



**Neutral Citation: 2019-BCRMD-023**

**IN THE MATTER OF THE *MOTOR DEALER ACT*, R.S.B.C. 1996, C. 316 and  
*BUSINESS PRACTICE AND CONSUMER PROTECTION ACT* S.B.C. 2004, c. 2**

**RE:**

**MOTOR VEHICLE SALES AUTHORITY OF BRITISH COLUMBIA**

Complainant

And

**BARNES WHEATON (NORTH SURREY) CHEVROLET BUICK GMC LTD.**  
(Motor Dealer Registration #31268)

Respondent Dealer

And

**DEVRON DONALD QUAST**  
(Salesperson Licence #103747)

Respondent Salesperson

## **DECISION OF THE REGISTRAR OF MOTOR DEALERS**

**Date and location of decision:** April 16, 2020 at Langley, British Columbia

**By way of written submissions**

### **I. Introduction**

[1] On January 20, 2020 I rendered a decision finding that Barnes Wheaton (North Surrey) Chevrolet Buick GMC Ltd. (Dealer #31268) ("Barnes") and Devron Donald Quast (Salesperson #103747) engaged in a deliberate deceptive act or practice contrary to the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 ("BPCPA"). I then directed a process where the Motor Vehicle Sales Authority of British Columbia (the "Authority"), Barnes and Mr. Quast could provide submissions and any additional evidence addressing what, if any, compliance action

should be taken and on the issue of costs. That process is complete, and I have received submissions from each of them.

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

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

[2] The Authority is of the view that Mr. Quast's salesperson licence should be cancelled and a ten-year ban on reapplying be imposed. In support of this position, the Authority emphasizes two points. First, is Mr. Quast's past criminal conviction in the United States and that he had been given a "second chance" when the Authority granted him a salesperson licence. Second, the Authority notes that the deceptive act was in relation to the subject vehicle not meeting emission standards and the general harm to the public that causes. Taken together, the Authority is essentially stating that Mr. Quast's prior criminal conviction coupled with the finding of a deliberate deceptive act on the serious topic of vehicle emission standards, amounts to conduct deserving of cancellation and a ten-year ban in order to protect the public interest.

[3] Regarding Barnes, the Authority suggests an administrative penalty of \$40,000 would be appropriate to provide the necessary general and specific deterrence against similar transactions. As with Mr. Quast, the Authority also emphasizes the importance of vehicles meeting emission standards in order to protect the public. The Authority also points out the need for motor dealers to abide by the law.

[4] Finally, the Authority provides evidence to show the investigation costs in this matter amount to \$1,704.97.

### **(b) Barnes**

[5] Barnes notes that the Authority's proposed administrative penalty of \$40,000 is not proportionate to the conduct nor in-line with past decisions of the Registrar.

[6] In its submissions, Barnes notes it relied on Mr. Quast as a VSA licensed salesperson along with the independent vehicle inspector in conducting itself in the consumer transaction. Barnes emphasizes that the Registrar's finding was that the vehicle in question did not meet emission standards and was thus not compliant with the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318 ("MVA"). The Registrar did not find that the vehicle was otherwise unsafe.

[7] Barnes believes that paying \$5,000 inclusive of costs would be a more appropriate, proportionate and procedurally fair compliance action.

### **(c) Devron Quast**

[8] Mr. Quast says that the Authority's approach is to look at his past criminal conviction and the conduct in this case in isolation of all of Mr. Quast's other past conduct. Mr. Quast emphasizes the duty of the Authority and the Registrar to take into consideration and apply section 13<sup>1</sup> of the *Human Rights Code*, R.S.B.C. 1996, c. 210 (the "Code") as it relates to his prior criminal record.

[9] Mr. Quast explains that this was a momentary lapse of judgement which should be considered not only with his past criminal conviction in mind, but also considering the totality of his prior conduct since that conviction. Mr. Quast provides varying letters of support and identifies his positive attributes and his positive past conduct that should also be considered.

[10] Overall, Mr. Quast believes a fine of \$2,500 is a more appropriate compliance action.

### **III. Legal considerations**

#### **(a) General approach to selecting compliance actions**

[11] A regulator does not punish past conduct. That is left for a different process, usually before the courts.

[12] A regulator has various tools at their disposal to gain compliance and secure future compliance in order to protect the public from various risks of harm. Such tools available to the Registrar are conditions on licence, suspensions with or without terms, administrative penalties, or a combination of these. If in the opinion of the Registrar, none of these would provide enough guarantees of future compliance, the Registrar is duty bound to revoke a licence<sup>2</sup> in order to protect the public interest.

[13] The law requires that I take varying factors into consideration when considering any compliance action. First are the statutory factors to be considered before applying an administrative penalty. Next is the need for general (industry) and specific (licensee) deterrence from committing similar conduct in the future. The principle of proportionality requires that the compliance measure selected meet the desired deterrence goal specific to the issue at hand, and not drift into the realm of being punitive. Proportionality also includes ensuring the measure selected, such as the amount of a fine, is not viewed as merely the cost of doing business as that does not deter. It is this later point which can cause one business licensee to pay a higher administrative penalty than another business licensee for

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<sup>1</sup> The correct section is section 14 of the Code: *Re: Peter Fryer* (December 13, 2013, File 13-11-005, Registrar) affirmed by *Fryer v. Motor Vehicle Sales Authority of British Columbia*, 2015 BCSC 279 (BC Supreme Court) at paragraph 22

<sup>2</sup> In this decision the term "licence" is used interchangeably with motor dealer registration and salesperson licence.

the same or similar infraction. A small, low volume used vehicle dealership may pay a lesser amount than a large multi-chain dealership for the same transgression. While the monetary amount may vary, the relative impact of that amount for both general and specific deterrence purposes should be about the same.

- *Guindon v. Canada*, 2015 SCC 41, [2015] 3 S.C.R. 3 (Supreme Court of Canada) at paragraphs 75 to 81
- *Cartaway Resources Corp. (Re)*, 2004 SCC 26, [2004] 1 S.C.R. 672 (Supreme Court of Canada)
- *Hogan v. British Columbia Securities Commission*, 2005 BCCA 53 (Court of Appeal)
- *Re: Best Import et al.* (November 28, 2017, File 17-08-002, Registrar) varied by *Best Import Auto Ltd. v Motor Dealer Council of British Columbia*, 2018 BCSC 834 (BC Supreme Court)
- *Harris & Harris v. Windmill Auto Sales & Detailing Ltd.* (April 10, 2013, File 12-030, Registrar), affirmed in *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers*, 2014 BCSC 903 (BC Supreme Court)
- *Knapp v. Crown Auto Body and Auto Sales Ltd.* (September 21, 2009, File 08-70578, Registrar) and affirmed in *Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia*, 2014 BCSC 894

[14] I am not bound to apply the same or similar penalty or compliance action as has been applied in the past. Compliance actions may change over time as past penalties or compliance actions may not have had the desired specific and general deterring effect. It cannot be that past ineffective compliance actions direct current compliance actions. Ultimately, my compliance selection must, in my opinion, meet the requirement of protecting the public interest today and in the future.

[15] Finally, as between the desires of an individual or business to be licensed and protecting the public interest, protecting the public interest is paramount.

- *British Columbia (Securities Commission) v. Pacific International Securities Inc.* 2002 BCCA 421 (BC Court of Appeal)
- *A Vancouver Auto Ltd. and Shahram Moghaddam* (Registrar, Hearing File 17-02-002, April 3, 2017)

**(b) Special considerations when there is a deliberate deceptive act or practice**

[16] Section 8.1(4)(b) of the *Motor Dealer Act* states that if a motor dealer commits even one deceptive act or practice, that is grounds for the Registrar to suspend or cancel the motor dealer's registration. This is an indication that the B.C. Legislature expects the Registrar to take seriously such breaches. This principle also applies to other licensees.

- *Best Import, supra*
- *Crown Auto Body, supra*
- *Windmill Auto, supra*

### **(c) Considering Past Criminal Convictions**

[17] There is no argument that the Registrar can review criminal convictions, whether in Canada or the United States, when considering a licensee's past conduct. Also, section 14 of the Code requires that a licensing body consider whether that past criminal conviction is related to the granting of, or the ability of a licensee to retain a licence. As to the purpose of considering past conduct, the B.C. Supreme Court in *Fryer, supra* noted:

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

[18] Past Registrar's decisions have repeatedly stated that a review of a licensee's past conduct requires a consideration of all conduct, good and bad. It is only once you have this bigger picture of an individual's past conduct can you properly and fairly assess the risk they may pose to the public if allowed entry into or remain within the industry. Further, that larger picture will help inform a decision-maker whether other compliance options may have the desired effect of protecting the public from risk. Without that more fulsome picture, it is difficult to say whether conditions on a licence would suffice over a suspension, fine or the cancellation of the licence.

[19] When faced with a review of its licence regarding concerning prior conduct, the licensee has a tactical burden to bring to the Registrar's attention any other conduct for consideration. The Authority will not be aware of all a licensee's past conduct that may be relevant to the licensee's conduct review.

## **IV. Discussion - Compliance**

[20] I start my compliance considerations in respect of Devron Quast.

### **(a) Devron Quast**

#### **(i) Factual considerations**

[21] As noted, I found Devron Quast to have committed a deliberate deceptive act or practice in respect of a consumer transaction. The conduct was to arrange for a vehicle to be inspected for compliance with the *Motor Vehicle Act* and have it pass that inspection, even though the vehicle's diesel emissions did not meet the

legislated standards. I did not find that Mr. Quast deliberately sold an unsafe vehicle to a consumer.

[22] I agree with the Authority that in our current era, ensuring vehicles meet emission standards is of great importance to the public interest. Health Canada's 2016 Report "Human Health Risk Assessment for Diesel Exhaust" (the "Health Canada Report") says "[t]he air quality modeling results show that on-road diesel emissions contribute significantly to air pollutant concentrations in urban and economically active areas and along major transportation routes... Based on the current health impact analysis, on-road and off-road diesel emissions result in significant and substantial population health impacts and societal costs in Canada via the contribution of DE [diesel emissions] to ambient concentrations of criteria air contaminants": page 35 of the Health Canada Report and page 83 of the Affidavit of Norm Felix.

[23] In 2008, Devron Quast was arrested for a serious crime and sentenced in 2009. He was incarcerated in the United States for several years. Reports are that Mr. Quast admitted to his involvement in the activity and cooperated with the U.S. Authority's investigation leading to other convictions. At the time of his arrest, Mr. Quast was working within the motor dealer industry.

[24] After serving his sentence, Mr. Quast worked for a short time in a family business before applying to be licensed as a salesperson in 2015. When applying, Mr. Quast declared his convictions to the Authority, underwent a background check by the Authority and was interviewed by an Investigator of the Authority. The interviewing Investigator's notes state Mr. Quast admitted to his involvement and provided a background of the positive things he has done since. In 2015, the interviewing Investigator opined that Mr. Quast would not return to criminal activity in the future.

[25] In August of 2015, Mr. Quast was issued a salesperson licence on certain conditions in order to limit his conduct and monitor him within the industry. Overtime, those conditions were lifted. The impugned conduct in question before me took place in and around February of 2018 – 30 months after Mr. Quast received his license as a salesperson. The Authority did not note any other questionable or non-compliant conduct within that 30-month period. I also recognize that approximately 10 years has passed between Mr. Quast's arrest and the incident under review here. Of course, much of that time was either awaiting sentencing or being incarcerated. What is important is Mr. Quast's conduct since his release and the conduct under review.

[26] Devron Quast provided various letters of support, especially noting his activity in the community and with his church. One letter is in relation to his current relationship. Devron Quast's partner and fiancée is in a sensitive position which required a background check and risk assessment of Mr. Quast by the police. I am advised that should Mr. Quast's conduct ever become questionable, that could

jeopardize the relationship. Mr. Quast's current life-partner is supportive of Mr. Quast and speaks well of him.

[27] I note that in his submissions, Mr. Quast did not deny the conduct occurred. Mr. Quast simply emphasizes that it was an error of judgement not characteristic of him, normally.

[28] Finally, I agree with Mr. Quast when he says that in considering his past conduct, I should look at the totality of that conduct. I should not ignore the 30 months between his being granted a licence and the transgression. I also must consider the letters of support which speak of Mr. Quast as an individual and a contributor to his community.

**(ii) Appropriate Compliance Activity**

**(1) Cancellation of Licence**

[29] First, I will address the request of the Authority to cancel Mr. Quast's licence and issue a 10-year ban. Such a result occurred in the case of *Best Import, supra*. In that case the motor dealer's registration was cancelled and a 10-year ban on reapplying for registration imposed. In that case, the salient facts (paraphrased) were:

- (a) The dealer sold vehicles that did not comply with the *Motor Vehicle Act*,
- (b) The dealer continued to offer for sale motor vehicles that were not compliant with the *Motor Vehicle Act* after the Registrar imposed conditions on its registration not to do so,
- (c) The dealer did not abide by the orders of the Registrar or of Enforcement Officers of the B.C. Ministry of Transportation and Infrastructure,
- (d) The dealer, through its principal, attempted to mislead the Registrar at the hearing, and
- (e) The dealer's failure to abide by lawful orders of the Registrar and other Enforcement Officers along with the other findings showed that the dealer was ungovernable and could not be regulated necessitating cancelling the dealer's registration and issuing the 10-year ban.

[30] In similar cases where a cancellation and extended ban on re-applying occurred, the evidence showed that the licensee could not be governed and no legislative tool, short of cancellation, would suffice to deter future misconduct and protect the public interest. In other cases, the licensee was refused a licence and a ban imposed, because they were recently convicted of a crime and there was insufficient history to assess if they would exhibit good conduct and trustworthiness in the future.

[31] In my view, Mr. Quast does not currently exhibit signs of being ungovernable such that cancellation of his licence is necessary to protect the public interest. Mr. Quast appears to have been cooperative with the investigation and admitted to the conduct. That is consistent with his cooperation with the U.S. Authorities. Mr. Quast

simply advances a different explanation of why that conduct occurred than does the Authority.

[32] This is not to say that Mr. Quast's conduct is trivial in nature. It is not. The fact that this conduct occurred within 30 months of being licensed as a salesperson is a fact that would be concerning to the public. Even more so given Mr. Quast's prior criminal conviction and that he is in a management position able to influence the conduct of other dealership staff. Steps need to be taken to ensure Mr. Quast can be trusted to abide by the laws governing his licence in the future. Mr. Quast being in a supervisory position and able to influence the conduct of those under his watch is also a public interest concern. I am satisfied that protecting the public interest can be done by a combination of adding conditions to Mr. Quast's licence, a compliance order and an administrative penalty to deter any future misconduct by Mr. Quast, and to deter other salespersons, generally.

[33] I find the case of Chas Thomson in *Webster v. Pioneer Garage Ltd. & Chas Thomson* (April 27, 2018, Hearing File 17-07-002, Registrar) is a closer comparator for Mr. Quast. There are two main differences, though. First, in the Webster case, I found Chas Thomson to have committed both a deceptive act or practice and an unconscionable act or practice, along with providing an investigator a false statement. Second, in this case, Mr. Quast has a prior criminal record that Mr. Thomson did not. These differences also influence my compliance selection.

## **(2) Conditions on Licence**

[34] Keeping in mind the need to balance proportionality with the need to protect the public interest, I believe that adding a restriction on Mr. Quast's salesperson licence that he not be in a management position until certain conditions are met and some time has passed to show he can be trusted to manage others is appropriate.

[35] The sooner Mr. Quast meets those conditions and demonstrates trustworthiness to abide by the law, the sooner he can be back in a management position influencing the conduct of others. The conditions that must be met include training on his legal obligations as a salesperson, and ethics in the selling process and as a leader. They also include abiding by the law which requires time to see that Mr. Quast is being trustworthy while under supervision. I therefore add the following restrictions and conditions to the salesperson licence of Devron Quast:

- (a) Not to be in a management position for a period of 12 months from the date of this decision and upon fulfilling the following conditions:
  - (i) To retake and successfully complete the Salesperson Certification Course at his own cost,



- (ii) To take and successfully complete a course on ethics (in-person or online<sup>3</sup>) at his own cost, at an institute acceptable to the Registrar. A British Columbia accredited post-secondary institute is acceptable,
- (iii) For a period of 12 months from the date of this decision, must have all consumer transactions reviewed by a manager at the dealership where he is employed before the transaction is finalized, and
- (iv) Must advise his employer or any prospective employer of these conditions.

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

[36] In this case I believe a Compliance Order is necessary for specific deterrence purposes. The following Compliance Order is made against Devron Quast:

- (a) To abide by the *Motor Dealer Act* and the *Business Practices and Consumer Protection Act* and their regulations,
- (b) To not fail to advise consumers of material facts, including the required disclosures in the *Motor Dealer Act* and its regulations, and
- (c) To not represent, by words or by conduct, that a motor vehicle displayed for sale, offered for sale or sold, complies with the requirements of the *Motor Vehicle Act* unless it does.

[37] The above Compliance Order is merely a recitation of the laws and obligations already imposed on Mr. Quast's licence. The Compliance Order does not impose any new obligations on him. It does serve as deterrence. If Mr. Quast breaches the noted legislation or repeats the noted conduct again in the future, compliance action may be taken against that new breach and separate compliance action may be taken for breaching this compliance order: see *Webster v. Pioneer Garage et al, supra*.

### **(4) Administrative Penalty**

[38] In considering the appropriate administrative penalty under the BPCPA, I start with considering the section 164(2) BPCPA factors.

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

[39] The question here is whether there are contraventions of a similar nature. It is not whether in the past Mr. Quast has deliberately misrepresented the emission

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<sup>3</sup> See for example "Business Ethics for Sales Professionals" provided by LinkedIn Learning: <https://www.linkedin.com/learning/business-ethics-for-sales-professionals>

standards on another vehicle. It is whether Mr. Quast has ever had enforcement actions taken against him for deceitful conduct. The criminal record information before me indicates Mr. Quast was not convicted for your traditional crimes of deception.

[40] Based on the evidence before me, there are no previous enforcement actions for contraventions of a similar nature by Mr. Quast. This would suggest an administrative penalty at the lower half of the maximum amount for deterrent purposes.

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

[41] The gravity of the contravention means how impactful it is on the public. A deceptive statement about a \$100 fee being of a lesser gravity than misrepresenting that a vehicle meets the emission and safety requirements of the *Motor Vehicle Act*. Gravity can also include the impact the conduct has on the reputation of the industry. The magnitude of the contravention, simply put, is how many people could potentially have been exposed and negatively impacted.

[42] In this case the gravity of the contravention is significant. The contravention was to misrepresent that a vehicle met the emission standards of the *Motor Vehicle Act* when it did not and to obtain by deceptive means an official inspection report to suggest the vehicle did meet those standards. The impact of that conduct was to place a vehicle on the road emitting excess pollutants than it should, with potential adverse health impacts on the public. The impact on the industry is profound. It certainly brings the reputation of the industry into disrepute that someone would conduct themselves as Mr. Quast did.

[43] Based on the evidence, the magnitude of the contravention was confined to this once transaction.

[44] Overall, the impact of the contravention on the public and on the reputation of the industry suggest an administrative penalty at the upper end of the maximum range. Factor in that there is evidence of only one transaction being involved, this suggests a penalty amount closer to the middle ground.

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

[45] In this case the consumer was not harmed. But that was only because the CVSE investigation led to Barnes buying back the Sierra. Had that not occurred, the consumer would have been legally liable for a non-compliant motor vehicle. Any other harm that may have resulted would have been on the public at large, as the vehicle was emitting more pollutants than it should. There is no evidence of what that would have been in this circumstance. Even so, the potential harm to the health of the public at large cannot be ignored. It is my view that protecting the public from harmful health effects of a polluting vehicle suggests a penalty amount

at the higher end of the maximum. Trying to transfer the legal liability of a MVA non-compliant vehicle to a consumer also suggests a penalty amount on the higher end of the maximum.

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

[46] The evidence before me indicates this was a one-time event and not repeated or continuous. This suggests an administrative penalty at the lower half of the maximum.

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

[47] I have found the conduct to have been deliberate. Deliberate deceptive conduct must be strongly deterred, and this suggests an administrative penalty at the higher end of the maximum.

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

[48] The evidence before me indicates the impugned conduct would save the dealership from spending about \$7,000 on emissions repairs. What part of that would benefit Mr. Quast is unknown. Even so, the need to deter similar conduct suggests the administrative penalty should not be so low as to be seen as the cost of doing business, or an inconvenience compared to the costs savings of undertaking the conduct. This suggests a penalty amount at the higher end of the maximum amount for an individual.

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

[49] Once confronted with the facts of this case, the dealer worked with the consumer to purchase back the vehicle and provide compensation for some out of pocket expenses the consumer had incurred. Mr. Quast has admitted to the conduct and stated it was a lapse of judgement. There is no indication that Mr. Quast was not cooperative with the investigation. This suggests that the conduct is recognized and was corrected fairly quick and that it possibly will not be repeated. This indicates a penalty amount at the lower end of the maximum.

**(h) *consideration of the whole case***

[50] The conduct in question is serious with the potential of undermining the industry's reputation with the public. The impact of the deception was also serious had it gone undetected with potential unknown health effects on the public. There are some indications that Mr. Quast understands the impact of his conduct and will not repeat it. Even so, the industry must also be deterred from committing the same or similar conduct.

[51] On the issue of general deterrence, it appears administrative penalties in amounts such as those imposed on Chas Thomson and the cases cited in that case have not had the desired effect of deterring breaches of the deceptive act provisions of the BPCPA. In the case of *Imad Abdullah Rashid* (June 20, 2019, File 19-04-003, Registrar), Mr. Rashid was acting as an unregistered motor dealer. In considering the appropriate penalty amount, the fact that past administrative penalty amounts had not deterred the conduct in question was also recognized. Importantly, there was evidence to show Mr. Rashid had gained anywhere from \$36,000 to \$73,000 from the wrongful conduct. In that case, a \$35,000 administrative penalty was issued to ensure the penalty amount was reflective of the potential gains to be made for the unlawful conduct, to act as a deterrent.

[52] The maximum penalty amount on an individual under the BPCPA is \$5,000. The potential gain for Mr. Quast is unknown, but his conduct was to try and save his employer around \$7,000. The conduct was also deliberate and involved counselling someone else to aid in the deceit. Overall, I believe an administrative penalty in the amount of \$3,000 is appropriate. This recognizes the seriousness of the conduct, the serious potential impact on the public and reputation of the industry, is proportionate to the potential gains Mr. Quast was attempting to obtain for his employer and considers Mr. Quast's cooperation during the investigation and his admissions. It also takes into consideration Mr. Quast's past criminal record which indicates a strong deterrent is necessary to keep Mr. Quast from repeating unlawful conduct. It addresses the need for specific and general deterrence.

[53] I would note that I am not suspending Mr. Quast's salesperson licence for a period as occurred with the case of Chas Thompson. In the case involving Chas Thomson, he was found to have also committed an unconscionable act or practice and provided a false statement to an investigator. That did not occur with Mr. Quast.

**(b) Barnes**

**(i) *Factual considerations***

[54] The basic factual considerations noted at paragraph 21 and 22 are applicable to Barnes. In addition, Barnes submits it relied on Mr. Quast and the designated inspector during this transaction. Barnes emphasizes that Mr. Quast is a VSA licensed salesperson. Barnes also submits that it is a general sales dealership with little expertise in the inspection and diagnosis of diesel emissions in modern trucks, which it says is why they relied on the outside repair shop. This is somewhat inconsistent with its submission on the liability phase of these hearings when it submitted it went to the outside repair shop as they could conduct the repairs for less than Barnes could.

**(ii) Appropriate Compliance Activity**

**(1) Conditions on Licence**

[55] One of my concerns is that in its submission, Barnes continues to emphasize its reliance on Mr. Quast as a licensed salesperson. The assessment of a person for a licence is a point-in-time assessment. It does not guarantee future compliance any more than granting someone a driver's licence guarantees they will not speed, drive recklessly, drive while impaired, etc. A dealer that does not provide the appropriate supervision and oversight of an employee, which allows the employee to, for example, commit fraud, may have their registration cancelled: *Allright Automotive Repair Inc. (Re)* [2006] O.L.A.T.D. No. 177 (Ont. Licence Appeal Tribunal), affirmed by *Allright Automotive Repair Inc. v. Ontario (Motor Vehicle Dealers Act, Registrar)* [2008] O.J. No. 1557 (Ont. Superior Court of Justice, Div. Crt.). It is to be noted that Barnes placed Mr. Quast in his position at the dealership. It is also to be noted that as a manager, Mr. Quast can make some decisions on behalf of Barnes.

[56] In this case, Barnes estimated repairs to the Sierra to be \$7,000 to make it compliant with the *Motor Vehicle Act* ("MVA"). When the Sierra was returned from the Langley repair shop, there was no amount owing by Barnes. If proper checks and monitoring were in place, this fact should have raised suspicions and triggered questions of Mr. Quast. The fact that the "lot boy" paid only \$157.50 for the repairs and inspection should also have raised suspicions and triggered questions of Mr. Quast, had proper monitoring been in place. It was the investigation by the CVSE that brought this issue to the attention of Barnes. As noted by the Ontario Licence Appeal Tribunal in *Allright*:

[116] In addition, if control, supervision and monitoring measures had been in place as they should have been, none of this would have happened. The fact that it was not discovered before OMVIC's inspection shows that there were no control measures in place...

[57] The Notice of Hearing advised Barnes that I could place conditions or restrictions on their registration. A condition is added to the registration of Barnes that it submits to the Registrar for review: Barnes' internal policies on how it monitors, supervises and performs checks on its sales and the conduct of all its staff involved in sales, including management. Such a condition is not onerous, and Barnes should already have such policies and processes in place. Those policies and processes are to be submitted to the Authority to the attention of the Registrar within 60 days of this decision. They can be submitted electronically.

[58] Another concern I have is Barnes' statement that it is "in the business of general automobile sales and [is] not expert in the inspection and diagnosis of complicated diesel systems found on present day trucks." Barnes is a GM franchise dealer who sells present day trucks with present day diesel systems. The subject vehicle Barnes professes no expertise in inspecting and diagnosing was a GMC

Sierra truck. Barnes is a provincially designated inspection facility. This includes inspecting vehicles with modern complicated diesel systems for compliance with BC laws. Barnes' own inspector was the one who identified the missing diesel emission components on the Sierra.

[59] If I accept Barnes' contention of not being expert in inspecting and diagnosing problems on modern diesel systems in present day trucks, and in reference to the GMC Sierra, then why is it authorized to sell and service them as a GM franchise dealer? What if a Barnes GM customer has a problem with its diesel truck that requires Barnes to diagnose the issue? Why is Barnes allowed to inspect complex diesel vehicle systems on modern trucks for compliance with the laws of British Columbia? Especially trucks it sells. The public would be very concerned of a franchise dealer being unable to properly inspect and diagnose issues of the vehicles it sells. The public would also be very concerned of Barnes being a designated inspection facility inspecting vehicles with modern diesel systems for compliance with B.C. laws, when it professes to have no expertise in doing so.

[60] As Registrar, I may add conditions or restrictions on a motor dealer registration as necessary to protect the public. This includes restricting a dealer from conducting certain types of sales. This already occurs regarding consignment sales.<sup>4</sup>

[61] It is within the authority of the Registrar to restrict a dealer from selling specific vehicles or sub-sets of vehicles if that is necessary to protect the public. In this case, I could restrict Barnes from selling diesel vehicles. Unlike the condition to provide its policies noted above, adding such a restriction to the registration of Barnes would have significant impact on it. While the Notice of Hearing stated I may add conditions or restrictions to its registration, this very specific type of restriction was not noted. Given the impact on it and no notice of or opportunity to make submissions on this potential restriction, I will not do so without giving Barnes an opportunity to address this potential restriction.

[62] As for it being a provincially designated inspection facility authorized to inspect modern and complex diesel vehicles for compliance with the laws of British Columbia, that matter falls to the B.C. Ministry of Transportation and Infrastructures' Commercial Vehicle Safety Enforcement branch to address with Barnes.

## **(2) Compliance Order**

[63] In this case I believe a Compliance Order is necessary for specific deterrence purposes. The following Compliance Order is made against Barnes:

Barnes Wheaton (North Surrey) Chevrolet Buick GMC Ltd. is to:

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<sup>4</sup> The authority to do so confirmed in *Southwest R.V. v. Motor Dealer Council of British Columbia*, 2007 BCSC 1140 (BC Supreme Court)

- (a) abide by the requirements of the *Motor Dealer Act*, R.S.B.C. 1996, c. 316 and its regulations,
- (b) abide by the requirement of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c.3 and its regulations,
- (c) refrain from committing deceptive acts or practice contrary to the *Business Practices and Consumer Protection Act*, and
- (d) refrain from, in any way, representing that a motor vehicle offered for sale, displayed for sale or that is sold complies with the requirements of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318 and its regulations unless the motor vehicle does so comply.

[64] The above Compliance Order is merely a recitation of the laws and obligations already imposed on the registration of Barnes. Thus, the Compliance Order does not impose any new obligations on Barnes. Issuing this Compliance Order does serve as a deterrent. If Barnes was to breach the noted legislation again in the future, compliance action may be taken against that new breach and separate compliance action may be taken for breaching this compliance order: see *Webster v. Pioneer Garage et al, supra*.

### **(3) Administrative Penalty**

[65] Both the Authority and Barnes submit the correct compliance action for Barnes is the issuance of an administrative penalty. Barnes submits \$5,000 inclusive of costs is appropriate. The Authority submits \$40,000 exclusive of costs is appropriate. Not surprisingly, I find the appropriate penalty amount lies somewhere in-between.

[66] In considering the appropriate administrative penalty under the BPCPA in relation to Barnes, I start with considering the section 164(2) BPCPA factors.

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

[67] No evidence was submitted that Barnes has had enforcement action for contraventions of a similar nature.

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

[68] The discussion at paragraphs 41 to 44 are equally applicable to Barnes.

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

[69] The discussion at paragraph 45 is equally applicable to Barnes.

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

[70] The discussion at paragraph 46 is equally applicable to Barnes.

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

[71] I found the conduct to be deliberate.

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

[72] In this case, Barnes would have saved itself an estimated \$7,000 through the conduct of its employee, Devron Quast.

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

[73] The discussion at paragraph 49 is equally applicable to Barnes.

**(h) consideration of the whole case**

[74] At the outset, I recognize that Barnes ultimately purchased the Sierra back from the consumer and provided additional compensation to the consumer for out of pocket expenses. However, the issue with the Sierra was brought to the attention of Barnes by the CVSE after its investigation on how the Sierra was inspected for compliance with the *Motor Vehicle Act*. Had that not occurred, I am confident the consumer would still be the owner of the Sierra and liable for its non-compliance with the *Motor Vehicle Act*. There were clear signs that the repairs and inspection of the Sierra were irregular, deserving of questioning their validity – an estimated \$7,000 in repairs plus an inspection being achieved for \$157.50. If Barnes had appropriate oversight and controls in place, Barnes would have discovered this issue earlier.

[75] I also take into consideration that this is Barnes' first infraction of this nature. The conduct was found to be deliberate. The impugned conduct would potentially save Barnes about \$7,000. In fashioning an appropriate administrative penalty, this must be considered to ensure the penalty is not merely seen as the cost of doing businesses: *Guindon, supra*. A penalty amount that approximates the potential gains is a better deterrent: *Imad Abdullah Rashid*. I also must consider the impact this conduct has on the reputation of the industry and the need to prevent its repeat within the industry.

[76] In the case of *Webster v. Pioneer Garage Ltd. et al*, the dealer received a \$25,000 administrative penalty which reflected the deliberate misrepresentations



made, the unconscionable act that occurred and the dealers three prior similar infractions addressed through Undertakings. The dealer received separate administrative penalties of \$12,000 for each of the breaches of each Undertaking (\$36,000 in total).

[77] In the case of *Scott et al. v. Lake Country Motor Sports Ltd. et al* (April 11, 2018, File 18-01-004, Registrar), the dealer was found to have done unauthorized consignment sales, committed a deceptive act or practice by misrepresenting the consumer's rights in the transaction and that the consumer owed the dealer money. The dealer's registration was cancelled and an administrative penalty of \$5,000 was imposed.

[78] In *Vehicle Sales Authority v. 0831522 B.C. Ltd. dba Street Trendz Auto Sales & Customizations* (November 26, 2015, File 14-04-064, Registrar) the dealer was found to have created a scheme allowing several consumers to register vehicles in Whistler to avoid the then requirement of Air Care inspections. The dealer had also misrepresented to consumers the nature of the transaction as between being a lease or financed. The dealer received a \$15,000 administrative penalty for the scheme to avoid Air Care inspections, a \$2,000 administrative penalty for the other misrepresentations and its registration canceled as it was viewed to be ungovernable.

[79] Finally, I keep in mind the case of *Imad Abdullah Rashid* where the administrative penalty of \$35,000 approximated the potential profit from the unlawful activity of between \$36,000 and \$73,000.

[80] I also note that the past administrative penalties for committing deceptive acts or practices contrary to the BPCPA cited here, do not appear to have had the desired deterrent effect on the industry. Despite these past administrative penalties on other dealers or unlicensed dealers in the industry, Barnes has deliberately contravened the BPCPA. This suggests the amount of an administrative penalty for these types of breaches needs to be revisited to ensure that they are more impactful and deterring.

[81] In this case Barnes, through its employee Devron Quast, devised a scheme to avoid the legislative requirements in the *Motor Vehicle Act*. This is most similar to the case of *Street Trendz*. The \$15,000 amount in *Street Trendz* was also in recognition of the multiple and ongoing breaches through the scheme in that case. The penalty cannot be the cost of doing business, the potential \$7,000 in savings in this case, and must send a proper message of deterrence to Barnes and to the Industry.

[82] Overall, it is my opinion that a \$12,500 administrative penalty is appropriate. It addresses the potential savings of \$7,000 Barnes would have obtained, recognizes the need to incrementally increase administrative penalties to deter future breaches by Barnes and the industry generally, but does not go as far as in

the case of *Street Trendz* recognizing that case was a continuous scheme; but also noting the dealer's registration in *Street Trendz* was cancelled.

## **V. Costs**

[83] The Authority has provided submissions and documentation noting its costs to investigate this matter was \$1,704.97. There was no challenge to the amount of those costs. Barnes submits that those costs should be included as part of the administrative penalty.

[84] Cost recovery and administrative penalties serve two different purposes. Cost recovery recognizes that the person who contravened the legislation should be responsible for any costs associated with investigating and ameliorating that breach and not the general industry through their collective licensing fees. Administrative penalties are used to deter future misconduct. This difference is inferentially noted in that costs are recoverable under section 155 of the BPCPA and administrative penalties are issued under section 166 of the BPCPA.

[85] The liability for the conduct in this case is shared between Devron Quast and Barnes Wheaton (North Surrey) Chevrolet Buick GMC Ltd.. A separate Compliance Order will issue where Devron Quast and Barnes Wheaton (North Surrey) Chevrolet Buick GMC Ltd. are joint and severally liable to pay costs of \$1,704.97.

## **VI. Summary**

[86] A summary of my findings on compliance are set out below.

### **(a) Devron Quast**

[87] Pursuant to section 6 of the *Salespersons Licensing Regulation*, B.C. Reg. 202/2017, the following conditions are placed on the salesperson licence of Devron Quast:

- (a) Not to be in a management position for a period of 12 months from the date of this decision and upon fulfilling the following conditions:
  - (i) To retake and successfully complete the Salesperson Certification Course at his own cost,
  - (ii) To take and successfully complete a course on ethics (in-person or online) at his own cost, at an institute acceptable to the Registrar. A British Columbia accredited post-secondary institute is acceptable,
  - (iii) For a period of 12 months from the date of this decision, must have all consumer transactions reviewed by a manager at the dealership where he is employed before the transaction is finalized, and

- (iv) Must advise his employer or any prospective employer of these conditions.

[88] Pursuant to section 155 of the *Business Practices and Consumer Protection Act*, the following Compliance Order is made against Devron Quast:

- (a) To abide by the *Motor Dealer Act* and the *Business Practices and Consumer Protection Act* and their regulations,
- (b) To not fail to advise consumers of material facts, including the required disclosures in the *Motor Dealer Act* and its regulations, and
- (c) To not represent, by words or by conduct, that a motor vehicle displayed for sale, offered for sale or sold, complies with the requirements of the *Motor Vehicle Act* unless it does.

[89] Pursuant to section 166 of *Business Practices and Consumer Protection Act* a notice of administrative penalty in the amount of \$3,000 is issued against Devron Quast.

**(b) Barnes Wheaton (North Surrey) Chevrolet Buick GMC**

[90] Pursuant to section 4(6) of the *Motor Dealer Act*, the following condition is added to the registration of Barnes Wheaton (North Surrey) Chevrolet Buick GMC Ltd.:

Barnes Wheaton (North Surrey) Chevrolet Buick GMC Ltd. is to submit to the Registrar for review, Barnes' internal policies on how it monitors, supervises and performs checks on its sales and the conduct of all its staff involved in sales, including management, within 60 days of April 16, 2020.

[91] Pursuant to section 155 of the *Business Practices and Consumer Protection Act*, the following Compliance Order is made against Barnes Wheaton (North Surrey) Chevrolet Buick GMC Ltd.:

Barnes Wheaton (North Surrey) Chevrolet Buick GMC Ltd. is to:

- (a) abide by the requirements of the *Motor Dealer Act*, R.S.B.C. 1996, c. 316 and its regulations,
- (b) abide by the requirement of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c.3 and its regulations,
- (c) refrain from committing deceptive acts or practice contrary to the *Business Practices and Consumer Protection Act*, and
- (d) refrain from, in any way, representing that a motor vehicle offered for sale, displayed for sale or that is sold complies with the requirements of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318 and its regulations unless the motor vehicle does so comply.

[92] Pursuant to section 166 of *Business Practices and Consumer Protection Act* a notice of administrative penalty in the amount of \$12,500 is issued against Barnes Wheaton (North Surrey) Chevrolet Buick GMC Ltd..

**(c) Devron Quast and Barnes Wheaton (North Surrey) Chevrolet Buick GMC**

[93] Pursuant to sections 155(4)(d) and 155(6) of the *Business Practices and Consumer Protection Act*, a compliance order is issued with Devron Quast and Barnes Wheaton (North Surrey) Chevrolet Buick GMC Ltd. being joint a severally liable to repay the investigation costs in the amount of \$1,704.97, payable to the Motor Vehicle Sales Authority of British Columbia.

**VII. Next Steps**

[94] As noted earlier I am concerned that Barnes states it has no expertise in inspecting and diagnosing complex diesel systems in modern trucks. This statement was made in relation to this complaint involving a GMC Sierra diesel truck. I am contemplating a restriction on Barnes' motor dealer registration to restrict it from selling diesel vehicles. If it cannot inspect and diagnose those vehicles, the public would be concerned that it is selling those vehicles as a GM franchisee.

[95] To ensure a fulsome consideration of this, I direct the following process:

- (a) Barnes may provide any submissions and evidence in addressing my noted concerns of it selling diesel vehicles within 60 days of this decision's date with a copy to the Authority.
- (b) The Authority will have 45 days from the date of being served any submissions and evidence from Barnes noted in paragraph (a), to provide submissions and additional evidence in response, with a copy to Barnes.
- (c) If Barnes wishes to Reply to the Authority's submissions and evidence, they will have 30 days from being served under paragraph (b) to do so, with a copy to the Authority.

[96] I have fashioned these time frames in consideration of the current COVID-19 pandemic in mind. Even so, should either party require an extension of time they have leave to request such an extension providing reasons for the extension and proposing a new date.

[97] Submissions and evidence for the Registrar's consideration can be sent to my assistant Preet Jassal at [preet@mvsabc.com](mailto:preet@mvsabc.com).

### **VIII. Review of these findings**

[98] The conditions I have imposed on the licence of Devron Quast and the registration of Barnes may be reviewed by requesting a reconsideration in accordance with sections 26.11 and 26.12 of the *Motor Dealer Act*. Such a request for reconsideration is to be in writing (electronic suffices) and is to include the required new evidence (as defined in the legislation). The time to request such a reconsideration is 30 days from the date of receiving this decision or the notice of conditions, whichever is the later. However, that time may be abridge due to COVID-19 and any party applying for a reconsideration may apply for an extension of time to file their request for reconsideration.

[99] The compliance orders and notices of administrative penalties may be reviewed by requesting a reconsideration in accordance with sections 180 to 182 of the BPCPA. Such a request for reconsideration is to be in writing (electronic suffices) and include any additional new evidence (as defined in the legislation). The time to request such a reconsideration is 30 days. However, that time may be abridge due to COVID-19 and any party applying for a reconsideration may apply for an extension of time to file their request for reconsideration.

[100] Alternatively, this decision may be reviewed by petitioning the B.C. Supreme Court for judicial review under the *Judicial Review Procedure Act*. Such a petition is to be filed within 60 days of receiving this decision: section 7.1(t) of the *Motor Dealer Act*. The Court may be empowered to extend that time due to COVID-19, which is for that Court to determine.

“original is signed”

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Ian Christman, J.D.  
Registrar of Motor Dealers