



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

BETWEEN:

**VEHICLE SALES AUTHORITY**

Complainant

AND:

**0831522 B.C. LTD. dba  
STREET TRENDZ AUTO SALES & CUSTOMIZATION  
(Dealer #31174)**

Motor Dealer

AND:

**MAXWELL MACLEAN  
(Salesperson #119575)**

Salesperson/Dealer Principal

AND:

**CHRISTOPHER ANTHONY YACOBACK  
(Salesperson #108710)**

Salesperson

**DECISION OF THE REGISTRAR OF MOTOR DEALERS**

**Date and Place of Hearings:** April 29 and May 20, 2015 (written statement of Yacoback only on July 16, 2015), at Surrey, British Columbia

**Appearances for:**

0831522 B.C. Ltd. dba Street Trendz Auto Sales & Customization	No One
Maxwell MacLean	No One
Christopher Anthony Yacoback	In person May 20, 2015 and written submission on July 16, 2015

Vehicle Sales Authority

Daryl Dunn, Manager of Compliance and Investigations

Carrie VanDokkumburg, Compliance Officer

Christina Walker, Compliance Support Officer – Advertising and Internet Specialist

Jaydon Rush, Licensing Officer

## **Introduction – Allegations**

[1] This hearing was called to review the conduct of 0831522 B.C. Ltd. *dba* Street Trendz Auto Sales & Customization, dealer licence #31174 (“Street Trendz”), Maxwell MacLean, salesperson licence #119575 and Christopher Anthony Yacoback, salesperson licence #108710. Details of the allegations against Street Trendz, Mr. MacLean and Mr. Yacoback are noted in the Hearing Notice (see Exhibit 7 of the Hearing).

[2] Summarizing the allegations; Street Trendz, Mr. Maxwell and Mr. Yacoback breached provisions of the *Motor Dealer Act*, R.S.B.C. 1996 c. 316 (“MDA”), the *Business Practices and Consumer Protection Act*, S.B.C. 2004 c. 2 (“BPCPA”) and their regulations in relation to six separate consumer transactions by:

- (a) Selling motor vehicles to four consumers (consumers S.P., J.R., C.S., and R.F.) that had not passed Air Care emissions tests and counseled the consumers to register the motor vehicles at the same address in Whistler, B.C., (outside the Air Care zone) to avoid having to have their vehicles pass Air Care.
- (b) Selling a motor vehicle to a consumer J.R. on a purchase agreement and then subsequently registered the motor vehicle with Street Trendz as lessor and the consumer as lessee, and failed to:
  - (i) provide a lease disclosure statement as required by Part 5, Division 3 and Division 9 of the BPCPA;
  - (ii) advise the consumer of the one clear day cooling off period for motor vehicle leases as required by section 31 of the *Motor Dealer Act Regulation*, B.C. Reg. 447/78; and
  - (iii) advise the consumer the Dealer was not authorized by the Vehicle Sales Authority (the “Authority”) to lease vehicles.

- (c) Providing to four consumers (J.R., C.S., D.Z., and R.F.) a Lubrico vehicle warranty and failed to remit proceeds to the warranty provider or otherwise register the warranty with the warranty provider.
- (d) Selling a motor vehicle to a consumer P.B. and failing to advise the consumer that the odometer had been replaced as required by the *Motor Dealer Act Regulation* sections 21(2)(b), 23(e) and 25.
- (e) Selling motor vehicles to four consumers (S.P., J.R., C.S., and R.F.) indicating they were suitable for transportation when they were not.

[3] All these issues came to light as a result of Compliance Officer Vandokkumburg's investigation into a complaint by consumer S.P. which included the vehicle being registered in Whistler as a means to avoid Air Care. In investigating S.P.'s complaint, Ms. Vandokkumburg reviewed other sales by Street Trendz and noted the same Whistler address used for various vehicles that had failed Air Care.

[4] During the investigation, Street Trendz agreed to unwind the sale to S.P. However, the first cheque Street Trendz issued did not clear. The second cheque did clear. At the hearing, S.P. gave evidence about the transaction and stated they were satisfied with the compensation they received.

[5] After Street Trendz, Mr. MacLean and Mr. Yacoback had been served with the first Notice of Hearing, but before the hearing itself, Street Trendz vacated its business premises and disappeared overnight, as did Mr. MacLean.

### **Preliminary Matter – Service of Notices of Hearing**

[6] Street Trendz, Maxwell MacLean and Christopher Anthony Yacoback did not attend the Hearing held on April 29, 2015. The affidavits of service and Ms. Vandokkumburg's testimony at the hearing show Street Trendz, Maxwell MacLean and Christopher Anthony Yacoback had been personally served with the Notice of Hearing and two Affidavits of Ms. Vandokkumburg containing the evidence to be presented at the Hearing. In accordance with section 6(e) of the MDA and section 7(e) of the *Salesperson Licensing Regulation*, B.C. Reg. 241/2004, I continued with the Hearing.

[7] One witness, Crystal Tisiga, was served a Summons to a Witness but did not attend the April 29, 2015 Hearing. I was satisfied from the Affidavit of Service and testimony from Ms. Vandokkumburg that she personally served Ms. Tisiga with the Summons to a Witness ordering her to appear at the Hearing on April 29, 2015. At

the conclusion of the April 29, 2015, Hearing, Mr. Dunn for the Authority requested a second hearing day and a new summons for Ms. Tisiga. Ms. Tisiga did attend and provide evidence at the May 20, 2015, hearing.

[8] The evidence submitted by Ms. Vandokkumburg and Ms. Christina Walker of the Authority, show Street Trendz, Maxwell MacLean and Christopher Anthony Yacoback were sent notices of the continuation of the Hearing to May 20, 2015. The notices to Street Trendz and Mr. MacLean were returned undelivered. Mr. Yacoback attended the May 20, 2015, hearing. In accordance with section 6(e) of the MDA and section 7(e) of the *Salesperson Licensing Regulation*, B.C. Reg. 241/2004, I continued with the hearing.

### **Preliminary Matter – Hearing Process – Mr. Yacoback**

[9] Christopher Anthony Yacoback attended the May 20, 2015, Hearing. He did not attend the April 29, 2015, Hearing. Mr. Yacoback stated after Street Trendz closed he decided that he did not want to be a salesperson any longer. Mr. Yacoback stated that Maxwell MacLean advised him not to bother attending. According to Mr. Yacoback, these two factors caused him not to take the hearing process seriously. Mr. Yacoback stated that when he received the second notice of hearing, he became more concerned. He says he spoke to a family law lawyer who is a friend. Mr. Yacoback said the lawyer advised him they could not assist as they were not aware of the Authority and its processes; but said that he should not miss any more hearings. Mr. Yacoback stated he would certainly like a lawyer to help him review the evidence and help him make his submissions as he tends to “ramble on” which may or may not be helpful.

[10] I balanced the following considerations in deciding to proceed with the hearing:

- (a) Mr. Yacoback had chosen not to attend the April 29, 2015, hearing, after being served with the hearing notice and evidence to be relied on by the Authority,
- (b) Mr. Yacoback now wanted legal assistance to review the evidence and have a lawyer assist in preparing any submissions,
- (c) There were two witnesses in attendance under a summons and an adjournment may require they re-attend at a future date,
- (d) An adjournment would increase the administrative costs, such as having a court reporter re-attend at a later date, and
- (e) The public interest that this matter be heard and addressed.

To ensure Mr. Yacoback had the benefit of legal assistance before making submissions or providing evidence, I ordered:

- (a) Mr. Yacoback be provided transcripts of the proceedings and any evidence not already in his possession,
- (b) Mr. Yacoback would be given 30 days from when he received the transcripts to review same and seek legal assistance to provide his own evidence or submissions,
- (c) If Mr. Yacoback wished to provide evidence orally, we would reconvene the hearing, and
- (d) Mr. Dunn would have the right to request the hearing be reconvened if he felt he needed to cross-examine Mr. Yacoback.

[11] The above process was followed. On July 16, 2015, Mr. Yacoback provided to Mr. Dunn, his response to the allegations against him by way of an email. Mr. Yacoback stated he did not require a further hearing. Also on that date, Mr. Dunn forwarded that email to my attention and confirmed the he did not intend to cross-examine Mr. Yacoback on his submissions: Email trail of July 16, 2015 from Mr. Dunn.

[12] I am satisfied that Mr. Yacoback was afforded procedural fairness and given a fair opportunity to know and respond to the allegations made against him.

### **The Law**

[13] I have cited in detail the law applicable in previous Registrar decisions. I will provide an overview of that law here:

**(a) *Business Practices and Consumer Protection Act – deceptive acts or practices***

- (i) A dealer and a salesperson are to refrain from making misrepresentations (deceptive acts or practices) as required by section 5(1) of the BPCPA.
- (ii) A deceptive act or practice may occur innocently, negligently or deliberately. It may also occur by failing to state a material fact.
- (iii) If there is some evidence to suggest a motor dealer or salesperson made a misrepresentation, the onus is on them to show it was not a deceptive act or practice: section 5(2) of the BPCPA.

- (iv) A consumer does not have to have suffered a loss for a deceptive act or practice to have occurred.

See:

*Bunyak v. Darryl's Best Buys Auto Sales Ltd. et al.* (Registrar, October 5, 2015, Hearing File # 14-12-002), reconsideration refused November 13, 2015.

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

**(b) Compliance with the Motor Vehicle Act – suitable for transportation**

- (i) A motor vehicle must not be offered for sale or sold (includes a lease) to a person unless that motor vehicle meets all the requirements of the *Motor Vehicle Act* and all its regulations: section 222 of the *Motor Vehicle Act* and section 8.01 of the *Motor Vehicle Act Regulation*.
- (ii) A motor dealer is to declare to a purchaser that a used motor vehicle is compliant with the *Motor Vehicle Act* or is otherwise “Unsuitable for transportation”.

See:

*Re: Xu dba Golden Year Auto Broker et al.* (Registrar, April 28, 2015, Hearing File #14-11-004)

*Knapp v. Crown Autobody & Auto Sales Ltd.* (Registrar, September 21, 2009 File # 08-70578) affirmed *Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia* 2014 BCSC 894 (BC Supreme Court)

**(c) A review of the conduct of a motor dealer or a salesperson**

- (i) A licensee’s past and present conduct is reviewed to assess whether they pose a future risk to the public interest and if so, what action is needed to address any concerns,

(ii) As recently summarized in *Crombie v. Auto Empire et al* (Registrar, August 18, 2014: Hearing File 13-12-001) at paragraph 38:

- a) A review of conduct has not been limited temporarily, geographically or by subject type. It simply needs to be conduct that is of concern to the public interest in order for the registrar to be able to review it: *Re: Stephen Albert Ironside* (BC Registrar, #11-026) and *Re: Bruce Ironside* (BC Registrar of Motor Dealers, File 11-025, May 27, 2011).
- b) What is conduct that is of concern to the public interest must be assessed contextually with the purpose of the MDA and the Regulation in mind. The categories of conduct that may be of concern are not limited, but the following have been recognized in past registrar decisions:
  - ...encompasses any act or omission or course of behaviour that affords reasonable grounds to believe that the business [or person] will not be carried on in accordance with law, honesty and integrity: *Re: Badshah* (Registrar's Decision, File 09-71010, September 24, 2010) at paragraph 20 citing *Prestige Toys Ltd v Ontario (Registrar, Motor Vehicle Dealers Act)*, 2009 CanLII 43657(Ont. Superior Court of Justice).
  - behaviour indicating a lack of transparency or candour on the part of the Salesperson [or dealer] in their interaction with the VSA: *Re: Badshah and Dirani*;
  - behaviour indicating the salesperson [or dealer] is or will be ungovernable, meaning they will not abide by lawful orders of the Registrar or the VSA: *Registrar v Peter Fryer* (December 13, 2013, File 13-11-005) at paragraph 11, citing *Evans v Society of Notaries Public (British Columbia)* 2010 BCSC 1232 (Supreme Court);
  - behaviour of concern to consumers' personal, financial and otherwise confidential information: *Registrar v Peter Fryer* at paragraph 10; and *Re: Basset* (Registrar of Motor Dealers, December 2, 2009, File 09-108822) at paragraph 22; and
  - behaviour of concern indicating an inability to trust the salesperson: *Re: Basset* at paragraph 22.
- c) Where a motor dealer that is a corporate entity is being reviewed, the registrar may look past the corporate veil and review the conduct of the corporation's directing minds (officers and directors). It is recognized that from a licensing standpoint, corporations act through people and it's the peoples' conduct that

is to be assessed: *Registrar v Key Track Auto Sales & Detailing Ltd* (June 8, 2010, File 10-013).

(iii) Recently, Madame Justice Sharma noted in *Fryer v. Motor Vehicle Sales Authority of British Columbia*, 2015 BCSC 279:

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

These same concerns are applicable to a motor dealer.

[14] In this case, assessing credibility is a key issue. In assessing credibility, I keep in mind the helpful directions in: *Bradshaw v. Stenner*, 2010 BCSC 1398 (BC Supreme Court) paras. 186-187, affirmed 2012 BCCA 296 (BC Court of Appeal), leave to appeal to the SCC refused 2013 CanLII 11302 (SCC) (Supreme Court of Canada); and *Crest Realty Westside Ltd. v. W & W Parker Enterprises Ltd.*, 2014 BCSC 1328 (BC Supreme Court) paras. 43-44, affirmed 2015 BCCA 447 (BC Court of Appeal).

## **Discussion**

### **(a) Failed Air Care and Whistler Address**

#### **(i) Complainant - Consumer S.P.'s evidence**

[15] In Consumer S.P.'s written complaint and statement dated April 14, 2014, S.P. states:

- On April 2, 2014, S.P. looked at a 2001 Acura and purchased it the following day from Street Trendz.
- They dealt with Maxwell MacLean at Street Trendz.
- Maxwell MacLean assured S.P. the motor vehicle was Air Cared and in good working order.



- S.P. was asked to see Crystal Tisiga from All Write Insurance who advised S.P. that the AirCare had expired in January, but they would register the motor vehicle at Maxwell MacLean's Whistler address, and
- Consumer S.P.'s ex-spouse complained to S.P. that the motor vehicle was unsafe, and also complained to the Ministry of Children and Family. Consumer S.P. had to have the vehicle inspected, which showed significant issues.

[16] During the course of the investigation, Street Trendz took back the 2001 Acura and provided Consumer S.P. a refund.

[17] In support of Consumer S.P.'s complaint, they provided various documents:

- Purchase agreement dated April 3, 2014, showing an address in Vancouver
- ICBC Transfer/Tax Form (APV9T) showing a residential address in Vancouver
- ICBC registration documents showing a location address at Blackcomb Way, Whistler, B.C. At the bottom of the APV9T is the initials CAT which Crystal Tisiga confirmed was her and agency stamp 56147 which belongs to All Write Insurance where Ms. Tisiga was employed. The bottom of the APV9T also shows a B.C. driver's licence used for identification
- A payment plan agreement Form APF207A showing an account holder name and address on Blackcomb Way, Whistler, B.C.
- Business card of Crystal Tisiga showing All Write Insurance
- Business card of Maxwell MacLean showing Street Trendz, and
- Vehicle inspection report with notes from the mechanic.

[18] During the hearing, Consumer S.P. indicated the following:

- Consumer S.P. dealt with Maxwell MacLean the day before the purchase who assured the motor vehicle was in good order and passed Air Care
- S.P. picked up the motor vehicle the next day and dealt with someone other than Maxwell MacLean at Street Trendz indicating it was Mr. Yacoback (Mr. Yacoback confirmed it was he that S.P. dealt with that second day)
- When they picked up the motor vehicle the next day and finalized the sale, Crystal Tisiga advised that the motor vehicle could be registered in Whistler in order to avoid having to put the motor vehicle through AirCare
- S.P. traded her Honda in for the Acura. S.P. gave Crystal Tisiga a copy of the Honda's insurance and registration papers to complete the transfer of the Honda to Street Trendz. On the insurance and registration papers for the Honda was the Vancouver address
- S.P. had some difficulties with the motor vehicle after purchase requiring some repairs, which Street Trendz addressed

- S.P. confirmed their written statement that the motor vehicle eventually was inspected and some further issues were found. Consumer S.P. then asked to return the motor vehicle and filed a complaint
- Consumer S.P. does not have a Whistler, B.C., address and never provided a Whistler, B.C., address to Crystal Tisiga or anyone else. S.P. has never been to Whistler: Transcript of Proceedings, April 29, pages 36-42, and
- At the hearing, Consumer S.P. produced their driver's licence and it showed the Vancouver address, and Consumer S.P. has lived there for several years.

**(ii) Evidence of Christopher Yacoback**

[19] Mr. Yacoback notes he did not deal with Consumer S.P. in arranging the terms and conditions of the sale. That was with Maxwell MacLean. Consumer S.P. confirmed Mr. Yacoback never said whether the Acura had passed Air Care or not: Transcript of Proceedings, April 29, 2015, page 42. Mr. Yacoback's written response notes S.P.'s testimony could not identify who signed the ICBC Transfer/Tax Form (APV9T) with initials CAT: Transcript of proceedings, April 29, 2015, page 69. Earlier in S.P.'s evidence, they note that Mr. Yacoback and Crystal Tisiga had a conversation about the transfer of the Acura to S.P. and Ms. Tisiga came back and said they could register it in Whistler to get around Air Care: Transcript of Proceedings, April 29, 2015, pages 36-42. Mr. Yacoback says he had no dealings with ICBC registration or transfers other than to ensure AutoPlan Agents have a desk and access to a computer and printer suitable for ICBC transfers.

**(iii) Evidence of Crystal Tisiga**

[20] Crystal Tisiga is an insurance agent providing insurance services by going to dealerships to register and insure newly purchased vehicles – commonly known as a runner. At the material time, she was employed by All Write Insurance.

[21] Ms. Tisiga says she could not remember the transaction with S.P. or any other of the transactions she was questioned on. Ms. Tisiga says she is unaware of a Blackcomb Way address in Whistler and does not memorize addresses. Her testimony is that she sees many transactions and indicated no one particular address or transaction really stands out for her.

[22] Ms. Tisiga categorially denies Consumer S.P.'s testimony that Ms. Tisiga told her to register the motor vehicle in Whistler to avoid Air Care. Ms. Tisiga confirmed the initials "CAT" on the APV9T was hers and the agency she works for All Write Insurance is agency number 56147. Ms. Tisiga also says that sometimes the APV9T is pre-filled out before she arrives at the dealership. She does not recall if that was the case here. Ms. Tisiga could not recall if she reviewed the address on S.P.'s

driver's licence. Crystal Tisiga was also adamant that she never sees any purchase agreements from the dealers when she does a vehicle transfer at the dealership: Transcript of Proceedings, May 20, 2015, page 35.

[23] Crystal Tisiga says her common practice is to review the identification provided by the purchaser and confirm the address they are providing is correct. She then explains that if she is suspicious of the purchaser's answer, she cautions them that the document may be held up in a court of law. Ms. Tisiga is unaware of whether she is to report any suspicious transactions to I.C.B.C., and does not recall ever having done so.

[24] Ms. Tisiga was questioned about the discrepancies in the addresses on various APV9T's showing the Blackcomb Way address. Some of the APV9T's did not have her initials. However, all these APV9T's involved sales from Street Trendz. Her response was to reiterate her usual practice of getting the consumers to confirm their address, or if there was a discrepancy, it was due to something said or done by the consumer. Even though she does not recall this transaction, Ms. Tisiga stated that the signature on the APV9T involving the Consumer S.P. transaction belonged to the consumer: "Yes, that's her signature right there, looks like it": Transcript of Proceedings, May 20, 2015, pages 49-50.

[25] Ms. Tisiga was questioned about the Vancouver address on the APV9T for Consumer S.P. and how that changed to a Whistler address on the ICBC Payment Plan Agreement Form APF207A. Ms. Tisiga's response was that the consumer must have requested the change: Transcript of Proceedings, May 20, 2015, pages 50-51.

[26] Ms. Tisiga was questioned about the documents for the transaction involving Consumer J.R. and the Whistler address. She could not recall this transaction and identified her usual practice of confirming the addresses with consumers. Ms. Tisiga's evidence is that she just processes the registration and insurance paperwork based on what the consumer advises her. Ms. Tisiga was asked directly whether the Blackcomb Way address was used because the motor vehicle purchased by J.R. did not pass Air Care. Ms. Tisiga answered a flat "No": Transcript of Proceedings, May 20, 2015, page 29. How would Ms. Tisiga know for sure whether or not the Blackcomb Way address was used for this purpose if, as she says, she just registers vehicles using the address provided by the consumer and she does not recall this transaction?

[27] Ms. Tisiga was questioned whether she obtained the Blackcomb Way Whistler address from the dealer. Ms. Tisiga said no. She obtains the address for registration directly from the customer: Transcript of Proceedings, May 20, 2015, page 30.

[28] Ms. Tisiga was asked about the process of inputting information into the ICBC system when registering a motor vehicle. She confirmed that she inputs the customer's driver's licence which will populate the ICBC screen with a name and address. Ms. Tisiga says she then confirms the address and makes any changes as identified by the customer: Transcript of Proceedings, May 20, 2015, at page 38.

[29] Ms. Tisiga did note that if a person registers and insures a motor vehicle as being in one location (ex. Whistler) when it is actually located in another location (ex. Vancouver), and there is an accident, then the person may not have insurance coverage: Transcript of Proceedings, May 20, 2015, pages 54-55.

**(iv) Evidence of Anna Dua**

[30] Ms. Dua is an owner of All Write Insurance and supervisor of Ms. Tisiga. Ms. Dua was not present during the transactions in question. Ms. Dua provided evidence which is mostly speculative or hearsay. I have considered Ms. Dua's evidence identifying the process of registering or insuring vehicles. I have placed no weight on Ms. Dua's speculation of what probably transpired at the dealership and her speculation about motives. In summary:

- Ms. Dua said there would be no motive for Crystal Tisiga to falsify documents. She would receive no benefit for conducting these transactions as she is paid hourly by All Write and not by commission: Transcript of Proceedings, May 20, 2015, pages 91-92
- Ms. Dua did admit that All Write Insurance would benefit in obtaining the fee for processing the registration and insurance of a motor vehicle: Transcript of Proceedings, May 20, 2015, pages 87-90
- Ms. Dua explained that a vehicle can be registered with new owners without requiring a passed Air Care inspection. However, once you go to insure the vehicle, the Air Care prompt would stop the insurance process unless there was a valid Air Care pass: Transcript of Proceedings, May 20, 2015, pages 85-86
- Ms. Dua explained that a customer may have a residential address that is different than the location address where a motor vehicle may normally be located
- Ms. Dua stated Street Trendz owes All Write about \$1,000

- Ms. Dua stated one customer who used the Whistler address has come in and renewed their insurance again using the Whistler address
- Ms. Dua believes the dealer was convincing consumers to use the Whistler address, and
- Ms. Dua also noted that Crystal Tisiga, as an insurance agent, is not the “brightest bulb”.

**(v) Evidence of Tony Carpenetti**

[31] Tony Carpenetti is a Senior Business Analyst with ICBC’s Vehicle Registration Programs. The Vehicle Registration Program is charged with maintaining the integrity of British Columbia’s vehicle registry. Mr. Carpenetti stated he was aware of the Air Care program. Mr. Carpenetti’s unchallenged evidence was:

- Whistler is in a territory that did not require Air Care
- The insurance premiums for the Whistler territory would be different than for Vancouver
- If the wrong premiums were paid, and a lesser amount, the insured may not have coverage in the case of an accident
- An AutoPlan agent who is registering a motor vehicle and providing the mandatory basic insurance from ICBC is acting as an agent for ICBC and not as a broker. It is a major concern for ICBC if an agent is not registering and insuring a motor vehicle in the correct territory. ICBC is responsible for the integrity and accuracy of the registry which is accessed by various agencies
- An insurance agent would have access to the purchase agreement and would look for things like a tax number for the dealer: Transcript of Proceedings, April 29, 2015, page 94, and
- If there is a discrepancy in the addresses provided by a customer, the agent must inquire and be satisfied of the answer for the discrepancy: Transcript of Proceedings, April 29, 2015, pages 94-95.

**(vi) Documents – Consumer J.R.**

[32] On a purchase agreement dated April 1, 2014, Consumer J.R., purchased a 2003 BMW X5 and shows an address in Vancouver, British Columbia. The ICBC registration forms also show a location address at the same Vancouver address. The motor vehicle was registered as a lease vehicle with Consumer R.L.G. as lessee. The driver’s licence of R.L.G. shows the same Vancouver address as on the purchase agreement with J.R. There are no agent’s initials on the bottom of the

ICBC Transfer/Tax Form (APV9T), but agency stamp 56147 (All Write) appears at the bottom.

[33] On a purchase agreement dated April 20, 2014, Consumer J.R., purchased a 1999 Pontiac Transport and shows an address in Vancouver, British Columbia. On the ICBC Transfer/Tax Form (APV9T) shows a residential address of Blackcomb Way, Whistler, B.C., although the purchase agreement indicates a residential address of Vancouver, B.C. At the bottom of the APV9T is the initials CAT which Ms. Tisiga confirmed was her and agency stamp 56147 which belongs to All Write Insurance where Ms. Tisiga was employed. The APV9T also identifies the B.C. driver's licence used as identification. ICBC registration documents also show a location address of Blackcomb Way, Whistler, B.C.

**(vii) Documents – Consumer C.S.**

[34] On a purchase agreement dated January 31, 2014, Consumer C.S. purchased a 2000 Lincoln with an address located in Port Coquitlam, B.C. Documents show this motor vehicle had failed Air Care and the apparent signature of Consumer C.S. appears on the document. The ICBC Transfer/Tax Form (APV9T) date stamped January 31, 2014, and bearing agency stamp 56147 and Ms. Tisiga's initials, shows the residential address as Blackcomb Way, Whistler, B.C., although the purchase agreement indicates a residential address of Port Coquitlam, B.C. Also noted is the BC driver's licence number used as identification. The motor vehicle was subsequently transferred back to Street Trendz on March 17, 2014 by a different agency, but Consumer C.S. used the Blackcomb Way address when completing the form as seller.

[35] If the intent was that the vehicle was to be registered in Whistler, not an Air Care territory, it seems a bit odd that the consumer was required to initial a document showing the vehicle failed Air Care. I place little weight on this as there may be an explanation, but it does seem out of the ordinary if Air Care was not going to be an issue in this transaction.

**(viii) Documents - Consumer R.F.**

[36] On a purchase agreement dated February 21, 2014, Consumer R.F. purchased a 2003 Dodge Durango with an address in Vancouver, B.C. The purchase agreement also says the dealer will ensure the vehicle passes Air Care. On February 22, 2014, the ICBC Transfer/Tax Form (APV9T) transferring the Durango to Consumer R.F. was executed and bears agency stamp 56147 and Ms. Tisiga's initials. On the APV9T, Consumer R.F.'s residential address is noted as Blackcomb Way, Whistler, B.C., even though the purchase agreement records a Vancouver

address as the residential address. The ICBC registration documents notes Consumer R.F. has a location address of Blackcomb Way, Whistler B.C. Documents also show that the Durango failed AirCare three times on February 22, 2014, and a further three times on February 28, 2014. Found in the dealer's file was a document printed February 18, 2014 showing the last time the Durango passed Air Care was two years prior on February 20, 2012.

[37] If the intent was for the Durango to be registered as located in Whistler, not an Air Care territory, why was it necessary to include as a term of the agreement of purchase and sale, that the dealer will ensure the Durango passes Air Care? The purchase agreement shows an intention that the vehicle be located and used in Metro Vancouver and only once it could not pass Air Care, is the Durango then registered in Whistler. This is further confirmed by the three failed Air Care tests on February 28, 2015, which is 7 days after the purchase agreement is dated. I note the vehicle was also insured in R.F.'s name on February 22, which is 6 days before the February 28 Air Care test and failures. It does not make sense to test a vehicle at Air Care if it was to be located in Whistler where an Air Care test was not required. The documents for the transaction with Consumer R.F. and the subsequent attempts to retest the vehicle 6 days after it was registered and insured as located in Whistler, are consistent with the evidence of S.P. This indicates that vehicles were registered in Whistler as a means to get past Air Care.

**(ix) Findings of Fact**

[38] I find on the evidence and on a balance of probabilities that Consumer S.P. was told by Crystal Tisiga that Consumer S.P. should register the motor vehicle in Whistler to avoid Air Care.

[39] Consumer S.P.'s evidence was given in a straight forward manner. S.P.'s version of events aligns with the documentary evidence and her written statement which was made 11 days after the consumer transaction was finalized. I note S.P. filed a complaint admitting that she was a party to the registration and insurance scheme, and did so again at the Hearing, which would reflect negatively on S.P. This assists in my assessment of S.P.'s credibility as it shows a willingness to tell the truth, even if the evidence places S.P. in a negative light or could hurt S.P.'s case. S.P.'s demeanour when S.P. stated they have never been in Whistler or provided a Whistler address to the dealer or Ms. Tisiga did not come across as being made up on the spot and seemed genuine. That evidence was not really challenged as Ms. Tisiga says she cannot remember this transaction.

[40] The purchase agreement, the APV9T, and S.P.'s driver's licence show a residential address of Vancouver and not Whistler. S.P.'s evidence was the Honda

documents provided to Ms. Tisiga as part of the trade-in also showed the same Vancouver address. It is only when registration and insurance was transacted does the Whistler address appear on the documents. As Ms. Dua stated, it is only when processing the insurance does the location of the motor vehicle matter, especially for Air Care. These documents align with a scenario that S.P. was going to register the vehicle at the Vancouver residential address, but because the motor vehicle did not have a current Air Care pass, it was then registered in Whistler. This is consistent with S.P.'s evidence and S.P.'s written statement. I note Ms. Tisiga could not explain why the APV9T showed a residential address in Vancouver, but the Payment Authorization then showed Whistler, other than to say, S.P. must have requested it.

[41] S.P.'s version of events is also consistent with the documentary evidence of Consumers C.S., J.R. and R.F. where the same Whistler address was used in relation to motor vehicles which failed Air Care and Ms. Tisiga was the transacting AutoPlan Agent. It is too coincidental that four consumers would purchase motor vehicles with Air Care issues from the same dealer and all register their motor vehicles at the same Whistler address, but who had different residential addresses, and using the same AutoPlan agent to complete the registration and insurance. As no witnesses were called to verify these documents, I place only some weight on them. They are not determinative of my findings here, but they do assist in assessing credibility and determining what did transpire.

[42] Crystal Tisiga's evidence was vague and she often relied on saying her "usual practice" was to confirm the address with the customer. Ms. Tisiga stated she did not remember the transaction or memorize addresses. However, on two occasions during cross-examination she expressed actual knowledge of the transactions. First, she said "no" when asked if the Whistler address was used to circumvent Air Care. If she only processes the paperwork using the address as given by the customer and does not recall the transaction, her answer would have been "I do not know" or something similar. When asked about the discrepancies in the address for the APV9T and the Payment Authorization for S.P., Ms. Tisiga said it must have been requested by S.P. and Ms. Tisiga was all of a sudden able to identify that it was S.P.'s signature on the documents. In both instances, Ms. Tisiga's credibility was clearly being tested and her responses were unequivocal, even though she says she did not remember the transactions, and I find was an attempt to show she was not involved in any wrong doing.

[43] I also do not accept Ms. Tisiga's evidence that she does not memorize addresses as a way of indicating the Blackcomb Way, Whistler address did not have any significance to her. On January 31, 2014, records show C.S. purchased from Street Trendz a motor vehicle that Ms. Tisiga registered and insured as at



Blackcomb Way in Whistler, but the purchase agreement showed a Metro Vancouver address. A few weeks later on February 21, 2014, this same scenario with a different car played out with Consumer R.F. On April 3, 2014, this same scenario again played out with Consumer S.P. (and the APV9T for this transaction also showed a residential address in Metro Vancouver). A few weeks after this, on April 20, 2014, the same scenario played out with Consumer J.R. Four very similar transactions within four months, where the consumers' residence was in Metro Vancouver, but the vehicles were registered and insured at the same address in Whistler; all motor vehicles having failed Air Care, and all occurring at the same dealership is a pattern I would expect an AutoPlan agent would identify regardless of how many transactions they complete in a month.

[44] I also do not accept Ms. Tisiga's evidence that AutoPlan agents never see the purchase agreement when they are registering ownership or transacting insurance. It simply does not make sense that an AutoPlan agent, as an agent for ICBC, operating out of a dealership would never see the purchase agreements which identifies who are the motor vehicle's new owner or owners, which is what must be recorded in the vehicle registry. Mr. Carpenetti from ICBC stated AutoPlan agents would have access to purchase agreements and would be looking for information from those purchase agreements in registering and insuring the motor vehicles. Mr. Carpenetti's evidence was not challenged and he is a disinterested third party in relation to these transactions.

[45] Consumer S.P. provided some evidence that Chris Yacoback was a part of the Blackcomb Way, Whistler address scheme. S.P. stated in their evidence that "they," Ms. Tisiga and Mr. Yacoback, were trying to get a hold of Maxwell MacLean to see if it would be okay to use his Whistler address. Mr. Yacoback's evidence was that he had nothing to do with registration and insurance and left that to the AutoPlan Agents. I cannot say Mr. Yacoback counselled Consumer S.P. to register the motor vehicle in question at the Whistler address. The evidence is simply not enough to say it was more likely than not that Mr. Yacoback, personally, was involved.

[46] There is enough direct and circumstantial evidence to say Street Trendz was a part of this scheme. These transactions are all too similar and originating from the same dealership within a short period of time to be considered coincidental or otherwise. Apart from Crystal Tisiga, the only other person that ties these transactions together is the dealership - Street Trendz. There is also the evidence from Consumer S.P. that the Whistler address was Maxwell MacLean's. This was not contradicted. There is also the purchase agreement of R.F. which explicitly notes the dealer will have the motor vehicle put through Air Care on February 22, 2015, which is the day the motor vehicle failed Air Care three times as noted above. I am also assisted in this finding by the conduct of Street Trendz and Maxwell MacLean.

Within two weeks of investigators seizing the records of Street Trendz, and the dealership being aware of the allegations, the dealership closed and vacated its premises and the owner, Maxwell MacLean, has not been heard from since.

**(b) Lease to Consumer J.R.**

[47] Consumer J.R. did not testify, nor did they file a complaint. These allegations arose after a review of the records of Street Trendz. The Purchase Agreement between J.R. and Street Trendz is a standard agreement. The terms on the reverse of the purchase agreement are those typically found in a conditional sales contract with a reference to the *Conditional Sales Act* (no longer in existence). The Finance Agreement in the dealer file shows a finance agreement between J.R. and Street Trendz with equal monthly payments payable to the dealer. At the end of the term, the motor vehicle will be completely paid, with no balloon payment or noted residual value. The transaction is structured as an in-house finance deal and not as a lease: *DaimlerChrysler Services Canada Inc. v. Cameron* 2007 BCCA 144 (BC Court of Appeal) and *Mercedes Benz Financial v. Wagner* 2010 BCSC 1090 (B.C. Supreme Court). However, the insurance documents for this transaction show the motor vehicle ownership as Street Trendz as lessor and consumer R.L.G. as lessee.

[48] Missing from the finance agreement are many of the disclosure requirements of the Cost of Consumer Credit provisions in the BPCPA relating to either a finance agreement for fixed credit or for a lease. If this is a lease, as registered, also missing are the disclosure requirements for a lease vehicle required by the *Motor Dealer Act Regulation*.

[49] If this was a credit agreement for fixed credit, examples of missing disclosures include:

- (a) a disclosure of when interest begins to accrue: s. 84(e) of the BPCPA,
- (b) the annual interest rate and the circumstances under which unpaid interest will be compounded: s. 84(f) of the BPCPA, and
- (c) a statement of the consumer's right to pre-pay the outstanding amount at any time without penalty, or to make partial payments without penalty: s. 84(n) of the BPCPA.

[50] If this was a lease agreement, examples of missing disclosures include:

- (a) who is responsible for the maintenance and servicing of the motor vehicle: s. 30(2)(c) *Motor Dealer Act Regulation*,
- (b) the amount of tax payable in each periodic payment based on the applicable tax rate: s. 30(2)(f) *Motor Dealer Act Regulation*,

- (c) the consumer's right to a one clear day cooling off period and any written waiver of this right: ss. 30(2)(g) and 31 *Motor Dealer Act Regulation*,
- (d) a statement that the agreement is a lease: s. 101(1)(b) of the BPCPA,
- (e) the cash value of the leased goods: s. 101(1)(e) of the BPCPA, and
- (f) the estimated residual value of the leased goods: s. 101(1)(j) of the BPCPA.

[51] Based on the evidence before me, Street Trendz is in breach of Part 5 of the BPCPA regardless of whether this transaction was a finance agreement for fixed credit or a lease.

[52] As noted, this consumer transaction was an in-house financing agreement and not a true lease: *DaimlerChrysler Services Canada Inc. v. Cameron* 2007 BCCA 144 (BC Court of Appeal) and *Mercedes Benz Financial v. Wagner* 2010 BCSC 1090 (B.C. Supreme Court). As I noted in *Bunyak v. Darryl's Best Buys Auto Sales Ltd.* (Registrar, October 5, 2015, Hearing File 14-12-002), misrepresenting the nature of the financing (finance agreement versus a lease) to a consumer is a misrepresentation of the consumer's rights and obligations in the consumer transaction: section 4(3)(b)(iv) of the BPCPA. For instance, the *Personal Property Security Act* provides consumers with very different rights as between a financing agreement and a true lease: *DaimlerChrysler Services Canada Inc. v. Cameron* 2007 BCCA 144 (BC Court of Appeal) and *Mercedes Benz Financial v. Wagner* 2010 BCSC 1090 (B.C. Supreme Court). As already highlighted, there are different disclosure requirements for a finance agreement and a lease under the BPCPA and the MDA Regulation.

[53] Also, calling an agreement a finance agreement but then registering the motor vehicle as a lease can create confusion regarding a material fact (finance versus a lease). This too can be a deceptive act under section 4(3)(b)(vi) of the BPCPA: see *Bunyak* (Registrar). On paper, Street Trendz is also in breach of the BPCPA for a deceptive act or practice regarding how Street Trendz characterized this consumer transaction involving J.R. – lease versus finance agreement. There is no evidence that J.R. was misled in any way so under the current evidence J.R. is not entitled to a remedy. However, the Registrar may still take enforcement action for these breaches.

[54] There is insufficient evidence to say Street Trendz failed to advise Consumer R.F. that they were not authorized to lease vehicles. R.F. did not give any evidence and Street Trendz may have disclosed this orally. There is no legal requirement that the dealer's authorization to lease vehicles must be noted in writing, on the purchase agreement or otherwise.

**(c) Failed to remit warranty premiums to the warranty provider**

[55] Evidence was placed before me that certain consumers were provided a vehicle warranty through a company called Lubrico Warranty. This is specifically noted on the purchase agreements of Consumers J.R., C.S., D.Z., and R.F. Tracey Van Kerrebroeck provided evidence on behalf of Lubrico. Ms. Van Kerrebroeck is the Sales Administration Manager at Lubrico and manages the accounts receivable and Customer Service Department at Lubrico. Lubrico allows dealer's to sell its warranty products as their agent. Ms. Van Kerrebroeck confirmed that Lubrico never received the premiums for these four warranties from Street Trendz. Ms. Van Kerrebroeck also confirmed there are at least 14 such cases arising from Street Trendz.

[56] Ms. Van Kerrebroeck noted Lubrico would honour the warranties even though they did not receive the premiums from Street Trendz. Under section 18 of the *Insurance Act* R.S.B.C. 2012, c. 1, an insurer must honour an insurance contract even if it does not receive the premium from its agent.

[57] I find this conduct of concern. It would appear the provision of a warranty was an inducement by Street Trendz to facilitate consumer's purchasing a motor vehicle. Street Trendz failed to remit the appropriate premiums to the warranty provider as it was obligated to do. This evidence shows Street Trendz has not managed its business in an honest way and has failed to show integrity.

**(d) Failed to disclose an odometer replacement**

[58] The allegation is that Street Trendz failed to disclose to P.B. that the odometer in the motor vehicle they purchased had been replaced. The ICBC Transfer/Tax Form (APV9T) dated January 27, 2014, where one dealer sold this vehicle to Street Trendz records an odometer reading of 182,022 km. When Street Trendz transferred the motor vehicle to P.B., the declared mileage on the APV9T and the purchase agreement was 83,000 km even.

[59] A motor dealer may not in any way alter, disconnect or tamper with an odometer with the intent to mislead a consumer: section 34 of the MDA. If it is necessary to replace an odometer due to defect, then a motor dealer is to "*record the reading that was on the odometer before the exchange or repair and the reading at the time of the sale on the sales order or purchase agreement as well as in his permanent written records*": section 25 *Motor Dealer Act Regulation*. The purchase agreement of P.B. does not show anything other than 83,000 km as the odometer reading.

[60] I am satisfied on the evidence, with no evidence to the contrary; that the motor vehicle purchased by P.B. had its odometer changed in some way and this was not noted on the purchase agreement as required by the *Motor Dealer Act Regulation*. I do not have sufficient evidence to say Street Trendz misled P.B. as it may have told P.B. orally of the odometer change.

[61] Even though I do not know if P.B. relied on Street Trendz's representation of the odometer, Street Trendz is required to declare whether or not the odometer accurately records the distance traveled by the motor vehicle, and Street Trendz confirmed on the purchase agreement that it did. This still constitutes a deceptive act under sections 4(1) and 4(3)(a)(iii) of the BPCPA.

**(e) Sold vehicles to S.P., J.R., C.S., and R.F., indicating they were suitable for transportation when they were not**

[62] This allegation was not fully argued before me. This is an extension of the Air Care allegation. Specifically, section 222 of the *Motor Vehicle Act* prohibits the sale of a motor vehicle for use on the roads where that motor vehicle is not compliant with that Act and all its regulations. The allegation is, a motor vehicle that has failed Air Care is not compliant with the *Motor Vehicle Act* and is legally unsuitable for transportation.

[63] The fact that a motor vehicle did not meet Air Care, in and of itself, does not mean it would be in breach of section 222 of the *Motor Vehicle Act* if used on the road. The Air Care program was, roughly speaking, applicable only to the Metro Vancouver region of the province: testimony of Tony Carpenetti. If a motor vehicle was purchased at a Burnaby dealership but was to be located and used in Penticton or Whistler, there would be no violation of section 222 of the *Motor Vehicle Act*.

[64] In this case, there is additional evidence to show that the motor vehicles being purchased by S.P., J.R., C.S. and R.F. were not going to be located in Whistler as registered. The evidence of S.P. who testified at the hearing is the most convincing and complete of these transactions and satisfies me that at least for S.P., Street Trendz sold a motor vehicle to be located and used on the roads in Metro Vancouver that was not compliant with the requirements of the *Motor Vehicle Act*.

[65] Street Trendz is required to declare to a purchaser whether or not the motor vehicle meets the requirements of the *Motor Vehicle Act*: section 21(2)(e) of the *Motor Dealer Act Regulation*. In the case of S.P., Street Trendz declared that the vehicle did meet those requirements on the purchase agreement when that was not the case. However, S.P. was aware the vehicle did not meet Air Care requirements,

and I cannot find S.P. was misled by Street Trendz on this point. Street Trendz is still in breach of the legislation.

### **Summary of Findings**

[66] I find as follows:

- (a) In relation to the consumer transaction with S.P.; Street Trendz, with the assistance of Crystal Tisiga, counseled S.P. into registering S.P.'s motor vehicle as located in Whistler, and declaring it was located in Whistler for insurance purposes to avoid Air Care. Street Trendz, through Maxwell MacLean, provided a Whistler address for this purpose.
- (b) In relation to the consumer transaction with J.R.; Street Trendz breached the Cost of Consumer Credit disclosure requirements of the BPCPA and misrepresented the nature of the financial arrangement (finance agreement versus a lease).
- (c) Street Trendz failed to remit the premiums for at least 14 warranty agreements to Lubrico warranty.
- (d) In the transaction with P.B., Street Trendz failed to record a change in odometer readings as required by the *Motor Dealer Act Regulation* and misrepresented the odometer reading on the purchase agreements as accurate when it was not, contrary to the BPCPA.
- (e) In the transaction with S.P., Street Trendz declared the vehicle met the requirements of the *Motor Vehicle Act* and its regulations (Air Care) when it did not, contrary to the *Motor Dealer Act Regulation*.

### **Regulatory Action**

[67] In this case no consumer remedy is required. Consumer S.P. was able to return the motor vehicle and obtained a refund satisfactory to them.

#### **(A) Compliance Order**

[68] To address the above noted conduct of Street Trendz and to protect the public interest, I make the following compliance order:

- (a) 0831522 B.C. Ltd. *dba* Street Trendz Auto Sales & Customization ("Street Trendz") and Maxwell MacLean are to abide by the *Business Practices and Consumer Protection Act*, S.B.C., 2004, c. 2 ("BPCPA"),
- (b) 0831522 B.C. Ltd. *dba* Street Trendz Auto Sales & Customization ("Street Trendz") and Maxwell MacLean are to properly disclose to consumers the cost of consumer credit if it is offering to finance a motor vehicle purchase as required by the BPCPA,
- (c) 0831522 B.C. Ltd. *dba* Street Trendz Auto Sales & Customization ("Street Trendz") and Maxwell MacLean are to refrain from leasing motor vehicles to consumers unless they have obtained approval from the Registrar to lease motor vehicles,
- (d) 0831522 B.C. Ltd. *dba* Street Trendz Auto Sales & Customization ("Street Trendz") and Maxwell MacLean are to disclose to consumers whether or not a motor vehicle it is offering for sale meets the requirements of the *Motor Vehicle Act*,
- (e) 0831522 B.C. Ltd. *dba* Street Trendz Auto Sales & Customization ("Street Trendz") and Maxwell MacLean are to disclose to consumers the true mileage of a motor vehicle and to disclose if an odometer has been changed as required by the *Motor Dealer Act* and its regulations, and
- (f) 0831522 B.C. Ltd. *dba* Street Trendz Auto Sales & Customization ("Street Trendz") is to pay to the Vehicle Sales Authority \$2,218.25 for its investigation and hearing costs.

**(B) Administrative Penalty**

[69] If a motor dealer has breached the BPCPA, I may issue an administrative penalty to address the wrongful conduct as a means to regain compliance. Administrative penalties also serve the purposes of both specific (the motor dealer or salesperson) and general (the industry as a whole) deterrence: *Re: Cartaway Resources Corp.* [2004] 1 S.C.R. 672 (Supreme Court of Canada); *Walker v. British Columbia (Securities Commission)* 2011 BCCA 415 (BC Court of Appeal); and *Guindon v. Canada* 2015 SCC 41 (Supreme Court of Canada). In this case, based on my decision below to cancel the registration of Street Trendz and the salesperson licence of Maxwell MacLean, general deterrence is the more important of those two considerations.

[70] In setting an appropriate administrative penalty, I must have regard to the factors found in section 164(2) of the BPCPA and take into consideration the whole of the case. An administrative penalty is to address the need for compliance and deterrence but not to penalize: *Guindon v. Canada* (Supreme Court of Canada).

[71] The maximum penalty per breach is \$50,000 for a company and \$5,000 for an individual: section 165 of the BPCPA.

[72] I now turn to consider the section 164(2) BPCPA factors.

**(a) *previous enforcement actions for contraventions of a similar nature by the person***

[73] A review of Street Trendz's compliance history does not show any substantiated contraventions of a similar nature.

**(b) *the gravity and magnitude of the contravention;***

[74] This was not a trivial matter. Consumers could have been denied insurance if they had to make a claim in relation to the Whistler address scheme. That contravention impacted the integrity of the B.C. vehicle registry.

[75] Ensuring clarity with consumers about whether they are financing or leasing a vehicle is important as it affects their rights. Disclosing the replacement of an odometer is very important as the mileage of a motor vehicle affects its value and its future resale value. These two issues were not trivial matters.

**(c) *the extent of the harm to others resulting from the contravention***

[76] It is hard to gauge the extent of the harm to persons regarding the Whistler scheme. In these transactions, the four consumers appeared willing to go ahead with the scheme which could have saved them money. However, as noted by witnesses, falsifying a motor vehicle's location to one where lower insurance premiums are payed, placed all four consumers in jeopardy of having an insurance claim disallowed with potentially catastrophic effects. Further, as Mr. Carpenetti noted, this type of scheme impacted the integrity of the B.C. vehicle registry. Overall, the evidence suggests four consumers were potentially affected by the registry scheme.

[77] The evidence only suggests one consumer was affected by the improper disclosure of the cost of consumer credit. There appears to be only one consumer affected by the odometer issue and I note the consumer may be aware if they were advised orally. That was not in evidence.



**(d) whether the contravention was repeated or continuous;**

[78] There are four documented instances where the Whistler address was used where the consumers showed a Metro Vancouver address. The use of the false Whistler address was used on repeated occasions.

[79] There is no documented evidence that the failure to disclose the Cost of Consumer Credit or the odometer replacement was repeated.

**(e) whether the contravention was deliberate;**

[80] As noted above, this was a scheme to use the Whistler address to get past the Air Care requirement. Based on the evidence, this was very much deliberate.

[81] The finance agreement and the registration of the dealer as lessor was clearly deliberate. The failure to disclose the changed odometer cannot be categorized as deliberate.

**(f) any economic benefit derived by the person from the contravention;**

[82] In this case, Street Trendz was able to sell to Consumer S.P. a motor vehicle they may not otherwise have been able to sell. In the case of Consumer R.F., the evidence showed the motor vehicle failed Air Care after three attempts the day after purchase and Street Trendz could have faced having to refund the consumer their purchase as it did with Consumer S.P. The actual dollar figure is hard to determine but in the case of S.P., Street Trendz stood to gain \$3,000 it otherwise might not have obtained.

[83] No evidence was led about the economic benefit of failing to properly provide the consumer with a Cost of Consumer Credit Disclosure statement or disclosing a changed odometer.

**(g) the person's efforts to correct the contravention.**

[84] Street Trendz did provide a refund to Consumer S.P. However, instead of addressing the remainder of the issues, Street Trendz and Maxwell MacLean closed the dealership and disappeared.

**(h) the whole case and other Registrar decisions**

[85] In considering the whole of the case, I note the Whistler address scheme was deliberate conduct that impacted on the integrity of British Columbia's vehicle registry. It was conduct that counseled (aid and abetted) consumers to falsify registration documents (contrary to the *Motor Vehicle Act*), their insurance documents and circumvent their legal obligation to have their vehicles Air Care tested.

[86] I also take into consideration the following Registrar cases:

- (a) In *Re: Xu & Golden Year Auto Broker et al.* (Registrar, April 28, 2015, Hearing File 14-11-004) the dealer was found to have committed a deceptive act or practice by advertising a vehicle as in "new car condition" when it was a rebuilt from salvage and breached its previous undertaking under the BPCPA. The dealer was ordered to pay \$5,000 administrative penalty for the advertising infraction and \$3,500 for the breach of undertaking. There was some history of past similar breaches.
- (b) In *Renney v. Silk Road Auto et al* (Registrar, March 10, 2015, Hearing File 14-11-002), the dealer was found to have misrepresented to the consumer that the vehicle came with multiple sets of keys. The dealer was ordered to pay a \$2,000 administrative penalty and the salesperson was order to pay a \$500 penalty. There were five past or ongoing investigations of the dealer.
- (c) In *Crowston v. Platinum Auto Corporation et al* (Registrar decision, April 26, 2012, Hearing File 12-002), the dealer was found to have committed a deceptive act or practice (misrepresentation) contrary to the BPCPA because it did not declare damage over \$2,000 as required by section 23 of the *Motor Dealer Act Regulation*. There were other cases of a similar nature. The dealer was order to pay a \$5,000 administrative penalty.
- (d) *Pirvulescu v. Parkwood et al.* (Registrar, August 6, 2010, File No. 07-70285), was one of four companion cases where the dealer was found to have deliberately misrepresented the damage history of the vehicles. In *Pirvulescu*, this was the first issue noted on file with the dealer. Given the amount of the undeclared damage (equal to the vehicles sale price), the dealer was ordered to pay a \$7,500 administrative penalty. In the companion case of Gill (07-70263), the dealer was order to pay an administrative penalty of \$10,000 for misrepresenting the odometer reading on the vehicle. The decision in *Pirvulescu* affected the penalty

amount in *Gill*. In the companion case of *Androsoff* (08-70631), the dealer was issued a \$12,500 administrative penalty for misrepresenting the vehicle as compliant with the *Motor Vehicle Act* when it was not. In *Androsoff*, the other companion cases also affected the amount along with the dealer's initial willingness to cancel the transaction and provide a refund. The initial willingness to cancel the transaction reduced the penalty from \$20,000. The dealer registration was also cancelled.

- (e) In *Knapp v. Crown Autobody & Auto Sales Ltd. et al* (Registrar, File 08-70578) affirmed *Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia*, 2014 BCSC 894 (BC Supreme Court), the dealer was found to have rebuilt a salvage vehicle to a substandard state and represented it as compliant with the *Motor Vehicle Act* when it was not. This was found to be a deliberate act. There had been no prior enforcement action against the dealer. The dealer was ordered to pay a \$20,000 administrative penalty and their registration was cancelled.

[87] In the case of Street Trendz, I believe an administrative penalty in the amount of \$15,000 is appropriate to address the misrepresentation associated with the Whistler address scheme and declaring S.P.'s motor vehicle was compliant with the *Motor Vehicle Act* when it was not. This amount takes into consideration my below decision to cancel the registration of Street Trendz, much like in the *Crown* and *Parkwood* decisions and the serious nature of Street Trendz's involvement with the Air Care scheme in multiple transactions.

[88] For failing to provide a proper disclosure statement as required by the Cost of Consumer Credit provisions of the BPCPA, I believe a \$2,000 administrative penalty is warranted against Street Trendz. The failure to properly disclose the cost of consumer credit to R.F. is not as serious as the Whistler address scheme, and is similar to a misrepresentation of a consumer's rights and obligations as in the Silk Road Auto decision. My below decision to cancel the Registration of Street Trendz is also a factor in setting this amount.

[89] I have chosen not to order an administrative penalty for the odometer issue. I believe the two administrative penalties will be sufficient general deterrence for the industry as a whole.

### **(C) Street Trendz's Registration and Maxwell MacLean's Licence**

[90] Considering my findings of fact as summarized at paragraph 66 and that Street Trendz closed without notice and is not responding to the Registrar's notice of hearing, I find the cancelation of the motor dealer registration of Street Trendz,

Dealer Licence #31174 is necessary to protect the public interest. The public would not have faith in a motor dealer who (a) counsels persons to commit provincial offences – indicating dishonesty, (b) makes misrepresentations about consumer rights (lease versus finance agreement) – indicating dishonesty, (c) fails to remit proceeds of sale for warranties – indicating dishonesty and lack of integrity while acting as an agent, and (d) choosing to “disappear” instead of addressing the allegations – indicating a lack of integrity and being ungovernable.

[91] Maxwell MacLean is the directing mind of Street Trendz and his actions are equally implicated in this matter. Further, the Registrar cannot regulate a person whose whereabouts are unknown. I also find it necessary to cancel Maxwell MacLean’s salesperson licence #119575 for these same reasons.

**(D) Christopher Anthony Yacoback**

[92] The evidence is insufficient to say on a balance of probabilities that Christopher Anthony Yacoback breached the above noted legislation. No compliance action is necessary or warranted.

**Re-applying**

[93] Based on the legislation, Maxwell MacLean and Street Trendz could re-apply tomorrow for licensing as a salesperson and registration as a motor dealer. As in other past decisions, I find it necessary to protect the Registrar’s process to set a time in which such applications will not be processed. These matters were very serious. A considerable amount of time would have to pass coupled with sufficient and reliable evidence to show Maxwell MacLean has changed his ways before he would be issued a salesperson licence again: see *Pugliese v. Clark*, 2008 BCCA 130 (BC Court of Appeal); *Bruce Ironside* (Registrar; Hearing File 11-025; May 27, 2011) and *Stephen Ironside* (Registrar; Hearing File 11-026; May, 27, 2011). In this case, I set a minimum of 7 years before any application will be accepted for review. Whether an application will be approved will depend on the circumstances that exist at the time of the application. Maxwell MacLean may not apply to operate a motor dealership until he has shown he can be trusted as a licensed salesperson for a minimum of 3 years: see *Karamali* (Registrar, Transcript, April 23, 2007). Whether registration of a dealership occurs, will depend on the facts that exist at the time of the application.


[94] Any motor dealership employing Maxwell MacLean during this time period risks a review of their registration.

## Reconsideration and Reviews

[95] The compliance order and administrative penalties are determinations as defined in the BPCPA. A request to have those determinations reconsidered may be made under Part 12, Division 1 of the BPCPA. The request must be made within 30 days of receiving these reasons and the compliance order and administrative penalty. The request for reconsideration must be made in writing and indicate the grounds and reasons for reconsideration. The request must also be accompanied by the required new or newly discovered evidence relied on, along with information on when that evidence came to light and any efforts made to try and locate that evidence prior to the April 29 and May 20, 2015, hearing dates.

[96] The decisions to cancel the motor dealer registration of Street Trendz and the salesperson licence of Maxwell MacLean may be reviewed by way of judicial review, under the *Judicial Review Procedure Act*. The compliance order and administrative penalty may also be reviewed by way of judicial review. An application for judicial review must be made within 60 days of the date this decision is issued.

Date: November 26, 2015



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Ian Christman, J.D., Registrar