two or more persons, all the persons are jointly and severally responsible for compliance and for the payment of any amounts required to be paid under the order.

81. In seeking a Compliance Order in this matter, the Authority does not allege any previous enforcement action against either Respondent. The Authority further does not seek the imposition of conditions or the suspension or cancellation of either Respondent's license.

82. The Authority does not seek the imposition of an administrative penalty pursuant to section 164 of the BPCPA or section 26.04 of the MDA given the passing of time since the date on which the contraventions occurred.

83. In this case, it is alleged that Traveland and its employee Mr. Moore offered for sale and ultimately sold a vehicle that they knew, or ought reasonably should have known, was not compliant with the MVA or the MVAR due to its length. The Respondents were and continue to be in the business of selling and consigning recreational vehicles and the Authority submits that any Compliance Order must address such conduct to protect

consumers, to ensure that such conduct is not repeated in the future and to regain compliance with the legislation.

84. *Similarly, Mr. Moore was, and continues to be a licensed salesperson who is employed by Traveland. He and other salespersons like him are the primary point of contact, providing information and advice to consumers who may wish to purchase recreational vehicles. In this case, Mr. Moore was relied upon by the Renners to provide clear and accurate advice with respect to the Vehicle and to ensure that all material facts were disclosed including its suitability for transportation. The Authority submits that a Compliance Order must reflect the obligation on Mr. Moore to disclose all material facts regarding the vehicles he sells to prospective consumers to ensure that they are able to make fully educated and informed purchases.*

85. *Finally, the Authority seeks a term in the Compliance Order requiring the Respondents to reimburse the total purchase price of the Vehicle to the Renners. The Registrar has the authority to make such an order pursuant to section 26.02(4)(a) of the MDA and section 155(4)(a) of the BPCPA which provides that an order may require "that a person reimburse any money or return any other property or thing received to a consumer or class of consumers." (emphasis added)*

Reimbursement of Purchase Price

86. *In Harris v. Windmill Auto Sales & Detailing Ltd and Jamil, the consumers purchased a used truck from the Respondent motor dealer. After learning that the motor dealer and salesperson failed to disclose the true amount of its prior damage, the consumers sought a full refund of the truck's purchase price from the Respondents.*

87. *At paragraph 40 of Harris, supra, the Registrar rejected an award of damages as being "too imprecise" given the extent of the further additional damage to the truck and ultimately ordered the Respondents to refund the full purchase price to the consumers.*

88. *The Registrar further considered whether there should be a reduction in the amount of the refund to reflect the fact that the consumers had traveled approximately 16,000 miles with the truck prior to its return. In declining to reduce the refund, the Registrar said at paragraph 46:*

> *Finally, I would note that allowing a discount for the Complainants' use of the Dodge, rent if you will, could effectively allow Windmill to profit from the intentional misrepresentation. As a matter of public policy, a person should not be allowed to benefit from their intentional wrong, especially at the expense of the person who was wronged.*

89. *The Respondents in Harris sought judicial review of the Registrar's decision: Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers, 2014 BCSC 903. After deciding that a full refund of the purchase price was specifically contemplated by section 155(4) of the BPCPA, the Court said at paragraph 78:*

> *Therefore, while it was open to the Registrar to apply a deduction to reflect subsequent use and damage, the statute did not require him to do so, nor was he foreclosed from granting the remedy under s. 155(4)(a) [of the BPCPA] because the parties could not be put back into their original position.*

90. *Applying this reasoning to the present case, the Authority submits that a full refund of the purchase price to the Renners is the most appropriate remedy. The Renners are in possession of a recreational vehicle that they cannot legally tow in British Columbia.*

They are only able to move it from one location to another by using a commercial towing company that is exempt from the applicable provisions of the MVAR.

91. *The Authority submits that an award of damages would, as in Harris, be too imprecise a remedy. Regardless of the amount of a potential damage award, the Renners would still be left with a recreational vehicle that has limited utility and is not fit for its intended purpose. They would still be unable to use it as they had intended and they would be required to comply with the provisions of the Sale of Goods Act in the event that they attempted to sell the Vehicle privately despite Mr. K. Howes questionable advice in his June 4, 2021 email that the Renners were under "no legal obligation" to explain the Vehicle's length to a prospective purchaser.*

92. *The Authority submits that the most reasonable remedy in this case is for the Vehicle to be returned by the Renners to Traveland for a full refund in the amount of $102,466.90.*

Compliance Order Terms

93. *The Authority respectfully submits that the Registrar should issue a Compliance Order pursuant to section 155 of the BPCPA and section 26.02 of the MDA, which provides that Traveland and Mr. Moore are each jointly and severally required to:*

    (a) *Abide by the MDA and the BPCPA and their respective regulations;*

    (b) *Ensure that any vehicle or trailer as defined in the MDA and MVA that is advertised or offered for sale complies with the requirements of the MVA and the MVAR;*

    (c) *Ensure that in the case of any vehicle or trailer as defined in the MDA and MVA that is advertised or offered for sale and that does not comply with the requirements of the MVA or the MVAR due to its length exceeding the maximum allowable for towing in British Columbia, that the statement "Not Suitable for Transportation" is included in any advertising, purchase agreements or sales agreements;*

    (d) *Ensure that a copy of the Fact Sheet is provided to any prospective purchaser of a vehicle or trailer as defined in the MDA and MVA that is advertised or offered for sale and that does not comply with the requirements of the MVA or the MVAR due to its length exceeding the maximum allowable for towing in British Columbia;*

    (e) *Pay to Mitieli Craig Renner and Victoria Lynn Renner the sum of $102,466.90, conditional upon the Renners returning the Vehicle to Traveland within 30 days of the date of the Compliance Order being signed by the Registrar. The payment of $102,466.90 becomes due upon the Renners executing the necessary documents transferring ownership of the Vehicle to Traveland; and*

    (f) *Pay to the Authority the amount of $5,491.25 which constitutes the Registrar's investigation and hearing costs.*

5. I will now recite the submissions of Traveland found in the following 155 paragraphs:

    1. *Unless otherwise defined herein, Traveland adopts the defined terms from the Authority's submissions dated July 29, 2022 (the **"Authority Submissions").** The adoption of any defined terms does not constitute an admission of facts by Traveland.*

    PART 1 -OVERVIEW OF ARGUMENT

2. *The Authority alleges that Traveland committed deceptive acts or practices contrary to the BPCPA. Those assertions rest on the faulty premise that the provisions of the MVA and/or MVAR operate to strictly prohibit the transportation of a fifth-wheel trailer longer than 12.5 metres in British Columbia.*

3. *However, a close reading of the MVA and MVAR demonstrates instead that:*

    a. *no such restriction applies to the fifth-wheel trailer purchased by the Renners; or*

    b. *at most, the provisions of the MV A and MVAR restrict only certain uses of "overlength" trailers in limited circumstances, rather than actually prohibiting their operation altogether.*

4. *Even if the legislation operates in the manner advocated by the Authority, Traveland's conduct with respect to the disclosure of these provisions did not contravene the BPCPA.*

PART 2- FACTS

Traveland

5. *Traveland is a family owned and operated business operating in British Columbia since 1977.*

6. *Traveland is one of the largest recreational vehicle dealers in Canada, and currently employs approximately 400 people.*

7. *Traveland has been a registered dealer under license number 9588 since February 25, 2000.*

8. *Traveland does not have any prior disciplinary history with the Authority.*

The Fifth Wheel

9. *On July 26, 2015 (the **"Date of Sale"),** the Renners purchased a 2015 Open Range Fifth Wheel Recreational Vehicle (**"Fifth-Wheel")** from Traveland for a purchase price of $102,466.90. The terms and conditions of the sale were set out in the Purchase Agreement.*

10. *At the time of purchase, the Renners did not own any truck with which to tow the Fifth- Wheel.*

11. *When the Renners purchased the Fifth Wheel, they were living in Alberta.*

12. *To date, the Fifth-Wheel has only ever been registered and licensed in Alberta.*

13. *The Fifth-Wheel is not insured for use in BC with the Insurance Corporation of British Columbia **("ICBC").***

14. *Where the Fifth-Wheel was insured by the Renners in British Columbia, it was under a property insurance (rather than vehicle insurance) policy with Aviva.*

The Complaint

15. *On June 2, 2021, the Renners filed this complaint (the **"Complaint").***

16. *The Complaint was only brought by the Renners after they had already tried to sell or consign the Fifth-Wheel to several other RV dealers.*

17. *On May 18, 2021, in an effort to resolve the Complaint, Traveland offered to consign the Fifth-Wheel for the Renners at a price of $50,000.00.*

18. *On June 4, 2021, Traveland offered to purchase the Fifth-Wheel from the Renners outright for the amount of $55,000.00 or consign it for the amount of $60,000.00 minus repair costs. Both offers were rejected by the Renners.*

19. *The industry standard for assessing fair market value for used recreational vehicles, such as the Fifth-Wheel, is the National Automotive Dealers Association **("NADA")** book value.*

20. *The current NADA trade-in value for the Fifth-Wheel is $25,100.00 (USD). The Fifth-Wheel's used retail value is $40,850.00 (USD)*

The Alleged Length Requirement

21. *On December 17, 2021, CVSE Area Vehicle Inspector Jim Kendall (**"Mr. Kendall")** determined that the Fifth-Wheel had an overall length of 12.95 metres. In his report, Mr. Kendall opines that this "length exceeds the maximum legal length of 12.50m by .48m (48cm) and as such DOES NOT conform to the requirements of the MVAR making it not legal for licensing or operation within the Province of British Columbia."*

22. *As of the Date of Sale in 2015, it was Traveland's understanding that the Fifth-Wheel was legal for both sale and towing in British Columbia provided it was used in a combination (truck plus trailer) of less than 20 metres.*

23. *Traveland's understanding of this legislative requirement was pervasive across the recreational vehicle industry at the time.*

24. *This understanding was also officially supported by industry associations, such as the Recreational Vehicle Dealers Association of British Columbia **("RVDA BC").** The RVDA BC also received a legal opinion on this issue that was circulated to its members finding that the length restrictions under the CTAR did not apply to fifth-wheel trailers.*

25. *Not only was Traveland's understanding of these requirements broadly shared across its industry, it was also informed by the following facts:*

    a. *the Canadian Standards Association Z240 RV Series-14 (approved by the Standards Council of Canada) provided that fifth-wheel trailers could be 14.65 metres in length measured from tip to tail;*

    b. *fifth-wheel trailers exceeding 12.5 metres in length were (and are) capable of being insured through ICBC; and*

    c. *fifth wheel trailers exceeding 12.5 metres in length were (and are) capable of being legally imported from the United States into Canada.*

26. *It was not until July of 2018 -approximately 3 years after the Fifth-Wheel was sold to the Renners - that Traveland first became aware the CVSE had begun re-interpreting the legislative requirements to consider trailers longer than 12.5 metres to be "overlength" (even if used in a combination of vehicles less than 20 metres).*

27. *This interpretation seems to have come as a surprise to stakeholders in the recreational vehicle sales industry. The response to this interpretation becoming known was summarized by the former Executive Director of the RVDA BC in correspondence to the Manager of Commercial Transport (Ministry of Transportation & Infrastructure) in these terms:*

> *"This interpretation is of great concern to our industry as it has been the understanding for many years that as long as the combination length doesn't exceed 20 metres when affixed to the tow vehicle the unit is compliant. We believe a 5th wheel trailer conforms to maximum length due to the way the unit is affixed to the tow vehicle...".*

28. *Traveland was informed by the Authority that, while not being prohibited from selling what the CVSE considered "overlength" recreational vehicles, Traveland was required to ensure customers were fully informed of the CVSE's interpretation.*

29. *Traveland has complied with the Authority's direction as it remains a standard practice to ensure that every customer purchasing a recreational vehicle the CVSE considers "overlength" receives and signs off on a copy of the Fact Sheet detailing the length requirements.*

PART 3- LEGAL ARGUMENT

A. The Fifth-Wheel Complies with the Law

30. *The Authority's argument rests on the premise that the Fifth-Wheel "was not suitable for transportation due to its length exceeding the maximum legal length".*

31. *The alleged deceptive acts flow from this underlying premise; namely, that the Fifth-Wheel "could not be legally towed in British Columbia due to its length exceeding the maximum allowable under the MVA and MVAR" and the Fifth-Wheel was not suitable for transportation in BC.*

(i) Applicable Provisions of the MVAR and CTAR

<u>The Authority's Argument</u>

32. *The Authority bases its argument on s. 19.02(1) of the MVAR which adopts the standards set out ins. 7.08(6) of the CTAR stating that:*

> *(6)A person must not, without a permit, drive or operate*
>
> *(b) a trailer having an overall length in excess of 12.5 m ....*

33. *Because the Fifth-Wheel is alleged to be 12.98 metres, the Authority argues it "cannot be legally towed in British Columbia because its length exceeds 12.5 metres".*

34. The Authority Submissions misapprehend the applicable law on this critical issue.

35. Indeed, there are four separate reasons whys. 7.08(6) of the CTAR does not prohibit the Fifth- Wheel from being towed in British Columbia:

(i) the Fifth-Wheel is not a "trailer" under the CTAR, and therefore the 12.5 metre restriction does not apply;

(ii) a towed Fifth-Wheel is a "commercial vehicle" under the CTAR, and as such, the restrictions under s. 19.02 of the MVAR (and s.7.08(6) of the CTAR by implication) do not apply;

(iii) the Fifth-Wheel may be towed on non-arterial highways and highways not in unorganized territories in any event; and

(iv) failing all else, a permit may be obtained to tow "overlength" trailers in British Columbia.

Section 7.08(6)(b) of the CTAR does not apply

36. Section 7.08(6)(b) of the CTAR applies to restrict the length of a "trailer". The Fifth-Wheel, however, is not a "trailer" under the CTAR. Therefore, the 12.5 metre length restriction under section 7.08(6)(b) ofthe CTAR does not apply to the Fifth-Wheel.

37. Section 7.02 of the MVAR incorporates Section 7.08 of the CTAR by reference. It is therefore critical to examine what the CTAR permits and prohibits.

38. Section 7.08(6)(b) of the CTAR states that "[a] person must not, without a permit, drive or operate...a trailer having an overall length in excess of 12.5 m ..." (emphasis added).

39. The definition of "trailer" is found in s. 1 of the CTA:

> *"**trailer**" includes a vehicle without motive power designed to be drawn by or used in conjunction with a motor vehicle and constructed so that no appreciable part of its weight rests on or is carried by the motor vehicle, but does not include*
>
> *….*
> *(b) a trailer that is*
> *(i) designed, constructed and equipped for human habitation, or*
> *(ii) designed, constructed and equipped for human occupancy for industrial, professional or commercial purposes, or*

(notably, a trailer that fits the definition of (b) is included in the definition of "house trailer" in s. 1 of the MVAR).

40. The definition of trailer found in the CTA applies to the CTAR by virtue of s. 13 of the Interpretation Act ("[a]n expression used in a regulation has the same meaning as in the enactment authorizing the regulation").

41. The Authority's own evidence is that the Fifth-Wheel is designed, constructed, and equipped for human habitation, as humans are able to comfortably sleep, live, and eat in the Fifth-Wheel.

42. *As such, the Fifth-Wheel is not a "trailer" as defined in the CTAR. It is excluded from the definition of trailer in the 7.08(6)(b) of the CTAR and the 12.5 m restriction does not apply.*

43. *A towed Fifth-Wheel fits within the restriction ins. 7.08(6)(c), which states that a person must not drive or operate:*

> *(c) subject to section 7.27 (1), a combination of 2 or more vehicles*
>
> *(i) if the combination contains one articulation point, having an overall length, including its load, in excess of 20 m, and*
>
> *(ii) if the combination contains more than one articulation point, having an overall length, including its load, in excess of 23 m.*

44. *In summary, the Fifth-Wheel is not restricted by s.7.08(6)(b) of the CTAR, but a combination of vehicles with the Fifth-Wheel is restricted by s.7.08(6)(c) of the CTAR.*

45. *The notion that the definition of "trailer" in the MVA be used, rather than the definition of "trailer" in the CTAR, when looking at s. 19.02 of the MVAR should be rejected.*

46. *The length and CTAR includes terms defined in the CTA and CTAR that are not included in the MVA or the MVAR. For example:*

> *(a) "jeep" is defined ins. 1 of the CTAR and referred to ins. 7.08(6)(d) as containing length restrictions for a combination of vehicles including a "jeep".*
>
> - *There is no definition in the MVA or MVAR for "jeep".*
>
> *(b) "air deflector" is defined in s. 1 of the CTAR and referred to in ss. 7.08(2) and 7.08(6)(b)(i), which includes a length restriction that incorporates the definition of trailer and the definition of "air deflector".*
>
> - *There is no definition of "air deflector" in the MVA or MVAR.*
>
> *(c) "lowbed semi-trailer" is defined in s. 1 of the CTAR and referred in s. 7.08(6)(d) as containing length restrictions for a combination of vehicles including a "low-bed semi-trailer".*
>
> - *There is no definition in the MVA or MVAR for "lowbed semi-trailer" or "low-bed semi-trailer".*
>
> *(d) There are a number of other examples where there are defined terms in the CTAR in s. 7.08 of the CTAR that are not defined in the MVA or MVAR.*

47. *Therefore, to bring meaning to s. 19.02 of the MVAR without creating legislative gaps, uncertainty, or borrowing from two different pieces of legislation, it is necessary to solely adopt the terms defined in the CTAICT AR.*

48. *The definitions employed in interpreting s. 19.02 of the MVAR and s. 7.08 of the CTAR should consistently borrow from the same regulation and enabling Act.*

49. *Different definitions from different statutes and regulations should not arbitrarily be mixed and matched without specific legislative direction.*

50. *Therefore, it is not consistent that s. 19.02 of the MVAR should be interpreted such that the definition of "trailer" in the MVAR would be employed, but the many specific definitions in the CTAR employed in s. 7.08 of the CTAR would not apply. The CTA/CTAR definitions should apply to the entire section when interpreting s. 19.02 of the MVAR.*

51. *This importance of using consistent definitions from the same Act/regulation is apparent when the word "trailer" (defined differently in the CTA and MV A) is used as a restriction in conjunction with a word only defined in the CTAR such as "air deflector". Because they are used in the same length restriction, it would be inconsistent and arbitrary to use the definition of "trailer" from the MVA and "air deflector" from the CTAR when there is no specific legislative direction to that effect.*

52. *Consistency - and avoiding arbitrariness - requires that the definitions in the CTA/CTAR apply to the entire s. 19.02 of the MVAR, which adopts s. 7.08 of the CTAR. There should not be the mixing and matching of definitions here, particularly since there is no indication the legislature intended this.*

53. *If the MVAR wanted to use the MVA definitions instead of the CTAR, the legislature could have separately repeated the length restrictions in its own section in the MVAR. Instead, it adopted the CTAR restrictions wholesale and consistency requires the CTAR definitions to apply.*

The Fifth-Wheel is a "Commercial Vehicle" under the MVAR and is Excluded by the Length Requirements of s. 19.02(1) of the MVAR

54. *Section 19.02(1) imports the CTAR length restrictions into the MVAR. However, s. 19.02 of the MVAR does not apply to a "commercial vehicle, as defined in the Commercial Transport Act" (MVAR., s. 19.01(4)).*

55. *A towed Fifth-Wheel is a "commercial vehicle" defined in the CTA.*

56. *Under s. **1** of the CTA, a commercial vehicle includes "a combination of vehicles".*

57. *The CTA defines "combination of vehicles" as "every combination of truck, truck tractor, semi-trailer and trailer".*

58. *Section 1 of the CTA also states that:*

> ***"semi-trailer"** includes*
>
> *(a) a vehicle without motive power designed to be drawn by a motor vehicle or truck tractor and so constructed that an appreciable part of its weight and that of its load rests on and is carried by the motor vehicle or truck tractor ...*

59. *The Fifth-Wheel, on its own, is therefore a "semi-trailer" under the CTA.*

60. *The Fifth-Wheel, in concert with a truck towing it, is a "combination of vehicles". Therefore, a truck towing a Fifth-Wheel is included in the definition of a "commercial vehicle" and is therefore not subject to the length requirements of s. 19.02 of the MVAR because s. 19.01(4) of the MVAR excludes the application of 19.02 of the MVAR for commercial vehicles.*

61. *(If the Fifth-Wheel in concert with a truck is considered to be a commercial vehicle, the BPCPA would not apply to the transaction).*

Section 19.02 Is Not a Blanket Restriction across all Highways

62. *As noted above, Authority's submissions are premised on the proposition that the Fifth- Wheel is not suitable for transportation in BC.*

63. *However, even ifs. 19.02 of the MVAR applied to restrict the Fifth-Wheel's length, it does not do so on all roads in BC. That is because s. 19.01 of the MVAR states that "Sections 19.02 to 19.06, inclusive, shall apply only in respect of highways in unorganized territory or on an arterial highways".*

64. *Arterial highways are certain, specific designated roads (Transportation Act, s. 1). It is unclear if there is any current statutory definition for "unorganized territory", but it was defined in former versions of the Interpretation Act as a "territory without municipal organization" (Interpretation Act, RSBC 1960, c. 199, s. 24(aaa)).*

65. *Critically, the length restrictions on these roads restricted by s. 19.02 of the MVAR are a small subset of all highways in British Columbia, which is defined in s. 1 of the MVA to include:*

    (a) every highway within the meaning of the Transportation Act,

    (b) every road, street, lane or right of way designed or intended for or used by the general public for the passage of vehicles, and

    (c) every private place or passageway to which the public, for the purpose of the parking or servicing of vehicles, has access or is invited,

    but does not include an industrial road;

66. *In other words, "highway" is the broadest term for virtually every roadway in British Columbia.*

67. *But the legislature elected not to restrict the length restrictions ins. 19.02 to all "highways", just ones in "unorganized territory" and "arterial highways". The same restriction appears ins. 7.01(1) of the CTAR. In summary, the Fifth Wheel is not completely unsuitable for transportation in British Columbia as alleged, because the length restrictions in s. 19.02 only apply to some roads.*

The Fifth-Wheel May be Transported With a Permit

68. *Even if the Fifth-Wheel was restricted in length to 12.5 m and s. 19.02 of the MVAR applied, which is denied s. 19.06 of the MVAR allows the minister issue a permit for "overlength" vehicles. Therefore, the Fifth-Wheel could be operated for use on arterial highways and unorganized territories in British Columbia by way of a permit.*

(ii) Applicable Provisions of the MDAR

69. *The Authority alleges that Traveland contravened s. 22 of the MDAR by failing to declare on the Purchase Agreement that the Fifth-Wheel "was not suitable for transportation and is sold for parts only or purposes other than transportation" because of "its length exceeding the maximum legal length allowable in British Columbia"*

70. *In response, Traveland says that:*

    a. *this section of the MDAR does not apply to the sale of the Fifth-Wheel;*

    b. *even if this section applies, it is not true that the Fifth-Wheel is not "suitable for transportation" under s. 22 of the MDAR.*

Section 22 of the MDAR Only Applies to Non-Functional Motor Vehicles That Are Not Intended For Transportation

71. *A plain reading of s. 22 of the MDAR shows that it does not apply here. This section states (emphasis added)*

    Motor vehicles not suitable for transportation

    22 *A motor dealer must ensure that any written representation including every purchase order, sales agreement or form of contract used in a consumer transaction for the purchase of a motor vehicle not intended for transportation contains a statement that the motor vehicle is not suitable for transportation and is sold for parts only or purposes other than transportation.*

72. *This section only applies to vehicles "not intended for transportation", such as a car without an operating engine.*

73. *There is no dispute, however, that the Fifth-Wheel was intended for transportation. The Authority's own evidence is that the Fifth-Wheel was intended for transportation, as the Renners allegedly intended to tow it to the United States in winter.*

74. *Even if the Fifth-Wheel was not "suitable for transportation" because it was too long (which is denied), this does not mean the Fifth-Wheel was not "intended for transportation".*

75. *For s. 22 of the MDA to apply, it must both be the case that the Fifth-Wheel was not intended for transportation and not suitable for transportation. If these definitions were intended to mean the same thing, the legislation would have said so:*

    > *When an Act uses different words in relation to the same subject such a choice by Parliament must be considered intentional and indicative of a change in meaning or a different meaning.*
    >
    > *Jabel Image Concepts Inc. v. Canada, 2000 CanLII 15319*

76. *This interpretation is strengthened by s. 22 of the MDAR stating that motor vehicles not intended for transportation must include a statement that it "is sold for parts only or purposes other than transportation".*

77. *If such a statement were included in a contract for the Fifth-Wheel, it would be misleading. As argued above, the Fifth-Wheel could be used for transportation in British Columbia. Even if the 12.5 metres length restriction applied, it would only restrict its ability to be towed on arterial highways and unorganized territories.*

78. *In any event, the Fifth-Wheel could be transported in other provinces, including the province of Alberta where it was actually registered. Indeed, all other provinces have agreed to a Memorandum of Understanding allowing a standard maximum*

length for fifth- wheels at 14.65 metres under a Category S2 for Recreational Vehicle Trailers. It is presently only British Columbia that has not implemented this dimension limit pending the completion of further research.

79. *The Fifth-Wheel was not "sold for parts only or purposes other than transportation".*

80. *Therefore, at the least, the Fifth-Wheel is a vehicle both intended and suitable for transportation at least on other roads in North America other than "highways in unorganized territory or on an arterial highways"; there is no evidence presented by the Authority that it was restricted on other roads.*

The Fifth-Wheel is Suitable For Transportation

81. *Even if "intended for transportation" and "suitable for transportation" were identical and interchangeable, it is not true that the Fifth-Wheel is not "suitable for transportation in BC". As argued above, any length restrictions only apply to use on a smaller subset of roads in British Columbia than all "highways". The Fifth-Wheel could, for instance, be towed in municipalities on non-arterial roads or with a permit.*

82. *This fact necessarily means that the Fifth-Wheel is not automatically "unsuitable for transportation", as the Authority argues. On the contrary, the Fifth-Wheel is suitable for transportation subject to certain restrictions.*

The Authority's Expert Opinion

83. *The Authority relies on the conclusion of Mr. Kendall that the Fifth-Wheel fails to "conform to the requirements of the MVAR making it not legal for licensing or operation within the Province of British Columbia."*

84. *However, it is improper for Mr. Kendall to opine on matters of law and this conclusion ought not be considered: "Expert evidence must not be argumentative, it must not consist of findings of fact or conclusions of law and the facts upon which the expert opinion is founded must be included in the report."*

Century 21 Canada Limited Partnership v. Rogers Communications Inc., 2011 BCSC 1196 at para. 44 (emphasis added)

B. Traveland Did not Commit Any Deceptive Act or Practice

85. *A deceptive act or practice is described under s. 4 of the BPCPA as follows:*

"deceptive act or practice" means, in relation to a consumer transaction,

(a) an oral, written, visual, descriptive or other representation by a supplier, or

(b) any conduct by a supplier

that has the capability, tendency or effect of deceiving or misleading a consumer or guarantor;

"representation" includes any term or form of a contract, notice or other document used or relied on by a supplier in connection with a consumer transaction.

(2) A deceptive act or practice by a supplier may occur before, during or after the consumer transaction.

(3) Without limiting subsection (1), one or more of the following constitutes a deceptive act or practice:

…

(c) a representation by a supplier

…

(vi) that uses exaggeration, innuendo or ambiguity about a material fact or that fails to state a material fact, if the effect is misleading,

86. The Authority alleges Traveland committed four specific deceptive acts:

i. Alleged Deceptive Act #1: Failure to Disclose the Length of the Fifth-Wheel and Inability to Tow;

ii. Alleged Deceptive Act #2: Failure to Advise of Non-Compliance with the MVA and MVAR;

iii. Alleged Deceptive Act #3: Ambiguity Regarding Compliance with the MVA and MVAR; and

iv. Alleged Deceptive Act #4: Misrepresenting Compliance with MVA and MVAR.

87. These allegations are not made out on the law or evidence.

i. ***Response to Alleged Deceptive Act #1: Traveland Was Not Required to Disclose the Length of the Fifth-Wheel as a Material Fact (Response to Authority Submissions, paras. 60-68)***

88. Traveland agrees with the Authority that a failure to state a material fact may be a deceptive act or practice.

89. The specific material fact the Authority alleges was omitted by Traveland was that the Fifth-Wheel"...could not be legally towed in British Columbia due to its length exceeding the maximum allowable under the MVA and MVAR."

90. Traveland disputes that this was a material fact and/or required disclosure because:

- *the Fifth-Wheel could still be towed in British Columbia (and in other jurisdictions where the Renners intended to use it);*
- *the evidence suggests the Renners never in fact used the Fifth-Wheel for towing in British Columbia; and*
- *if the Fifth-Wheel could not be towed in British Columbia, that was not a fact known or reasonably knowable by Traveland when the Fifth-Wheel was sold.*

<u>The Fifth-Wheel Could Be Towed in British Columbia</u>

91. *If the 12.5 metre length requirement in the CTAR does not apply to the Fifth-Wheel, the Fifth-Wheel can be legally towed in British Columbia and there is no failure by Traveland to state the material fact the VSA alleges should have been made.*

92. *Even if the 12.5 metre length requirement applies, the Fifth-Wheel can still be towed in British Columbia everywhere except arterial highways and unorganized territory. A restriction on where the Fifth-Wheel can be towed in British Columbia is not a "material fact" that Traveland was required to disclose.*

93. *The facts here are different than the Registrar's decision in Best Import Auto Ltd. v. Anvari et al., 2017-BCRMD-017 [**Best**] and Pham and Pham v. Super Sale Auto Ltd. et al., 2019- BCRMD-021 [**Pham**] relied on by the Authority.*

94. *In both Best and Pham, the dealers were found to be selling vehicles that were "not suitable for transportation".*

Best at para. 46; Pham at para. 15

95. *Here, even if the Fifth-Wheel was restricted by its length from being transported in certain specific highways and territories, this does not mean it was completely unsuitable for transportation or not intended for transportation, as alleged by the authority.*

96. *Also, the dealers in Best and Pham were selling used motor vehicles to which s. 21 and s.27 of the MDAR applied. A dealer selling used vehicles has a positive obligation to make "a statement that the motor vehicle complies with the requirements of the Motor Vehicle Act." There is no such positive obligation under the MDAR in respect to new vehicles.*

The Renners Never Towed the Fifth-Wheel in British Columbia

97. *Even if the Fifth-Wheel was "not suitable for transportation", there is no evidence the Renners in fact used it for transportation in British Columbia.*

98. *The Authority relies on the fact that the Renners (purportedly) intended to eventually tow the Fifth-Wheel behind a personal truck and travel with it to Arizona.*

99. *Whether or not the Renners disclosed that particular purpose, and whether the Fifth-Wheel was in fact reasonably fit for that purpose, is an inquiry better suited to a claim under s.18(a) of the Sale of Goods Act, [RSBC 1996, c. 410].*

Pham at para. 53

100. *In any event, despite what the Renners allegedly conveyed, the evidence does not establish that the Fifth-Wheel was in fact used for transportation in British Columbia at any point over the approximately seven years the Renners owned it. Indeed, the evidence is contrary because:*

- *there is no evidence the Fifth-Wheel was ever registered or attempted to be registered with ICBC. The only evidence is that the Fifth-Wheel was registered with Motor Vehicle Services in Alberta (Gallo #1, Ex. "G", p. 33);*

- *the only evidence of the Fifth-Wheel being insured in British Columbia was under the Renner's property insurance with Aviva (Gallo #1, Ex. "G", p. 34). This*

suggests the Fifth Wheel remained stationary rather than being used for transportation;

- *Mr. Renner specifically confirmed that he did not own a truck capable of towing the Fifth-Wheel when it was purchased (Gallo #1, Ex. "E", p. 27; Gallo #2, Ex. "A"). There is no evidence that he acquired such a vehicle prior to attempting to sell the Fifth-Wheel; and*

- *Despite Mr. Renner stating that his father-in-law had an "appropriate truck" for Towing the Fifth-Wheel, he never provides evidence that truck was actually used for towing the Fifth-Wheel in British Columbia (Gallo #2, Ex. "A").*

101. *Here the ability to tow the Fifth-Wheel in British Columbia cannot be considered a material fact, where the Renners in fact never towed the Fifth-Wheel in British Columbia.*

Traveland Was Unaware the Length Requirement Applied to the Fifth-Wheel

102. *If the Fifth-Wheel was unable to be towed in British Columbia when it was sold to the Renners, that fact was neither known to Traveland nor could it have been reasonably known.*

103. *The duty to disclose a material fact can only be extended to facts that were known to Traveland.*

> *Rushak v. Henneken (1991), 84. D.L.R. (4th) 87, 59.B.C.L.R. (2d) 250 (C.A.)*

104. *That proposition is consistent with the description of a manufacture's duty to warn as recently described in Cantlie v. Canadian Heating Products Inc., 2017 BCSC 286 [**Cantlie**]. In Cantlie, Justice W. J. Harris cited Vester v. Boston Scientific Ltd., 2015 ONSC 7950 as follows (emphasis added):*

> *"... [M]manufacturers have a duty of care to warn consumers of dangers inherent in the use of the product which the manufacture has knowledge or ought to have knowledge: ...".*

105. *This same focus was brought to bear by Justice Grauer (as he then was) in Wakelam v. Johnson & Johnson, 2011 BCSC 1765, when stating (emphasis added):*

> *[76] Relying on that decision, Dardi J. took a different approach in Kouhi v. Mazda Canada Inc., 2010 BCSC 650, in response to the defendants' argument that the plaintiff would have to show individual reliance on a failure to disclose a material fact:*
>
> > *[124] In my view, the critical component is proving that Mazda Canada committed a deceptive act or practice. The focus of this inquiry is on Mazda Canada's knowledge of the alleged defect and its conduct, and on whether the alleged conduct had the "capability, tendency, or effect of deceiving or misleading a consumer" and not whether a particular plaintiff was deceived or not....*

I06. *These cases highlight the necessity of finding prior knowledge in holding a supplier liable for a deceptive act or practice.*

I07. As of the Date of Sale, the RV industry standard understanding in British Columbia was that fifth-wheel trailers could be used in a combination of vehicles, provided a 20 metre length was not exceeded. This interpretation of the legislation was promulgated by reputable industry associations, such as the RVDA BC, and relied upon reasonably by Traveland at the Date of Sale.

108. While Mr. Moore acknowledged that he was "currently aware" of s. 7.08(6) of the CTAR, there is no evidence he was aware of the CVSE/Authority's interpretation of that provision in 2015.

109. Trailers longer than 12.5 metres were imported into British Columbia legally and insured by ICBC. At the Date of Sale, neither the CVSE nor the Authority had published circulars or bulletins accessible to Traveland advising of the interpretation that 12.5 metre trailers were being considered "overlength".

110. Other standards adhered to by Traveland, such as the Z240 RV Series-14 provided by the Standards Council of Canada, provided that the overall length of fifth-wheel trailers could not exceed 14.65 metres.

111. Traveland also reasonably relied on the fact these "overlength" trailers were regularly imported into BC and insured by ICBC.

112. The Authority argues that "...it is reasonable to expect that Traveland either knew or should have known the provincial rules and regulations that apply to the products that they sell to the public."

113. While that is reasonable as a general principle, in these circumstances this would have required Traveland to adopt an interpretation of the provincial rules and regulations contrary to the prevailing industry standard, the advice of reputable industry associations such as the RVDABC, and other standards applied to the same goods sold by Traveland.

ii. Response to Alleged Deceptive Act #2: The Fifth-Wheel was Compliant with the MVA and MVAR (Response to Authority Submissions, paras. 69-72)

114. The Authority analyses Traveland's alleged failure to disclose that the Fifth-Wheel was non-compliant with the MVA and MVAR as distinct from its alleged failure to advise the Renners of the Fifth-Wheel's length making it not towable in British Columbia.

115. However, the Fifth-Wheel's length is only potentially material insofar as it relates to the requirements of the MVA and MVAR. Similarly, the only reason the Fifth-Wheel is alleged not to be towable in British Columbia is because it is said to contravene the legislated maximum lengths. In substance, these alleged omissions are flip sides of the same coin and Traveland has addressed them together above.

iii. Response to Alleged Deceptive Act #3 and #4: Compliance with the MVA and/or the MVAR (Response to Authority Submissions, paras. 73-78)

116. The Authority also identifies a statement in the Purchase Agreement that "[t]his Vehicle Complies with the Requirements of the Fifth-Wheel Act of the Province of BC" as being a deceptive act or practice contrary to the BCPCA.

117. The only aspect of the MVA and MVAR the Authority alleges was contravened by Traveland was the Fifth-Wheel being "overlength". If Traveland is correct that length

requirement did not apply, there is no other basis before the Registrar to find the Fifth- Wheel non-compliant.

118. Even if the 12.5 metre length restriction applied, this would not make Fifth-Wheel non- - compliant with the MVA and MVAR. Neither the MVA nor MVAR prohibited Traveland's sale or the Renner's ownership of the Fifth-Wheel.

119. At most, certain uses of the Fifth-Wheel by the Renners could potentially be considered non-compliant with the requirements of the MVA and MVAR (i.e. usage on unorganized territories or arterial highways or without a permit). The possibility that the Renners' usage could potentially be non-compliant with the MVA or MVAR does not make the Fifth- Wheel itself non-compliant.

120. Even assuming this statement was intended to be about the MVA and/or MVAR as the Authority suggests, it was not misleading or inaccurate.

121. In any event, there is no evidence the Renners even read this statement, let alone relied on it (reasonably or at all).

122. Without such evidence of reliance, this alleged misstatement does not provide any basis for the remedy sought:

> *[60] Deceptive statements cannot be pleaded in the abstract. A consumer cannot allege that a statement was deceptive-either in support of an assertion that a transaction was unconscionable or as an independent basis for damages- without establishing that he or she relied on that statement in entering into the transaction in issue. Absent such a nexus a statement would not be a "representation", as it would not have been "used or relied upon by a supplier in connection with a consumer transaction. "*
>
> *Loychuk v. Cougar Mountain Adventures Ltd., 2012 BCCA 122 at para. 60*

123. If there was evidence of reliance by the Renners, that reliance still would have been unreasonable given the express terms agreed to in the Purchase Agreement:

> *"The Purchaser acknowledges that he has not relied on the Dealer's skill or knowledge to furnish a vehicle for any particular purpose and this sale is made without any warranty by the Dealer that the vehicle is suitable of any particular purpose. "*

124. If the Renners did not change their position in reliance on any of the Alleged Deceptive Acts, even if they occurred, this should not be found a deceptive act within the meaning of the BPCPA.

PART III- RESPONSE TO STATEMENT OF RELIEF SOUGHT

i. Response to Regulatory Action and Compliance Order Sought

125. The Authority alleges a compliance order is appropriate here to address Traveland's "conduct to protect consumers, to ensure that such conduct is not repeated in the future and to regain compliance with the legislation."

126. For several reasons, a compliance order is not necessary to further these objectives.

127. Firstly, it bears mentioning that the transaction in question took place over seven years ago. The alleged deceptive act or practice here is sufficiently dated that issuing a compliance order now would be inappropriate.

128. Secondly, the evidence is overwhelmingly in favour of a finding that Traveland was unaware that the Authority considered recreational vehicles exceeding 12.5 metres to be "overlength" at the Date of Sale.

129. Even if the Registrar upholds that interpretation at this juncture, the fact that this standard was neither known or applied in the recreational vehicle industry in 2015 is significant. At worst, Traveland's conduct was based on an honest (and broadly held) misinterpretation of complicated legislation that has since been clarified. There is no evidence of deliberate or reckless conduct on Traveland's part.

130. Thirdly, Traveland has already complied voluntarily with the Authority's direction to provide information to consumers about the 12.5 metre length requirement. An order is unnecessary to ensure compliance. This also means that there is no ongoing risk to consumers that requires mitigation.

131. Moreover, as the Registrar found in Pham, a consumer remedy for a misrepresentation under the BPCPA must still meet the common law elements of such a claim (emphasis added):

> *"[32] Any consumer remedy for a misrepresentation under the BPCPA, must still meet the common law elements of such a claim:*
>
> *(a) a representation that is untrue or misleading- a misrepresentation,*
>
> *(b) the consumer reasonably relied on the misrepresentation*
>
> *(c) the consumer experienced damages due to the misrepresentation, and*
>
> *(d) there is some evidence of the amount of damages (legally called quantum of damages) that the consumer suffered due to the misrepresentation.*
>
> *[33] The BPCPA modifies the first of these common law elements (a misrepresentation) in aid of consumer protection in the following ways:*
>
> *(a) once there is some evidence that a misrepresentation occurred, the onus shifts to the dealer to show the misrepresentation did not happen, was in fact true or was not misleading: section 5(2) of the BPCPA, and*
>
> *(b) deems certain conduct to be misrepresentations: section 4(3) of the BPCPA.*
>
> *[34] .... the consumer still has the burden to show that it reasonably relied on the misrepresentation; that the damages it seeks is due to the misrepresentation; and provide some evidence of the amount (quantum) of those damages....*
>
> *[35] If the misrepresentation was not reasonably relied on by the consumer when they made their decision, they would generally not be entitled to damages. The BPCPA remedies consumer harm due to actions of the supplied...and not remedy errors of judgment by consumers....*

[37] Finally, obtaining the cancelation of a contract for a misrepresentation is rare To be able to repudiate (cancel) a contract requires showing the aggrieved person did not receive substantially the thing they bargained for. There may be public policy reasons to allow cancelling a contract under the BPCPA, but these too are rare. Generally, the measure of damages for a breach of the BPCPA is contractual; the cost to put the person into the position they would have been had the representation been true."

132. *There must be "clear evidence" linking a salesperson's misrepresentation to a consumer's damages for that remedy to sound (Pham, para. 57).*

The Evidence Does not Make out Reasonable Reliance

133. *Here, the evidence falls short of establishing this critical link between the Renner's reliance on any of the alleged deceptive acts and a tangible loss.*

134. *With respect to Alleged Deceptive Act #11#2, Mr. Renner has stated that if Traveland had provided him with the Fact Sheet, he "... would have questioned it as it's clear about the maximum length."*

135. *Critically, Mr. Renner has nowhere stated that he would not have purchased the Fifth- Wheel had he known about the CVSE/VSA's interpretation of the "overlength" requirement. That fact must be established in the evidence and not merely assumed. This record does not establish that, but for the alleged failure to disclose the length requirement, the Renners would have been in any different position than they are now.*

136. *As argued above, the evidence similarly fails to establish this required nexus with respect to Deceptive Act #3/#4 (i.e., an alleged misrepresentation in the Purchase Agreement that the Fifth-Wheel "[c]omplies with the Vehicle Act of the Province of BC)".*

137. *Even if the absence of reliance is found not to be fatal to establishing a breach of s. 4 and s. 5 of the BPCPA, the lack of a nexus between that reliance and any loss by the Renners means compensation should not be awarded.*

The Evidence Does not Support the Damages Sought

138. *Even if reliance is established, the specific order sought that Traveland reimburse the Renners for the Fifth-Wheel's total purchase price is an "extraordinary remedy" and manifestly unsuitable on these facts.*

139. *The Authority relies on the decision in Harris v. Windmill Auto Sales & Detailing Ltd and Jamil, Hearing File 12-030* ***("Harris"),*** *upheld in 2014 BCSC 903, as a precedent for such an order.*

140. *However, the facts in Harris are plainly distinguishable from the present case in at least two significant ways.*

141. *Firstly, if there was a misrepresentation here at all, it was certainly not intentional. It is only "generally accepted that an intentional misrepresentation can place the contract in jeopardy at common law..". Granting a compliance order for a full refund would effectively undo the bargain between Traveland and the Renners. That is not appropriate to remedy what is, at worst, an unintentional innocent misrepresentation.*

142. Moreover, in Harris, the Registrar was clearly concerned with the prospect of a dealer profiting from its intentional misrepresentation.

Harris at para. 46

143. That public policy concern is not engaged here.

144. Secondly, the Registrar in Harris rejected financial damages for the consumer because it would have been "too imprecise".

Harris at para. 40

145. If the requisite nexus is established, a more precise remedy can be fashioned here to put the Renners back in the position they would have been in without providing an improper betterment.

146. The central concern giving rise to the Complaint was the Renners' inability to trade in the Fifth-Wheel because other RV dealers considered it "overlength".

147. The resulting loss to the Renners can reasonably be quantified as the loss of the Fifth- Wheel's trade-in value, rather than replacement of its original purchase price.

*148. Here, Traveland has led evidence establishing that the recreational vehicle industry standard for determining fair market trade-in values is the National Auto Dealers Association **("NADA")** valuation. Because the NADA value is the industry standard used by dealers in valuing second hand recreational vehicles, it provides precise data of what the Renners would have received for the Fifth-Wheel had it been eligible for a dealer trade in.*

149. The NADA value for the Fifth Wheel is currently $25,100.00 (USD)

150. Alternatively, at most, it could be said that the Renners may have been able to sell the Fifth-Wheel for retail value of a used trailer. Even for that, the NADA value is $40,850.00.

151. These figures demonstrate the good faith nature of Traveland's earlier attempts to purchase back or consign the Fifth-Wheel for amounts between $50,000.00 and $60,000.00.

152. In Pham, the Registrar stated the following in rejecting the remedy sought by the consumer:

> *[39] ... I do not find sufficient evidence that the consumer did not obtain substantially what thev bargained for. the Mazda. There may have been mechanic issues after purchase, which I will discuss shortly, but they do not amount to a claim that the consumer did not obtain what they bargained for. There is also no public policy reason to cancel the contract....*

153. This conclusion is apposite here. The Renners obtained substantially what they bargained for. There is no evidence that the Renners use of the Fifth-Wheel was in any way impeded by the length restrictions over the approximately 7 years they owned it. This issue did not even come to their attention until they were seeking to trade the Fifth-Wheel.

154. Granting a compensation order refunding the purchase price would result in betterment to the Renners, rather than a restoration of their original position. This is not in keeping with the ordinary measure of damages under the BCPCA and ought to be rejected.

PART 4 - CONCLUSION

155. The allegations made against Traveland in the Complaint have not been substantiated on the evidence before the Registrar. Even if they had, there is a fundamental disconnect between the alleged conduct and remedies sought, making further orders against Traveland unsuitable and/or unnecessary in the circumstances.

6. I will now recite the Reply Submissions of the Authority found in the following 46 paragraphs:

1. The Vehicle Sales Authority of British Columbia ("the Authority") has reviewed the Written Submissions of the Respondent/Motor Dealer Traveland RV Supercentre Langley ("the Response") dated September 20, 2022 and the supporting affidavit of Christopher Clarke ("Clarke Affidavit") sworn the same day and provides this Reply.

2. The Authority will respond to each of the Respondents' arguments in the order presented. The Authority will continue to use the defined terms from its submissions of July 29, 2022. For ease of reference, the fifth-wheel trailer purchased by the Consumers will be referred to in these submissions as "the Vehicle."

The Vehicle Was Legal for Sale and Towing

3. The Respondents argue that at the time of the subject transaction, it was their understanding that fifth-wheel trailers such as the one purchased by the Renners that exceeded 12.5 metres in length could be legally sold and towed in British Columbia if they were used in a combination (truck + trailer) of 20 metres or less.

4. The Authority submits this argument runs contrary to the Commercial Transportation Act Regulations ("CTAR") and the Fact Sheet that was provided by the Respondents to the Renners when they brought their concerns to the Respondents in May 2021.

5. The Fact Sheet is dated May 2007, eight years prior to the date of the Renners purchase, and very clearly sets out the maximum lengths for recreational vehicles as follows:

- *Maximum total length for a motorhome is 14.0 metres (45.93 feet)*
- *Maximum length for a towed recreational vehicle is 12.5 metres (41 feet)*
- *Maximum overall length for a combination is 20.0 metres (65.6 feet)*

6. These dimensions are taken directly from section 7.08(6) of the CTAR which, the Authority notes, the Respondents now argue does not apply at all to the Vehicle or fifth-wheel trailers generally, a position that the Authority opposes in this matter. The Authority will respond to this further below.

7. The Authority submits that where a towed recreational vehicle is included in a combination, not only must the overall length of the combination be 20 metres or less, but the length of the towed recreational vehicle included in that combination must not exceed 12.5 metres.

8. *If the Respondents' argument were accepted, it would render the 12.5 metre maximum as set out in section 7.08(6)(b) of the CTAR redundant, as all fifth-wheel trailers are towed on the highways. A fifth-wheel trailer that was towed as part of a combination could be any length so long as the total combination was less than 20 metres. It cannot be concluded that the legislature intended such a result.*

9. *The Authority submits that this is not an "either/or" scenario. To the contrary, it is an "and" scenario. The proper interpretation of section 7.08(6) of the CTAR is that where a towed recreational vehicle is part of a combination, that combination must not exceed 20 metres* ***and*** *the towed vehicle may not exceed 12.5 metres.*

Applicability of section 7.08(6)(b) of the CTAR

10. *Contrary to its earlier interpretation of section 7.08(6)(b) of the CTAR, the Respondents also argue that this provision does not apply to the Vehicle in this case because the Commercial Transportation Act ("CTA") definition of "trailer" does not include a trailer that is equipped for human habitation.*

11. *The Authority submits that this position runs contrary to established and accepted principles of statutory interpretation and section 44 of the Interpretation Act.*

12. *Section 44 of the Interpretation Act states that if an enactment provides that another enactment applies, it applies "with the necessary changes and so far as it is applicable." Applying this provision to the present case, the Authority submits that section 7.08(6) of the CTAR applies mutatis mutandis to the Motor Vehicle Act Regulations ("MVAR") due to the operation of section 19.02(1) of that enactment.*

13. *The MVAR does not provide for the maximum towable length for a fifth-wheel recreational trailer in British Columbia. However, various miscellaneous provisions have been included in the MVAR to addresses this. Specifically, section 19.02(1) narrowly adopts "sizes and dimensions as quoted in Division 7" of the CTAR."*

14. *Applying section 44 of the Interpretation Act, section 7.08(6) of the CTAR applies so far as it is applicable to the MVAR. The adoption provision in the MVAR is for the purpose of sizes and dimensions only and does not adopt other provisions of the CTAR or the CTA. Applying the language of section 44 of the Interpretation Act, it is not necessary to adopt further changes, including definitions, because the Motor Vehicle Act ("MVA") already provides for the definition of trailer. The CTA definition is not necessary.*

The Fifth Wheel is a Commercial Vehicle

15. *As noted above, the Authority submits that the Vehicle is a trailer as defined by the MVA. As such, section 7.08(6) of the CTAR is adopted by the MVAR and applies to it. The Vehicle is not a commercial vehicle as argued by the Respondents.*

Operation of the Vehicle is Not Restricted on All Highways

16. *The Respondents argue that if section 19.02 of the MVAR adopts section 7.08(6) of the CTAR, it is applicable only to operation on highways in unorganized territory or on an arterial highway (within the meaning of the Transportation Act) in a municipality as provided for by section 19.01(2) of the MVAR. More simply put, the Respondents argue that the Vehicle is not completely unsuitable for transportation on some roads in British Columbia.*

17. *The Authority notes that the evidence of Mr. Moore is that he has no recollection of any discussions with the Renners at the time they purchased the Vehicle. If the Respondent's argument is accepted, the Authority takes the position that the limited nature of where the Vehicle could be towed was a material fact that should have been, but was not disclosed by the Respondents to the Renners and constitutes a breach of section 4(3)(b)(vi) of the Business Practices and Consumer Protection Act ("BPCPA").*

The Fifth-Wheel May Be Transported With a Permit

18. *The argument that the consumers could operate the Vehicle by obtaining a minister's permit assumes that the Respondent disclosed the length restrictions at the date of the transaction. The Renners deny being told anything about the Vehicle being over length or that a permit was required for its operation and the Respondents have led no evidence to the contrary. The Authority further submits that if the Respondents' argument that the Renners could have operated the Vehicle with a permit is accepted, this constituted a material fact that should have been, but was not disclosed by the Respondents to the Renners and constitutes a further breach of section 4(3)(b)(vi) of the BPCPA.*

19. *Given the Respondents' argument that the Vehicle could be towed on a limited class of highways or alternatively that it could be towed with a permit and the Authority's submission that the Respondents' failure to advise the Renners of these conditions of use constituted a failure to disclose a material fact, the Authority further submits that a material fact need only be an omitted fact that would have been important in the decision-making process to enter into a transaction. This was noted by the Supreme Court of Canada in defining a material fact in relation to a disclosure statement for real estate transactions under the BC Real Estate Act in Sharbern Holding Inc. v. Vancouver Airport Centre Ltd., 2011 SCC 23 (CanLII), [2011] 2 SCR 175 at paragraph 61:*

> *[61] In sum, the important aspects of the test for materiality are as follows:*
>
> *i. Materiality is a question of mixed law and fact, determined objectively, from the perspective of a reasonable investor;*
>
> *ii. An omitted fact is material if there is a substantial likelihood that it would have been considered important by a reasonable investor in making his or her decision, rather than if the fact merely might have been considered important. In other words, an omitted fact is material if there is a substantial likelihood that its disclosure would have been viewed by the reasonable investor as having significantly altered the total mix of information made available;*
>
> *iii. The proof required is not that the material fact would have changed the decision, but that there was a substantial likelihood it would have assumed actual significance in a reasonable investor's deliberations;*
>
> *iv. Materiality involves the application of a legal standard to particular facts. It is a fact-specific inquiry, to be determined on a case-by-case basis in light of all of the relevant considerations and from the surrounding circumstances forming the total mix of information made available to investors; and*

v. *v. The materiality of a fact, statement or omission must be proven through evidence by the party alleging materiality, except in those cases where common sense inferences are sufficient. A court must first look at the disclosed information and the omitted information. A court may also consider contextual evidence which helps to explain, interpret, or place the omitted information in a broader factual setting, provided it is viewed in the context of the disclosed information. As well, evidence of concurrent or subsequent conduct or events that would shed light on potential or actual behaviour of persons in the same or similar situations is relevant to the materiality assessment. However, the predominant focus must be on a contextual consideration of what information was disclosed, and what facts or information were omitted from the disclosure documents provided by the issuer.*

The Fifth-Wheel is Suitable for Transportation

20. *The Respondent argues that section 22 of the Motor Dealer Act Regulations ("MDAR") apply only to "non-functional motor vehicles that are not intended for transportation." With respect, the Authority submits that this is an unduly narrow interpretation of consumer protection legislation. This is supported by a decision of the British Columbia Court of Appeal in Stanway v. Wyeth Canada Inc., 2012 BCCA 260:*

> *[78] The BPCPA is obviously directed at consumer protection. In Seidel v. Telus Communications Inc., 2011 SCC 15, [2011] 1 S.C.R. 531, a case dealing with whether the statutory right to bring an action set out in s. 172 of the BPCPA could override an arbitration clause in a consumer contract, Binnie J., for a majority of the Supreme Court of Canada, wrote as follows in regard to interpretation of the BPCPA:*
>
> > *[37] As to statutory purpose, the BPCPA is all about consumer protection. As such, its terms should be interpreted generously in favour of consumers: Smith v. Co-operators General Insurance Co., 2002 SCC 30, [2002] 2 S.C.R. 129, and ACS Public Sector Solutions Inc. v. Courthouse Technologies Ltd., 2005 BCCA 605, 48 B.C.L.R. (4th) 328. ...*
>
> *[79] Further, s. 8 of the Interpretation Act, R.S.B.C. 1996, c. 238 requires that "every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best insures the attainment of its objects."*
>
> *[80] Turning to the wording of the BPCPA with those principles in mind, it is significant that the definition of a "deceptive act or practice" in s. 4(1), is broadly worded, including "an oral, written, visual, descriptive or other representation by a supplier" (s. 4(1)(a)). The wording of s. 4(3)(b)(vi) – "representation by a supplier ... that fails to state a material fact" – anticipates that an omission can constitute a deceptive practice. As I interpret s. 4(3)(b)(vi) of the BPCPA, in light of the definition of a deceptive act or practice in s. 4(1), non-disclosure of a material fact alone, absent a corresponding oral, written, visual, or descriptive representation, can ground a cause of action.*

> *[81] In my opinion, this interpretation is consonant with the purposes of the BPCPA and avoids an interpretation that is clearly contrary to the objectives of consumer protection.*

Expert Opinion of CVSE Inspector J. Kendall is Improper

21. *The Respondents argue that the conclusions of Jim Kendall, an Area Vehicle Inspector with the Ministry of Transportation and Infrastructure's Commercial Vehicle Safety Enforcement ("CVSE") branch, in his Vehicle Inspection Report dated December 17, 2021 are improper and should not be considered.*

22. *The Authority submits that Mr. Kendall's conclusions in his report may be relied on in this matter. Rule 34(3) of the Registrar's Rules of Practice and Procedure provide as follows:*

> ***Rule 34 – Evidence at Hearings***
> ***…***
> *3) The Registrar is not bound by the rules of evidence that apply in a court of law. The Registrar may in their discretion decide whether to admit evidence, its relevance and the amount of weight to be given to it.*

23. *In addition to Rule 34, the Authority relies on Alberta (Workers' Compensation Board) v. Appeals Commission, 2005 ABCA 276 (CanLII). In that case, the appellant challenged the respondent's decision to tender a medical report prepared by a physician, due in part to the respondent not properly qualifying the author as an expert.*

24. *In dismissing the appeal, the Court stated at paragraph 63 that "As a general rule, strict rules of evidence do not apply to administrative tribunals, unless expressly prescribed." Continuing at paragraph 64, the Court said:*

> *[64] This general rule applies even in the absence of a specific legislative direction to that effect. While many statutes stipulate that a particular tribunal is not constrained by the rules of evidence applicable to courts of civil and criminal jurisdiction, "these various provisions do not however alter the common law; rather they reflect the common law position: in general, the normal rules of evidence do not apply to administrative tribunals and agencies": Administrative Law, supra, at 279-80.*

25. *Similarly, the British Columbia Supreme Court has also commented on this issue in Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia, 2014 BCSC 894 (CanLII). That decision involved the admissibility of an inspection report authored by an individual who the Petitioners argued was unqualified to provide the evidence it contained. In admitting the report, Mr. Justice Blok held as follows:*

> *[66] In Western Forest Products Limited v. HMTQ, 2009 BCCA 354, the Court considered, among other things, the admissibility of expert evidence concerning the technical area of stumpage rates and stumpage assessment practices. While that subject-matter is not germane to the issues in the present case, the following statement provides general guidance on the matter of expert evidence before administrative tribunals:*

> *[26] It is unclear whether the chambers judge was referred to s. 148.6 of the Forest Act, which states that the Commission may admit evidence in an appeal "whether or not given or proven under oath or admissible as evidence in a court" provided it is relevant to the subject matter at hand. This provision is consistent with the principle, affirmed by this court in Cambie Hotel (Nanaimo) Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch) 2006 BCCA 119, that an administrative tribunal, as "master of its own procedure" may admit hearsay evidence unless its receipt would amount to a clear denial of natural justice. (At para. 30, quoting from J. Sopinka, S.N. Lederman and A.W. Bryant, The Law of Evidence in Canada, 2d ed. (1999) at 308.)*
>
> *[27] The rules of evidence relating to expert reports and testimony admit of more discretion than the hearsay rule and, I would have thought, should be less susceptible to judicial interference.*
> *[Emphasis added.]*
>
> *[67] I take from that excerpt that courts should apply a deferential standard of review in considering whether an administrative tribunal ought to have received expert evidence.*

26. *The Authority submits that the conclusions reached by Mr. Kendall in his report should be admitted and that his conclusions be given significant weight based his employment as an Area Vehicle Inspector with the CVSE.*

No Deceptive Act or Practice

Traveland was not required to disclose the length of the Fifth-Wheel as a material fact

27. *The Respondents submit that they were not required to disclose the length of the Vehicle as a material fact based on the following:*

    a. *The Vehicle could be towed in British Columbia;*
    b. *The Renners never used the Vehicle for towing in British Columbia; and*
    c. *The fact that the Vehicle could not be towed in British Columbia was a fact not known or not reasonably known by the Respondents at the time it was purchased by the Renners.*

The Vehicle was Compliant with the MVA and MVAR

28. *As noted above, the Authority submits that a proper interpretation of the CTAR shows that the Vehicle was overlength and could not be towed. The Vehicle was designed for this purpose and failure to advise the Renners of this material fact constitutes a deceptive act or practice under the BPCPA.*

29. *The Renners actual use of the Vehicle does not change the fact that the Respondents failed to advise them of a material fact, ie, that the Vehicle could not legally be towed in British Columbia. The unchallenged evidence is that the Renners purchased the Vehicle with the intention to eventually tow it behind a truck but because of its length, they cannot use it in that manner for as long as they own it.*

30. *The Respondents argue that they were not aware that the Vehicle could not legally be towed at the time it was sold to the Renners "nor could it have been reasonably known." The Authority submits however that this ignores the fact that the Respondents, in the business of selling recreational vehicles since 1977, had access to the Fact Sheet which was created eight years prior to the Renners' purchase.*

31. *Further, when Mr. Renner advised the Respondents in 2011 that he had been advised by other motor dealers that the Vehicle was overlength, the Respondents maintained its position that it could be towed as part of a combination that did not exceed 20 metres and that Mr. Renner was not obligated to disclose the "ongoing length debate" to prospective purchasers should he decide to sell the Vehicle privately. The Authority notes that section 4(2) of the BPCPA provides that a deceptive act or practice by a supplier can occur after a completed consumer transaction.*

Compliance Order

32. *The Respondents argue that a compliance order is not necessary for the following reasons:*

    a. *The alleged deceptive act or practice is sufficiently dated;*
    b. *The Respondent was unaware that the Authority considered recreational vehicles exceeding 12.5 metres to be overlength at the date of purchase; and*
    c. *The Respondent has already complied with the Authority's direction to provide information to consumers about the 12.5 metre length requirement.*

34. *The Authority submits that the continued conduct of the Respondents since the date of the Renner's purchase of the Vehicle warrants the issuance of a compliance order to ensure compliance with the MDA, the MDAR and the BPCPA.*

35. *As recently as 2021 when the Respondent was confronted by the Renners concerning the Vehicle's length, the Respondent maintained its position that the Vehicle was legal to tow so long as it was part of a combination that was no longer than 20 metres and that "there are no issues pulling [the Vehicle] down the road." The Respondent further advised the Renners that if they elected to sell the Vehicle privately, they were under no legal obligation to disclose the "ongoing length debate" to prospective purchasers.*

36. *The Authority notes that sections 26.02(4)(c) of the MDA and 155(1)(4)(c) of the BPCPA authorize the Registrar to issue a compliance order to address current, future or past contraventions of the legislation.*

37. *A misrepresentation does not have to be intentional to constitute a deceptive act or practice. Guidance in this respect may be found in a 2009 decision of the Registrar in David Knapp v. Crown Auto Body and Auto Sales Ltd. et al.:*

    20. *The case law provides guidance in the application of these deceptive act or practice provisions. In Rushak v. Henneken Auto Sales & Service (1991), B.C.L.R. (2d) 250 (BCCA) the following principles emerge:*

        a. *a deceptive act or practice need not be intentional, may be inadvertent and may arise even if the supplier has an honest belief in the accuracy of the information it relays;*
        b. *a deceptive act is on that "that tends to lead a person astray into making an error of judgment";*

c. *the Act must be construed so as to protect not only alert potential customers, but also those who are not alert, are unsuspicious and are credulous; and*
d. *the Act imposes a high standard of candour on a supplier of goods.*

38. *In addition to the misrepresentation at the date of purchase, six years later the Respondent continued to adhere to and rely on the argument that "there are no issues pulling [the Vehicle] down the road."*

39. *Finally, providing a copy of the Fact Sheet to prospective purchasers does not constitute compliance with the applicable legislation given the Respondents' continued position that overlength trailers can be towed if they are part of a combination that is 20 metres or less. The Respondents have not provided evidence to support a finding that they are advising prospective purchasers of overlength trailers that they are not legal for towing in British Columbia.*

Reliance on Misrepresentation

40. *The Respondents argue that the evidence does not establish a link between the Renners' reliance on any of the alleged deceptive acts and a tangible loss.*

41. *The unchallenged evidence of Mr. Renner is that he told Mr. Moore that he intended to tow the Vehicle. Mr. Renner further stated that if Mr. Moore had provided him with a copy of the Fact Sheet indicating that the Vehicle could not be legally towed in British Columbia due to its length, he would have questioned it for that reason.*

42. *The Authority submits that the Respondent misrepresented the extent of the Vehicle's use to the Renners. The Respondent has offered no evidence from the time of the purchase to contradict that as Mr. Moore recalls nothing about his discussions with the Renners. Mr. Renner did not question whether the Vehicle could be towed but indicated that if he had been provided with a copy of the Fact Sheet, he would have taken a different course. In that respect, he relied on the misrepresentation of Mr. Moore.*

43. *The Authority again relies on the Supreme Court of Canada decision in Sharbern Holding Inc., supra, in support of the argument that "the proof required is not that the material fact would have changed the decision, but that there was a substantial likelihood it would have assumed actual significance in a reasonable investor's deliberations."*

Damages

43. *The Respondents argue that any misrepresentation was not intentional. This however flies in the face of Mr. Howes' advice to Mr. Renner in 2021 that the Vehicle could be towed as part of a combination of vehicles not exceeding 20 metres in length and that he was not obliged to disclose the "ongoing length debate" to prospective purchasers in a private sale.*
44. *The Respondents further suggest that a full refund of the purchase price as a remedy is too imprecise and that a more appropriate approach is to quantify the Renners' loss as the loss of the Vehicle's trade-in value.*
45. *The Authority submits that using the trade-in value as a measurement of damages for the Vehicle is of no assistance insofar as the Vehicle's utility is greatly diminished due to its length and the inability to tow it in British Columbia.*
46. *The Renners own a fifth-wheel trailer that cannot be towed in British Columbia. Calculation of damages based on trade-in value assumes that its utility has not been reduced. Given the restrictions on towing, trade-in value is a far more imprecise*

approach to measuring damages under the MDA and the BPCPA. The most reasonable approach is to simply refund the original purchase price to the Renners.

Registrar's Response to the Written Submissions

7. In these reasons for my decision, I do not address each of the extensive arguments made by the parties to this dispute. I agree with the submissions of the Authority and, in particular, agree with the relief sought by the Authority at its paragraph 79. The arguments I now address are those that I consider to be determinative of the question of whether Traveland, at the time of the purchase of the Vehicle by the Renners, contravened the *Motor Dealer Act Regulation,* BC Reg 447/78, s 22 by failing to declare on the purchase agreement that the Vehicle is not suitable for transportation because its length exceeds the legal length allowable on the roads of British Columbia, and contravened the *Business Practices and Consumer Protection Act*, SBC 2004, c 2, s 4 (1) and 5 (1) by engaging in deceptive acts or practices by failing to disclose that the Vehicle exceeded the maximum length legally allowed in British Columbia thus rendering it unsuitable for transportation.

8. I will repeat some of the salient facts that emerged from the submissions and my conclusions.

9. This matter involves an alleged misrepresentation, namely that Traveland deceived the Renners at the time of the purchase of the Vehicle by failing to advise them that the Vehicle was too long to be driven in British Columbia. The purchase of the Vehicle was a "consumer transaction", as defined in section 1 of the *Business Practices and Consumer Protection Act* which provides that a "supplier", which in this instance includes Traveland, must not commit or otherwise engage in a deceptive act or practice in relation to a consumer transaction. The burden of proof that the deceptive act or practice was not committed rests on the supplier, here Traveland.

10. Section 4 (1) of the *Business Practices and Consumer Protection Act* provides that a deceptive act or practice in respect of the consumer transaction means, "any conduct by a supplier that has the capability, tendency, or effect of deceiving or misleading a consumer".

11. A deceptive act or practice is a misrepresentation whether it is innocent, negligent, or deliberate. It is not alleged that Traveland actively sought to mislead the Renners when they purchased the Vehicle. The alleged deception was the failure to advise the Renners that the Vehicle could not be towed in British Columbia because of its length. There is no evidence that Traveland gave that advice to the Renners at the time of the purchase of the Vehicle and no attempt has been made to argue otherwise.

12. I am satisfied that Traveland had in its possession at the time of the sale of the Vehicle a "Fact Sheet" generated by the CVSE which document addressed "recreational vehicles in British Columbia". Under the heading "Maximum Lengths of Recreational Vehicles" there is the following: "maximum length for a towed recreational vehicle is 12.5 meters". There is no reasonable basis on which it can be argued that this maximum length restriction did not apply to the Vehicle. I will come back to this conclusion in the next portion of these reasons.

13. I assume that Traveland and, in particular, Mr. Moore, who was the responsible salesperson at the time of the purchase, did not have the Fact Sheet in mind at the time of the purchase and at the time of his discussion with the Renners. Nevertheless, the Fact Sheet was available and ought to have been in Mr. Moore's mind at the time of the sale of the Vehicle. The Fact Sheet contained information vital to the Renners. A failure by Traveland to bring it to the attention of the Renners misled them.

14. In addition to the importance of the Fact Sheet, there is evidence that in December of 2021, Mr. Kendall, an Area Vehicle Inspector with the CVSE inspected the Vehicle to measure its length

for compliance with the Motor Vehicle Act and Regulations. His opinion was that the Vehicle "DOES NOT conform with the Motor Vehicle Act Regulations" [Mr. Kendall's emphasis].

15. If Mr. Kendall's opinion evidence is admissible, there is no reasonable basis on which Traveland can successfully argue that it did not engage in deceptive practice as is alleged.

16. Recognizing its importance, Traveland seeks to exclude Mr. Kendall's evidence, which in my opinion, is fatal to Traveland's position. Its submission is that "it is improper for Mr. Kendall to opine on matters of law that this conclusion ought not to be considered: 'Expert evidence must not be argumentative, it must consist of findings of fact or conclusion of law' and the facts upon which the expert opinion is founded must be included in the report.'" [emphasis by Traveland]. I do not agree with Traveland that Mr. Kendall's evidence ought to be excluded. Counsel for the Authority brings my attention to Rule 34 of the Registrar's Rules of Practice and Procedure which provides that the Registrar has the discretion to receive evidence and to consider its relevance and the weight to be given to it. Further, the Authority submits that the Registrar does not hear this controversy as if sitting in a court of law and is not bound by the rules of evidence as would a judge.

17. I agree with this submission of the Authority.

18. In support of its position, the Authority relies on *Alberta (Workers' Compensation Board) v Appeals Commission*, 2005 ABCA 276 in which the Appellant sought to exclude a medical opinion offered by a physician who had not been qualified as such at trial. The Alberta Court of Appeal stated that "as a general rule, strict rules of evidence do not apply to administrative tribunals, unless expressly prescribed".

19. Further, the Alberta Court elaborated on this "general rule" writing that it:

> "[64] *applies even in the absence of a specific legislative direction to that effect. While many statutes stipulate that a particular tribunal is not constrained by the rules of evidence applicable to courts of civil and criminal jurisdiction, "these various provisions do not however alter the common law; rather they reflect the common law position: in general, the normal rules of evidence do not apply to administrative tribunals and agencies*."
> …
>
> *[66] In Western Forest Products Limited v. HMTQ, 2009 BCCA 354, the Court considered, among other things, the admissibility of expert evidence concerning the technical area of stumpage rates and stumpage assessment practices. While that subject-matter is not germane to the issues in the present case, the following statement provides general guidance on the matter of expert evidence before administrative tribunals:*
>
> > *[26] It is unclear whether the chambers judge was referred to s. 148.6 of the Forest Act, which states that the Commission may admit evidence in an appeal "whether or not given or proven under oath or admissible as evidence in a court" provided it is relevant to the subject matter at hand. This provision is consistent with the principle, affirmed by this court in Cambie Hotel (Nanaimo) Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch) 2006 BCCA 119, that an administrative tribunal, as "master of its own procedure" may admit hearsay evidence unless its receipt would amount to a clear denial of natural justice. (At para. 30, quoting from J. Sopinka, S.N. Lederman and A.W. Bryant, The Law of Evidence in Canada, 2d ed. (1999) at 308.)*

> *[27] The rules of evidence relating to expert reports and testimony admit of more discretion than the hearsay rule and, I would have thought, should be less susceptible to judicial interference."*
> [Emphasis Added] (by the Authority)
>
> *[67] I take from that excerpt that courts should apply a deferential standard of review in considering whether an administrative tribunal ought to have received expert evidence.*

20. I conclude that Mr. Kendall's evidence is admissible and should be given considerable weight. There is no cogent evidence to the contrary.

21. Traveland further submits that it was not obliged to disclose the length of the Vehicle because the Renners did not intend to have it towed in British Columbia, nor did Traveland know, or could reasonably have known, that the Vehicle could not be towed in British Columbia. In my opinion, if they had learned of that fact, it is inconceivable they would have purchased it.

22. There is no evidence that Mr. Moore was told by the Renners that they would not tow the Vehicle in British Columbia. Mr. Moore had no useful memory of his dealings with the Renners. He was not able to give any evidence on the question of whether the Renners had intended to tow the Vehicle or not. In my opinion, there can be no doubt that the Renners, if they had been at least alerted to the question of the Vehicle's length, would have made appropriate inquiries and would have learned that the Vehicle could not have been towed in British Columbia.

23. Traveland adopted a regrettably casual approach to its obligation to the Renners. This is exemplified by Mr. K. Howes' email of June 4, 2021, about a possible private sale of the Vehicle as a solution to the Renners' complaints. Mr. Howes' email reads: "you may explain this ongoing length debate to any potential buyer if you feel so inclined, but you are in no legal obligation to do so. For private sellers, the rule is 'buyer beware' which is why many people choose to purchase through a dealer." If Mr. Renner had gone down the dishonorable path advocated by Mr. K. Howes, Mr. K. Howes may have been subject to further litigation.

The Registrar's Decision

24. I am satisfied that the Renners have made out a deception case within the meaning of the *Business Practices and Consumer Protection Act* against Traveland. I do not find Traveland intended to deceive but that is not necessary for the Renners to be entitled to a remedy.

The Question of the Appropriate Remedy

25. Traveland submits that if the Renners have made out their case and are entitled to remedy, it ought not to be a refund of the purchase price. To do so, it is said "would result in a betterment for the Renners who have had use of the vehicle for several years." It is argued that there is no evidence they have not been able to use the Vehicle over the years since it was purchased.

26. Traveland suggests that its trade-in value be determined through the National Auto Dealer's Association which can provide "precise data" to establish the value of a second-hand recreational vehicle. Traveland submits the current value of the Vehicle is $25,100.00 USD. Traveland makes other suggestions that could lead to the sale of the Vehicle as a "used trailer" valued at $40,850.00. A further suggestion is made that Traveland, through an "earlier attempt to purchase back or consign the fifth wheel", could fetch between $50,000.00 to $60,000.00.00

27. I do not agree with Traveland that the Renners ought to be put to the task of determining the value of the Vehicle through the rather uncertain means suggested by Traveland.

28. I conclude there is much uncertainty for the Renners if they adopt any of the approaches suggested by Traveland and I conclude the appropriate remedy is that Traveland take the Vehicle back on payment to the Renners of its original purchase price.

29. It is normal in cases such as this that a licensee may be liable to pay investigation and hearing costs (see section 26.02 (4)(d) of the *Motor Dealer Act* and section 155 (4)(d) of the *Business Practices and Consumer Protection Act* provide for such a remedy). The Authority has leave to deliver submissions and evidence on investigation and hearing costs by **January 30, 2023,** and Traveland will have 2 weeks thereafter to respond.

30. This decision may be reviewed by petitioning the British Columbia Supreme Court for judicial review pursuant to the *Judicial Procedure Act*. Such a Petition is to be filed with the Court within 60 days of this decision.

Kenneth Affleck, K.C.
Registrar of Motor Dealers