Hearing File No. 19-09-001

Neutral Citation: 2019-BCRMD-024

IN THE MATTER OF THE *MOTOR DEALER ACT*, R.S.B.C. 1996, C. 316

Re:

Vehicle Sales Authority of British Columbia

the "Authority"

And:

One West Auto Ltd.

Respondent

And:

Arash Askarian

Respondent

And:

Daniel Paul Debartollo

Respondent

DECISION OF THE
REGISTRAR OF MOTOR DEALERS

Date and Place of Decision: November 8, 2019, at Langley, British Columbia

Date and Place of Hearing: September 11, 2019, at Langley, British Columbia

Appearances for

The Authority	Loraine Lee, Director of Compliance and Consumer Services and legal counsel
One West Auto Ltd., Arash Askarian and Daniel Paul Debartolo	Mathew Wansink, legal counsel and Christopher Bakker, legal counsel – both by teleconference

Introduction

[1] One West Auto Ltd. ("One West") applies for registration as a motor dealer. In reviewing One West's application, Hong Wong, Manager of Licensing at the Authority, became concerned about the past conduct of the owners of One West related to their operation of another dealership, Surrey Mitsubishi. The concern relates to past compliance action against Surrey Mitsubishi and of allegations of conduct against Surrey Mitsubishi that are being brought before the Registrar for formal review. On August 7, 2019, Hong Wong wrote to Arash Askarian, principal and an owner of One West, that the Authority would not proceed with reviewing One West's application until the conclusion of the Registrar's review of the allegations against Surrey Mitsubishi.

[2] One West then applied for a hearing before the Registrar to review Hong Wong's decision. That hearing was on September 11, 2019. One West advances that Mr. Wong's decision was a refusal to issue a registration as he cited section 5 of the *Motor Dealer Act*, R.S.B.C. 1996, c. 316 ("MDA") in his letter. One West says the decision to refuse to register One West was procedurally unfair as Mr. Wong relied on allegations of past conduct in arriving at that decision. One West argues that the term "past conduct" as found in section 5 of the MDA, must be given its ordinary meaning and that meaning is 'proven' past conduct. At the hearing, One West invited me to interpret "past conduct" in section 5 of the MDA, by reading in the word 'proven'.

[3] The Authority argued that Mr. Wong did not refuse to register One West. It says a reading of the August 7 letter shows Mr. Wong was holding his review of the application in abeyance until the hearing involving Surrey Mitsubishi was complete and the Registrar's decision known.

[4] At the conclusion of the hearing, I noted the interpretation One West sought would have a significant impact on the interpretation and application of the MDA. As such, and there being very light legal argument on the proper interpretation of a B.C. statute in general and of this provision in specific, I directed legal counsel to

prepare written legal arguments on the interpretation of section 5 of the MDA and specifically on whether past conduct should be interpreted as being "proven past conduct". That process was completed on October 1, 2019.

Issues under review

[5] From the submissions of the parties, I would summarize the issues for resolution as follows:

(a) Did Manager of Licensing Hong Wong refuse to register One West as a motor dealer?

(b) If the answer to (a) is yes, was that refusal procedurally unfair because Mr. Wong relied on unproven allegations in making his decision?

(c) In answering (b), the related issue is whether the term "past conduct" should be interpreted to read "proven past conduct".

Legal Principles

(a) Statutory interpretation

[6] Both the Authority and the Respondents provided case law excerpts to establish the principles to be applied in the interpretation of a statute. The Authority relied on my decision in *Pioneer Garage Ltd. dba Greenlight Auto Sales et al* (File 17-06-002, August 10, 2017) whereby I refused to register the dealers in that case based on past conduct and alleged conduct which was coming before the Registrar for formal review. In this case, I believe it is important to more expansively discuss those legal principles.

[7] The starting point is that a B.C. enactment is interpreted in accordance with section 8 of the *Interpretation Act* R.S.B.C. 1996, c. 238 and the common law principles of statutory construction:

> [32] On appeal, counsel's arguments were pitched at three levels – first, the policy considerations underlying the principle of vicarious liability generally and s. 86 in particular, as compared with those underlying the definition of "conditional sale" in the former ***Sale of Goods on Condition Act***; second, the principles of statutory interpretation relevant to the repeal of the ***Sale of Goods on Condition Act***, and the apparent disconnection between it and s. 86 of the ***Motor Vehicle Act***; and third, the "true nature" or "real substance" of the lease agreement in this case. In my view, however,

the starting point must be the wording of s. 86 itself, bearing in mind the approach to statutory interpretation endorsed by the Supreme Court of Canada in ***Re Rizzo & Rizzo Shoes Ltd***. 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27, adopted from Elmer Driedger, ***Construction of Statutes*** (2nd ed., 1983):

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. [At 87.]

The Court in ***Rizzo*** also emphasized the principle, encapsulated at s. 8 of the ***Interpretation Act***, R.S.B.C. 1996, c. 238, that every act "must be construed as being remedial" and must receive "such fair, large and liberal construction and interpretation as best assures the attainment of its object."

- *Yeung (Guardian ad litem of) v. Au*, 2006 BCCA 217 (unanimous 5 panel Court of Appeal), and affirmed for the reasons of the Court of Appeal in *Transportaction Lease Systems Inc. v. Jennifer Yeung, by her litigation guardian Heidi Yeung, et al*., 2007 CanLII 44151 (Supreme Court of Canada)
- See also *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 SCR 559, 2002 SCC 42 (Supreme Court of Canada)

[8] Words that are not defined in an enactment are given their ordinary meaning unless after reading the provision and the whole of the enactment, the legislative intent shows those words should be given a different meaning, to ensure the intentions and objectives of the legislative drafter are honoured.

- *Thomson v. Canada (Deputy Minister of Agriculture)*, [1992] 1 S.C.R. 385, 1992 CanLII 121 (Supreme Court of Canada)

[9] Words in an enactment must be considered within the context of their legislative scheme. Where more than one enactment forms a part of the legislative scheme, all the enactments are considered together to ensure a harmonious legislative scheme. Further, using tools of statutory construction, such as reading in, occurs only when the words of the statute are truly ambiguous. As noted in *Bell ExpressVu:*

> 26 In Elmer Driedger's definitive formulation, found at p. 87 of his *Construction of Statutes* (2nd ed. 1983):
>
> > Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

Driedger's modern approach has been repeatedly cited by this Court as the preferred approach to statutory interpretation across a wide range of interpretive settings: see, for example, *Stubart Investments Ltd. v. The Queen*, 1984 CanLII 20 (SCC), [1984] 1 S.C.R. 536, at p. 578, *per* Estey J.; *Québec (Communauté urbaine) v. Corp. Notre-Dame de Bon-Secours*, 1994 CanLII 58 (SCC), [1994] 3 S.C.R. 3, at p. 17; *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27, at para. 21; *R. v. Gladue*, 1999 CanLII 679 (SCC), [1999] 1 S.C.R. 688, at para. 25; *R. v. Araujo*, [2000] 2 S.C.R. 992, 2000 SCC 65 (CanLII), at para. 26; *R. v. Sharpe*, [2001] 1 S.C.R. 45, 2001 SCC 2 (CanLII), at para. 33, *per* McLachlin C.J.; *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 84, 2002 SCC 3 (CanLII), at para. 27. I note as well that, in the federal legislative context, this Court's preferred approach is buttressed by s. 12 of the *Interpretation Act*, R.S.C. 1985, c. I-21, which provides that every enactment "is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects".

27 The preferred approach recognizes the important role that context must inevitably play when a court construes the written words of a statute: as Professor John Willis incisively noted in his seminal article "Statute Interpretation in a Nutshell" (1938), 16 *Can. Bar Rev.* 1, at p. 6, "words, like people, take their colour from their surroundings". This being the case, where the provision under consideration is found in an Act that is itself a component of a larger statutory scheme, the surroundings that colour the words and the scheme of the Act are more expansive. In such an instance, the application of Driedger's principle gives rise to what was described in *R. v. Ulybel Enterprises Ltd.*, [2001] 2 S.C.R. 867, 2001 SCC 56 (CanLII), at para. 52, as "the principle of interpretation that presumes a harmony, coherence, and consistency between statutes dealing with the same subject matter". (See also *Stoddard v. Watson*, 1993 CanLII 59 (SCC), [1993] 2 S.C.R. 1069, at p. 1079; *Pointe-Claire (City) v. Quebec (Labour Court)*, 1997 CanLII 390 (SCC), [1997] 1 S.C.R. 1015, at para. 61, *per* Lamer C.J.)

28 Other principles of interpretation — such as the strict construction of penal statutes and the "*Charter* values" presumption — only receive application where there is ambiguity as to the meaning of a provision. (On strict construction, see: *Marcotte v. Deputy Attorney General for Canada*, 1974 CanLII 1 (SCC), [1976] 1 S.C.R. 108, at p. 115, *per* Dickson J. (as he then was); *R. v. Goulis* (1981), 1981 CanLII 1642 (ON CA), 33 O.R. (2d) 55 (C.A.), at pp. 59-60; *R. v. Hasselwander*, 1993 CanLII 90 (SCC), [1993] 2 S.C.R. 398, at p. 413; *R. v. Russell*, [2001] 2 S.C.R. 804, 2001 SCC 53 (CanLII), at para. 46. I shall discuss the "*Charter* values" principle later in these reasons.)

29 What, then, in law is an ambiguity? To answer, an ambiguity must be "real" (*Marcotte*, *supra*, at p. 115). The words of the provision must be "reasonably capable of more than one meaning" (*Westminster Bank Ltd. v. Zang*, [1966] A.C. 182 (H.L.), at p. 222, *per* Lord Reid). By necessity, however, one must consider the "entire context" of a provision before one can determine if it is reasonably capable of multiple interpretations. In this regard, Major J.'s statement in *CanadianOxy Chemicals Ltd. v. Canada (Attorney General)*, 1999

> CanLII 680 (SCC), [1999] 1 S.C.R. 743, at para. 14, is apposite: "It is only when genuine ambiguity arises between two or more plausible readings, each equally in accordance with the intentions of the statute, that the courts need to resort to external interpretive aids" (emphasis added), to which I would add, "including other principles of interpretation".
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> 30 For this reason, ambiguity cannot reside in the mere fact that several courts -- or, for that matter, several doctrinal writers -- have come to differing conclusions on the interpretation of a given provision. Just as it would be improper for one to engage in a preliminary tallying of the number of decisions supporting competing interpretations and then apply that which receives the "higher score", it is not appropriate to take as one's starting point the premise that differing interpretations reveal an ambiguity. It is necessary, in every case, for the court charged with interpreting a provision to undertake the contextual and purposive approach set out by Driedger, and thereafter to determine if "the words are ambiguous enough to induce two people to spend good money in backing two opposing views as to their meaning" (Willis, *supra*, at pp. 4-5).
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> [underlining added]

[10] The *Motor Dealer Act* is consumer protection legislation: *Fireman's Fund Insurance Co. of Canada v. Shoreline Auto Sales Ltd.* [1986] B.C.J. No. 1745 (BC Supreme Court). As such, the MDA must be interpreted generously in furtherance and in favour of consumer protection:

> [37] As to statutory purpose, the *BPCPA* [Business Practices and Consumer Protection Act of B.C.] is all about consumer protection. As such, its terms should be interpreted generously in favour of consumers: *Smith v. Co-operators General Insurance Co.*, 2002 SCC 30 (CanLII), [2002] 2 S.C.R. 129, and *ACS Public Sector Solutions Inc. v. Courthouse Technologies Ltd.*, 2005 BCCA 605 (CanLII), 48 B.C.L.R. (4th) 328. The policy objectives of s. 172 would not be well served by low-profile, private and confidential arbitrations where consumers of a particular product may have little opportunity to connect with other consumers who may share their experience and complaints and seek vindication through a well-publicized court action.
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> [underlining added]

- *Seidel v. TELUS Communications Inc*., [2011] 1 SCR 531, 2011 SCC 15 (Supreme Court of Canada)

[11] Another objective of the *Motor Dealer Act* is to regulate the motor vehicle sales industry in British Columbia through a registration and licensing regime. Regulatory legislation exists to prevent future harm from occurring and not to assign moral fault for past conduct. Prevention of future harm involves a shift from promoting individual interests to protecting societal interests. Prevention of future

harm means assessing whether a person is suitable to operate within this industry as they pose little to no risk of harm to consumers. Regulation is not merely a tool to address harm once it has occurred. Regulation is proactive and protective. As stated by Justice Cory of the Supreme Court of Canada:

> The objective of regulatory legislation is to protect the public or broad segments of the public (such as employees, consumers and motorists, to name but a few) from the potentially adverse effects of otherwise lawful activity. Regulatory legislation involves a shift of emphasis from the protection of individual interests and the deterrence and punishment of acts involving moral fault to the protection of public and societal interests. While criminal offences are usually designed to condemn and punish past, inherently wrongful conduct, regulatory measures are generally directed to the prevention of future harm through the enforcement of minimum standards of conduct and care.

- *R. v. Wholesale Travel Group Inc.,* [1991] 3 SCR 154, 1991 CanLII 39 (Supreme Court of Canada) per Justice Cory
- Approved by the unanimous court in *R. v. Fitzpatrick*, [1995] 4 SCR 154, 1995 CanLII 44 (Supreme Court of Canada)

[12] In considering similar "past conduct" language in the former *Salesperson Licensing Regulation*, B.C. Reg. 241/2004[1], the B.C. Supreme Court commented on the purpose of assessing "past conduct" as being a tool to protect the public:

> [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.
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> [underlining added]

- *Fryer v. Motor Vehicle Sales Authority of British Columbia*, 2015 BCSC 279 (BC Supreme Court)

[1] Replaced by the *Salesperson Licensing Regulation*, B.C. Reg. 202/2017

[13] Finally, as between the public interest and the private interests of a person or business to be licensed, the public interest is paramount. As cited approvingly by Justice Smith for the B.C. Court of Appeal:

> …A registered broker or salesman has no vested interest that is to be weighed in the balance against the public interest. I have no doubt the Commission will, on proper occasions, give consideration to the possible serious consequences of taking away a man's livelihood, and of making the business of a broker or salesman a precarious occupation. Such considerations may have their proper place in determining what is in the public interest. It is, however, the public interest that is to be served by the Commission, and no private interests or the interest of any profession or business, in the exercise of the Commission's powers of suspension or cancellation of the registration of any broker or salesman.
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> [Underlining added]

- *British Columbia (Securities Commission) v. Pacific International Securities Inc.*, 2002 BCCA 421 (CanLII) at CanLII, paragraph 12.

[14] The language of the above cases shows an emphasis on protecting the public from potential future harm. Assessing past conduct under section 5 of the MDA is a tool to make that risk assessment. When reviewing someone's suitability to be registered as a motor dealer, it is not to assign blame or moral fault for any past conduct, but to assess whether they pose a risk to the public if they were granted access to the industry. This purpose influences the interpretation of the words "past conduct" in section 5 of the MDA.

(b) Interpretation of the reasons of a decision-maker

[15] Legal counsel did not address the legal principles I should apply when considering the August 7, 2019, letter of Hong Wong, a delegate of the Registrar. To be fair, I did not ask. Even though I did not ask for legal argument on this point, I keep in mind the following directions from a recent B.C. Supreme Court decision reviewing the reasons of the Registrar:

> [56] Furthermore, on a review of the entire reasons, rather than the "parsing" approach proposed by the petitioners, I cannot find that it was unreasonable for the Registrar to have made the challenged findings. It is important to review the decision "as a whole": *Cooper v. British Columbia (Liquor Control and Licensing Branch)*, 2017 BCCA 451 (CanLII) at para. 54.

- *Best Import Auto Ltd. v Motor Dealer Council of British Columbia*, 2018 BCSC 834

Discussion

(a) Did Hong Wong refuse to register One West as a motor dealer?

[16] Did Hong Wong refuse to register One West as a motor dealer? The simple answer to this is no! A review of the whole letter which describes Mr. Wong's decision notes that he is unable to make that determination at the time of writing the August 7, 2019 letter. The stated reasons are (paraphrasing):

(a) There is past compliance action taken against Surrey Mitsubishi, which shares individual owners with One West, that is of concern to the public interest, and
(b) There are allegations of past conduct to be formally reviewed by the Registrar at an upcoming hearing involving Surrey Mitsubishi. Those allegations must be addressed before One West's application will be further reviewed to assess any public interest concern in registering One West as a motor dealer.

[17] One West's argument focused on Hong Wong citing section 5 of the MDA in his August 7 letter. This, they say, means he had refused One West a registration. This is a parsing approach to reading Mr. Wong's letter. Mr. Wong did not just cite section 5 of the MDA. He cited section 4 and 5 of the MDA together, and his letter is clear that he was not refusing to register One West.

[18] I would note that citing both section 4 and 5 of the MDA was appropriate in this context. As One West conceded, section 4 of the MDA is the provision regarding the Registrar accepting and reviewing an application for registration as a motor dealer. Section 5 of the MDA describes the "past conduct" that forms the basis of the review under section 4 of the MDA. Those two provisions work together as noted in section 7 of the MDA.

[19] As to the authority to "pause" the review of an application to register someone as a motor dealer, I would note the following:

(a) The MDA does not compel a decision to register someone within a specified time frame,
(b) The MDA does not compel registering someone if certain minimum requirements are met,

(c) The Registrar may stay an application until after the determination of another application per section 7.1(l) of the MDA, incorporating section 37(2) of the *Administrative Tribunals Act,* and

(d) The Registrar must be satisfied that there is no public interest concern if the person were to be registered, before so registering the person: section 5 of the MDA.

[20] The MDA allows the review of an application to be registered as a motor dealer to be paused; but not indefinitely. An indefinite pause would amount to a refusal. Hong Wong's letter was specific as to why the pause was necessary and indicated when the application review would recommence.

(b) Does past conduct in section 5 of the MDA mean "proven" past conduct?

[21] Was it appropriate for Mr. Wong to consider the alleged past conduct in deciding to pause the application process of One West? The answer is, yes! "Past conduct" as noted in section 5 of the MDA is not limited to only "proven" past conduct. It may include allegations of past conduct.

[22] As noted in *Bell ExpressVu*, the starting point is to review the words under consideration within the context of the provision and the whole of the MDA's legislative scheme. To start, section 5 of the MDA says:

> 5 If the financial responsibility or past conduct of an applicant or person registered, or its officers or directors if the applicant or person registered is a corporation, is, in the opinion of the registrar, such that it would not be in the public interest for the applicant or person to be registered or continue to be registered, the registrar may,
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> (a) if the application is made under section 4, refuse to register, or refuse to renew registration, or
>
> (b) if a person is registered,
>
> > (i) cancel the registration, or
> >
> > (ii) suspend the registration for a period of time and subject to conditions the registrar considers necessary.
>
> [Underlining added]

[23] I note that the B.C. Legislature placed no limiting words before "past conduct". It is not "proven past conduct", it is not "alleged past conduct" it is not

"proven and/or alleged past conduct". So, the starting point is that "past conduct" means just that; conduct that occurred in the past. Past conduct does not exist in some nebulous state that only coalesces upon proof of its existence. Past conduct either occurred or it did not.

[24] The terms 'alleged' and 'proven' have a legal meaning and purpose for when we assign legal liability on someone for past conduct. We impose liability only when past conduct is proven by someone with legal authority to make findings of fact. A person is incarcerated for past conduct that constitutes a crime only once that past conduct is proven.[2] A person is legally liable to pay damages only if it is proven that their past conduct caused harm. Having a legal meaning, the Legislature could have included the word "proven" before "past conduct" if that was its intention. As noted by the Supreme Court of Canada:

> [40] Moreover, the term "costs", in legal parlance, has a well-understood meaning that is distinct from either compensation or expenses. It is a legal term of art because it consists of "words or expressions that have through usage by legal professionals acquired a distinct legal meaning": Sullivan, at p. 57. Costs usually mean some sort of compensation for legal expenses and services incurred in the course of litigation. <u>If Parliament intended to confer authority to order costs, it is difficult to understand why it did not use this very familiar and widely used legal term of art to implement that purpose.</u> As we shall see shortly, the legislative history of the statute also strongly supports the inference that this was not Parliament's intent.
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> [Underlining added]

- *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, [2011] 3 SCR 471, 2011 SCC 53

[25] The goal and objective of section 5 of the MDA, when read with the whole act, is to protect the public from potential future harm. Refusing someone a licence due to past conduct is not a sanction or a legal liability, in the same way that revoking a licence due to past conduct is not a sanction or a legal liability: *R. v. Wigglesworth*, [1987] 2 SCR 541, 1987 CanLII 41 (Supreme Court of Canada) at CanLII paragraph 23. Refusing a licence is an expression that the person does not meet the minimum standards required to operate in the motor vehicle sales industry; and in order to protect the public from potential future harm, they are refused access to the industry: *R. v. Wholesale Travel Group*, per Justice Cory.

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[2] Ignoring for the moment that we incarcerate people on allegations of a crime, called a charge, in certain circumstances to protect the public and ensure the person's attendance at trial.

[26] The Respondents argument that past conduct can only mean proven past conduct requires reading into section 5, the word 'proven'. Reading words into a provision is a tool of statutory construction which is only used if the provision is truly ambiguous and requires reading in to make the legislation function as intended: *Bell ExpressVu.* The term "past conduct" is not ambiguous. It means conduct that occurred in the past whether it has been proven by an adjudicator charged with proving facts, or it is alleged past conduct. The term "past conduct" in section 5 of the MDA can encompass both proven and alleged past conduct.

[27] This interpretation of "past conduct" encompassing both alleged and proven past conduct furthers the legislative objective of the MDA of protecting the public from potential future harm. Only considering "proven" past conduct narrows the information available to the registrar to assess public risk. For example, a plane is not ordered grounded only when it is proven to have a fault. The plane is grounded when it is suspected of having a fault until it can be inspected and proven safe for the public to use, regardless of the financial impact on the airline as public safety is paramount.

[28] The Registrar considering alleged past conduct in section 5 of the MDA is supported by reviewing other provisions of the MDA and of the *Business Practices and Consumer Protection Act*, S.B.C., 2004, c. 2 ("BPCPA"). The later Act forming an integral part of the legislative scheme anchored by the MDA: see section 8.1 of the MDA and section 29 of *the Motor Dealer Act Regulation*, B.C. Reg. 447/78.

(i) Section 5 of the MDA

[29] First, is the power of the Registrar to suspend a registered motor dealer based on alleged past conduct. This power is found in section 5 of the MDA. The same section where the power to refuse registration lies. Adopting the Respondents' contention that past conduct must be proven, the Registrar could only suspend a registration on proven past conduct. This would not further consumer protection. It would hinder it.

[30] In the case of *Best Import Auto*, the Registrar suspended the dealer as a *prima facie* case was made that the dealer was selling motor vehicles whose safety components did not comply with the standards set by *Motor Vehicle Act* and thus making the vehicles legally "not suitable for transportation" contrary to sections 219 and 222 of the *Motor Vehicle Act;* section 8.01 of the *Motor Vehicle Act Regulation*; and see sections 21(2)(e) and (f), section 22 and section 27(b) of the

Motor Dealer Act Regulation.[3] Best Import also failed to comply with orders from the Registrar to cease doing so.

[31] It was necessary to suspend Best Import's registration to protect the public from potential harm until all the facts were gathered and proven at a formal hearing. If the Registrar could only suspend based on proven past conduct, many consumers could have been exposed to purchasing potentially unsafe vehicles until the investigation was concluded and it was proven, as it ultimately was, that the dealer was selling non-compliant vehicles.[4] If past conduct only means proven past conduct, this diminishes the ability of the Registrar to protect consumers and the public from potential future harm through a suspension order and is contrary to the clear intention of the Legislature.

- See reasons for suspension in *Vehicle Sales Authority v. Best Import Auto Ltd.* (September 1, 2017, File 17-08-002, Registrar) with reasons to revoke registration in *Re: Best Import Auto Ltd. & Mahyar Anvari & Faridoon Zolfagharkhani* (November 28, 2017, Registrar), varied but not on this point *Best Import Auto Ltd. v Motor Dealer Council of British Columbia*, 2018 BCSC 834 (BC Supreme Court).
- Applying *Scott v. College of Massage Therapists of British Columbia*, 2016 BCCA 180 (BC Court of Appeal) requiring only a *prima facie* case to order a suspension to protect the public.

(ii) Compliance Orders under the MDA and the BPCPA

[32] Next, is the ability of the Registrar to issue a Compliance Order under the MDA or the BPCPA, by ordering someone not to breach those pieces of legislation only on being satisfied that they may. Section 26.02(1) of the MDA states:

> **Compliance orders**
>
> **26.02** (1) After giving a person an opportunity to be heard, the registrar may order the person to comply with this Act and the regulations <u>if satisfied that the person</u> is contravening, <u>is about to contravene</u> or has contravened this Act or the regulations.
>
> [underlining added]

[33] The term "is about to contravene" is anticipatory language. No actual contravention, or past conduct, has occurred. Certainly, the basis of being satisfied

[3] Colloquially, such vehicles are referred to as being "unsafe".

[4] The dealer's registration was revoked.

that a person is about to contravene the legislation is based on past conduct or evidence to suggest a certain course of conduct is about to occur. But the provision does not require "proof" that a breach will occur. This shows a legislative intent that the Registrar intervene to protect the public in anticipation of some type of misconduct.

[34] See the equivalent provision in section 155 of the BPCPA, which the Registrar may also apply.

(iii) Registrar's Order to Freeze Dealer Assets/Property

[35] Another provision that shows the Legislature's intent that the Registrar act to protect the public on allegations of past conduct is section 27 of the MDA. This provision empowers the Registrar to order:

(a) a person holding the property of another person under investigation, or
(b) the motor dealer under investigation,

to refrain from dealing with the property of the motor dealer.

[36] The Registrar may make such an order once an investigation has begun and if the Registrar <u>believes</u> such an order is necessary to protect individuals dealing with the person. The past conduct under investigation requiring such an order need not be proven.

[37] See the equivalent provision in section 159 of the BPCPA, which the Registrar may also apply.

(iv) Applying to the Court to appoint a Receiver or a Trustee

[38] Section 28 of the MDA allows the Registrar to apply to the BC Supreme Court for the appointment of a receiver, receiver-manager or trustee of a person, if an investigation of that person has begun. There need not be proven facts, but the court must be satisfied that making such an order is in the best interests of:

(a) the creditors of that person,
(b) persons whose property is in the possession of or under the control of that person, or
(c) consumers.

[39] The application can be made without notice to the person named in the investigation order and who will be subject of the court order, under certain conditions: section 28(4) of the MDA. This provision empowers the Registrar to enlist the aid of the court to protect the public interest while an investigation is ongoing, and a *prima facie* case is established that such a court order is appropriate. Again, only an investigation need be started, and all the facts need not be proven.

[40] See the equivalent provision in section 158 of the BPCPA, which the Registrar may apply.

[41] A review of these other provisions of the MDA and the BPCPA shows a clear legislative intention that the Registrar act to protect the public and the public interest on mere allegations of past conduct or a reasonable belief of potential harmful future conduct. This further informs my opinion that the term "past conduct" in section 5 of the MDA is not ambiguous requiring reading in the limiting word of "proven" before "past conduct". Both proven and alleged past conduct can be reviewed and acted on by the Registrar under the MDA. Of course, acting on alleged past conduct must be done carefully and where satisfied that acting on the alleged past conduct is necessary to protect the public interest: *Best Import*, *supra* and *Pioneer Garage Ltd. dba Greenlight Auto Sales et al, supra.*

(c) Application to the letter of Hong Wong of August 7, 2019

[42] When the letter of Hong Wong of August 7, 2019 is reviewed as a whole, consistent with the above interpretation of "past conduct," and in considering the prior decision in *Pioneer Garage Ltd. dba Greenlight Auto Sales et al (supra);* his decision is reasonable. Hong Wong considered actual past conduct that resulted in some compliance action coupled with what is described as allegations of misconduct of a very serious nature in arriving at his decision. In my view, Mr. Wong was reasonable in balancing the Respondents' desire to have One West registered as a motor dealer with protecting the public interest. Hong Wong did not say an outright no, but simply that he needed the alleged past conduct to be addressed (proven or refuted) before making a final decision that was in the public interest.

Decision

[43] For clarity, I would agree that the application of One West Auto Ltd. should be stayed until the complaint against Surrey Mitsubishi is addressed for the reasons cited by Hong Wong. There is proven past conduct in the form of the prior compliance action along with alleged past conduct that is to be reviewed, that if proven, would be a concern to the public interest.

[44] The application of One West Auto Ltd. for registration as a motor dealer is stayed pending the final resolution of the allegations against Surrey Mitsubishi in case file 18-12-197, hearing file 19-05-002. Whether One West Auto Ltd. will be registered as a motor dealer will depend on the facts that exist at the time its application again comes under review.

Review

[45] There being no refusal to issue a registration, there is no "determination" as that term is defined in section 26.11 of the MDA. Therefore, a request to reconsider this decision under the MDA is not available.

[46] This decision may be reviewed by petitioning the B.C. Supreme Court for judicial review pursuant to the *Judicial Review Procedure Act*. Such a petition is to be filed with that court within 60 days of the date of this decision: section 7.1(t) of the MDA.

"original is signed"

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Ian Christman, Registrar