



Neutral Citation: 2017-BCRMD-013

**IN THE MATTER OF 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**

BREEZY WEBSTER

Complainant

And

VEHICLE SALES AUTHORITY OF BRITISH COLUMBIA

Complainant

And

**PIONEER GARAGE LIMITED DBA FRASER VALLEY PRE-OWNED
(Dealer Registration #40190)**

Respondent Dealer

And

**CHAS THOMSON
(Salesperson Licence #117125)**

Respondent Salesperson

**DECISION OF THE
REGISTRAR OF MOTOR DEALERS**

Dates and place of hearing: October 11 and 13, 2017 at Surrey,
British Columbia.

Written closing submissions of the Authority: November 3 and 22, 2017

Written closing submissions of Pioneer: November 17 and 28, 2017

Written closing submissions
by Breezy Webster: None

Written closing submissions
by Chas Thomson: None

Appearances for:

The Authority:	Robert Hrabinsky, legal counsel
Breezy Webster:	In person
Pioneer Garage Ltd. dba Fraser Valley Pre-Owned:	Paul Schwartz, legal counsel
Chas Thomson:	In person

I. Introduction

[1] This hearing was called to review allegations in relation to a consumer transaction with Breezy Webster where Pioneer Garage Ltd. dba Fraser Valley Pre-Owned, motor dealer registration number 40190 ("Pioneer") and Chas Thomson, salesperson licence number 117125, sold Ms. Webster a 2015 Dodge Grand Caravan (the "Dodge") and brokered financing for the transaction on behalf of Ms. Webster.

[2] It is alleged that in respect of this consumer transaction, Pioneer and Mr. Thomson did breach the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 ("BPCPA") by (paraphrasing the Notice of Hearing):

- (a) Committing an unconscionable act or practice contrary to subsection 9(1) of the BPCPA in that they took advantage of Ms. Webster's inability or incapacity to reasonably protect her own interests
 - (i) Due to Ms. Webster's diminished capacity after having suffered a traumatic brain injury just prior to the consumer transaction and of which Pioneer and Mr. Thomson were aware or ought to have been aware;
 - (ii) By conducting the transaction in such a way as to hide from Ms. Webster the total price of the vehicle and not disclosing to her the full terms of the agreement and financing prior to her entering the purchase;
 - (iii) By falsifying Ms. Webster's job position, income, and liabilities on the finance application documents, which were submitted to the lender for approval without Ms. Webster's knowledge and consent;

- (iv) By falsifying the finance documents to state that Ms. Webster had provided a \$7,150 down-payment, when she had not, and doing so without Ms. Webster's knowledge and consent;
 - (v) By charging an extraordinary documentation service fee of \$2,555 without it being a part of the total price, and claiming it was to cover a cost of discharging a debt owed to ICBC by Ms. Webster, without advising her of that fact; and
 - (vi) By not advising Ms. Webster that there would be an \$11,895.97 balloon payment on March 2, 2022, but instead stating that "Christmas [was] coming early" as they had secured an interest rate between 5% and 7% for Ms. Webster.
- (b) Committing a deceptive act or practice contrary to subsection 5(1) of the BPCPA, in that by their words or by their conduct they deceived Ms. Webster into believing that:
- (i) She qualified for a loan when she did not;
 - (ii) She would be capable of servicing that loan when she could not; and
 - (iii) The purchase price of the Dodge would be \$28,039.00 when in fact the total price of the Dodge was \$42,543.00.

[3] It is further alleged that Pioneer and Mr. Thomson breached subsection 21(1)(l), as being a part of subsection 21(2), of the *Motor Dealer Act Regulation* B.C. Reg. 447/78 ("MDAR") by failing to itemize on the purchase agreement the cost of all charges for which Ms. Webster would be responsible.

[4] It is also alleged that Pioneer and Mr. Thomson breached section 23 of the MDAR by failing to declare on the purchase agreement whether the Dodge had:

- (a) Been used as a taxi, police or emergency vehicle or in organized racing;
- (b) Sustained damages requiring repairs costing more than \$2,000;
- (c) Been used as a lease or rental vehicle; or
- (d) Been brought into B.C. for the purpose of sale.

[5] It is also alleged that - during the investigation - Mr. Thomson falsely asserted that on May 26, 2017, he had attended the home of Ms. Webster to pick-up the Dodge, when he had not.

[6] It is also alleged that Pioneer's above alleged conduct breaches terms of the following Undertakings entered into by Pioneer:

- (a) April 15, 2016, VSA File No. 15-09-001;
- (b) May 25, 2016, VSA File No. 16-05-001; and
- (c) September 27, 2016, VSA File No. 16-05-005.

II. Position of the Parties

A. The Authority

[7] The Authority's position is partially summarized in the above allegations. The Authority's further submissions can be summarized as follows:

- (a) The evidence of the complainant, Ms. Webster, is uncontroverted and corroborated by other evidence. Her evidence should be believed and, combined with the other evidence, prove the allegations made against Pioneer and Mr. Thomson.
- (b) An adverse inference should be drawn from Mr. Thomson's not giving evidence and Pioneer electing not to call Mr. Thomson as a witness.
- (c) In response to Pioneer's assertion that the Affidavit of Ms. Vandokkumburg should be rejected, the Authority says there is no basis to do so. The Authority notes:
 - (i) The Affidavit was commissioned before a commissioner for taking oaths.
 - (ii) The fact that Ms. Vandokkumburg could not describe with legal precision the nature of an Affidavit is not grounds to reject the Affidavit.
 - (iii) The fact that one page of the attached exhibits was not legible in the Pioneer copy of the Affidavit is not grounds to reject the whole Affidavit. It is instead, a moment when Pioneer's counsel should have requested a more legible copy.

- (iv) The fact that, in Pioneer's submission, there is no sense that the documents exhibited to the Affidavit have been selectively edited is a topic of questioning for Pioneer, which it did explore.
- (v) The fact that Ms. Vandokkumburg did not use the words "information and belief" in paragraph 19 of the Affidavit does not mean Ms. Vandokkumburg did not understand the purpose of an Affidavit.
- (vi) Ms. Webster gave evidence including evidence about documents at the hearing, which should be preferred over the Affidavit.

[8] As to sanctions, the Authority submits:

- (a) An administrative penalty of \$20,000 should be levied jointly against Pioneer and Mr. Thomson, as specific and general deterrence. Past undertakings and administrative penalties do not appear to have deterred Pioneer.
- (b) Additional administrative penalties should be levied for Pioneer's breach of three past undertakings of \$10,000 each (\$30,000 in total).
- (c) Mr. Thomson's salespersons licence should be canceled.
- (d) Pioneer's conduct requires that its registration as a motor dealer be cancelled.

B. Pioneer

[9] Where appropriate, I have amalgamated Pioneer's position on the various allegations from its written submissions. Pioneer's position can be summarized as follows:

- (a) The Affidavit of Ms. Vandokkumburg should not be relied on, or at least the text portions of the Affidavit, because:
 - (i) Ms. Vandokkumburg appears not to understand that an Affidavit is sworn evidence, nor does it appear that the then Manager of Compliance and Investigations understood that an Affidavit is sworn evidence;
 - (ii) Paragraph 19 of the Affidavit is not based on information and belief, the evidence within that paragraph appears incomplete, and evidence associated with that paragraph such as a recording of an interview were not kept and produced by Ms. Vandokkumburg;

- (iii) One page of the affidavit documents, the one-page hospital document, was not legible; and
 - (iv) The serious errors in the text of the Affidavit contaminates the exhibits attached to the Affidavit as there is no associated reliable sworn testimony going to those exhibits.
- (b) The allegations of unconscionability in the Notice of Hearing suggest that Ms. Webster suffered a mental incapacity; and the Authority has not proven that to be the case.
 - (c) Ms. Webster was aware of the price of the Dodge contrary to the allegations.
 - (d) The Authority has not proven that Ms. Webster was not given a copy of the purchase agreement at the time of the sale.
 - (e) The evidence does not show that Pioneer or Mr. Thomson ever misrepresented to Ms. Webster her employment status or income status.
 - (f) The Registrar should make a strong inference that neither Ms. Webster nor the Authority provided documentary evidence to prove Ms. Webster's assertions of employment and income status.
 - (g) The evidence falls short of establishing negligent misrepresentation at common law.
 - (h) Ms. Webster was aware that Pioneer was noting a \$7,150 down-payment on the purchase agreement.
 - (i) The alleged extraordinary documentation fee of \$2,555 was a result of Pioneer undertaking to discharge two debts on behalf of Ms. Webster of \$1,800 and \$900.
 - (j) The Authority's allegations that Ms. Webster would not be able to support the debt due to a \$11,895.97 balloon payment was not proven and an over-reaching allegation by the Authority.
 - (k) The Authority's allegation that Ms. Webster would not be able to service the debt generally was not proven by the Authority. The evidence of Ms. Webster's past debt payment history indicates she could service the debt.
 - (l) Ms. Webster's belief that the Dodge was \$42,543.50, when a representation of \$28,000 was made by Mr. Thomson, is based on Ms.

Webster's mistaken understanding of the numbers on the purchase agreement. Her mistaken belief is not legally the same as Pioneer or Mr. Thomson having misrepresented those facts to her.

- (m) The Authority is estopped from reasserting the allegation of failing to itemize all costs under section 21(1)(l) of the MDAR; and it would be procedurally unfair for the Registrar to now consider that allegation. Pioneer conducted its case according to the Authority's withdrawal of that allegation at the hearing, and did not question witnesses on this point.
- (n) Pioneer concedes that the purchase agreement is missing four declarations as alleged. There is no evidence that this was deliberate conduct and - at best - Pioneer should only be liable for the same amount as a violation ticket amounting to \$1,840 in total and to a \$250 administrative penalty.
- (o) Pioneer submits that it had nothing to do with Mr. Thomson's false assertion to the Authority and notes that it was an employee of Pioneer, who brought this false assertion to the attention of the Authority.
- (p) Generally, where the Authority relies on the wording of "ought to have known" in the legislation, the Authority is applying a "could have known" test, where it should be applying a "should have known" test.
- (q) Pioneer cautions the Registrar as to what it says are misdirection's by the Authority, and new allegations and sanctions raised by the Authority, in the Authority's written Reply.

[10] As to sanctions, Pioneer submits, that:

- (a) Pioneer should be liable for \$1,840 for the missed declarations under section 23 of the Motor Dealer Act Regulation;
- (b) Pioneer should be further liable for a \$250 administrative penalty for those missed declarations; and
- (c) Chas Thomson be liable for a \$500 administrative penalty for misleading an investigator of the Authority.

C. Chas Thomson

[11] Mr. Thomson did not give evidence at the hearing nor did he provide any written submissions, despite having been advised of his right to do so. In this case, it can only be said that Mr. Thomson makes a general denial of all the allegations against him.

D. Ms. Breezy Webster

[12] Ms. Breezy Webster's position is set forth in her consumer complaint form. For the purposes of this decision, her position can be summarized as feeling that she was taken advantage of by Pioneer and Mr. Thomson in the consumer transaction, as more particularized in the above allegations.

III. The Law

A. Statutory Interpretation

[13] The BPCPA and the *Motor Dealer Act* R.S.B.C. 1996, C. 316 ("MDA") are consumer protection legislation. As such, their interpretation and application must be in favour of consumers and consumer protection.

- section 8 of the *Interpretation Act* R.S.B.C. 1996, c. 238.
- *Seidel v. TELUS Communications Inc.*, [2011] 1 SCR 531, 2011 SCC 15 (CanLII) (Supreme Court of Canada) at paragraph 37.
- *Pioneer Garage Ltd. dba Greenlight Auto Sales et al.* (August 10, 2017, File 17-06-002 and 17-07-003, Registrar), paragraph 12.

B. Deceptive Acts or Practices – BPCPA

[14] The BPCPA has two main aspects. First, is a regulatory regime for licensees, which includes enforcement provisions to ensure compliance with the BPCPA. Those enforcement provisions have been incorporated into the MDA. Second, the BPCPA contains consumer protection provisions, which sets conduct expectations on suppliers and provides consumers with rights and with remedies if a consumer suffers harm due to a breach of their rights. Certain consumer protection provisions of the BPCPA have been incorporated into the MDA for administration by the Registrar.

[15] A combined reading of section 4 and subsection 5(1) of the BPCPA prohibits a supplier from committing a deceptive act or practice before, during, or after a consumer transaction whether by words or by conduct. Deceptive acts or practices are, essentially, misrepresentations or misleading conduct. Subsection 4(3) is conduct that the B.C. Legislature has deemed to be deceptive acts or practices. A deceptive act or practice may be innocent, negligent, or deliberate conduct by the dealer or salesperson and still entitle a consumer to a remedy. Whether the misrepresentation was innocent, negligent, or deliberate conduct can affect any compliance action that is taken.

- *Bunyak v. Darryl's Best Buys Auto Sales Ltd.* (Registrar, Hearing File 14-12-002, October 5, 2015).

[16] A deceptive act or practice can occur by failing to state a material fact.

- *Stanway v. Wyeth Canada Inc.* 2012 BCCA 260 (Court of Appeal) at paragraphs 80 – 81.
- *Applewood v. Ratte & Registrar* (April 13, 2010, S.C.B.C. Action S094126, Vancouver Registry) (B.C. Supreme Court).
- *Darryl's Best Buys*.

[17] Once it is alleged that a supplier committed a deceptive act or practice and the supplier fails to disprove the allegation, regulatory action can be taken against that supplier. Actual consumer harm is not necessary for there to be a breach of subsection 5(1) of the BPCPA, because the BPCPA's goal is consumer protection and preventing consumer harm. Preventing harm requires acting before harm occurs. That is why the BPCPA prohibits deceptive acts or practices before an actual consumer transaction, such as in an advertisement: s. 4(2) of the BPCPA. This view is supported by the fact that the Registrar may issue a compliance order requiring a supplier to abide by the BPCPA, if the Registrar believes a person is about to contravene that Act: s. 155(1) of the BPCPA.

- *Darryl's Best Buy*.

[18] If a consumer seeks damages under the BPCPA due to a supplier committing a deceptive act or practice, then the principles of common law requires proof of: reasonable reliance; a connection between the breach and the harm; and the quantum of damages arising from the harm suffered by the consumer.

- *Darryl's Best Buys*.

[19] Under section 5(2) of the BPCPA, an allegation that a supplier has committed a deceptive act or practice, shifts the onus to the supplier to prove there was no such breach.

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

[20] In this case, Pioneer has already provided compensation to Ms. Webster and unwound the transaction. Ms. Webster is not seeking any further remedies under the BPCPA. Therefore, the issues are whether Pioneer and or Mr. Thomson have breached the BPCPA and - if so - identifying the appropriate action to take.

[21] Pioneer's submissions indicate that any misrepresentations that may have been made to the lender in respect of this consumer transaction is not covered by

the BPCPA. In its view, the BPCPA prohibits a supplier from committing a deceptive act or practice to a consumer. This is not a proper interpretation of the BPCPA.

[22] Subsection 5(1) of the BPCPA prohibits a supplier from committing a deceptive act or practice “in respect of a consumer transaction:”

5 (1) A supplier must not commit or engage in a deceptive act or practice in respect of a consumer transaction. (Emphasis added.)

[23] The Legislature has not prohibited suppliers from committing deceptive acts or practices to a consumer, but in respect of a consumer transaction. In subsection 1(1) of the BPCPA, the definition of a consumer transaction includes the provision of goods or services to a consumer.

[24] The services that may be provided to a consumer include acting on behalf of a consumer in a consumer transaction, such as a loan broker as defined in Part 5 of the BPCPA. It may be that a loan broker, acting on behalf of a consumer, and in respect of a consumer transaction, makes misrepresentations to a third party, such as a lender, which may harm a consumer. The BPCPA is meant to protect consumers in such situations. A consumer is not to be deprived of the protections and remedies available under the BPCPA, just because the supplier in such a case did not make a misrepresentation directly to the consumer.

[25] This interpretation respects the intentions of the Legislature to protect consumers in all types of consumer transactions, including those transactions where someone acts on behalf of a consumer. The BPCPA achieves consumer protection not only by providing consumers rights and remedies, but by also setting expectations of business practices by suppliers. This is important in the motor vehicle sales industry as motor dealers and salespersons may act on behalf of consumers in various ways, including by:

- (a) Acting as a loan broker for the consumer;
- (b) Undertaking to pay the outstanding loan on a vehicle the consumer has traded-in towards the purchase of another vehicle;
- (c) Undertaking to pay other debts, such as a debt owed to ICBC; and
- (d) Agreeing to sell a consumer’s motor vehicle on consignment, pursuant to the *Motor Dealer Consignment Sales Regulation*, B.C. Reg. 101/95.

In these types of trust relationships, consumers are most vulnerable, because they have less control in the consumer transaction. The BPCPA is there to protect

consumers by setting expectations on supplier conduct and to provide consumers with remedies if they are harmed.

[26] The same is true in relation to subsection 9(1) of the BPCPA regarding unconscionable acts or practice:

9 (1) A supplier must not commit or engage in an unconscionable act or practice in respect of a consumer transaction. (Emphasis added.)

C. Unconscionable Acts or Practices – BPCPA

[27] Subsection 9(1) of the BPCPA prohibits suppliers from committing unconscionable acts or practices in respect of a consumer transaction. If it is alleged that a supplier committed an unconscionable act in respect of a consumer transaction, the onus is on the supplier to prove otherwise: subsection 9(2) of the BPCPA. If the supplier fails to disprove the allegation of unconscionability in respect of the consumer transaction, that transaction is not binding on the consumer: section 10(1) of the BPCPA.

[28] The BPCPA neither provides a definition of an unconscionable act or practice nor deems certain conduct unconscionable. Instead, the BPCPA directs the Registrar to consider the circumstances noted in subsection 8(3) of the BPCPA and to consider the whole of the case: subsection 8(2) of the BPCPA.

[29] Further guidance on the proper application of the unconscionability provisions of the BPCPA can be garnered from the caselaw. For this purpose, the Registrar has adopted the analytical approach in *Bain v. The Empire Life Insurance Company*, 2004 BCSC 1577 and as applied in *The Estate of George Mann Sr. v. Ocean Park Ford* (File 07-70255, May 19, 2009, Registrar decision on Reconsideration).

[30] In *Bain*, Justice Tysoe reviewed the factors in section 8(3) of the BPCPA, noting that the existence of one or more factors was not determinative of unconscionability. Those factors were to be considered against the whole of the case. In *Bain*, Justice Tysoe also noted that:

[72]The test was expressed in different terms in a subsequent decision of the B.C. Court of Appeal, *Harry v. Kreutziger* (1978), 1978 CanLII 393 (BC CA), 9 B.C.L.R. 166:

That single question is whether the transaction, seen as a whole, is sufficiently divergent from community standards of commercial morality that it should be rescinded. (p. 177)

This test was recently cited by the B.C. Court of Appeal in *Ma v. MIV Therapeutics Inc.*, 2004 BCCA 483 (CanLII).

[31] In *Bain*, Mr. Justice Tysoe also cautioned that the purpose of the legislation is to protect consumers from the transgressions of suppliers. The legislation is not meant to protect consumers from their own mistakes: *Bain*, at paragraph 88.

D. Section 21 of the Motor Dealer Act Regulation

[32] Section 21 of the MDAR requires that certain information be contained in a purchase agreement, regarding a new or used motor vehicle and that the purchase agreement be given to the consumer at the time the dealer accepts the agreement.

[33] Sub-section 21(1)(l) requires that purchase agreements for new motor vehicles include an itemized list of all costs for which a consumer is responsible. Subsection 21(2) incorporates by reference section 21(1)(l) for a purchase agreement for a used motor vehicle:

(2) Where a motor dealer makes a written representation in the form of a sales or purchase agreement respecting the sale by him of a used motor vehicle, he shall include the particulars required for a new motor vehicle under subsection (1). (Emphasis added.)

[34] These legislated disclosures are written representations of material facts for the consideration of a prospective purchaser. As such, the way that those representations are made must be compliant with the BPCPA. This includes not:

- (a) Misrepresenting the motor vehicle's history, age, quality, trim level, and other features: s. 4(3)(a)(ii) and (iii) of the BPCPA;
- (b) Misrepresenting the rights and obligations of a consumer or of the supplier: s. 4(3)(b)(iv) of the BPCPA;
- (c) Being ambiguous about or exaggerating a material fact: s. 4(3)(b)(vi) of the BPCPA; or
- (d) Failing to state a material fact: s. 4(3)(b)(vi) of the BPCPA.
 - *Re: Best Import Auto Ltd. et al.* (Registrar, Hearing File 17-08-002, November 28, 2017).

E. Section 23 of the Motor Dealer Act Regulation

[35] Section 23 of the *Motor Dealer Act Regulation* requires written disclosures about a motor vehicle's history on the purchase agreement. The required disclosures are as follows:

- (a) Whether the motor vehicle has been used as a taxi, police or emergency vehicle, or in organized racing;

- (b) Whether the motor vehicle has
 - (i) in the case of a new motor vehicle, sustained damage requiring repairs costing more than 20% of the asking price of the motor vehicle; or
 - (ii) in the case of a used motor vehicle, sustained damages requiring repairs costing more than \$2 000;
- (c) Whether the motor vehicle has been used as a lease or rental vehicle;
- (d) Whether a used motor vehicle has been brought into the Province specifically for the purpose of sale;
- (e) Whether the odometer of the motor vehicle accurately records the true distance travelled by the motor vehicle.

[36] These disclosures are also representations about the motor vehicle; and the way that the disclosures are made must comply with the BPCPA.

[37] The disclosures required by sections 21 and 23 of the *Motor Dealer Act Regulation* are material to a consumer's decision to purchase and are to be provided to the consumer prior to their entering into the agreement. These disclosures would serve no consumer protection utility if they could be made after the consumer had agreed to purchase the motor vehicle. These material declarations must be made; and not making them is a failure to state a material fact and is deemed to be a deceptive act or practice under the BPCPA.

- *Re: Best Import Auto Ltd. et al.*

F. Section 8.1(4)(b) of the MDA

[38] In section 8.1(4)(b) of the MDA, the Legislature directed the Registrar to take seriously a motor dealer's committing a deceptive act or practice or an unconscionable act or practice. The Legislature has also made clear that even one such breach of those provisions provides sufficient grounds for the Registrar to cancel a motor dealer's registration.

G. Witness Credibility & Reliability

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

- *Bradshaw v. Stenner*, 2010 BCSC 1398 (BC Supreme Court); affirmed 2012 BCCA 296 (BC Court of Appeal); leave to appeal to the SCC refused 2013 CanLII 11302 (Supreme Court of Canada).

- *Crest Realty Westside Ltd. v. W & W Parker Enterprises Ltd.*, 2014 BCSC 1328 (BC Supreme Court); affirmed 2015 BCCA 447 (BC Court of Appeal).

H. Burden of Proof

[40] The burden of proof is on a balance of probabilities. That balancing is based on the existence of sufficiently clear, convincing, and cogent evidence to establish whether it is more likely than not that the alleged conduct occurred: *F.H. v. McDougall*, [2008] 3 SCR 41, 2008 SCC 53 (CanLII) at paragraphs 44 and 46.

IV. Discussion

[41] Based on the allegations and the above noted positions of the parties, I find the following issues are to be addressed:

- (a) The Affidavit of Ms. Vandokkumburg;
- (b) The evidence of Ms. Breezy Webster generally – credibility and reliability;
- (c) Section 21 of the *Motor Dealer Act Regulation*;
- (d) Section 23 of the *Motor Dealer Act Regulation*;
- (e) Allegations and evidence of any deceptive act or practice;
- (f) Allegations and evidence of any unconscionable act or practice;
- (g) Mr. Thomson’s having provided a false statement to the Authority during the investigation;
- (h) Given my below findings, the appropriate compliance action to be taken.

A. The Affidavit of Ms. Vandokkumburg

[42] As highlighted above, Pioneer challenges the reliability of the Vandokkumburg Affidavit. The basis of Pioneer’s position is that the Affidavit is fraught with issues related to potentially missing or illegible evidence, concerns with Ms. VanDokkumburg’s information and belief of the facts noted in paragraph 19, and that Ms. Vandokkumburg appears not to know the purpose of an affidavit.

[43] Ms. Vandokkumburg gave evidence that she had recorded a conversation with the Complainant in aid of making her notes. Ms. VanDokkumburg then deleted that recording after the notes were made. While it would have been preferable for Ms. VanDokkumburg to have preserved the recording, Ms. Vandokkumburg did make her notes and provided them to Pioneer; and she was questioned by Pioneer on that evidence and she explained why she followed that process. I don’t find

anything procedurally unfair in how Ms. Vandokkumburg made her notes; nor does it taint the reliability of her Affidavit.

[44] Pioneer complains that the one-page hospital record in the Pioneer copy of the Affidavit was not legible: Exhibit K, page 78, of the Affidavit Exhibits. Pioneer states this is indicative of Ms. Vandokkumburg's not properly completing her investigation, inasmuch as she should have obtained a legible copy of that record. Pioneer says this failure reflects on the completeness of Ms. VanDokkumburg's investigation and the Affidavit. I agree with the Authority's counsel on this point. If there were an illegible record in the Pioneer copy of the Affidavit, counsel for Pioneer should have asked for a legible copy and to have been provided with same. Instead, it appears Pioneer was satisfied not to have a legible copy of that record. I note that Exhibit K, page 78, of the Affidavit, which was tendered in evidence at the hearing, is legible. Errors in the compilation and binding of copies of an Affidavit do not taint the actual Affidavit entered into evidence.

[45] Paragraph 19 of the Affidavit is Ms. Vandokkumburg's recitation of an interview she conducted with the Complainant in the presence of the Complainant's friend. The Affidavit says "[t]he Consumer stated the following" and goes on to discuss what the Complainant told Ms. Vandokkumburg. That paragraph does not say that what is stated is "based upon information and belief," and Pioneer argues that therefore I cannot rely on paragraph 19. The remainder of that phraseology is "and where so stated, I do verily believe the same to be true:" see paragraph 1 of the Affidavit. I take paragraph 19 of the Affidavit at face value. It specifically says Ms. Vandokkumburg is restating what she was told by the Complainant, Ms. Webster. Ms. Vandokkumburg is not judging what Ms. Webster said to be true. Ms. Webster provided oral testimony covered by paragraph 19 and was cross-examined on that evidence by Pioneer. Ms. Webster's oral testimony is to be preferred over paragraph 19 of the Affidavit.

[46] Pioneer complains that Ms. Vandokkumburg's description of what an Affidavit is, suggests she does not understand it is sworn testimony and that makes the entire Affidavit unreliable. I disagree with this position. The Affidavit is sworn before a Commissioner for taking oaths. The fact that Ms. Vandokkumburg answered Pioneer's questions about the Affidavit by describing its physical characteristics and its practical utility does not mean Ms. Vandokkumburg did not know it is sworn testimony.

[47] Finally, I would note that those paragraphs in which the attached exhibits are identified are all factually based and describe how Ms. Vandokkumburg came into possession of those exhibits. There is no basis to reject those paragraphs of the Affidavit nor the exhibits they reference.

[48] I find that I may rely on the Affidavit and its attached exhibits. As to paragraph 19 of the Affidavit, Ms. Webster's oral testimony at the hearing is to be preferred.

B. The evidence of Ms. Breezy Webster generally – credibility and reliability

[49] During the hearing, I found Ms. Webster's testimony to be, at times, clear and concise; and she was quick to respond to questions. At other times, Ms. Webster's testimony appeared guarded, less than clear, and slow in response. At one point, Ms. Webster said her brain was getting "fuzzy," which she said is a result of her motor vehicle accident and brain injury. This "fuzzy" moment came near the end of a line of questioning by Pioneer's lawyer.

[50] The Authority's lawyer submits that I should accept some of Ms. Webster's evidence, where it is uncontroverted. I disagree with that view and agree with counsel for Pioneer's view. Even uncontroverted evidence must be acceptable on a balance of probabilities: *Bradshaw*.

[51] Given Ms. Webster's brain injury, and the way she gave evidence, where I have accepted Ms. Webster's evidence, it is not because it is uncontroverted. Ms. Webster's evidence has been accepted because, after assessing that evidence, it is more likely than not to be true: *Bradshaw*.

C. Section 21 of the Motor Dealer Act Regulation

[52] At the commencement of the hearing, the Authority abandoned its allegation that Pioneer had breached sub-section 21(1)(l) of the *Motor Dealer Act Regulation*. At that time, counsel for the Authority said that the provision applied to only new motor vehicle purchases. The Dodge was a used motor vehicle at the time of the transaction. In its written submissions after the hearing, the Authority renewed this allegation, noting that Pioneer would not be prejudiced as the evidence on this point is the purchase agreement itself. The Authority noted subsection 21(1)(l) was applicable to a used motor vehicle purchase by its incorporation into subsection 21(2) of the Regulation.

[53] I disagree with the Authority that there would be no prejudice to Pioneer. First, the allegation was that Pioneer failed to itemize all charges on the purchase agreement as required by section 21(1)(l) of the Regulation. It stands to reason that other evidence is needed to know what has not been itemized on the purchase agreement, and not just the purchase agreement itself. Second, and as Pioneer notes, Pioneer conducted its defence based on the abandoned allegation. To renew that allegation after the hearing is complete, would deprive Pioneer of questioning witnesses, tendering its own evidence, and defending itself.

[54] I find it would be procedurally unfair to allow the Authority to renew this allegation at this stage of the proceedings. If it wished to renew that allegation, it should have done so with notice to Pioneer and myself during the hearing. I decline to consider whether Pioneer has breached subsection 21(1)(l), as incorporated into subsection 21(2), of the MDAR.

D. Section 23 of the *Motor Dealer Act Regulation*

[55] As noted earlier, Pioneer has failed to make the four legally required declarations of material facts regarding the Dodge on the purchase agreement. Specifically, Pioneer failed to declare whether the Dodge had:

- (a) Been used as a taxi, police or emergency vehicle or in organized racing;
- (b) Sustained damages requiring repairs costing more than \$2,000;
- (c) Been used as a lease or rental vehicle; or
- (d) Been brought into B.C. for the purpose of sale.

[56] In its written submissions, Pioneer has admitted this failure to state material facts are breaches of the BPCPA, even though they were not alleged as such. Pioneer has done so by agreeing that it should be liable for an administrative penalty of \$250 for failing to make these declarations: paragraph 83 of Pioneer's November 17, 2017, submissions. As of the date of its written submissions, the only way an administrative penalty could be levied for failing to make these declarations is if they were also a breach of the BPCPA. In this case, a failure to state a material fact is deemed to be a deceptive act or practice: s. 4(3)(b)(vi) of the BPCPA.

- *Stanway*
- *Windmill Auto Sales and Detailing*

[57] Pioneer has breached section 23 of the MDAR and as Pioneer has agreed, this is a breach of subsection 5(1) of the BPCPA by failing to state material facts. No proven harm is necessary for there to be a breach of those provisions.

E. Factual findings regarding the consumer transaction

1. The signing of blank documents

[58] It is Ms. Webster's evidence that she met with Chas Thomson to sign the paperwork at the dealership. Ms. Webster recalls signing those documents upstairs at the dealership. There, Ms. Webster says that she was asked to sign the documents, which were blank. Under cross-examination she later said that she meant that they did not contain the numbers that now appear on the documents. In

giving this evidence, Ms. Webster was clear and consistent under cross-examination. Mr. Thomson did not give evidence in contradiction to Ms. Webster; and Pioneer elected not to call Mr. Thomson as a witness. A review of the documentary evidence and the evidence of others, supports Ms. Webster's evidence that she signed the paperwork in blank.

2. A comparison of ICBC Transfer/Tax Form's (APV9T's)

[59] The documentary evidence contains two copies of an ICBC Transfer/Tax Form APV9T ("APV9T") in respect of this consumer transaction. The first APV9T is the one provided by Ms. Webster as part of her complaint package (page 13 of the Affidavit Exhibits). The seller portion of that document is signed and the name Chas Thomson appears beside that signature. The page 13 APV9T does not make any of the section 23 MDAR declarations. In comparison is the ICBC Transfer/Tax Form APV9T obtained by the Authority from ICBC (page 29 of the Affidavit Exhibits), which is also signed by the seller, with the name Chas Thomson. The seller portion of the page 29 APV9T does show the section 23 MDAR declarations, with hand written lines checking the boxes. There are further discrepancies between these two APV9T's:

- (a) The noted colour for the Dodge on the page 13 APV9T is Silver, while on the page 29 APV9T it is (Silver) Grey, with a hand-written parenthesis around Silver and Grey having been written in;
- (b) The noted Fuel on the page 13 APV9T is blank, while on the page 29 APV9T it is noted as "G" in hand-writing;
- (c) The noted body style on the page 13 APV9T is "SXT," while on the page 29 APV9T, it is noted as "(SXT)," with a hand-written parenthesis and "4DRSW" hand-written beside it;
- (d) The noted seating capacity on the page 13 APV9T is left blank, while on the page 29 APV9T a hand-written, diagonal line is drawn through the box;
- (e) The purchaser's name on the page 13 APV9T is "Webster Breezy," while on the page 29 APV9T, the name is "Webster Breezy" with "Winter" hand-written beside it; and
- (f) At the bottom of the page 13 APV9T, the boxes for "name of agent (print)" and "signature of agent" are blank, while the page 29 APV9T has the name printed as what appears to be "Reg" or "Raj" and the agent's signature.

[60] A comparison of these two APV9T's satisfies me that information could have been and was added after this document was signed and a copy provided to Ms. Webster in respect of this consumer transaction.

3. A review of the finance documents

[61] The BMO loan approval of March 3, 2017 did not require a \$7,150 down-payment; but the March 4, 2017 purchase agreement and March 4 BMO Conditional Sales Contract noted a \$7,150 down payment. Something changed after the March 3, 2017 loan approval was issued that required Ms. Webster to have a \$7,150 down payment. There is no BMO Credit Application in relation to the approval Pioneer received from BMO on March 3, 2017. The credit application associated with the March 3, 2017 BMO loan approval would have shown what was declared as Ms. Webster's income, job status, and liabilities such as rent; and it would have provided a comparison to the March 4, 2017 BMO credit application, which Ms. Webster says falsely declares those items. The absence of the BMO credit application associated with the March 3, 2017 BMO loan approval in Pioneer's response materials to the Authority is a factor for consideration.

[62] When Pioneer submitted the bank loan responses to the Authority, the ones from TD Bank and RBC were dated March 4, 2017 and declined Ms. Webster's credit application. The document Pioneer provided showing the BMO loan approval, which was ultimately applied to this consumer transaction, is dated March 21, 2017 and indicates "Booked" as opposed to "Approved," as was indicated on the March 3, 2017 BMO loan approval. Missing is the loan approval Pioneer would have obtained from BMO, showing the need for the \$7,150 down-payment in or around March 4, when the purchase agreement, the BMO Conditional Sales contract, and the BMO Credit Application are dated. Having the original BMO loan approval, with its associated date and time stamp, would have shown when Pioneer received that approval for comparison to the date that the purchase agreement, BMO Credit Application, and BMO Conditional Sales Contract were signed. Pioneer kept and produced the other approvals and declinations from the banks, but did not keep the loan approval for the loan used in this consumer transaction, which is unusual. The fact that Pioneer provided the BMO loan approval showing "Booked" and dated March 21, instead of the BMO loan approval showing "Approved" that it would have received closer in time to March 4, 2017 is a factor for consideration.

4. The evidence of Raj Sekhon

[63] I also consider the evidence of Raj Sekhon, who was called as a witness by Pioneer. Mr. Sekhon says he was the agent, who processed the transfer of the vehicle (APV9T) and other ICBC transactions - such as paying the ICBC debt. These all occurred on March 6, 2017. Mr. Sekhon said Mr. Thomson came from upstairs, where he believes Mr. Thomson's office is, to review documents with Ms. Webster.

Mr. Sekhon also stated that for about 4 or 5 minutes, Mr. Thomson went over the documents with Ms. Webster: Transcript of Proceedings, October 11, 2017, pages 11 to 34. If Ms. Webster signed and initialed all the documents with all the numbers on them, that would have occurred, while Mr. Thomson went over those numbers with Ms. Webster on March 4, 2017. Instead, Mr. Thomson was going over the numbers, while Mr. Sekhon was processing the transfer of the vehicle and insurance with Ms. Webster on March 6, 2017. This tends to show the numbers were added after Ms. Webster signed the documents on March 4, 2017.

5. *Pioneer internal emails of March 6, 2017, and testimony of Arlene Sater*

[64] A chain of emails from Chas Thomson to Ray van Empel (Owner of Pioneer), dated March 6, 2017 and copied to Arlene Sater (Controller at Pioneer) and Raj Sekhon (Insurance Agent), shows Mr. Thomson asking Mr. Van Emepl for authorization to pay the "icbc deck for 1800" owed by Ms. Webster. Mr. Thomson notes there is "lots of room." This exchange of emails is around 12:00 p.m. on March 6, 2017. Ms. Sater testified that this \$1,800 payment to ICBC had to be approved by head-office along with any lien payments and cash back payments: Transcript of Proceedings, October 13, 2017, pages 347 – 348.

[65] The evidence from Pioneer is that this \$1,800 was built into the purchase agreement for the Dodge as dated March 4, 2017, and the BMO Conditional Sales Contract, dated March 4, 2017. It was not until March 6 that Mr. Thomson and Pioneer knew and agreed to pay the \$1,800 ICBC debt of Ms. Webster. It was not until March 6, 2017 that Pioneer and Mr. Thomson knew what the total amount to be financed would be so they could submit the credit application to BMO. This evidence supports Ms. Webster's evidence that the numbers noted on the purchase agreement, BMO Conditional Sales Contract, and the BMO Credit Application, all dated March 4, 2017, were added after those documents were signed.

6. *The text messages*

[66] The sequence of events of Ms. Webster's signing documents on March 4 and finalizing the transfer of the Dodge on March 6 is also supported by text messages between Ms. Webster and Pioneer: pages 89 to 100 of the Affidavit Exhibits. In one text message dated March 4, 2017, at 1:03 pm, Ms. Webster asks what the interest rate was going to be. She received a response at 1:06 pm that it was "5 to 7 %!!!": page 92 of the Affidavit Exhibits. As of the early afternoon of March 4, 2017, Pioneer does not appear to know what the exact interest rate was going to be, even though the BMO loan approval of March 3, 2017 shows an interest rate of 6.99%. Another text message shows Ms. Webster did not arrive at the dealership until close to 5 pm on March 4, 2017, (Page 94 of the Affidavit Exhibits) when - according to the date on the documents - she appears to have signed the Purchase Agreement,

BMO Conditional Sales Contract, and the BMO Application for Credit. As already noted, the consumer transaction was not finalized until March 6, 2017.

[67] I find Ms. Webster's evidence that she signed these documents in blank to have been clear and cogent and withstood cross-examination. Ms. Webster's testimony is supported by a review of the two APV9T's, the internal emails of Pioneer, the text messages, and the testimony of Ms. Sater and Mr. Sekhon. The full extent of the transaction, especially the requirement to add \$1800 to pay an ICBC debt, were not known until March 6, 2017.

F. *Ms. Webster did not receive a copy of purchase agreement and finance agreement until March 15, 2017*

[68] I find that Ms. Webster was not provided with a copy of the purchase agreement or the BMO Conditional Sales contract until on or around March 15, 2017. Ms. Webster's evidence on this point was clear and convincing and did not change under cross-examination. It is consistent with Ms. Webster's complaint form. Mr. Sekhon's evidence about Ms. Webster receiving documents from Mr. Thomson on March 6, 2017 was an assumption on his part.

[69] In its submissions Pioneer discusses how, from Ms. Webster's complaint form, it appears that Ms. Webster ticked one box and then another, regarding having received documents at the time of the transaction. One box is ticked "none" and the other is ticked "a copy attached." I would note that the associated document to those tick boxes is "vehicle registration." A copy of that document is attached to Ms. Webster's complaint form. The boxes associated with having received a copy of a purchase agreement and a copy of the finance agreement are ticked none. I do not find there to be such a discrepancy regarding the purchase agreement and finance agreement.

[70] Two text messages support Ms. Webster's evidence that she did not receive a copy of the purchase agreement and finance documents, until after the purchase.

[71] First, is the text message exchange on March 7, 2017 where Ms. Webster is inquiring why the Dodge was "\$39999 for the insurance." Ms. Webster's brother apparently thought that was high. Mr. Thomson explains how the numbers break down, as discussed more fully at paragraph 116 below. Ms. Webster responds with a "thank you," and says "i [sic] just mentioned that was what is on insurance and he wondered and so did i [sic]. I did mention the others but couldn't fully explain it as it was discussed more verbally." Ms. Webster is indicating a verbal conversation and nothing about documents.

[72] A second exchange of text messages dated March 17, 2017, involves Adrianna explaining the numbers for the transaction with Ms. Webster, as discussed more fully at paragraph 116 below. In one text message, time stamped 12:59 pm,

Adrianna says, "I am sending your bill of sale now please read all numbers from top to bottom carefully," which includes a picture of the purchase agreement. If Ms. Webster had been given a copy of the purchase agreement at the time of purchase, it seems unlikely that Adrianna would have had to send a picture of it to her and suggest she go over the numbers on the purchase agreement "from top to bottom."

G. The \$7,150 down-payment

[73] Pioneer has admitted that there was no down payment and that it has manipulated the numbers on the purchase agreement and finance documents to show one.

[74] Pioneer argues that this conduct should not constitute a deceptive act or practice, as it was not a misrepresentation made to Ms. Webster. Further, or in the alternative, Pioneer argues that Ms. Webster was aware that the falsification of the down payment on the paperwork was going to occur. Pioneer brings to my attention Ms. Webster's answers in cross-examination where she said she knew that Pioneer was putting a \$7,150 down payment for the Dodge.

[75] In reviewing Ms. Webster's whole testimony on this point, it shows she was less than clear about the down payment. It appears that Ms. Webster believed Pioneer was making some payment and Ms. Webster was not required to do so. This view is supported by the April 10, 2017 letter from Chas Thomson in Pioneer's Dealer Response to the Authority regarding Ms. Webster's Complaint: see pages 37-38 of the Affidavit Exhibits. In the letter, Mr. Thomson says "[t]he \$7,150.00 down payment was required by the bank as a down payment. Fraser Valley Preowned took care of that for her. To get the accurate price of the vehicle, the \$7,150.00 should be deducted since Fraser Valley preowned [*sic*] covered that."

[76] Ms. Webster also said she was not aware that there was a requirement from the Bank of Montreal that there be a down payment, but that Pioneer was going to note one down. Ms. Webster was emphatic that she would not have agreed to actually pay a \$7,150 down payment, as she did not have that money.

- Transcript of Proceedings, October 11, 2017, pages 202 to 211.

[77] I found Ms. Webster's evidence during this exchange to be convincing and reliable. Ms. Webster admitted that there was discussion about a down-payment being noted on the paperwork, which would appear to be evidence contrary to her own interest. Ms. Webster's evidence was also consistent throughout the cross-examination on this point and with her prior evidence, such as signing the documents when they were blank. Mr. Thomson did not give evidence at the hearing on this point; and Pioneer did not call him as a witness. I find Ms. Webster was aware that something was going to be noted about a down payment, but she

was unaware of exactly why or how it was going to happen, or that she had to provide one at all.

H. Ms. Webster's income and job status

[78] As part of the application for credit, the Bank of Montreal required knowing Ms. Webster's income, liabilities (such as rent or mortgage), and Ms. Webster's employment status. Based on its assessment of Ms. Webster's financial situation, as represented to the Bank of Montreal in the credit application, the Bank of Montreal approved Ms. Webster for a loan so long as a \$7,150 down-payment was made.

[79] In her evidence, Ms. Webster noted the following about her employment status and financial situation, at the time of the Dodge's purchase:

- (a) She was receiving around \$500 to \$700 every two weeks in EI disability benefits;
- (b) She was receiving \$1,000 a month in child tax benefits;
- (c) She was a pre-school teacher and family program coordinator before her accident; and
- (d) She paid no rent.

Ms. Webster was cross-examined regarding her employment status, income, and rent. Ms. Webster was consistent in her testimony in direct and under cross-examination.

[80] Pioneer argues that the Authority has not advanced any evidence such as pay-stubs or letters from Ms. Webster's employer to establish Ms. Webster's income or employment status.

[81] First, there is evidence of Ms. Webster's employment and income status, which came from Ms. Webster herself. I found her testimony on direct and cross-examination to be clear and cogent on this point. I also found her answers to make sense. For example, Ms. Webster's evidence was that she does not pay any rent. However, the BMO Credit Application shows Ms. Webster paying \$405 a month in rent. It makes no sense for Ms. Webster to claim monthly rent of \$405, a monthly liability, on a credit application. It would make more sense for her to have claimed no monthly rental payment as was her evidence.

[82] Second, the allegation is that Pioneer has committed a deceptive act or practice by misrepresenting Ms. Webster's income and employment status on the credit application to the Bank of Montreal. This is in respect of a consumer transaction. As such, the onus has shifted to Pioneer to prove that the employment

status and income noted on those documents are not misrepresentations: section 5(2) of the BPCPA.

[83] Another consideration, as noted above, is that the BMO loan approval dated March 3, 2017, was not being pursued. To get a new BMO loan approval on different terms required applying with different information than the credit application submitted to obtain the March 3, 2017 BMO loan approval.

[84] One would expect that Pioneer would have taken steps to obtain copies of pay stubs, Notices of Assessments or a letter verifying employment as part of its work brokering a loan for Ms. Webster. In the records Pioneer submitted to the Authority is a BMO loan approval for Ms. Webster dated July 2, 2016: page 87 of the Affidavit Exhibits. That 2016 BMO approval required "proof of income and employment as declared." Pioneer knew that BMO wanted proof of income and employment regarding Ms. Webster from its prior dealing with Ms. Webster. Chas Thomson's response letter to the Authority confirms these prior dealings with Ms. Webster: pages 37 – 38 of the Affidavit Exhibits.

[85] I also consider that Chas Thomson does not appear to have been following Pioneer's process as noted in an email, dated March 13, 2017, provided to the Authority by Pioneer, from a Karen Lewis at the Pioneer Credit Center. In that email, Ms. Lewis was asking Chas Thomson and Adrianna Mitrovic for documents supporting the Webster transaction. Ms. Lewis noted that the following items were missing: "safety report," "status card is expired (require letter from the band)," "need photo on reserve," and "completed tax form (both pages)." Further missing was a "washout," and "nothing for the deposit" was provided: page 51 of the Affidavit Exhibits. It appears Mr. Thomson does not follow established processes.

[86] Ms. Webster's evidence regarding her income is also consistent with a statement she provided to Mr. Barteski, in one of his interviews of her on May 1 or May 4, 2017. During one of those interviews, Ms. Webster is said to have told Mr. Barteski that she could not afford the vehicle, because she was on disability payments of \$500 every two-weeks.

[87] A comparison of the March 4, 2017 written BMO loan application with the dealer management print outs from Dealertrack, as provided by Pioneer, shows a discrepancy in the declared income of Ms. Webster to TD Auto Finance and Royal Bank, as follows:

BMO March 4, 2017 Credit Application	Gross Income \$6,450 a month (page 62 Affidavit Exhibits)
Scotiabank DealerTrack	Gross Income \$6,450 a month (page 82 Affidavit Exhibits)

[93] In cross-examination, Ms. Webster stated she was falling behind on bills, including TD bank payments on the vehicle that was involved in the accident: Transcript of Proceedings, October 11, 2017, page 73.

[94] Looking at the terms of the March 4 BMO Conditional Sales Contract, the financial liability of Ms. Webster was:

Total of all advances and fees	\$42,637.01
Term of Borrowing	60 months
Amortization	84 months
Periodic payment	\$244.83 biweekly (\$244.83 x 26 = \$6,365.58 a year)
Residual value (owing end of 60 months term)	\$11,895.97
Interest	6.74%
Down-payment	\$7,150

[95] Ms. Webster's evidence was she was receiving about \$1,500 to \$1,700 a month in income. Paying about \$489.66 every four weeks would constitute roughly about 29% of her monthly income.

[96] Ms. Webster's evidence was that she has suffered a brain injury and is recovering from the motor vehicle accident. At the time of the transaction, Ms. Webster was unemployed.

[97] At the time of the consumer transaction, Ms. Webster could not pay the \$7,150 as a down-payment. At the time of the transaction, Ms. Webster was not working and on disability payments. Based on the BMO Conditional Sales Contract, Ms. Webster would be devoting about a 1/3 of her monthly income to the Dodge payments. Based on the information at the time of the consumer transaction, it is difficult to see how Ms. Webster would be able to pay the \$11,895.97 at the end of the term.

[98] I find that at the time of the consumer transaction, it is very unlikely that Ms. Webster would be able to service her debt. I also find that at the time of the transaction, Pioneer and Mr. Thomson had sufficient evidence to show Ms. Webster was having difficulty maintaining payments on her then current car loan.

J. How the transaction unfolded

[99] From the forgoing I am satisfied on a balance of probabilities that:

- (a) Ms. Webster signed the purchase agreement for the Dodge dated March 4, 2017, the BMO Application for Credit, dated March 4, 2017, and the BMO Conditional Sales Contract dated March 4, 2017, in blank at or around 5 p.m. on March 4, 2017;
- (b) At that time, Pioneer did not know what the exact interest rate would be, but knew that it would be between 5 to 7%, based on the March 3, 2017 BMO loan approval;
- (c) Pioneer did not know what the exact interest rate was going to be, because it had to submit a new application for credit to BMO, on behalf of Ms. Webster, as the BMO approval of March 3, 2017 was no longer being pursued;
- (d) Because the March 3, 2017 BMO loan approval was not being pursued, the BMO Credit Application had to be resubmitted, with different information. It had to be different information, because applying with the same information that resulted in the March 3, 2017 BMO loan approval, including its terms and conditions, would most likely produce the same approval;
- (e) As Pioneer had to await a response from BMO, after it submitted the credit application sometime after 5 pm on March 4, 2017, it could not know what the exact interest rate was going to be, whether BMO would require a down-payment or how much it might be, what the exact periodic payments were going to be, or whether Ms. Webster's income and job status had to be verified as a condition of the loan being approved;
- (f) Because of the unknown exact interest rate, exact down-payment if any, and exact monthly payments, the numbers had to be left blank on the purchase agreement and the BMO Conditional Sales Contract, dated March 4, 2017, so that they could be added once known;
- (g) Once Pioneer and Mr. Thomson knew that BMO wanted a \$7,150 down-payment, Pioneer and Mr. Thomson also knew they had to add a fictitious down-payment and adjust the purchase price of the Dodge to account for the fictitious down-payment;
- (h) Mr. Thomson did not get authorization for Pioneer to pay Ms. Webster's ICBC debt of \$1,800 until March 6, 2017;

- (i) It was only on March 6, 2017 that adding the \$1,800 amount to the purchase price of the Dodge was known and incorporated into the purchase agreement and the BMO Conditional Sales Contract, both signed and dated March 4, 2017;
- (j) It was only on March 6, 2017 that Pioneer and Mr. Thomson knew the full amount to be financed by BMO. It was only on this date that the credit application to BMO could be completed and submitted to BMO for approval;
- (k) Once the remaining terms of the BMO loan approval; including the periodic payment amount, interest, residual amount, amortization period and loan term, the down-payment amount with adjusting the purchase price accordingly, and the \$1800 ICBC debt amount were all known on March 6, 2018, did Pioneer and Mr. Thomson fill in the purchase agreement and the BMO Conditional Sales Agreement both signed and dated March 4, 2017;
- (l) Mr. Thomson went over the numbers with Ms. Webster for the first time on March 6, 2017, when Ms. Webster was having the Dodge transferred to her and obtaining insurance. That was the first time Pioneer both knew what all the numbers were, including the \$7,150 down-payment and \$1,800 ICBC debt, how all the numbers had to be represented on the purchase agreement and on the BMO Conditional Sales Contract to make the deal work, and that Mr. Thomson had an opportunity to try to explain them to Ms. Webster;
- (m) Mr. Thomson went over the numbers on the purchase agreement and the BMO conditional sales contract for about 4 or 5 minutes, while Ms. Webster was also engaged in transferring ownership of the Dodge from Pioneer to herself on March 6, 2017. This would require Ms. Webster redirect her focus from the purchase of insurance to the purchase and finance transaction documents;
- (n) On March 6, 2017, Ms. Webster left Pioneer with her insurance papers and was not provided copies of her purchase agreement or the finance documents by Pioneer;
- (o) Pioneer provided a BMO loan approval document, dated March 21, 2017, showing "Booked" to the Authority, instead of one, dated on or around March 4, 2017, showing "Approved" as it did with documents showing TD and RBC declining loans and the March 3, 2017 BMO loan approval;
- (p) Pioneer did not provide this document, because it did not want to show that the BMO loan approval, requiring the \$7,150 down-payment and the 6.74% interest rate, came in sometime after March 4, 2017, and after the

purchase agreement and BMO Conditional Sales Contract were signed – showing that Pioneer and Mr. Thomson had Ms. Webster pre-sign those documents in blank. That approval could not come in on or about March 4, 2017, because the full purchase price of the Dodge inclusive of the \$1,800 ICBC debt, and the total amount to be financed were not known until March 6, 2017 and only then could BMO approve financing on the terms noted in the March 21, 2017 “Booked” loan approval document, but which terms show up on the signed March 4, 2017 BMO Conditional Sales Contract and the signed March 4, 2017 purchase agreement; and

- (q) Pioneer did not provide a copy of the BMO Credit Application associated with the March 3, 2017, BMO loan approval, because Pioneer did not want to show there were different declarations, regarding Ms. Webster’s income, job status and rent when compared to the March 4, 2017, BMO Credit Application.

K. Deceptive act or practice – representing that the Complainant qualified for a loan when the Complainant did not

[100] The BMO Conditional Sales Contract dated March 4, 2017, is a representation that Ms. Webster qualified for a loan, if she could provide a \$7,150 down-payment. The text message from Mr. Thomson clearly represented to Ms. Webster that she had qualified for a loan. The language in the text message tries to create excitement by stating “Christmas is coming early.” That text message does not mention that Ms. Webster had to provide a down-payment of \$7,150 to qualify for the loan.

[101] Ms. Webster did not have \$7,150 as a down payment. Pioneer and Mr. Thomson manipulated the numbers on the paperwork to make it appear that Ms. Webster did provide a down payment. “They took care of it for her.” Ms. Webster did not qualify for the loan.

[102] Even if I accept that Ms. Webster knew of the fictional \$7,150 down-payment and agreed to it’s being placed on the BMO Conditional Sales Contract, that does not constitute a waiver of the BPCPA prohibition on Pioneer and Mr. Thomson against committing a deceptive act or practice in respect of a consumer transaction. A consumer’s knowingly agreeing to participate in a deceptive act or practice may affect the remedy the consumer is entitled to if they are harmed. The BPCPA requires that suppliers not engage in such conduct, irrespective of whether the consumer is a willing or instigating participant in the deceptive act or practice. Pioneer’s submission, essentially, is that it is okay to breach the BPCPA, so long as the consumer goes along with it. This is not only incorrect under the legislation, but constitutes concerning conduct of a motor dealer.

[103] I find that Pioneer and Mr. Thomson committed a deceptive act or practice in respect of a consumer transaction by representing to Ms. Webster and to BMO that Ms. Webster qualified for a loan when she did not, by falsifying a down-payment on the purchase agreement provided to the consumer and the finance documents provided to the consumer (eventually) and to BMO, contrary to subsection 5(1) of the BPCPA.

L. Deceptive act or practice – the Complainant would be capable of servicing the loan when she could not.

[104] Ms. Webster's income was reduced due to her accident. The noted TD pay-out statement and declination notices from TD and RBC show Pioneer was aware at the time of the consumer transaction that Ms. Webster was having difficulty servicing her then current car loan. Ms. Webster's ability to service the loan on the Dodge is also based on a false income and employment status declaration and a false declaration of liabilities made to BMO.

[105] The ability to service the loan is also premised on Ms. Webster having provided an actual down-payment of \$7,150. There was no actual down-payment.

[106] I am satisfied that Pioneer and Mr. Thomson, by words and by conduct, represented to Ms. Webster and to BMO that Ms. Webster would be able to service the loan when Ms. Webster could not. This is a deceptive act or practice made by Pioneer and Mr. Thomson in respect of a consumer transaction, contrary to subsection 5(1) of the BPCPA.

M. Deceptive act or practice - The purchase price of the Dodge would be \$28,039.00 when in fact the total price of the Dodge was \$42,543.00

[107] I find the evidence regarding this allegation to be imprecise. The alleged vehicle price of \$42,543.00 is not the asking price of the Dodge, but the sub-total before taxes and the fictitious down-payment are applied. Within the \$42,543.00 is an amount to cover a \$1,800 debt owed to ICBC, which Ms. Webster agreed was part of the transaction and a \$1,941.72 pay out to TD Auto Finance to clear the lien on the trade-in vehicle. Both payments were incorporated into the financing to purchase the Dodge. Ignoring for the moment the artificial adjustment of the vehicle purchase price by \$7,150 to cover the fictitious down-payment, there were what I will call "add-ons" to this transaction, which would have affected the price for the entire transaction to be financed. I note that those add-ons were at the request and agreement of Ms. Webster.

[108] Based on the above, I do not find Pioneer committed a deceptive act or practice by representing the price of the Dodge to be \$28,039.00, when in fact it was \$42,543.00. It would have been clearer to Ms. Webster had Pioneer itemized

all the costs on the purchase agreement, but I have said I will not consider that allegation as it was abandoned by the Authority.

N. Unconscionable act or practice

[109] As earlier noted, the analytical approach in determining whether there was an unconscionable act or practice in a consumer transaction is to examine the whole of the transaction, ensuring the circumstances in sub-section 8(3) of the BPCPA are considered, to see if the consumer transaction does not meet community standards of commercial morality. The BPCPA is to be used to address the transgressions of suppliers and not the mistakes of consumers. Where it is alleged that the supplier committed an unconscionable act or practice, the onus shifts to the supplier to prove otherwise.

[110] I first turn to an assessment of the circumstances noted in section 8(3) of the BPCPA. As to subsection 8(3)(f) of the BPCPA, there are currently no prescribed circumstances for consideration.

1. 8(3)(a) That the supplier subjected the consumer or guarantor to undue pressure to enter into the consumer transaction;

[111] I heard no evidence suggesting Pioneer or Mr. Thomson subjected Ms. Webster to "undue pressure" to enter into the consumer transaction.

2. 8(3)(b) That the supplier took advantage of the consumer or guarantor's inability or incapacity to reasonably protect his or her own interest because of the consumer or guarantor's physical or mental infirmity, ignorance, illiteracy, age, or inability to understand the character, nature, or language of the consumer transaction, or any other matter related to the transaction

[112] A combined reading of subsection 8(2) and 8(3)(b), directs me to consider all those circumstances within subsection 8(3)(b) in relation to the whole of the case - the whole of the evidence.

[113] I accept that Ms. Webster is deemed competent until she proves otherwise under the *Adult Guardianship Act* R.S.B.C 1996, c. 6, ("AGA") as submitted by Pioneer. There is no evidence to suggest Ms. Webster is under a legal disability as defined by the AGA. However, a circumstance for consideration remains whether, considering the evidence, Pioneer and Mr. Thomson took advantage of Ms. Webster, because she was unable:

...to reasonably protect her own interest because of her inability...to understand the character, nature or language of the consumer transaction, or any other matter related to the transaction.

[114] Subsection 8(3)(b) does not qualify a consumer's inability to understand be linked to the consumer's incapacity or mental infirmity. To so limit subsection 8(3)(b) would reduce the protections of the BPCPA contrary to the principle that consumer protection legislation is to be interpreted in favour of consumers and the legislative direction in section 8 of the *Interpretation Act*.

[115] As noted, I found that Ms. Webster signed the purchase agreement, BMO Conditional Sales Contract, and the BMO Credit Application - all dated March 4, 2017 in blank. I further found that the numbers were explained to Ms. Webster over 4 to 5 minutes while she was also obtaining insurance for the Dodge. Ms. Webster's evidence of being confused about the numbers came through not only in her testimony, but can also be noted in the text messages.

[116] In those text messages, Ms. Webster did not know why the vehicle price was now \$39,998 and sought an explanation under threat of cancelling the deal. Ms. Webster received two different explanations by way of text message. One on March 7 from Chas Thomson and one on March 17 from Adrianna. The two versions are as follows:

March 7 - Chas Thomson Page 96 of the Affidavit Exhibits	March 17 - Adrianna Page 104 of the Affidavit Exhibits
39998	Vehicle price on bill of sale \$39998.00
	+
Minus 3000 cash back to pay your trade in off	\$2555.00 documentation, fees, admin
1800 cash back to pay your insurance	- \$7150 the bank require as a down-payment but we paid for it for you
Minus the 7150 cash down (I paid)	- \$1800.00 we paid for your ICBC debt
Equals 28039 is what u paid	-\$1941.72 the difference owed to TD for the old van
	You paid \$31,661.28 for the van at 6.74%

And miracle approval too! This just saved you so much money it's insane.

You won't find this deal anywhere.

Also, we will send you \$500.00 cheque for all your driving and troubles.

I am sending your bill of sale now please read all numbers from top to bottom carefully.

[117] I note that the text message from Chas Thomson does not mention a \$2,555.00 documentation fee, but "3000 cash back to pay your trade in off" – which was \$1,941.72 to pay TD bank for the old van.

[118] The written letter from Chas Thomson to the Authority, dated April 10, 2017, noted that Adrianna Mitrovic was Mr. Thomson's partner. It also confirms some of the numbers in the above text messages and that Pioneer took care of the down-payment: pages 37-38 of the Affidavit Exhibits.

[119] A few things to note from these text messages and other evidence:

- (a) Pioneer has represented two purchase prices for the Dodge to Ms. Webster after the sale occurred - \$28,039 and \$31,661.28. A difference of \$3,622.28. Only 11 days after the consumer transaction was finalized, Pioneer is not sure how much it charged Ms. Webster for the Dodge. That being the case, how can anyone expect Ms. Webster to have understood.
- (b) Pioneer has represented to Ms. Webster that they paid the \$7,150 down-payment for Ms. Webster. This representation is also contained in Mr. Thomson's letter to the Authority on April 10, 2017. In a phone interview of Ms. Webster conducted by Mr. Barteski on behalf of Pioneer, either May 1 or May 4, 2017, Ms. Webster was maintaining that she believed Pioneer had paid the \$7,150 down-payment: Evidence of Larry Barteski, Transcript of Proceedings, October 13, 2017, pages 371-372.
- (c) Mr. Thomson called the transaction a "miracle approval" regarding the 6.74% interest rate with \$7,150 down-payment, even though Ms. Webster had received a BMO approval on different terms on March 3, 2017.

[120] Ms. Webster gave evidence that she was in a motor vehicle accident. Ms. Webster gave evidence that she had suffered a brain injury and that she sometimes "goes fuzzy." The Fraser Health Authority - Royal Columbian Hospital November 25,

2016, admission diagnosis indicates Ms. Webster was in a motor vehicle collision and suffered various injuries, including a diagnosis of traumatic brain injury: page 78 of the Affidavit Exhibits.

[121] Ms. Webster stated that she spoke to Mr. Thomson and advised him of her motor vehicle accident including her brain injury. Mr. Thomson's letter of April 10, 2017 to the Authority confirms that Ms. Webster told him that she had been in a car accident, but said she had not mentioned a brain injury. Mr. Thomson elected not to give evidence at the hearing and was not questioned on his letter. I note that Mr. Thomson apologized for having given incorrect statements to the compliance officer during the investigation: page 120 of the Affidavit Exhibits. I prefer the evidence of Ms. Webster on this point over the written statement of Mr. Thomson. Ms. Webster's evidence on this point was clear and withstood cross-examination. Mr. Thomson's written statement went unquestioned and was not tested under cross-examination. As well, he has admitted to providing incorrect statements. It is clear to me that a discussion occurred between Ms. Webster and Mr. Thomson that Ms. Webster was in a motor vehicle accident. Mr. Thomson was aware that the vehicle was written-off. It seems odd that this type of discussion would occur with no mention of Ms. Webster's injuries, including a traumatic brain injury, which is a significant life event for someone. I find that Ms. Webster did advise Mr. Thomson of her brain injury.

[122] Mr. Barteski gave evidence of his interaction with Ms. Webster, during two phone interviews, one on May 1 and one on May 4. When he called Ms. Webster on May 1, Ms. Webster was at the trauma clinic waiting to see her doctor. Mr. Barteski spoke with her for about 10 minutes and did not note any memory issues, that Ms. Webster kept a train of thought, and that her speech was coherent. Under cross-examination, Mr. Barteski agreed his assessment was as a lay person and based on what he heard over the phone. Mr. Barteski further agreed that he would not have the ability to have assessed Ms. Webster for memory problems. What I take from this evidence is that, on May 1, 2017, Ms. Webster was being seen by a doctor at the trauma clinic, suggesting that Ms. Webster was still receiving treatment at that time.

[123] Pioneer submits that Ms. Webster had been researching a vehicle purchase for a few years, that she had attended a vehicle financing session at her work, knew for at least a year what type of vehicle and features she wanted, knew the maximum monthly payments she could service, and had been to three dealerships looking to purchase a vehicle from between 2015-17. The fact that Ms. Webster knew the type of vehicle she wanted and her monthly payment does not equate to understanding the nature of a consumer transaction. The fact that Ms. Webster attended a financing information session in the past, the content of which is unknown, does not mean Ms. Webster could understand this consumer transaction. The same holds true for Ms. Webster's past experience in trying to purchase a

motor vehicle. The question to be asked is whether, under the facts of this consumer transaction, Ms. Webster was unable to protect her own interests due to the character, nature, or language of the consumer transaction. Ms. Webster's past experiences are factors to be considered, but not determinative of the issue.

[124] I am satisfied on the evidence that Pioneer took advantage of Ms. Webster by having her sign blank documents and by the way it structured the consumer transaction. I am also satisfied that Pioneer was aware that Ms. Webster had been in a recent motor vehicle accident that resulted in a traumatic brain injury. Ms. Webster gave clear evidence at the hearing as to how that brain injury continues to affect her. I find it reasonable under the circumstances described above that Ms. Webster would have been confused by the way in which the consumer transaction was structured. Pioneer itself appears confused on how the numbers were structured in this transaction, having provided two different explanations regarding the Dodge's price to Ms. Webster after the transaction occurred. I am satisfied on a balance of probabilities that Ms. Webster was unable to protect her own interests, because she did not understand the nature, character, or language of the consumer transaction.

- 3. 8(3)(c) That, at the time the consumer transaction was entered into, the total price grossly exceeded the total price at which similar subjects of similar consumer transactions were readily obtainable by similar consumers;**

[125] No evidence was submitted comparing the purchase price of the Dodge with that of similar Dodges in similar consumer transactions.

- 4. 8(3)(d) That, at the time the consumer transaction was entered into, there was no reasonable probability of full payment of the total price by the consumer;**

[126] I have essentially covered this in my discussion of deceptive act or practice. For the reasons already stated, Pioneer and Mr. Thomson knew Ms. Webster could not make a down-payment of \$7,150, was struggling to make her current loan payments, had a reduced income at the time of the consumer transaction, and was unlikely to make her periodic payments. Certainly, if at the time of the consumer transaction, Ms. Webster was unable to make a \$7,150 down-payment, then it is difficult to see how she could make a \$11,895.97 end of term payment on the Dodge.

5. 8(3)(e) That the terms or conditions on, or subject to, which the consumer entered into the consumer transaction were so harsh or adverse to the consumer as to be inequitable;

[127] The Authority points to the extraordinary documentation fee of \$2,550.00. In its written submission, Pioneer submits that this fee covers the \$1,800 ICBC debt payment and another \$900 debt of Ms. Webster. Both these amounts were paid by Pioneer on Ms. Webster's behalf. Pioneer notes that even this shows a shortfall between what was paid and what Pioneer charged as a documentation fee.

[128] The problem with this submission is that, in his letter of April 10, Chas Thomson notes the ICBC and TD costs are built into the price of the Dodge on the purchase agreement. This is further confirmed by the March 17 text message from Adriana, while Mr. Thomson's March 7 text message does not even mention the \$2,555 documentation fee. In the oral testimony of Arlene Sater, controller for Pioneer, she noted that the \$1,800 debt was probably not part of the \$2,555 documentation fee: Transcript of Proceedings dated October 13, 2017, page 350. Pioneer has provided differing explanations of what was captured by the \$2,555 documentation fee. I cannot accept any of those explanations. No other explanation was given of what Pioneer was documenting that cost it \$2,555.

[129] I note that on the BMO Conditional Sales Contract dated March 4, 2017, line 6, the "Cost of Financing the Good," there is a \$94.01 charge for an administration and registration fees. On the following page is an explanation that the administration fee (\$50) is the banks (BMO) fee to process the Contract. The registration fee of \$44.01 is the fee that the bank pays to register the security interest under the *Personal Property Security Act*. This \$94.01 is in addition to the documentation fee of \$2,555 charged by Pioneer, and therefore this documentation and filing costs cannot be a part of the \$2,555 charged by Pioneer. It is noteworthy to compare BMO's \$94.01 combined administrative and registration fees with Pioneer's unexplained \$2,555 documentation fee. That is certainly a large discrepancy.

[130] Mr. Barteski testified that after reviewing this consumer transaction for Pioneer, he had concerns with the fees charged to Ms. Webster. I note that Mr. Barteski was formally a Compliance Officer with the Authority until he retired.

[131] \$2,555 is an extraordinary amount of money to charge for documenting something that Pioneer and Mr. Thomson have not properly explained. I do find including an unexplained documentation fee of \$2,555 is harsh making it inequitable, especially when compared to the \$94.01 charged by the bank to process and register documents in relation to this transaction.

6. Section 8(2) of the BPCPA – a consideration of the whole case

[132] When Pioneer and Mr. Thomson undertook to aid Ms. Webster in locating financing to purchase the Dodge, they were acting on her behalf and were required to act in her best interests in obtaining financing. Ms. Webster placed her trust in Pioneer and Mr. Thomson to do so. In this consumer transaction there was a tension between Pioneer's desire to sell a motor vehicle to Ms. Webster (acting in its own self-interest) and acting in Ms. Webster's best interest to find financing. Ultimately, the BPCPA required Pioneer and Mr. Thomson to place Ms. Webster's best interest before their own. They did not.

[133] Ms. Webster did not qualify for the loan associated with this consumer transaction, as she did not have \$7,150 as a down-payment. Pioneer falsified documents submitted to BMO to show a down-payment and to show, on paper, that Ms. Webster qualified for the loan. If a consumer does not qualify for a loan, commercial morality requires the consumer transaction to be declined. Manipulating numbers by showing a down-payment to obtain the loan is not commercially moral conduct. The manipulation of those numbers was to Pioneer's benefit in securing a sale for itself, but to Ms. Webster's detriment by placing her in a financing agreement for which she did not qualify and could not sustain. It was Mr. Thomson, who acted on behalf of Pioneer.

[134] In support of Pioneer's and Mr. Thomson's conduct being outside community standards of commercially moral conduct is a document submitted by Pioneer and the testimony of Billy Gray. Pioneer provided a document showing a BMO Loan approval dated July 2, 2016, in relation to Ms. Webster: page 87 of the Affidavit Exhibits. At that time, BMO approved a loan for Ms. Webster. However, a hand-written notation on that document indicates that Pioneer did not go forward with that transaction because of issues with the vehicle Ms. Webster wished to trade-in.

[135] Billy Gray testified at the hearing as a witness for Pioneer. Mr. Gray is a licensed salesperson and spoke of his prior encounters with Ms. Webster while he worked at two different dealerships and when he joined Pioneer in February of 2017. Mr. Gray gave evidence that Ms. Webster was declined financing at the prior dealerships, where he worked before Pioneer, and said he did not sell her a vehicle. It was Mr. Gray's understanding that several banks declined Ms. Webster's credit application, due to issues with past credit.

[136] The evidence of Mr. Gray shows that commercial morality in this industry is to decline a consumer transaction involving financing, if the consumer does not qualify for a loan. Pioneer's conduct has been shown to be contrary to this industry's commercial practices regarding consumer financing. It also makes

inherent commercial sense that if someone does not qualify for a loan, their consumer transaction is to be declined.

[137] Again, Pioneer and Mr. Thomson were required to act in Ms. Webster's best interest, once they knew she did not qualify for the loan. Pioneer's and Mr. Thomson's failure to decline the consumer transaction while in this trust relationship with Ms. Webster and instead manufacturing a loan approval to complete the consumer transaction, is sufficient to find that Pioneer's conduct and Mr. Thomson's conduct are unconscionable acts or practices in respect of this consumer transaction, contrary to s. 9(1) of the BPCPA.

[138] The other circumstances I have considered as required by section 8(3) of the BPCPA and my findings of deceptive acts or practices compound Pioneer's and Mr. Thomson's unconscionable act or practice. That conduct made it difficult, if not impossible, for Ms. Webster to understand the full nature of the consumer transaction and its impact on her, so that she could protect her own interests.

O. Mr. Thomson providing a false statement to the Authority during the investigation

[139] Mr. Thomson told Compliance Officer VanDokkumburg that he attended the residence of Ms. Webster on May 26, 2017 to retrieve the Dodge. This was part of Pioneer's agreement to unwind the transaction with Ms. Webster. Mr. Thomson admitted that he did not attend Ms. Webster's residence and apologized if he made an incorrect statement: emails and text messages found at pages 118 to 124 of the Affidavit Exhibits. Mr. Thomson provided no additional evidence at the hearing.

[140] The submission of Pioneer appears to admit to Mr. Thomson's providing this incorrect statement to the Authority and suggests the appropriate compliance action. I would note that Mr. Thomson is a party to these proceedings and legal counsel for Pioneer advised me that he did not represent Mr. Thomson. With that, I cannot accept Pioneer's submissions as to the appropriate sanction for Mr. Thomson, as I was not advised by Mr. Thomson that Pioneer and its legal counsel could speak on his behalf.

V. Compliance action

[141] Having found that Pioneer has committed deceptive acts or practices and an unconscionable act or practice, the next issue for consideration is to identify the appropriate compliance action to take. The focus is on deterring future conduct to protect prospective consumers interacting with Pioneer and Mr. Thomson. If I am not satisfied on a balance of probabilities that deterrence can be achieved through the statutory tools at my disposal, I am required to protect consumers and the public interest by revoking Pioneer's registration as a motor dealer, and Mr. Thomson's licence as a salesperson.

[142] If I am considering imposing administrative penalties pursuant to the BPCPA, I must consider the factors noted in subsection 164(2) of the BPCPA, consider the need for specific and general deterrence, and ensure the penalty is not seen as a mere cost of doing business. An administrative penalty is forward looking as it is meant to deter future misconduct.

- *Windmill Auto Sales & Detailing*

[143] I also note the nature of the breach of the BPCPA was for the most part related to obtaining financing on behalf of Ms. Webster and Mr. Thomson's providing a false statement to the Authority during the investigation. On the later point, I recognize that it was Pioneer, Ms. Arlene Sater, who brought Mr. Thomson's false statement to the attention of the Authority.

[144] At the outset, I find on the facts that regulatory action short of canceling Pioneer's registration as a motor dealer can address the public interest concerns arising from Pioneer and Mr. Thomson's conduct and past compliance history. I find the same to hold true for Mr. Thomson in relation to his salesperson licence. I have concluded that the below measures balance protecting the public interest with allowing a business to continue to operate and continue to employ its staff, and Mr. Thomson to continue to work in this industry.

A. Conditions on Registration for Pioneer, ss. 4(6) of the *Motor Dealer Act*

[145] It is clear from the above that Pioneer and Mr. Thomson did not act in the best interest of Ms. Webster in securing financing for this transaction. It also appears that Mr. Thomson did not follow the policies of Pioneer, as noted by Ms. Sater in her testimony.

[146] It is also apparent from the evidence that Pioneer's controller Arlene Sater and the owner of Pioneer, Ray van Empel, were also made aware of this transaction, prior to it being finalized on March 6, 2017. Ms. Sater and Mr. van Empel had an opportunity to review the Webster consumer transaction before it was finalized, yet took no action to stop it. As I have noted, Pioneer, through Ms. Sater, brought to the Authority's attention the incorrect statement provided by Mr. Thomson during the investigation. From a review of the evidence, it appears Ms. Sater was cooperative in providing records to the Authority when asked.

[147] The conduct of Pioneer during the consumer transaction and after the consumer transaction shows Pioneer lacks insight into its responsibilities to consumers in respect of a consumer transaction. It appears Pioneer is responsive to consumer issues only once a problem has been brought to its attention. The purpose of regulation is to prevent harm from occurring in the first place and not

simply ensuring harm is remediated once it occurs. Pioneer needs to develop appropriate internal checks and balances to ensure consumer rights are protected before, during, and after a consumer transaction. This is especially important if Pioneer is going to act on behalf of consumers to obtain financing on their behalf.

[148] As noted, the manipulation of the numbers, the signing of blank documents, the falsification of the down-payment, and the falsification of income and employment status of Ms. Webster were related to obtaining financing for Ms. Webster. Pioneer must show it has the necessary policies, procedures, and internal checks and balances to protect a consumer while Pioneer is, essentially, acting as a loan broker on behalf of a client. Further, Pioneer needs to show that it can be trusted with the unique consumer service of being a loan broker. This will require some time and history of good behaviour and trustworthiness to gauge Pioneer's risk to the public. Until that time and history of good behaviour occurs, protecting the public requires restricting Pioneer from acting as a loan broker, as defined in the BPCPA, or in any way acting on behalf of a consumer to obtain financing of any type, including a lease, for that consumer in a consumer transaction. This is regardless of whether or not Pioneer receives a fee, gain, reward, or any form of consideration for providing those services. Pursuant to subsection 4(6) of the *Motor Dealer Act*, the following restriction is added to the motor dealer registration of Pioneer Garage Limited dba as Fraser Valley Pre-Owned, registration # 40190:

Pioneer Garage Limited dba as Fraser Valley Pre-Owned, registration # 40190 (Pioneer) and its employees are not to act as a loan broker, as defined in the *Business Practices and Consumer Protection Act*, or in any way act on behalf of a consumer to obtain financing, including a lease, for a consumer for a period of at least one year, commencing on May 1, 2018. A review to remove this condition may occur after that one-year period and if Pioneer can show it has appropriate internal policies and procedures to protect consumers before, during, and after a consumer transaction, and that Pioneer is trustworthy to act on behalf of consumers to obtain financing, including leasing, for them.

B. Conditions on Licence for Chas Thomson, section 6 of the Salesperson Licensing Regulation, B.C. Reg. 202/2017

[149] Mr. Thomson has shown a disregard for following the policies of his own employer and providing false statements to the Authority during an investigation. Mr. Thomson was the person who carried out the manipulation of the numbers and the falsification of the down-payment that impacted Ms. Webster. I find that having Mr. Thomson in the position to provide financing services to consumers and to be in a leadership position, such as a manager, would not be in the public interest. I also find it necessary for Mr. Thomson to retrain on his legal obligations to consumers. In accordance with sub-sections 6(3), 6(2) (c), (d) and (f) of the *Salesperson*

Licensing Regulation, B.C. Reg. 202/2017, I add the following conditions to the salesperson licence of Chas Thomson, number 117125:

- (a) Chas Thomson may not be in a management position without the prior written approval of the Authority.
- (b) All of Mr. Chas Thomson's sales to consumers must be reviewed and approved by a manager before the consumer transaction is finalized.
- (c) Chas Thomson may not to act as a loan broker as defined in the *Business Practices and Consumer Protection Act*, or in any way act on behalf of a consumer to obtain financing, including a lease, for a consumer for at least one year commencing May 1, 2018. A review to remove this condition may occur after that one-year period. Mr. Thomson must be able to show he has the appropriate insight into his duties to consumers and that he is otherwise suitable and trustworthy to act as a loan broker or otherwise act on behalf of a consumer to obtain financing, including a lease.
- (d) Chas Thomson must retake and successfully complete the Salesperson Certification Course at his own expense by May 25, 2018.

C. Compliance Order – s. 155 of the BPCPA

[150] I have found that Pioneer and Mr. Thomson have committed deceptive acts or practices, contrary to subsection 5(1) of the BPCPA, as well as an unconscionable act or practice, contrary to subsection 9(1) of the BPCPA. In such a situation, I may issue a compliance order under section 155 of the BPCPA to address that non-compliance. I have found the Authority has largely proven its allegations. It is then, entitled to recover its costs.

[151] In this case, I find it would be appropriate to incorporate my condition on Pioneer's registration and my condition on Mr. Thomson's salesperson licence, restricting them from acting as loan brokers into the compliance order. This provides flexibility in overseeing and enforcing compliance with the terms of those conditions.

[152] I note that a breach of section 9(1) of the BPCPA makes a consumer transaction non-binding on the consumer: section 10(1) of the BPCPA. In this case, Pioneer has already unwound the transaction with Ms. Webster and provided her compensation. Therefore, there is no need to make any type of restitution order in favour of Ms. Webster.

[153] The following are the terms of the Compliance Order:

- (a) Pioneer Garage Ltd. dba Fraser Valley Pre-Owned and Chas Thomson are to abide by the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 and its regulations;
- (b) Pioneer Garage Ltd dba Fraser Valley Pre-Owned and Chas Thomson are to abide by the *Motor Dealer Act*, R.S.B.C. 1996, c. 316 and its regulations;
- (c) Pioneer Garage Ltd dba Fraser Valley Pre-Owned and Chas Thomson are to ensure all consumers receive a copy of the purchase agreement, any finance documents, or any other document on which the consumer signs and at the time any such document is signed by that consumer;
- (d) Pioneer Garage Ltd dba Fraser Valley Pre-Owned and Chas Thomson are not to falsify on any document any information about a consumer in respect of a consumer transaction;
- (e) Pioneer Garage Ltd dba Fraser Valley Pre-Owned and Chas Thomson shall clearly state on all purchase agreements and any other documents in respect of a consumer transaction the actual selling price of a motor vehicle, the actual amount of any down-payments, and the actual amount of any other item noted on those documents;
- (f) Pioneer Garage Ltd dba Fraser Valley Pre-Owned and Chas Thomson shall not falsify any motor vehicle purchase prices, down-payments, or any other terms on such documents;
- (g) Pioneer Garage Ltd dba Fraser Valley Pre-Owned and Chas Thomson shall not charge a documentation fee to a consumer without first providing the consumer an itemized list of all the costs associated with that documentation fee and providing the consumer a copy of that itemized list at the time the consumer transaction is completed;
- (h) Pioneer Garage Ltd dba Fraser Valley Pre-Owned and its employees, are not to act as a loan broker, as defined in the *Business Practices and Consumer Protection Act*, or in any way act on behalf of a consumer to obtain financing, including a lease, for a consumer for a period of at least one year commencing on May 1, 2018. A review to remove this condition may occur after that one-year period;
- (i) Chas Thomson may not act as a loan broker, as defined in the *Business Practices and Consumer Protection Act*, or in any way act on behalf of a consumer to obtain financing, including a lease, for a consumer for at least

one year commencing May 1, 2018. A review to remove this condition may occur after that one-year period;

- (j) Pioneer Garage Ltd dba Fraser Valley Pre-Owned and Chas Thomson are to reimburse the Motor Vehicle Sales Authority of British Columbia its actual costs to investigate this complaint including actual legal costs and hearing costs.

Pioneer Garage Ltd dba Fraser Valley Pre-Owned and Chas Thomson are jointly and severally liable to pay the costs of the Authority: sub-section 155(6) of the BPCPA.

[154] If Pioneer, Mr. Thomson, and the Authority are unable to agree as to the amount of costs to be paid to the Authority, they may arrange for my review of costs within 30 days of the Compliance Order being issued.

D. Administrative Penalty – s. 164 of the BPCPA

[155] Under the facts of this case, subsection 164(1)(a) and (f) of the BPCPA provides that I may issue an administrative penalty for: (a) a breach of subsections 5(1) and 9(1) of the BPCPA, (b) Mr. Thomson’s supplying false or misleading information to a person acting under the BPCPA, and (c) for a breach of prior undertakings issued under the BPCPA. As noted, an administrative penalty is used to deter future misconduct, with consideration to specific and general deterrence. The amount of the penalty should not be too high as to be a punishment for past conduct, but also not too low to be the mere cost of doing business.

1. Breach of the BPCPA in this consumer transaction

[156] I find that in this case, the deceptive acts or practices and the unconscionable acts or practices in respect of the consumer transaction with Ms. Webster are attributable to Pioneer and to Mr. Thomson. They are equally liable for that conduct under the BPCPA, but the BPCPA sets a different cap on the monetary administrative penalty for Pioneer, the company, and Mr. Thomson, the individual.

[157] While I find Pioneer and Mr. Thomson to have committed deceptive acts or practices and an unconscionable act or practice in respect of this consumer transaction involving financing, I consider the underlying conduct to be a continuum of conduct such that it should be treated as a single breach of the unconscionability provision of the BPCPA for the purposes of an administrative penalty. To that end, I find it is unnecessary to consider the breaches of section 23 of the *Motor Dealer Act Regulation* in setting an administrative penalty. I turn to a consideration of the factors under subsection 164(2) of the BPCPA in relation to Pioneer.

a. Assessment in relation to Pioneer

i. 164(2)(a) previous enforcement for similar conduct

[158] In the Undertaking accepted by the Registrar on April 19, 2016, regarding Hearing File 15-09-001, the allegations against Pioneer Garage Ltd. were that Pioneer had made misrepresentations regarding financing to the consumer in that transaction and committed an unconscionable act by subjecting a consumer to undue pressure to enter into the consumer transaction and finance agreement. Pioneer undertook to abide by the BPCPA, refrain from exerting undue pressure on consumers, and refrain from misrepresenting the status of financial approval. Pioneer also undertook to pay a \$2,000 administrative penalty.

[159] I find that the Undertaking regarding Hearing File 15-09-001 is similar conduct as in this case as they both involve (a) deceptive acts or practices, (b) unconscionable acts or practices, and (c) in respect of a consumer purchase involving financing.

[160] In an Undertaking accepted by the Registrar on May 25, 2016, regarding Hearing File 16-05-001, the allegations against Pioneer Garage Ltd. were that Pioneer had rushed a consumer through the finance documents, misrepresented to the consumer numbers on those finance documents, and failed to provide the consumer with copies of any paperwork in relation to the consumer transaction to conceal these misrepresentations. Pioneer undertook to abide by the BPCPA, provide consumers with copies of purchase agreements and finance documents to the consumer after the agreement is entered into, and pay restitution to the consumer. Pioneer also undertook to pay an administrative penalty of \$4,000.

[161] I find that the Undertaking regarding Hearing File 16-05-001 is like the conduct in this case, as it involves misrepresentations in relation to financing and the withholding of the purchase agreement and the finance documents from the consumer.

[162] In the Undertaking accepted by the Registrar on September 27, 2016, regarding Hearing File 16-05-005, the allegations against Pioneer Garage Ltd. were that its employee, who prepared financing for the transaction, had misrepresented the vehicle in that transaction as safe and insurable, when it was not. Pioneer undertook to abide by the BPCPA, comply with the MDAR, and the *Motor Vehicle Act*, and its regulations. Pioneer further undertook to pay an administrative penalty, in the amount of \$7,500.

[163] I find that the Undertaking regarding Hearing File 16-05-005 has similarities to this case as Pioneer's employees made misrepresentations about vehicle safety,

while they were assisting the consumer to obtain financing. The effect was to have the consumer continue with the transaction, including financing, to the benefit of Pioneer.

ii. 164(2)(b) Gravity and magnitude of the contravention

[164] In this case, I find that Pioneer exposed Ms. Webster to a financial burden, which she could not sustain. This might have resulted in Ms. Webster's having to default on her loan, subsequent credit issues, and the repossession of the Dodge by the lender, leaving Ms. Webster without a motor vehicle. The impact on Ms. Webster was financial as opposed to safety concerns with the Dodge. In this case, Ms. Webster was placed in a financing agreement, which would require her to pay an end of term payment of \$11,895.97, which she could not reasonably expect to pay at the end of the term.

iii. 164(2)(c) The extent of the harm to others

[165] The harm was confined to Ms. Webster.

iv. 164(2)(d) Whether the contravention was repeated or continuous

[166] There was no evidence advanced that Pioneer or Mr. Thomson repeated this process in relation to Ms. Webster or any other consumer transaction. There was no indication of a continuous breach, such as misleading advertisements being reposted.

v. 164(2)(e) Whether the contravention was deliberate

[167] Based on my findings of fact noted above, the conduct was deliberate. Pioneer and Mr. Thomson knew that they could not finalize the purchase agreement and the BMO Conditional Sales Contract until after it received the BMO loan approval, sometime after March 4, 2017. Further, the final numbers for the purchase price of the Dodge were not known until March 6, 2017, when Pioneer undertook to pay Ms. Webster's \$1,800 ICBC debt was confirmed. Pioneer knew that it had to falsify the down-payment. Adding a \$7,150 fictitious deposit to obtain a loan approval was deliberate.

vi. 164(2)(f) Any economic benefit derived from the contravention

[168] Based on the evidence before me, Pioneer unwound this transaction and appears to have absorbed the debts it paid to ICBC on behalf of Ms. Webster. Pioneer does not appear to have derived an economic benefit from this contravention. In the Deal Summary Sheet supplied to the Authority by Pioneer, it stood to gross \$11,389.60 on this transaction if it had not been reversed: page 75 of the Affidavit Exhibits.

vii. 164(2)(g) The person's efforts to correct the contravention

[169] As noted, Pioneer unwound this transaction, within a few months of Ms. Webster's complaint being brought to its attention. I also consider that Ms. Arlene Sater of Pioneer did advise the Authority of Mr. Thomson's false statement. I also consider that Ms. Sater appears to have been responsive and cooperative with the Authority during its investigation.

viii. Other factors considered

[170] I also consider that the prior administrative penalties have not had the desired deterrent effect on Pioneer. I also must remember that I am not only deterring Pioneer, but the industry generally. I also consider that Pioneer undertook to act on behalf of Ms. Webster in locating financing for her. In doing so, Pioneer was required to act in her best interests and did not. Pioneer broke that trust. Such a breach severely impacts the confidence consumers have of motor dealers and of salespersons generally. Therefore, the deterrence must be sufficient to ensure the public interest is met including the public's confidence in the motor dealer industry.

ix. Decision on administrative penalty for breaches of sections 5(1) and 9(1) of the BPCPA for Pioneer

[171] Given the above s. 164(2) BPCPA factors, that the three prior undertakings totaling \$13,500 in administrative penalties have not had their desired deterrent effect, Pioneer having twice committed an unconscionable act or practice, and in consideration of the suspension I am ordering against Pioneer as detailed below, I find an administrative penalty in the amount of \$25,000 is warranted. This combining of an administrative penalty with action against the motor dealer's registration, by way of a suspension or cancelation, as a deterrent has precedent: *Knapp v. Crown Autobody & Auto Sales Ltd.* (Registrar, File 08-70578, September 21, 2009), affirmed by *Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia*, 2014 BCSC 894 (CanLII).

b. Assessment in relation to Chas Thomson

[172] Chas Thomson is a licensed salesperson; and he is directly liable for his breaches of the BPCPA. As with Pioneer, I will assess Mr. Thomson's conduct in respect of this consumer transaction as a continuum of conduct resulting in a single breach of the unconscionability provision of the BPCPA for the purpose of an administrative penalty. I turn now to an assessment of the subsection 164(2) BPCPA factors in relation to Mr. Thomson.

i. 164(2)(a) previous enforcement for similar conduct

[173] There is no evidence of similar past conduct committed by Mr. Thomson.

ii. 164(2)(b) Gravity and magnitude of the contravention

[174] The same assessment for Pioneer at paragraph 164 above, applies equally here.

iii. 164(2)(c) The extent of the harm to others

[175] The harm was confined to Ms. Webster.

iv. 164(2)(d) Whether the contravention was repeated or continuous

[176] The same assessment for Pioneer at paragraph 166 above, applies equally here.

v. 164(2)(e) Whether the contravention was deliberate

[177] The same assessment for Pioneer at paragraph 167 above, applies equally here.

vi. 164(2)(f) Any economic benefit derived from the contravention

[178] There is no evidence that Mr. Thomson obtained any economic benefit from this transaction. It is unknown whether Mr. Thomson received a commission and subsequently had to return it or otherwise.

vii. 164(2)(g) The person's efforts to correct the contravention

[179] Mr. Thomson provided a false statement about his efforts to retrieve the Dodge to effect Pioneer's decision to unwind the transaction. His email statement apologizing for making this false statement indicates that he was less than diligent than Pioneer wanted him to be to unwind this consumer transaction.

viii. Other considerations

[180] There is no prior enforcement action against Mr. Thomson such as undertakings to gauge what may be an appropriate administrative penalty for Mr. Thomson's breach of subsections 5(1) and 9(1) of the BPCPA. I have considered the following decisions involving salespersons:

- *Haley v. 069549 B.C. LTD. dba K.F.M. Auto and Farshad Sharifpour* (Registrar, Hearing File 15-12-003, May 20, 2016).
- *Bunyak v. Darryl's Best Buys Auto Sales Ltd. and Darrin Joseph Cotnam* (Registrar, Hearing File 14-12-002, October 5, 2015).
- *Harris & Harris v. Windmill Auto Sales & Detailing Ltd.* and Sam Romaya (Registrar, Hearing File 12-030, April 10, 2013), affirmed by *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers*, 2014 BCSC 903 (BC Supreme Court).
- *Re: Parkwood Auto Sales Ltd. & Beune & Hawes* (Registrar, Files 07-70285A, 07-70263A, 08-70631A and 08-70997A, August 6, 2010).

[181] In *Haley* the dealer and the salesperson were found to have recklessly misrepresented the mechanical condition of a motor vehicle to a consumer. The salesperson was ordered to retake the salesperson certification course and pay a \$500 administrative penalty.

[182] In *Bunyak*, the salesperson was found to have negligently misrepresented the odometer on the purchase agreement, misrepresented that the transaction included a free tank of gas, and deliberately misrepresented the ex-lease status of the motor vehicle. The salesperson was ordered to retake the salesperson certification course and pay a \$375 administrative penalty.

[183] In *Harris*, the dealer and the salesperson were found to have deliberately misrepresented the damage history of the motor vehicle. The salesperson was also the owner of the dealership. In assessing an administrative penalty on the owner as a salesperson, consideration was given to the impact overall compliance would have on the salesperson as owner. The salesperson was issued a \$500 administrative penalty.

[184] In *Parkwood et al*, the dealership, the owner (Mr. Beune), and the salesperson (Mr. Hawes) were found to have committed deceptive acts or practices in relation to four different transactions. Some of those deceptive acts or practices involved misrepresenting the safety status of motor vehicles. Mr. Beune was found to have orchestrated a scheme in which his salesperson did not know the extent of damage on a vehicle to provide proper declarations. Mr. Beune was found to have misrepresented the safety status of motor vehicles in two transactions. Mr. Beune's salesperson licence was cancelled and an administrative penalty of \$500 was issued for the one misrepresentation of the vehicle's safety status and a second administrative penalty of \$1,000 was issued for the second misrepresentation of a motor vehicle's safety status. In the case of Mr. Hawes, his deceptive acts were found to be related to two of the motor vehicle transactions that did not involve safety issues. Mr. Hawes had misrepresented the damage declaration of a motor vehicle in one transaction and the odometer reading of a motor vehicle in another. This was also the first time Mr. Hawes was disciplined. Mr. Hawes received a 30-day suspension of his salesperson licence, an administrative penalty of \$500 for misrepresenting the damage declaration, and a \$750 administrative penalty for the odometer misrepresentation.

[185] Mr. Thomson has deliberately committed an unconscionable act or practice in this case. The issue is serious, as it could have had significant financial repercussions on Ms. Webster. The conduct goes beyond a mere misrepresentation of prior damage of a motor vehicle and of the odometer reading on a motor vehicle. Considering the section 164(2) BPCPA factors, the whole of the case and comparator cases, I believe an administrative penalty of \$750 is warranted to deter other salespersons and Mr. Thomson personally, when combined with the suspension I will discuss below.

2. Providing false or misleading information to Compliance Officer VanDokkumburg

[186] This allegation is specific to Mr. Thomson. I have chosen to exclude Pioneer from the actions of its employee here as Pioneer, by way of Ms. Sater, brought Mr. Thomson's false statement to the attention of the Authority.

[187] Providing a false statement to a regulator is serious. It is an offence to do so with liability being a fine or incarceration: ss. 35 and 35.1 of the *Motor Dealer Act*. Providing false statements can deprive a regulator of accurate information so that the regulator may meet its mandate of protecting the public interest.

[188] Placing Mr. Thomson's false statement into context is important. Mr. Thomson advised Compliance Officer VanDokkumburg that he attempted to pick up the Dodge from Ms. Webster at her home on May 26, 2017, as part of Pioneer's

agreement to unwind the transaction. Mr. Thomson did not actually attend Ms. Webster's home on that date. This false statement did not deprive the Authority and the Registrar from regulating the industry in general. It does speak to Mr. Thomson's governability, which must be addressed. In this case, I believe the requirement to retake the salesperson certification course, the other conditions I have imposed, and the suspension of Mr. Thomson's licence discussed below, will suffice to address Mr. Thomson giving a false statement to the compliance officer.

3. Breach of prior undertakings

[189] One may consider that the administrative penalty issued above for a breach of subsections 5(1) and 9(1) of the BPCPA encompasses the breaches of prior undertakings because such prior conduct is a factor for consideration required by section 164(2)(a) of the BPCPA. However, the administrative penalty issued for breaches of subsections 5(1) and 9(1) in respect of this consumer transaction and for a breach of prior undertakings serve two different purposes. The former addresses the current breach of the BPCPA, and the magnitude of the penalty necessary to deter future non-compliance is informed by the past compliance history of Pioneer. For a breach of an undertaking, the penalty addresses the need for a registrant or licensee to obey such undertakings, which are a registrant's and licensee's promise to abide by the law and abide by the terms contained in the undertaking. There must be sufficient deterrence of such breaches, otherwise undertakings will become meaningless.

[190] In assessing an administrative penalty for a breach of prior undertakings, I must consider the factors in sub-section 164(2) of the BPCPA and the whole of the case. In conducting that assessment, it is sufficient to consider the three different breaches together under section 164(2) of the BPCPA.

[191] My assessment of breaching past undertakings involves only Pioneer.

a. 164(2)(a) Previous enforcement for similar conduct

[192] In the three prior undertakings, Pioneer has undertaken not to breach the BPCPA including the deceptive acts or practices and unconscionable acts or practice provisions, including in relation to financing. I have found that it has again breached the BPCPA for similar conduct. Increasing the amount of the administrative penalties of \$2,000, \$4,000 and \$7,500 to ensure compliance with those undertakings has not had the desired deterring effect.

b. 164(2)(b) Gravity and magnitude of the contravention

[193] Pioneer has failed to abide by the terms of three prior undertakings. The gravity of the concern is not just the harm to Ms. Webster, as noted in this decision. Failing to abide by the terms of a voluntary undertaking shakes the confidence that consumers have in this dealer and in the industry. It also brings into question the governability of Pioneer. If Pioneer cannot be trusted to adhere to the terms of an undertaking, it is hard to ensure that it will follow the lawful orders of the regulator.

c. 164(2)(c) The extent of the harm to others

[194] The evidence is that Pioneer's breach of the three prior undertakings has only affected Ms. Webster. However, she is the fourth consumer proven to be negatively impacted by Pioneer's conduct.

d. 164(2)(d) Whether the contravention was repeated or continuous

[195] The breach of three undertakings makes this current contravention a repeat of past contraventions.

e. 164(2)(e) Whether the contravention was deliberate

[196] Pioneer was aware of its prior undertakings. I find the breaches of the past undertakings to have been deliberate.

f. 164(2)(f) Any economic benefit derived from the contravention

[197] What was said in paragraph 168 above applies equally here.

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

[198] What was said in paragraph 169 above applies equally here.

h. Administrative Penalty

[199] In consideration of the above factors - that administrative penalties in increasing amounts have not had the desired deterrent effect, that Pioneer having

paid a total of \$13,500 in those undertakings in the past has not had a deterrent effect, and given my decision below regarding suspension of Pioneer's registration - I believe an administrative penalty of \$12,000 for each breach of the three undertakings, for a total of a \$36,000 administrative penalty, is warranted.

E. Suspension of Pioneer's Registration – s. 5 of the MDA

[200] A motor dealer committing deceptive acts or practices and unconscionable acts or practices contrary to the BPCPA is grounds to revoke that motor dealer's registration: s. 8.1(4)(b) of the *Motor Dealer Act*. That being the case, it would also be grounds to suspend a registration.

[201] In the case of Pioneer, prior undertakings with various terms and progressively increasing administrative penalties have not deterred Pioneer's conduct. Therefore, it is my view that the public interest requires something more to help deter Pioneer.

[202] One other concern is the exchange of emails, dated March 6, 2017, in which the owner of Pioneer is made aware of this transaction and asked permission to pay the ICBC loan of \$1,800 on behalf of Ms. Webster. Mr. Van Empel's email response was "Really...serious." That ICBC payment ultimately went forward as did the consumer transaction. The owner of Pioneer was given an opportunity to review the transaction, yet did nothing to prevent it from occurring. It is one thing for employees of a company to make transgressions against the BPCPA, which binds its employer. It is another for the owner to be aware of the transaction that breaches the BPCPA and to acquiesce, by allowing the transaction to continue. In such a situation a strong deterrence is necessary as directed by the Legislature in subsection 8.1(4)(b) of the *Motor Dealer Act*.

[203] In considering the appropriate length of a suspension, I am mindful of the administrative penalties already levied, the conditions on Pioneer's registration, and the compliance order against Pioneer.

[204] In *Re: SG Power Products* (Registrar, File 08-70569, September 15, 2008), there was a three-day suspension against the motor dealer for operating without licensed salespersons as it did not ensure its salespersons renewed their licenses on time. There is also the recent decision in *Vehicle Sales Authority v. Best Import Auto Ltd.* (Registrar, File 17-08-002, September 1, 2017), which was an interim suspension pending the full hearing, where the dealer's registration was ultimately cancelled.

[205] Cases involving suspensions tend to involve the licence of salespersons, such as the 30-day suspension of Mr. Hawes in the *Parkwood* case. Another salesperson licence case is the undertaking accepted by the Registrar on May 22, 2012,

involving James Lee. Mr. Lee agreed to a 30-day suspension of his salesperson licence for breaching the privacy of consumers and accessing his former employer's customer management system. Mr. Lee also paid \$1,000 in costs.

[206] The conduct of Pioneer is certainly more serious than operating without licensed salespersons as in *Re: SG Power Products*. The seriousness approaches that of the two deceptive acts or practices committed by Mr. Hawes in *Parkwood*. I also consider that Pioneer will require some time to readjust its internal policies and procedures, as well as to conduct training of its staff to ensure Pioneer does not commit deceptive or unconscionable acts and practices in the future. In considering these factors and the above considerations, I believe a 30-day suspension of Pioneer Garage Ltd. dba Fraser Valley Pre-owned's motor dealer registration # 40190 is appropriate. I also take into consideration the impact this suspension may have on Pioneer's employees. To that end, the suspension will not commence immediately and will commence at 12:00 a.m. on May 27, 2018 and end at 11:59 pm on June 25, 2018.

F. Suspension of Chas Thomson's Licence – s. 7 of the Salesperson Licensing Regulation

[207] I consider Chas Thomson's breaches of the BPCPA to be serious. Mr. Thomson orchestrated this consumer transaction. Mr. Thomson also provided a false statement to the compliance officer investigating this matter. To help protect the public, I have ordered Mr. Thomson to complete the salesperson certification course by May 25, 2018 and imposed other conditions. I also consider the 30-day suspensions issued to Mr. Hawes in the *Parkwood* case and Mr. Lee in his undertaking to the Registrar. I find that in this case, the public interest requires that Mr. Thomson not act as a salesperson, until he completes the Salesperson Certification Course and has had an opportunity to contemplate his conduct and its impact on Ms. Webster. I immediately suspend Chas Thomson's salesperson licence # 117125 until May 26, 2018, and subject to his successfully completing the Salesperson Certification Course.

VI. Summary

[208] The below is a summary of my findings and my orders to address the breaches of the legislation. The full details of my findings and orders are noted above.

[209] In this case, I have found that Pioneer Garage Ltd. dba Fraser Valley Pre-owned (Registration #40190) and Chas Thomson (SPL #117125) have:

- (a) Committed deceptive acts or practices as outlined in this decision, contrary to subsection 5(1) of the *Business Practices and Consumer Protection Act*; and
- (b) Committed an unconscionable act or practice as outlined in this decision, contrary to subsection 9(1) of the *Business Practices and Consumer Protection Act*.

[210] I further have found that Pioneer Garage Ltd. dba Fraser Valley Pre-owned (Registration #40190), has breached three prior undertakings made under the *Business Practices and Consumer Protection Act*.

[211] I further have found that Pioneer Garage Ltd. dba Fraser Valley Pre-owned (#40190) failed to make the declarations required by section 23 of the *Motor Dealer Act Regulation* as outlined in this decision.

[212] I further have found that Chas Thomson (#117125) made a false statement to Compliance Officer VanDokkumburg during her investigation, as outlined in this decision.

[213] To address these contraventions, I have made the following orders:

- (a) A condition is placed on the motor dealer registration of Pioneer Garage Ltd. dba Fraser Valley Pre-owned, (#40190), restricting it and its employees from acting as loan brokers as defined in the BPCPA, or in any way assisting consumers to obtain financing, including a lease, in a consumer transaction, for a period of at least one-year as detailed in this decision;
- (b) Various conditions are placed on the salesperson licence of Chas Thomson (#117125):
 - (i) Restricting Mr. Thomson from acting as a loan broker as defined in the BPCPA, or in any way assisting consumers to obtain financing, including a lease, for a period of one year;
 - (ii) Restricting Mr. Thomson from acting in a management position without the prior written approval of the Authority;
 - (iii) Requiring all of Mr. Thomson's consumer transactions to be reviewed and approved by a manager before the consumer transaction is finalized; and

- (iv) Requiring Mr. Thomson to successfully complete the Salesperson Certification Course at his own cost by May 25, 2018;

all as detailed in this decision.

- (c) A Compliance Order has been issued against Pioneer Garage Ltd. dba Fraser Valley Pre-owned (#40190), and Chas Thomson (#117125) on various terms as detailed in this decision.
- (d) Administrative penalties have been levied against Pioneer Garage Ltd. dba Fraser Valley Pre-owned (#40190) of:
 - (i) \$25,000 for its breaches of the BPCPA in respect of this consumer transaction; and
 - (ii) \$12,000 for each of the three undertakings it has breached (\$36,000 total).
- (e) An administrative penalty of \$750 has been levied against Chas Thomson (#117125) for his breaches of the BPCPA.
- (f) The motor dealer registration of Pioneer Garage Ltd. dba Fraser Valley Pre-owned (#40190) is suspended for 30 days commencing 12:00 a.m. May 27, 2018 and ending 11:59 p.m. on June 25, 2018, and
- (g) The salesperson licence of Chas Thomson, (#117125), is immediately suspended until May 26, 2018, subject to him having successfully completed the Salesperson Certification Course.

VII. Review of this Decision

[214] The:

- (a) Conditions added to the motor dealer registration of Pioneer Garage Ltd. dba Fraser Valley Pre-owned;
- (b) Conditions added to the salesperson licence of Chas Thomson;
- (c) Suspension of the motor dealer registration of Pioneer Garage Ltd. dba Fraser Valley Pre-owned; and
- (d) Suspension of the salesperson licence of Chas Thomson

may be reviewed by way of application to the Registrar for reconsideration by following the requirements of section 26.11 of the *Motor Dealer Act* and in consideration of the requirement for new evidence as required by subsection 26.12(2) of that Act.

[215] An application for reconsideration to the Registrar to review the Compliance Order and Notices of Administrative Penalty issued under the BPCPA may be made following the requirements of section 181 of the BPCPA and in consideration of the requirement for new evidence as required by subsection 182(2) of that Act.

[216] A petition for judicial review of this decision under the *Judicial Review Procedure Act* must be made within 60 days of this decision being issued: section 7.1(t) of the *Motor Dealer Act*.

Date of decision: April 27, 2018

Original Signed

Ian Christman, Registrar