



Neutral Citation: 2016-BCRMD-008

**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:

**MOTOR DEALER COUNCIL OF BRITISH COLUMBIA  
*dba* MOTOR VEHICLE SALES AUTHORITY OF BRITISH COLUMBIA**

COMPLAINANT

AND:

**K-REINE FINANCE INC.  
(Dealer Licence #31013)**

RESPONDENT

AND:

**JOEL PAUL GOBEIL  
(Salesperson Licence #103248)**

RESPONDENT

**DECISION OF THE REGISTRAR OF MOTOR DEALERS**

**Date and Place of Hearing:** April 28 and 29, 2016, at Kamloops, British Columbia

**Appearances for:**

K-Reine Finance Inc.	Joel Paul Gobeil and Luke G. Bergerman, Lawyer
Joel Paul Gobeil	Himself and Luke G. Bergerman, Lawyer
Vehicle Sales Authority	Daryl Dunn, Manager of Compliance and Investigations Chris Coleman, Compliance Officer

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## I. Introduction

[1] The hearing in this matter was to review allegations that Joel Gobeil, salesperson licence #103428, devised a scheme to have consumers pay him cash for windshield repair deductibles on vehicles they traded-in to Butler Auto Sales Ltd. and then kept that cash (hereinafter called "windshield claims"). These allegations are said to have occurred while Mr. Gobeil was employed as a finance manager at Butler Auto Sales Ltd. It is alleged this conduct is deceptive conduct as defined in the *Business Practices and Consumer Protection Act* (the "BPCPA"). It is also alleged that this conduct is a concern such that Mr. Gobeil's salesperson licence should be suspended or canceled pursuant to the *Salesperson Licensing Regulation*.

[2] Mr. Gobeil also operates his own dealership/finance company called K-Reine Finance Inc. ("K-Reine"), dealer licence #31013. As Mr. Gobeil is the directing mind of K-Reine, it was appropriate to give notice to K-Reine. If the conduct of Mr. Gobeil was found serious enough to cancel his salesperson licence, that finding could reflect on his continuing to operate K-Reine.

[3] The allegations came to the Authority's attention from Butler Auto Sales Ltd. Butler Auto Sales Ltd. provided much of the documentary evidence in this case, including written

witness statements and a statement from the dealership authored by Audrey Lorrie March. Ms. March is a senior employee in the finance department and the assistant to the owners June and Joe Butler. Based on the evidence at the hearing, it is not disputed that much of the investigation that went into Butler Auto Sales Ltd.'s submissions and evidence was prepared by Audrey Lorrie March with assistance from co-owner June Butler.

[4] An important consideration for my deliberations is the fact that Joel Gobeil and Butler Auto Sales Ltd. are opposing parties in civil litigation stemming from their employment relationship. Butler Auto Sales Ltd.'s allegations against Joel Gobeil came forward during the course of that ongoing civil litigation.

[5] Some of the documents brought forward by Butler Auto Sales Ltd. related to their yet unproven claims in the court proceeding. I found these were not relevant to the allegations in this case. I ordered those documents be struck from the Affidavit of Compliance Officer Chris Coleman. Other evidence of consumer transactions attached to the Affidavit of Chris Coleman were also struck as those witnesses did not give evidence at the oral hearing and Mr. Gobeil was unable to question them on their evidence. As will be seen in these reasons, the oral testimony from the consumers was vital in order to compare them to their written statements. I have not considered any of the evidence that was struck from the Affidavit of Chris Coleman.

[6] In my reasons I refer to general manager and sales manager interchangeably depending on the witness testimony. This is the same position at Butler Auto Sales Ltd. who approves of the price negotiations on the vehicle being sold and the trade-in appraisal. This position is different than the finance/business manager role which was the one occupied by Mr. Gobeil.

[7] At the conclusion of the hearing I directed Mr. Dunn and Mr. Gobeil's lawyer to provide written closing submissions. That process was concluded on June 2, 2016.

## **II. Position of the Parties**

### **(a) The Authority**

[8] The Authority's position is provided in the Hearing Notice exhibited at the hearing. The Authority is concerned that Joel Gobeil created a scheme to have consumers pay cash for false windshield deductibles on the motor vehicles that consumers traded-in to Butler Auto Sales Ltd. These cash payments were allegedly not recorded on documentation and Mr. Gobeil kept the proceeds. The Authority is concerned that this alleged conduct is of such concern to the public interest that Joel Gobeil should be suspended or his salesperson licence cancelled. The Authority is also concerned if Mr. Gobeil continues to operate K-Reine if these allegations are proven.

[9] As to the evidence presented, Mr. Dunn for the Authority says in closing written submissions (paraphrasing):

- (a) There is evidence from consumer W.G. and Claudia Piano to substantiate that Joel Gobeil took cash from consumers for the windshield claims.
- (b) The balance of the other witnesses show Mr. Gobeil, at a minimum, requested they pay him cash during their transactions.
- (c) Mr. Dunn also provides a summary of the evidence provided by the Authority's witnesses and that of Mr. Gobeil and his witnesses. I will not elaborate here on that summary.

**(b) Joel Gobeil**

[10] Joel Gobeil denies the allegations. He states that he never took cash from these consumers and he never ran the windshield claims as alleged.

[11] In written closing submissions, Mr. Gobeil's lawyer writes (paraphrasing):

- (a) The investigation of these allegations was predominantly conducted by Audrey Lorrie March of Butler Auto Sales Ltd. The evidence shows that Ms. March was biased in her investigation of these allegations when she produced the evidence to the Authority. I will discuss this concern of bias later in these reasons.
- (b) Butler Auto Sales Ltd. became aware of these allegations from a conversation Ms. March had with Joel Gobeil's now ex-wife, Claudia Piano. Joel Gobeil noted that he and Claudio Piano are not on good terms at all.
- (c) Ms. March wrote each of the consumers' written statements regarding their interaction with Joel Gobeil, and asked each to review and sign the written statements.
- (d) At the hearing, all but consumer W.G. said they do not recall giving Joel Gobeil any cash during their respective transactions. This is contrary to their written statements obtained by Audrey Lorrie March. One consumer, D.H., received compensation of \$200 as a refund for their windshield claim allegedly taken by Mr. Gobeil, shortly after D.H. signed their written statement.
- (e) The evidence of W.G. should be considered in light of:
  - (i) W.G.'s spouse, whose name appears on the purchase agreement and was part of the transaction, not giving oral testimony at the hearing,
  - (ii) Butler Auto Sales Ltd. did not produce all of the purchase agreements for the transaction involving W.G. Only the purchase of the vehicle was produced and no documents about the purchase of the trailer and add-ons purchased for and installed on the trailer that occurred at the same time as the purchase of the vehicle were produced, and

(iii) the biased investigation by Ms. March and the totality of the evidence from all the witnesses.

(f) A concern was also raised that Butler Auto Sales Ltd. is also a “supplier” under the BPCPA and is vicariously liable for the conduct of its employees. If Mr. Gobeil is found to have committed the alleged acts, Butler Auto Sales Ltd. should also be found in breach of the BPCPA. I addressed this during the course of the hearing.

### III. The Law

#### (a) Assessing conduct – Motor Dealer Act and Salesperson Licensing Regulation

[12] Section 6 of the *Salesperson Licensing Regulation* is the provision addressing salesperson conduct. In discussing that provision, Madame Justice Sharma noted:

[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.

*Fryer v. Motor Vehicle Sales Authority of British Columbia*, 2015 BCSC 279 (BC Supreme Court), affirming *Re: Peter Fryer* (December 13, 2013, File 13-11-005, Registrar).

[13] These same principles have been applied to a review of a dealership’s conduct.

*Vehicle Sales Authority v. 0831522 B.C. Ltd. dba Street Trendz Auto Sales & Customization et al* (November 26, 2015, File 15-02-002, Registrar)

[14] The general role of a regulator and of regulation is to prevent future harm from occurring: *R. v. Wholesale Travel Group Inc.*, [1991] 3 S.C.R. 154 (Supreme Court of Canada) and applied in *Wilson v. British Columbia (Superintendent of Motor Vehicles)*, [2015] 3 S.C.R. 300, 2015 SCC 47 at para. 33 (Supreme Court of Canada).

[15] Where a business is seeking to be licensed, the regulator may look past the corporation’s separate identity (the corporate veil) and review the conduct of its principals in order to protect the public interest and prevent future harm. From the licensing perspective, it is recognized that corporations act through its principals – their guiding minds. In fact, a failure of a regulator to undertake such a review may constitute a reviewable error.

*Wight v. Canadian Egg Marketing Agency*, [1978] 2 F.C. 260; (1977), 19 N.R. 529 (Federal Court of Appeal)

*Syntex Pharmaceuticals International Ltd. v. Medichem Inc.* 1990 CarswellNat 636, [1990] 2 F.C. 499 (Federal Court of Appeal)

*Villetard's Eggs Ltd. v. Canada*, 1995 CarswellNat 669, [1995] 2 FC 581, 181 N.R. 374 (Federal Court of Appeal)

[16] A review of the principals of a corporation before registering the corporation as a motor dealer or allowing it to continue to be registered is embedded in section 5 of the *Motor Dealer Act*. This type of review was upheld in *Prestige Toys Ltd. v. Registrar, Motor Vehicle Dealers Act*, 2009 CanLII 43657 (ON SCDC) at paras. 24 – 30, involving a similar provision in Ontario's *Motor Vehicle Dealers Act*.

[17] The above principles have been applied to a review of a B.C. motor dealer registration in *Vehicle Sales Authority v. 0831522 B.C. Ltd. dba Street Trendz Auto Sales & Customization et al* (November 26, 2015, File 15-02-002, B.C. Registrar), and to an application for registration in *Re: Key Track Auto Sales & Detailing Ltd.* (May 11, 2010, File 10-013, B.C. Registrar).

[18] It was appropriate for the Authority to put K-Reine on notice that a finding against its owner and its principal while he was employed at Butler Auto Sales Ltd. could jeopardize K-Reine's registration as a motor dealer. It would be the proper role of the Registrar to review such a situation to assess if there was any concern of future harm to consumers.

**(b) Deceptive acts or practices – Business Practices and Consumer Protection Act**

[19] In previous registrar decisions, I have cited in detail the applicable legal principles regarding deceptive acts or practices found in the BPCPA. I will provide an overview of those legal principles here.

(a) A dealer and a salesperson are "suppliers", as defined in the BPCPA, when conducting a "consumer transaction," also as defined in the BPCPA. They are to refrain from making misrepresentations to consumers, which are called deceptive acts or practices under the BPCPA: section 5(1) of the BPCPA.

(b) A deceptive act or practice is a misrepresentation that has the tendency or capability to deceive or mislead a person and can occur before, during or after a consumer transaction: section 4 of the BPCPA.

(c) Certain conduct is deemed to be a deceptive act or practice. Applicable to the allegations in this case is "a representation by a supplier that a consumer transaction involves or does not involve rights, remedies or obligations that differs from the fact" is deemed to be a deceptive act or practice: section 4(3)(b)(iv) of the BPCPA.

- (d) A deceptive act or practice may also occur by failing to state a material fact: section 4(3)(b)(vi) of the BPCPA.
- (e) A deceptive act or practice may occur innocently (the supplier believed its representations to be true), negligently or deliberately and the supplier is still held liable to the consumer for any harm or damages.
- (f) If there is some evidence to suggest that a motor dealer or a salesperson made a misrepresentation, committed a deceptive act or practice, the onus is then placed on the motor dealer and or the salesperson to prove they did not commit a deceptive act or practice: section 5(2) of the BPCPA.
- (g) A consumer does not have to have suffered a loss or damages for a deceptive act or practice to have occurred. In such a case, it remains a regulatory issue of concern to the general public.

See:

*Stanway v. Wyeth Canada Inc.* 2012 BCCA 260 (BC Court of Appeal)

*Rushak v. Henneken Auto Sales & Services Ltd.* 1991 CanLII 178 (BC Court of Appeal)

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

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

*Cummings v. 565204 B.C. LTD. dba Daewoo Richmond*, 2009 BCSC 1009 (BC Supreme Court)

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

[20] The B.C. Legislature has expressed the importance of a motor dealer and of a salesperson to abide by the BPCPA. Even one breach of the deceptive act or practice provisions of the BPCPA "*is grounds for the registrar or director, as the case may be, to determine that it is not in the public interest for the person to be registered or to continue to be registered under this Act...*": section 8.1(4)(b) of the *Motor Dealer Act*. The discretion is left with the registrar to apply section 8.1(4)(b) of the *Motor Dealer Act*.

**(c) Assessing credibility and the burden of proof**

[21] This case will turn on the credibility and reliability of witness testimony. A review of the documentary evidence (excluding witness statements) does not show any of the alleged



transgressions. They show the purchase of a motor vehicle and that Butler Auto Sales Ltd. paid to have windshields replaced on the vehicles the consumer's traded-in to that dealership. The alleged misconduct and deceptive acts can only be proven with reference to witness testimony including any written statements.

[22] I am mindful of the guidance from the courts in assessing witness credibility and reliability. I will start by considering the evidence of each witness to see if it is acceptable. It may require testing each witness's testimony against the documentary evidence, especially their written statements, and that of others to see if their individual witness evidence is acceptable. If their evidence is acceptable, I will then review their evidence against the evidence of other witnesses, the documentary evidence and in consideration of the whole of the case to see whether "*the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time.*"

*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)

*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).

[23] The burden of proof in civil matters is on a balance of probabilities. This includes for allegations of serious misconduct reviewed within the regulatory/disciplinary context. In applying this burden of proof, the unanimous Supreme Court of Canada noted the following:

[46] Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. In serious cases, like the present, judges may be faced with evidence of events that are alleged to have occurred many years before, where there is little other evidence than that of the plaintiff and defendant. As difficult as the task may be, the judge must make a decision. If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.

[48] ... It will be for the trial judge to decide to what extent, if any, the circumstances suggest that an allegation is inherently improbable and where appropriate, that may be taken into account in the assessment of whether the evidence establishes that it is more likely than not that the event occurred. However, there can be no rule of law imposing such a formula.

[49] In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.

[underlining added]

*F.H. v. McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41 (Supreme Court of Canada)

[24] If there is sufficient evidence to say a deceptive act or practice may have occurred, this burden of proof is on Mr. Gobeil to prove otherwise: section 5(2) of the BPCPA.

[25] I will first review and discuss the evidence of the Authority's non-consumer witnesses followed by the consumer witnesses. This will be followed by a review and discussion on the evidence of Mr. Gobeil and his witnesses. Finally, I will discuss the evidence as a whole.

#### **IV. Evidence of the Authority's witnesses**

##### **(a) Non-consumer witnesses**

###### **(i) Chris Coleman**

[26] Chris Coleman is a Compliance Officer with the Authority who investigated this matter. Mr. Coleman's evidence is that he received information and documents from Butler Auto Sales Ltd. through their representative Audrey Lorrie March. Mr. Coleman reviewed those documents and was concerned with the allegations. All of the consumers identified by Butler Auto Sales Ltd. were contacted by Mr. Coleman and asked to confirm that the written statement they had signed contained their signature, was accurate and that each had not in some way received some incentive from Butler Auto Sales Ltd. in providing the written statement. Every consumer acknowledged their signature and that their statement was true. All but one consumer said they had received nothing from Butler Auto Sales Ltd. in consideration of their statement.

[27] Chris Coleman was asked why he brought forward the transaction of L.R. as that transaction did not allege Mr. Gobeil asked for money for windshield claims. Chris Coleman said L.R.'s statement indicated that Mr. Gobeil asked L.R. to make a payment in cash consistent with his request for cash from the consumers paying the windshield claims. Chris Coleman thought this particular request for a cash payment by Mr. Gobeil was relevant.

[28] Chris Coleman agreed that his investigation did not include an audit of Butler Auto Sales Ltd. and that he relied on the information and documentation provided by Butler Auto Sales Ltd.

###### **(ii) Joe Butler**

[29] Joe Butler is a co-owner of Butler Auto Sales Ltd. Mr. Butler does not deal with the day-to-day operations of the dealership. His wife June Butler is responsible for oversight of the day-to-day operations. Joe Butler says he became aware of the windshield claims from the "girls" in the accounting department.

[30] Joe Butler described the cash payment process at Butler Auto Sales Ltd. He noted that if cash is taken by the finance manager, they are to provide the cash to the "girls", meaning the women who work in the accounting department. If the finance manager takes cash when the accounting department is closed, they are to give the cash to either June or Joe Butler if they are in the dealership. They could also give it to the general manager, if they were around. If none of these people were around then the finance managers, such as

Joel Gobeil, were to keep the money, take it home with them and return it the next business day.

[31] Under questioning by Mr. Gobeil's lawyer, Joe Butler noted there was a \$395 non-negotiable documentation fee on all sales, unless the vehicle was a junk vehicle (valued under \$500). Joe Butler noted that the salesperson and general manager negotiates with the consumer on the vehicle purchase. The finance manager, such as Joel Gobeil, was not allowed to negotiate the purchase of the vehicle or any changes to the deal. If the general manager was not at the dealership, the salesperson would go to Mr. Butler. Mr. Butler also noted that Butler Auto Sales Ltd. never charges a consumer for a windshield deductible as it is inexpensive these days to replace a windshield.

[32] Joe Butler's evidence was not challenged in any way. His evidence came across as being straight forward and not exaggerated.

**(iii) Audrey (Lorrie) March**

[33] Audrey (Lorrie) March is the office manager, assistant to the owners and a senior employee in the accounting department of Butler Auto Sales Ltd.

[34] Ms. March's evidence can be summarized as follows:

- (a) Ms. March first heard of Joel Gobeil taking windshield money from Claudio Piano who is Mr. Gobeil's now ex-wife. Ms. March was friends with Ms. Piano before her marriage to Mr. Gobeil ended.
- (b) Ms. March states that after receiving this information from Ms. Piano, Ms. March looked at various invoices where Butler Auto Sales Ltd. had paid for windshield replacements on vehicles that had been traded-in. Ms. March then obtained the purchase agreements where that trade-in occurred and started calling consumers to see if they had paid cash to Joel Gobeil for a windshield deductible.
- (c) Ms. March confirmed she called and interviewed the consumers who provided evidence at the hearing. Ms. March said after the call she would then prepare a written statement for the consumers to review and sign if they agreed with the written statement. In the case of the written statement of D.H., Ms. March did say she told D.H. what Ms. March was going to write. The indication was that the statement was that of Ms. March and D.H. was being asked to agree with it.
- (d) Ms. March worked with co-owner June Butler to produce the evidence provided to the Authority. Ms. March said she did not include all consumers she spoke with, but only those who she felt had the best evidence. Ms. March was clearly indicating the best evidence to prove the case against Mr. Gobeil.
- (e) Ms. March confirmed the method for dealing with cash at Butler Auto Sales Ltd. If cash was part of a purchase, it was to be noted on the purchase agreement. Once

the cash was taken from the consumer it was to be given to the accounting department. If no one in the accounting department was available, then the cash was given to June or Joe Butler or to "Bill" the General Manager. Otherwise, the finance manager took the cash home and brought it to the dealership the next business day. Under questioning by the lawyer for Mr. Gobeil, Ms. March confirmed the accounting department is staffed Monday to Friday 8 am to 5 pm.

- (f) Ms. March stated Butler Auto Sales Ltd. did not collect deductibles for windshields.
- (g) Ms. March confirmed it would not be unusual for Mr. Gobeil to have cash from Butler Auto Sales Ltd. vehicle sales at his home. That was part of his responsibility.
- (h) Ms. March confirmed the text message conversation between herself and Ms. Piano tendered as an exhibit at the hearing was produced from her phone.
- (i) Ms. March confirmed she issued the check of July 20, 2015, to consumer D.H. for \$200 for "windshield refund". This is six days after the date noted on D.H.'s written statement.

[35] I have not commented here on the opinion evidence of Ms. March. Her opinions would have been informed by her interviews with the consumers and her conversation with Ms. Piano. Ms. March's opinion evidence will be considered later in these reasons.

[36] Ms. March's evidence of the steps she took to inquire of windshield deductibles and of the cash transaction process at Butler Auto Sales Ltd. was not really challenged.

[37] What is being challenged by Mr. Gobeil, is Ms. March's motives and the manner in which she conducted and documented the consumer interviews. Mr. Gobeil states that taken together, the evidence as produced and manufactured (witness statements) by Ms. March indicate a bias on her part, tainting her and the consumers' evidence. I will also address this when I discuss the evidence as a whole.

**(iv) Claudio Piano**

[38] Claudio Piano is the ex-wife of Joel Gobeil. Ms. Piano's evidence can be summarized as follows:

- (a) She once questioned Joel Gobeil about the money he brought home from Butler Auto Sales Ltd. and left in a box in the bathroom. Joel Gobeil had said it was a mix of deal money and windshield money, from deductibles. She did not again ask about the money being windshield money.
- (b) Ms. Piano said Joel Gobeil came home with Butler Auto Sales Ltd. money often. It was not unusual for that to occur.

(c) Ms. Piano does not know where the money went to or if the money was taken to Butler Auto Sales Ltd.

(d) Ms. Piano confirmed she had a conversation with Ms. March about Joel Gobeil having cash at home and that they discussed it being “windshield money”.

[39] Ms. Piano’s evidence was presented in a straight forward manner and did not appear to be exaggerated. Ms. Piano readily admitted there was only one conversation and she did not follow up on that conversation with Joel Gobeil.

[40] Ms. Piano was not questioned by Mr. Gobeil’s lawyer.

**(v) Christina Keogh**

[41] Christina Keogh is one of the three people working in the accounting office at Butler Auto Sales Ltd. Ms. Keogh stated she pays all the bills of the dealership. Ms. Keogh has been with the dealership for about three and one half years.

[42] Christina Keogh provided evidence on the process for taking cash on a motor vehicle sale at the dealership. Ms. Keogh said that if cash was going to be taken, that had to be noted on the purchase agreement and Ms. Keogh would initial the cash entry on the right hand side of the purchase agreement. When the cash is taken, a receipt is to be given to the consumer and the cash is to be turned into the accounting department along with the deal paperwork. If the accounting department is not open, then the finance/business manager must bring in the cash the next business day along with a copy of the receipt given to the consumer.

[43] Christina Keogh stated that in her time at Butler Auto Sales Ltd., she has not paid any money to ICBC for windshield deductibles.

[44] Christina Keogh’s evidence was made in a straight forward manner and is corroborated by other evidence. Christina Keogh was not questioned by Mr. Gobeil’s lawyer.

**(vi) Jess Town**

[45] Jess Town is a current business manager at Butler Auto Sales Ltd. Jess Town has been there for about two years.

[46] Jess Town gave evidence of the cash payment process at Butler Auto Sales Ltd. Jess Town noted that the cash was to be noted on the purchase agreement, initialed by the “girls” in the accounting office, a receipt given to the consumer and the cash given to the accounting department. If no one was in the accounting department, then the finance manager hands the cash over to the general manager. If the general manager is unavailable, then the finance manager takes the cash home and hands it in the next business day. Jess Town said he has taken cash home on two occasions in two years. Jess Town said he never worked with Joel Gobeil. This evidence was not challenged by Mr. Gobeil’s lawyer.

[47] When questioned by Mr. Gobeil's lawyer Jess Town noted:

- (a) Glenn Butler, the general manager, does not like to be involved in transactions. He does not like taking money.
- (b) There is another finance manager at the dealership who has worked there longer than Jess Town.
- (c) As the finance manager, Jess Town does not negotiate the vehicle sale. He only obtains financing for the consumer and sells insurance and warranty products.

**(b) Consumer witnesses**

**(i) Consumer D.H.**

[48] In their written statement, D.H. states they paid Joel Gobeil \$200 in cash on March 15, 2014, for a windshield deductible on their trade-in vehicle. Butler Auto Sales Ltd. and D.H. did not provide a copy of the purchase agreement for this vehicle transaction. With no purchase agreement to review the date, it must be assumed this was the date of the transaction itself.

[49] Consumer D.H.'s evidence is of no assistance in this case. D.H. spoke of money exchanging hands but could only recall the name of the salesperson "Billy." D.H. did not remember who else they spoke to at the dealership. When asked how D.H. got the name of Joel Gobeil for their written statement, they said they got it from someone at Butler Auto Sales Ltd. D.H. thought it may have come from June Butler.

[50] D.H. was asked about the written statement they signed. D.H. said they had their boss type up the statement at her work in Saskatchewan. D.H. described the scenario as if they were dictating the letter to their boss to type. D.H. saying that their boss typed up their statement is inconsistent with the other witnesses and inconsistent with the documentary evidence. A review of all of the consumers' written statements shows all but one are virtually a "template" statement, including D.H.'s, with slight modifications.

[51] D. H.'s oral evidence does not identify Joel Gobeil as the person to whom they gave money. D.H.'s evidence is clear that Butler Auto Sales Ltd. told D.H. who to identify.

[52] Further, on the date noted in D.H.'s written statement for the transaction, Mr. Gobeil gave oral evidence supported by documentary evidence (commission/sales logs and credit card receipts) to show he received no commission for this sale and that he was in Langley, B.C. for a junior basketball event during the time the cash allegedly changed hands in Kamloops.

[53] It is also important to note that the purchase agreement for D.H.'s transaction was never produced by Butler Auto Sales Ltd. This is significant for two reasons. First, purchase agreements for all the other consumer transactions were provided by Butler Auto Sales Ltd. Second, the evidence from Mr. Gobeil, Ms. March, Joe Butler and other employees at Butler Auto Sales Ltd. said there is a very specific way of noting any cash received on purchase

agreements and a very specific process in place at Butler Auto Sales Ltd. to ensure cash is handed in to the accounting department. This includes an initial from someone in the dealership's accounting department on the right side of the purchase agreement acknowledging the cash payment. This is a significant piece of evidence that was withheld without explanation. Butler Auto Sales Ltd. was not afforded an opportunity to explain this clear discrepancy so I will not make an adverse inference against Butler Auto Sales Ltd. However, the non-production of the purchase agreement can weigh into my consideration of the reliability and credibility of D.H.'s evidence, as I have no documentary evidence to aid in my assessment of D.H.'s credibility.

[54] Overall, D.H.'s evidence lacks consistency with the evidence of other witnesses and the documentary evidence (logs and credit card receipts) provided by Mr. Gobeil, which was not contradicted. D.H. could not identify the person to whom they provided the money, and they were coached on who to identify. Importantly, D.H.'s evidence lacks internal consistency. D.H.'s written statement of events is inconsistent with their oral evidence.

#### **(ii) Consumer L.R.**

[55] Consumer L.R. did not allege they were asked for cash to pay for a windshield claim. Their evidence was they had to pay \$400 for the transfer of the vehicle and that Mr. Gobeil asked that it be paid in cash. L.R. refused and it was paid by interact/debit.

[56] In their written statement Consumer L.R. wrote they were upset about this transaction and expected it would be a straight trade of their vehicle for a new used vehicle. Instead, there was a \$400 additional charge. That \$400 was for a documentation fee of \$395 plus taxes (\$442.40 total). Joe Butler, said all vehicles except "junk" vehicles come with a non-negotiable \$395 documentation fee. Unless waived by the general manager, L.R. would be required to pay it. That fee of \$395 is also pre-printed on the purchase agreement. If there was no charge for the fee it would have had to been struck off in some way, which also would have been apparent. Further, at Butler Auto Sales Ltd. it would be the responsibility of the salesperson along with the General Manager to strike out the \$395 documentation fee. If it was not, it was the responsibility of the finance manager, such as Joel Gobeil, to collect what was noted as owing on the purchase agreement, even if all that was owed was \$442.40 for the documentation fee inclusive of tax.

[57] L.R.'s written statement is different than the other consumers and I am satisfied, L.R. was the author of that statement even if Ms. March was the scribe. There was no evidence to the contrary. L.R. emailed Mr. Coleman to note an error that "Department of Consumer Affairs" should read "Vehicle Sales Authority". L.R. also gave evidence that they advised Audrey Lorrie March of that error and asked that it be corrected before they came to the dealership to sign the document. Ms. March had not made that change, but L.R. signed it anyway.

[58] What is important to note is on the purchase agreement, the payment was made for a documentation fee and noted on the purchase agreement that it was paid for by interact. In written closing submissions, the lawyer for Mr. Gobeil notes Ms. March appears to be

concerned that it would have been \$400 that “he [Mr. Gobeil] would have been trying to get.” I will discuss this concern later in these reasons.

[59] I find the evidence of L.R. does not assist in determining whether Mr. Gobeil asked consumers to pay cash for windshield claims and then pocketed that cash. At best, L.R.’s transaction was a request by Mr. Gobeil to pay the documentation fee in cash. I fail to see how Mr. Gobeil would have been able to hide the cash payment of a documentation fee, given: (a) the cash payment process at Butler Auto Sales Ltd., (b) the process in place at Butler Auto Sales Ltd. for the accounting department to review transactions for proper payment – ensuring what is noted on the purchase agreement has been paid<sup>1</sup>, (c) the documentation fee was non-negotiable and could only be changed with the general manager’s approval at the dealership and Mr. Gobeil was expected to collect it if it appeared on the purchase agreement; and (d) the documentation fee is pre-printed on the purchase agreement and crossing it off would be apparent when reviewed by the accounting department. In short, documentation fees were non-negotiable, Mr. Gobeil could not have cancelled that fee on the purchase agreement without it being noticed and Mr. Gobeil would have to account for or explain any unpaid documentation fees, if he were to have pocketed that cash.

**(iii) Consumer W.G.**

[60] Consumer W.G. gave evidence that they along with their spouse purchased a truck. W.G. also mentioned they were looking for a trailer and they needed to upgrade their vehicle as it would not tow the trailer they desired to purchase. They gave evidence that Mr. Gobeil asked them to pay \$300 for the deductible to have the windshield in their trade-in vehicle replaced. W.G. did not have a receipt or any proof of payment. W.G. noted they deal with cash only as they do not like using cheques. W.G. financed the vehicle purchase and Mr. Gobeil was the one finding financing for their truck and their trailer.

[61] Under questioning by Mr. Gobeil’s lawyer, W.G. said they were called by Butler Auto Sales Ltd. and advised the dealer was auditing a discrepancy in their windshield account. W.G. also noted the dodge truck they were buying was on a separate agreement and financed by a separate bank than the trailer they also purchased on the same day. W.G. also noted there were add-ons for the trailer such as batteries and propane and they did not pick up the trailer the same day they picked up the dodge truck.

**(iv) Consumer G.A.**

[62] The evidence of G.A. is not reliable.

[63] G.A. agreed his signature is on the written statement that says G.A. paid Joel Gobeil \$250 for a windshield deductible. However, G.A. said in oral testimony that he does not recall signing the written statement prepared by Audrey Lorrie March. In oral testimony, G.A. could not recall whether he was contacted by Butler Auto Sales Ltd. to sign the written statement.

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<sup>1</sup> In this case, the alleged payment of windshield deductibles was not noted on the purchase agreements.



[64] In oral testimony G.A. agreed that there was an issue with the windshield on the vehicle G.A. traded-in towards another vehicle. However G.A. says the cost to deal with the windshield was already "in the deal." G.A.'s oral evidence is that no money/cash changed hands – that was to be the deal. It was to be a straight trade of vehicles. G.A.'s oral evidence is that he cannot remember the name of the salesperson he dealt with.

[65] G.A was asked to look at the purchase agreement. On that agreement is noted a charge to m/c (MasterCard) for \$330.40. G.A. does not recall making this payment. A review of the purchase agreement shows this amount was to pay the documentation fee. The trade-in less the cost of the vehicle purchased netted \$100 which reduced the documentation fee of \$395 to \$295 plus taxes (HST at the time).

[66] G.A.'s testimony lacks internal consistency. G.A.'s written statement of last year is inconsistent with G.A.'s oral testimony. G.A.'s testimony is also inconsistent with the documentary evidence as he did make a payment in this deal. G.A. never identified Joel Gobeil at the hearing. G.A.'s recollection of events is not reliable.

#### **(v) Consumer B.G.**

[67] B.G. purchased a vehicle and traded-in a vehicle at Butler Auto Sales Ltd. At the hearing B.G. said they could not remember every detail of the transaction. B.G.'s salesperson at Butler Auto Sales Ltd. was Jeff Hunter and with whom B.G. is friends. B.G. did not speak to Jeff Hunter about the windshield of the mustang he was trading in.

[68] B.G. does recall a conversation with someone at Butler Auto Sales Ltd. about having the windshield of the mustang done at Butler Auto Sales Ltd. as it would be cheaper than going directly to a glass shop. I would note that this is consistent with the evidence of Joe Butler. Butler Auto Sales Ltd. can get a better price on windshield work, than if an individual sought out those services on their own.

[69] When asked to identify if B.G. dealt with Joel Gobeil in the business office, B.G. said they were not 100% sure, but B.G. believed that to be the case. B.G. said Mr. Gobeil arranged the financing of the deal, and was with Mr. Gobeil for just over one hour.

[70] At the hearing, B.G. could not recall paying anything in cash during his transaction. B.G. believed the issue with the windshield was already part of the deal. This is consistent with the evidence of consumers G.A. and D.H. and with the evidence of Dave Sopiwynek and Ron Delisle that an issue such as repairs to trade-in vehicles were addressed as part of the deal – the final number on the purchase agreement.

[71] B.G. does not recall receiving a receipt for any cash payments of \$200. B.G. does not believe they paid \$200 in cash to Butler Auto Sales Ltd. This evidence is contrary to B.G.'s written statement where they identify Joel Gobeil and state they gave Mr. Gobeil the cash for a windshield claim.

[72] While I found B.G. to be forthright at the hearing, their evidence lacks internal consistency. Their written statement is inconsistent with their oral testimony. Some of their evidence, such as their belief that the windshield cost on the trade-in vehicle was already part of the deal is consistent with how such issues were dealt with at Butler Auto Sales. Overall, I find I cannot rely on B.G.'s written statement that they paid Joel Gobeil \$200 for a windshield claim.

## **V. Evidence of Mr. Gobeil and his witnesses**

### **(a) Mr. Gobeil**

[73] Mr. Gobeil addressed the various allegations and provided evidence of the cash payment process at Butler Auto Sales Ltd. as well as evidence to show that as finance manager he would not be aware that a trade-in vehicle even had a damaged windshield.

[74] Mr. Gobeil denied that he took money from consumers for the windshield claims. Mr. Gobeil also provided evidence regarding each unique transaction. In all but the transaction with D.H., Mr. Gobeil verified his signature was on the purchase agreement and he was a part of the transaction as the finance manager. For the majority of Mr. Gobeil's evidence, it was presented in a straight forward fashion, consistent with documentary evidence, did not appear embellished and Mr. Gobeil did not deny he was a part of these transactions except the case of D.H. Mr. Gobeil's evidence generally withstood the questioning by Daryl Dunn.

[75] When asked to explain the testimony of W.G., Mr. Gobeil said he believed it was an error or a discrepancy, but he did not know why they were saying what they were saying. Mr. Gobeil did not try to fill-in the gaps of witness testimony to his advantage, but said they were discrepancies in the witnesses' evidence that he was unable to explain.

[76] Mr. Gobeil stated his relationship with his ex-wife Claudia Piano was not on good terms.

[77] In the case of the D.H. transaction, Mr. Gobeil said he was in Langley the day D.H. said the money exchanged hands. Mr. Gobeil produced American Express statements for his account to show several charges for that day in Langley, B.C. Mr. Gobeil also produced his sales/commission logs which show he received nothing for the D.H transaction. These logs were not contradicted or shown to be inaccurate in the evidence. I would note that there was evidence that the finance manager would receive a small commission off a consumer transaction, even if there was no warranty or other add-on products sold by the finance manager.

[78] In the case of the L.R. transaction, Mr. Gobeil noted there is no evidence of him taking anything for windshield deductibles in this case. L.R.'s complaint is that their transaction was a straight trade and Mr. Gobeil asked them to pay for about \$400 in cash, which they refused. As I already noted above, this money is shown to be the documentation fee that Butler Auto Sales Ltd. required Mr. Gobeil to collect. That amount is pre-printed on the purchase agreement and was not struck off. The evidence is clear Mr. Gobeil was not

authorized to strike that off a purchase agreement. The evidence shows it was not unusual for a straight across transaction to require the finance manager to collect only a documentation fee. Mr. Gobeil states that the purchase agreement identifies how the payment was taken, which was not in cash.

[79] In the case of the W.G. transaction, Mr. Gobeil denies taking any cash for windshield claims in this transaction. Mr. Gobeil produced his commission logs for this transaction to show there was more than this one vehicle transaction with this consumer. Mr. Gobeil explained W.G. and their spouse also purchased a trailer and explained how he knew this from his commission logs. This was not refuted in evidence. Mr. Gobeil also noted that a consumer who purchased a vehicle and a trailer rarely picked them up on the same day. Mr. Gobeil stated that trailers would have to go through a gas certification process before being released to the consumer which generally takes place after purchase. This evidence was not refuted.

[80] Mr. Gobeil denies taking any cash in the G.A. transaction for windshield deductibles. Mr. Gobeil admits to being the finance manager on this transaction and his signature appears on the purchase agreement on behalf of Butler Auto Sales Ltd. Mr. Gobeil notes he would have received the base commission for this transaction.

[81] Finally, Mr. Gobeil denies taking any cash for windshield claims in the B.G. transaction. Mr. Gobeil confirmed he received a commission on this transaction and identified that the dealer payment included a reserve from the bank, which is a payment from the bank to the dealer as a commission.

[82] Mr. Dunn questioned Mr. Gobeil. Mr. Gobeil again denied taking any money for windshield deductibles. Mr. Gobeil again explained how Butler Auto Sales Ltd. was paid a reserve by the banks on financing deals. Mr. Dunn asked if a consumer knew they were paying for this reserve amount through the interest they would pay. Mr. Gobeil was forthright and said he doubts a consumer would know, but indicated if he, Mr. Gobeil, was asked he probably would tell a consumer. Mr. Gobeil again explained the cash payment process at Butler Auto Sales Ltd. and readily admitted he took Butler Auto Sales Ltd. money home and put it into a box in his home's washroom. Mr. Gobeil reiterated that was part of his responsibilities if no one was available at Butler Auto to receive the cash. Mr. Gobeil also again stated he believed W.G. was simply mistaken about the cash payment.

[83] Overall, Mr. Gobeil's evidence was not successfully challenged under cross-examination. His answers were clear, forthright, spontaneous (he did not pause too long to respond, as if he was making something up), did not come across as embellished and he did not try to "fill-in the gaps" of the evidence in a way that would support his position.

**(b) Witnesses for Mr. Gobeil**

**(i) Dave Sopiwynek**

[84] Mr. Sopiwynek was a salesperson at Butler Auto Sales Ltd. for 19 years until his retirement in 2012. Mr. Sopiwynek had been in the industry for about 30 years.

[85] Mr. Sopiwynek's evidence can be summarized as follows:

- (a) Salespersons at Butler Auto Sales Ltd cannot approve of sales. The manager or Joe Butler approves sales, including the value to be given a trade-in.
- (b) If the customer and Butler Auto Sales Ltd. agree on a sale, it is then sent to the finance manager to document the sale on a purchase agreement, arrange financing if necessary, and see if the consumer wants to purchase a warranty or insurance or other products.
- (c) When arriving at a price that included a trade-in the manager and customer were working towards an agreeable difference in the price – vehicle being purchased less the trade-in value.
- (d) Any repairs to the trade-in or the vehicle being bought was included in the deal price arrived at through the consumer - salesperson/manager negotiations.
- (e) The salesperson mentioned the documentation fee before the consumer went into the finance manager's office. Customer should not be surprised.
- (f) Mr. Sopiwynek preferred bringing his clients to Mr. Gobeil. Mr. Sopiwynek never had any customer complaints with Mr. Gobeil. Mr. Gobeil was polite and efficient.
- (g) Mr. Sopiwynek gave evidence regarding the location of Mr. Gobeil's office.

The above evidence was not refuted.

[86] Under questioning by Mr. Dunn, Mr. Sopiwynek noted that if a trade-in needed a windshield, there should be a notation on the offer to purchase/worksheet that was provided to the finance manager. Under redirect by Mr. Gobeil's lawyer, Mr. Sopiwynek clarified that if the consumer had to pay anything towards a windshield deductible, it would have been noted on the auto-track sheet. Mr. Sopiwynek said the auto-track sheet went to the finance manager, including Joel Gobeil, and then it went to the "ladies" in the office – meaning the accounting department at Butler Auto Sales Ltd.

**(ii) Lorrie Morton**

[87] Ms. Morton is a former employee at Butler Auto Sales Ltd. Ms. Morton worked in the accounting department at the dealership for 20 years (1992 – 2012) before retiring. Prior to Butler Auto Sales Ltd., Ms. Morton was at Dearborn Motors for about 25 years. Ms. Morton described her job duties as working on the vehicle sales paperwork, payroll and accounts receivable. Ms. Morton also did the cash deposits for the dealership. During her time at Butler Auto Sales Ltd., Ms. Morton processed the paperwork for the vehicle sales while Ms. March focused on parts and service.

[88] Ms. Morton described the cash sale process in a similar manner as other witnesses. A notation was made on the purchase agreement, initialed by her; money was collected and remitted to the accounting department with the proper paperwork. If the accounting department was closed, June or Joe Butler would take the cash, and if they were not around, then the finance manager would take the money home and return it the next business day. Ms. Morton relays she never had any problems with Mr. Gobeil remitting money, although he may have forgotten once in a while and went home and brought it in.

[89] Ms. Morton noted that she would get paperwork regarding a vehicle sale from two sources. The auto track document would come from the sales manager while the rest of the transaction documents would come from the finance manager. Ms. Morton noted the auto track would describe any trade-in vehicle including options and statutory declarations. Ms. Morton stated windshield issues and deductibles were not noted on the auto track. Ms. Morton noted she was unaware of any customer complaints involving Joel Gobeil. Ms. Morton said she could not comment on his interaction with customers as she never really observed his interactions with customers. Ms. Morton noted she never had any concerns with Mr. Gobeil's paperwork.

[90] Mr. Dunn's questioning of Ms. Morton essentially confirmed her direct testimony. Ms. Morton's evidence was not really contested.

### **(iii) Ron Delisle**

[91] Ron Delisle was a salesperson at Butler Auto Sales Ltd. from 2010 – 2014. Mr. Delisle spoke of the salesperson process and the way salespersons at Butler Auto Sales Ltd are paid and earn commission. Mr. Delisle spoke about him working on Sunday's and how Joe Butler had trust in him to complete deals. Mr. Delisle said he would have to get approval from the sales manager or Joe Butler on the price of a vehicle and any trade in.

[92] Ron Delisle spoke about how a deal was negotiated and documented. There would be an offer to purchase where the sales person and consumer negotiate over the price of the vehicle and the trade in which was approved by the sales manager. Once that was agreed to, the offer to purchase was given to the finance manager to create the purchase agreement and sell any insurance or warranty products and if a customer needed it, to obtain financing for the sale.

[93] Ron Delisle noted he preferred Joel Gobeil doing his deals as Joel was quick and efficient and Mr. Delisle did not get along with the other finance manager. Ron Delisle could not recall any consumer complaints involving Joel Gobeil.

[94] Ron Delisle noted the documents that went to the finance manager. Mr. Delisle said the entire paperwork for the deal would go into the finance manager's office including the auto track. The auto track was used to appraise the vehicle. Mr. Delisle's evidence was the deal folders were kept in the finance manager's office. On this last point, his evidence is inconsistent with most other witnesses who spoke of the paperwork trail at Butler Auto Sales Ltd. Ms. March, Ms. Morton and Ms. Keogh noted that the accounting department receives the deal files for verification and processing. Also, Mr. Delisle's evidence was that the auto track was used to appraise a vehicle. Based on the evidence of all other witnesses about the negotiating and sale process at Butler Auto Sales Ltd., such as Joe Butler, the sales manager or Joe Butler appraised the trade-ins and so they would need the auto track in order to do so, and not the finance manager.

[95] Under questioning by Mr. Dunn, Ron Delisle said the auto track would note any damage to a trade-in vehicle. Mr. Delisle noted that any damage to the windshield of a trade-in may be noted on the auto track. Mr. Delisle also stated that any damage to a trade-in's windshield was not noted on the purchase agreement. Any windshield issue on a trade-in was dealt with as part of the overall deal. Mr. Delisle's evidence was otherwise not challenged.

## **VI. Discussion**

### **(a) Burden of proof**

[96] I am satisfied that the individual evidence of consumer W.G. and that of Claudia Piano combined with the documentary evidence and the evidence of witnesses such as Joe Butler that windshield deductibles were not collected by Butler Auto Sales Ltd., establishes at least a *prima facie* case against Mr. Gobeil. I am satisfied that the onus is on Mr. Gobeil to show that the alleged conduct was not a deceptive act or practice (misrepresentation). Mr. Gobeil's case has been that the misrepresentations alleged against him were never made.

- Section 5(2) of the *Business Practices and Consumer Protection Act*
- *Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia*, 2014 BCSC 894 at paragraphs 26-27 (BC Supreme Court).

### **(b) The core evidence to be considered**

[97] As indicated above, I cannot rely on the evidence of consumers D.H., L.R., A.G. and B.F. to establish that Mr. Gobeil did or attempted to solicit cash from them for windshield deductibles.

[98] Also as indicated above, the purchase agreements and the windshield repair invoices on their own do not show Mr. Mr. Gobeil did or attempted to solicit cash from consumers for windshield deductibles. They merely show vehicle transactions which included a trade-in vehicle and windshield repairs to those trade-in vehicles. They do show that windshield deductibles were not noted on the purchase agreements.

[99] I am able to rely on the evidence of Joe Butler, Christina Keogh, Lorrie Morton, and Jess Town about the cash payment process at Butler Auto Sales Ltd. I am also able to rely on Joe Butler's and Christina Keogh's evidence that Butler Auto Sales Ltd. does not collect windshield deductibles and remit them to ICBC.

[100] To establish that Mr. Gobeil in fact solicited and obtained cash from consumers for windshield deductibles requires relying on the evidence of consumer W.G., Claudia Piano and to some extent the opinion evidence of Audrey Lorrie March who investigated this matter on behalf of Butler Auto Sales Ltd.

**(c) Concerns with the evidence**

[101] I now discuss concerns I have with the evidence in general that will impact my overall assessment of the evidence to see if “*the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time*”: *Bradshaw v. Stenner, supra*.

[102] I would note that the evidence of Mr. Gobeil and his witnesses was not really challenged and showed consistency with the other evidence including the documentary evidence. I do not find the inconsistencies in the evidence of Mr. Delisle, Ms. Morton or Mr. Sopiwynek regarding where the auto track form went during the sale process to have much bearing in weighing the evidence; for reasons that will become apparent below.

**(i) Missing documents**

[103] I would note that a motor dealer must keep a minimum of the past two years of transaction records on site at its dealership: section 11 of the *Motor Dealer Act* and section 20 of the *Motor Dealer Act Regulation*. Ms. March’s evidence is that when she undertook her review in the summer of 2015, she reviewed transactions going back one to two years.

[104] The transaction involving consumer W.G has a significant impact on this case. The evidence is clear that W.G. purchased a motor vehicle and a trailer. However, only the purchase agreement for the motor vehicle was produced. Given the evidence of the cash payment process at Butler Auto Sales Ltd. it would have been important to view the trailer purchase agreement. The trailer purchase agreement could be reviewed to see if there was a notation that cash was taken on that agreement. Maybe cash was taken in the amount of \$300.00 and properly recorded and accounted for by Butler Auto Sales Ltd.’s accounting department.

[105] Also missing are the worksheets (a.k.a offer to purchase) used between the salesperson, sales manager and the consumer to agree on the essential terms of the contract. On those worksheets should be information regarding the vehicle price and the evidence is also clear and uncontradicted that the documentation fee to be charged appears on the worksheet. As will be discussed below in relation to the transaction with L.R, the worksheet would contain crucial evidence to see if the documentation fee was in fact waived by the sales manager.

[106] Also missing are the auto track documents which would show information about the vehicles the consumers did trade-in. Would they shed any light on the state of their windshields and any information about how that affected their appraisal and incorporated into the deal? Both Mr. Delisle and Mr. Sopiwynek stated that information about windshields could be on those documents.

[107] I have said I cannot rely on the evidence of D.H. However, I can consider the lack of production of D.H.’s transaction records by Butler Auto Sales Ltd. In the case of D.H., Butler Auto Sales Ltd. did not produce the purchase agreement, work sheet or auto track sheet.

The invoice for the windshield repair was produced. I am unsure if that purchase agreement would in fact show Mr. Gobeil's signature on the bottom of that document. Mr. Gobeil did identify his signature on the other purchase agreements. This is significant as Mr. Gobeil testified he was in Langley the date D.H.'s written statement says they gave the money to Mr. Gobeil. Mr. Gobeil's testimony is corroborated by the documentary evidence he provided. When one factors in that D.H. testified they did not recall giving Mr. Gobeil any money and that someone at Butler Auto Sales Ltd. coached D.H. on who to identify, one is left with the impression that this evidence may have been manufactured or manipulated to identify Mr. Gobeil.

[108] In two past decisions of the Registrar, I noted it to be prejudicial to the dealers where the complainants had clearly withheld crucial evidence from the dealer and from the Authority:

[23] I also find Mr. Held's failure to disclose the November 2013 accident and subsequent repairs by Octavio Auto Body, except mid-way through the hearing, was prejudicial to Spartan and Mr. Mushaluk's ability to defend the case against them: *Naples v. River City Auto Sales et al.* (February 18, 2013) Registrar of Motor Dealers, File 12-022. Mr. Held deprived Spartan and Mr. Mushaluk of an opportunity to question representatives of Octavio Auto Body about the prior damage and/or repairs they may have seen.

- *Held v. Spartan Auto Group Ltd.* (February 20, 2014; Hearing File 13-11-003, Registrar).

[109] The failure to produce clearly crucial documents by Butler Auto Sales Ltd factors into my assessment of the whole of the evidence. Mr. Gobeil was deprived of an opportunity to fully question D.H. and W.G. regarding the whole of their transactions. It is possible the transaction records show that cash was taken for a legitimate reason related to these transactions, and D.H. and W.G. were mistaken in their evidence.

#### **(ii) Payment to D.H.**

[110] Ms. March gave evidence of how she and Butler Auto Sales Ltd. found consumer D.H.'s transaction to be of concern and felt compelled to provide D.H. with a refund of \$200 being the amount of the windshield deductible claimed to have been paid to Mr. Gobeil. Ms. March explained that consumer D.H. was upset that they had to pay a deductible for the windshield on the trade-in vehicle while Butler sold D.H. a vehicle that required its windshield repaired and D.H. was responsible for its repair. As already noted, this payment was made shortly after the date D.H. provided their written statement to Butler Auto Sales Ltd.

[111] Issuing a refund, even after the provision of a written statement by D.H., in and of itself is not wrong. Documenting by way of a written statement why you are providing someone a refund is a legitimate request. The concern is that D.H. was the only consumer to have been provided a refund, after providing a written statement. The action of Butler Auto Sales Ltd. was to single out D.H. among the consumers for special treatment. Ms. March says that in the case of D.H., Ms. March felt it was wrong to have collected a \$200



deductible while Butler Auto then sold D.H. a vehicle that itself needed a windshield replaced. A question arises of why were the other consumers not provided a refund? Is it because Butler Auto Sales Ltd. did not believe the other consumers? Including consumer W.G.? Consumer L.R. was equally upset they paid a documentation fee in what was supposed to be a straight across trade, and no refund was issued. I will have more to say about L.R.'s transaction next.

[112] It would make common sense that if Butler Auto Sales Ltd. believed all of the consumers it interviewed and their written statements, and believed the dealership wrongfully obtained money from all of them, that it would want to give all of them a refund. But Butler Auto Sales Ltd. did not do so. This is an inconsistency in the conduct of Butler Auto Sales Ltd that I weigh in my assessment of the whole of the evidence.

**(iii) Ms. March's negative view of Mr. Gobeil's handling of the deal with L.R.**

[113] During her direct evidence Ms. March emphasized Joel Gobeil expressing triumph in getting \$400 for the documentation fee from the transaction with L.R., which was supposed to be a straight across trade. Ms. March states she specifically recalls this transaction for those reasons and "thinking that's not - - that's not right": Transcript of Proceedings, April 28, 2016, page 134. Ms. March also expresses that consumer L.R. was very upset about having to pay that fee, and that Mr. Gobeil allegedly tried to obtain cash payment for that deal. Ms. March went on at length about this transaction and said she too would be upset. I have concerns with Ms. March's testimony on this point for the following reasons:

- (a) Ms. March is able to specifically recall the transaction with L.R. for the reasons noted above. The transaction involving L.R. occurred March 23, 2013. This is some three years ago and two years after Ms. March started her investigation in the summer of 2015. A month earlier, on February 27, 2013, consumer G.A. also paid a documentation fee by MasterCard in what was allegedly supposed to be a straight across deal. It appears these types of deals are not unusual at Butler Auto Sales Ltd. Is Ms. March confusing these two deals? The ability to recall this specific transaction some three years after it occurred, especially as they appear common place at this dealership, is not what one would expect from witness testimony as memories fade over time.
- (b) Ms. March stating Mr. Gobeil announced to others how good he was in getting a further \$400 in this transaction does seem odd conduct on the part of Mr. Gobeil. As Ms. March stated, this was to be a no cash, straight across deal. If Mr. Gobeil is trying to obtain an extra \$400 for himself without anyone knowing, an attempt which allegedly failed, why would he announce that he obtained an extra \$400? Certainly the salesperson and sales manager would also find out that the deal had been changed by Mr. Gobeil without the sales manager's authorization. Would that not trigger some type of review of Mr. Gobeil's conduct at the dealership at that time? Why would Mr. Gobeil want to draw attention to a deal with its attenuating increased scrutiny, and where he tried to wrongfully obtain cash from a consumer? It simply

does not make common sense that Mr. Gobeil would make such an announcement in these circumstances.

- (c) Ms. March's evidence is that the manager (sales manager) approved of this deal and then it went to Mr. Gobeil: Transcript of Proceedings, April 28, 2016, page 134. If the manager approved the deal including a documentation fee, then it was up to Mr. Gobeil to collect that documentation fee. The evidence is clear that the finance manager may not modify the deal. Any modification to a deal must be approved by the sales manager, and documentation fees were non-negotiable. No worksheet was provided by Butler Auto Sales Ltd. for this deal, or any deal, to show it was a straight across deal and that the sales manager waived the documentation fee. If there was no waiver of that fee, then Mr. Gobeil was simply doing his job.
- (d) Even though Ms. March said she too would be upset that L.R. paid cash for a documentation fee in a straight across deal, and Ms. March appears to have clearly believed L.R.; Butler Auto Sales Ltd. did not provide L.R. with a refund like it did with D.H. As noted, the condemnation by Ms. March and Butler Auto Sales Ltd. regarding their belief of this transaction with L.R. is not consistent with its conduct in relation to the transaction with D.H. Both consumers were equally upset, both consumers were equally allegedly wronged by the conduct of Mr. Gobeil, yet D.H. is the only one receiving a refund.
- (e) If Mr. Gobeil had failed to obtain a documentation fee in cash that he was not supposed to have been requested, why would he go through with documenting the documentation fee on the purchase agreement and have collected it? Why would he simply say sorry there must be a mistake, I can have that fee waived for you and not charge for it?

[114] The direct oral testimony of Ms. March paints a rather unfavourable view of Mr. Gobeil in his handling of the transaction with L.R. However, the rest of the evidence does not support Ms. March's view of this transaction. Collecting documentation fees on straight across transactions appear a normal occurrence at Butler Auto Sales Ltd. Based on the evidence presented, the L.R. transaction was authorized by the sales manager and Mr. Gobeil was obligated to collect the documentation fee. As noted earlier in these reasons, to have tried to collect cash for a documentation fee and not remit it to the accounting department would have raised questions. This does raise concerns about Ms. March's investigation and whether she kept an open mind or was simply collecting and highlighting evidence in a way to support Butler Auto Sales Ltd.'s position.

**(iv) Evasive answers regarding Butler Auto Sales Ltd.'s statement**

[115] Exhibit C (pages 3 & 4) of the Affidavit of Chris Coleman is a statement of events delivered to the Authority by Butler Auto Sales Ltd. During her direct evidence, Ms. March was asked who prepared this document and she said she typed it up. Under questioning by the lawyer for Mr. Gobeil, she was asked who the author of the letter was. Ms. March's answers then became evasive. Ms. March indicated it was her and June Butler who

assembled the information. Ms. March then talked about how it was not a letter but a statement of facts. When asked who was making the statement of fact her or Ms. Butler, Ms. March again became evasive in answering the question and finally said it was a statement of fact from her: Transcript of Proceedings, April 28, 2016, pages 149 to 151. Ms. March's evasiveness in answering this question was the only occurrence of her being evasive and while it is a consideration when I consider the whole of the evidence, it plays a minor role.

**(v) Timing of bringing this complaint and evidence forward**

[116] A review of the text messages in evidence shows Ms. Piano and Ms. March discussed the windshield claim money sometime in the past. The text messages make clear that Ms. March later reaches out to Ms. Piano, when she is separated from Joel Gobeil, and asks her again about the windshield deductibles. From the text messages, a motive for Ms. March and Butler Auto Sales Ltd. embarking on the review of the alleged windshield claims appears. From those text messages, Ms. March tells Ms. Piano that the dealership is talking to a "whole lot of customers" who say Joel Gobeil took cash from them for windshield deductibles. Ms. Piano then makes a derogatory remark about Mr. Gobeil's then girlfriend to which Ms. March agrees. Ms. March then states "mebee [sic] his ridiculous court case goes away now."

[117] Why did Butler Auto Sales Ltd. not raise concerns when they first heard of the issue? Why did they wait until litigation between Mr. Gobeil and Butler Auto Sales had commenced to start reviewing Ms. Piano's claim and bring this to the attention of the Authority? Where are these "whole lot of consumers" who can identify Joel Gobeil? This is a concerning sequence of events when considered globally with the rest of the evidence.

**(vi) Butler Auto Sales Ltd. controlled access to witnesses**

[118] Ms. March stated she only identified and brought forward the "best witnesses" to establish their allegations. From the text message evidence noted above, there should be a "whole lot of customers" who could give evidence. Yet, Butler Auto Sales Ltd. only identified a few consumers; of which one could identify Mr. Gobeil during the hearing. I would note the Authority had other witnesses noted in the Affidavit of Chris Coleman. The Authority elected not to call them and their evidence was struck out of the Affidavit. Would the other witnesses Butler Auto Sales Ltd. interviewed have told a different story? Would they have supported Mr. Gobeil's story?

**(vii) Butler Auto Sales Ltd. coaching witnesses**

[119] Consumer D.H., G.A. and B.F. do not recall speaking to Joel Gobeil about cash. Yet, their written statements specifically identify Joel Gobeil taking cash from them. Those statements were drafted by Ms. March. Consumer D.H. specifically said a women, and possibly June Butler, at Butler Auto Sales Ltd. told D.H. that they had been dealing with Joel Gobeil. As noted already, Mr. Gobeil was in Langley when D.H.'s written statement says the cash was given to Mr. Gobeil in Kamloops. This evidence suggests that the witness

testimony of the consumers was coached at least to some degree by Butler Auto Sales Ltd and the evidence of all the witnesses must be viewed in that light.

**(viii) Ms. Piano's evidence**

[120] While a tribunal may accept and rely on hearsay evidence, it must be careful in basing the core of its decision on only hearsay evidence. The hearsay evidence of Ms. Piano of what Mr. Gobeil allegedly stated - the cash was for windshield deductibles - is acceptable to concern whether or not that statement was made. It is not proof of the content of the statement. That is, it does not prove Mr. Gobeil actually took cash for windshield deductibles. If there is other clear, convincing and cogent evidence corroborating the truth of the hearsay evidence, then the hearsay is acceptable to consider as enhancing the reliability of other direct evidence.

[121] There is also concern that Ms. Piano is biased in her evidence due to a marriage break-up that has not ended well. That must be considered when considering Ms. Piano's evidence. While Ms. Piano gave her evidence in a well-mannered and respectful way at the hearing, the acrimonious marriage break-up is clearly evidenced in her text message conversation with Ms. March. These two factors must also weigh in my consideration of the evidence as a whole.

**(ix) The evidence of W.G.**

[122] The concern with the evidence of W.G. arises when considering the whole of the case. W.G. stands as the only person who stated at the hearing that Mr. Gobeil took \$300 cash for windshield deductibles. That does have to be looked at in light of all the evidence. It is as equally possible that W.G. was also coached in this case by Butler Auto Sales Ltd. Butler Auto Sales Ltd. clearly did not believe W.G. sufficiently to issue an immediate refund like they did with D.H. All transaction records of the sale with W.G. were not produced. This failure to produce all the records of the transaction does prejudice Mr. Gobeil in making a fulsome defence to the allegations. It does leave one to wonder what those documents would reveal. This is especially so given the cash payment process described by Butler Auto Sales Ltd. Another consideration is that W.G.'s spouse did not give evidence even though they were present for the transaction. Why? Would their evidence have been different than that of W.G.? Was their evidence not "the best evidence" as compared to W.G.?

**VII. Decision**

[123] The case brought forward by the Authority and from Butler Auto Sales Ltd. is a weak one once the statements from consumer's D.H., L.R., G.A., and B.F. are discounted. It effectively rests entirely on the testimony of consumer W.G. Ms. March's evidence is opinion evidence reliant on the evidence of the other witnesses. Ms. Piano's evidence is hearsay.

[124] Due to my above noted concerns that Butler Auto Sales Ltd.:

(a) coached witnesses,

- (b) created a statement implicating Mr. Gobeil in the case of D.H., when the evidence shows Mr. Gobeil was not even in Kamloops on the day the money was alleged to have changed hands, and Butler Auto Sales Ltd. did not produce even the purchase agreement for this sale,
- (c) controlled which witnesses to bring forward and withheld the release of important documents (ex. worksheets a.k.a. offers to purchase, and the auto track sheets) within its control,
- (d) was not concerned with the alleged conduct of Mr. Gobeil until civil litigation between it and Mr. Gobeil was underway,
- (e) provided a refund only to consumer D.H., conduct indicating it only believed D.H.,
- (f) did not produce all the transaction records for W.G.'s transaction, and
- (g) did not bring forward the evidence of W.G.'s spouse,

I find that I cannot rely on the evidence of W.G. W.G.'s evidence is tainted by the conduct of Butler Auto Sales Ltd. That conduct has also deprived Mr. Gobeil a full opportunity to question W.G. about their transaction, because Butler Auto Sales Ltd. did not produce all the records for both the truck and the trailer sales.

[125] Ms. March's opinion evidence cannot be relied on as it is based on the direct evidence of others; evidence which I have rejected as unreliable.

[126] Ms. Piano's evidence is hearsay evidence and cannot be the foundation of a decision, especially as important as the one I am asked to make.

[127] I am satisfied that the case put forth by Joel Gobeil shows the evidence advanced by the Authority and Butler Auto Sales Ltd. in support of the allegations is not clear, cogent and convincing. Mr. Gobeil has met his burden of proof and the allegations against him are dismissed.

[128] The MDA and the BPCPA do not currently grant the Registrar authority to order costs to a salesperson or a dealership in these circumstances.

#### **VIII. No further review by Registrar**

[129] If there is disagreement with this decision, it may be reviewed by petitioning the B.C. Supreme Court to conduct a judicial review pursuant to the *Judicial Review Procedure Act*. Such a petition must be filed within 60 days of the date of this decision: Section 7.1(t) of the *Motor Dealer Act* and section 57 of the *Administrative Tribunals Act*.

Date: June 27, 2016



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Ian Christman, J.D. Registrar of Motor Dealers