

## DISCIPLINE DECISION

IN THE MATTER OF A DISCIPLINE HEARING HELD PURSUANT TO THE MOTOR  
VEHICLE DEALERS ACT 2002, S.O. 2002, C.30, Sch. B

BETWEEN:

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

- AND -

MAPLE LEAF AUTOS INC.

- AND -

MUSHTAQ KHAN

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**Date of Hearing:** February 3, 2015

**Date of Decision:** February 18, 2015

**Preliminary Matter:**

At the commencement of the hearing, counsel for the Registrar sought the panel's permission to withdraw the allegation set out at paragraph 5 of the Notice of Complaint. The Registrant did not oppose the request. As such, the panel granted the Registrar permission to withdraw the allegation as requested.

**Plea:**

Although the Registrant, Mr. Khan, did not dispute the facts as set out in the Notice of Complaint, he denied that he had not provided his customers with total disclosure.

The Chair noting that Mr. Khan was unrepresented inquired as to whether or not Mr. Khan was prepared to proceed without representation. Mr. Khan responded that he wished to proceed. The Chair briefly explained the hearing process to Mr. Khan as well as the onus of proof on a balance of probabilities being OMVIC's to meet.

**Findings:**

Breach of Section 42(19) of Ontario Regulation 333/08 and Sections 7 and 9 of the Code of Ethics as set out in the Ontario Regulation 332/08





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### Order:

1. Mushtaq Khan is ordered to pay a fine in the amount of \$4,500.00. This amount shall be paid in three installments. The first installment of \$2,000.00 is due within 30 days of the date of the Discipline Committee Order with the remaining 2 payments of \$1,250.00 each due within 90 days of the previous payment. All payments must be received within a one year period following the date of this order.
2. Mushtaq Khan is ordered to attend in person and successfully re-take, the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order. The Dealer is responsible for all cost associated with the course.

### Reasons for Decision

#### Introduction

This matter proceeded before a Panel of the Discipline Committee pursuant to Section 17 of the Motor Vehicle Dealers Act, 2002.

The Registrar was represented by counsel, Michael Rusek, and Andrea Korth attended on behalf of OMVIC. The Registrant Mr. Mushtaq Khan was present and self represented. Mr. Khan appeared on behalf of himself and his dealership known as Maple Leaf Autos Inc. Together they are the Registrants.

The Panel consisted of Debra Mattina (Chair), Wally Pietraszko (Vice-Chair), and Tony Rizzuto (Vice-Chair). Luisa Ritacca attended as Independent Legal Counsel for the Panel.

The following documents were entered as exhibits:

- The Notice of Complaint as Exhibit #1.
- The ONBIS Corporate Inquiry Report as Exhibit #2
- Licence Appeal Tribunal Pre-Hearing Order as Exhibit #3
- OMVIC System notes as Exhibit #4
- Terms and Conditions of Registration as Exhibit #5
- 2007 Honda Accord EX BIN: 1HGCM5767A809074 as Exhibit #6
- 2005 Dodge Caravan VIN: 1D4GP25R65B268143 as Exhibit #7
- 2001 Toyota Corolla VIN 2T1BR12E41C847687 as Exhibit #8
- 2004 Toyota Camry VIN 4T1BF32K54U574675 as Exhibit #9
- OMVIC New Dealer Report as Exhibit #10
- Undated Letter by Alkarim Haji as Exhibit #11
- May 08, 2013 Letter from Keisha Gordon as Exhibit #12
- Canada Post Tracking Number 0104130002293249 as Exhibit #13
- Canada Post Tracking Number 0104130002293256 as Exhibit #14



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### **Notice of Complaint**

The allegations against the Registrants were set out in the Notice of Complaint, marked as Exhibit 1. The allegations were as follows:

1. Khan Trading Corporation o/a Maple Leaf Autos ("Khan Trading") was registered as a motor vehicle dealer from in or around May 2012 to in or around May 2013. Maple Leaf Autos Inc (the "Dealer") was first registered as a motor vehicle dealer in or around May 2013. Mushtaq Khan ("Khan") was first registered as a motor vehicle salesperson in or around May 2012. At all material times, Khan was the sole officer and director of Khan Trading and the Dealer.
2. On or about May 9, 2012, the License Appeal Tribunal ("LAT") issued a Consent Order pursuant to a negotiated resolution regarding the proposal to refuse the registration of Khan Trading and Khan, attached hereto as Schedule "A". The Order required:
  - a. Khan Trading and Khan comply with OMVIC's Code of Ethics (Ontario Regulation 332/08) and Standards of Business Practice, 2010 as may be amended from time to time.
  - b. [Khan Trading] agrees [it] is under a positive obligation to disclose, in writing on the bill of sale, all material facts about the vehicles it sells or leases to its customers, whether or not [Khan Trading] agrees with the disclosure and whether or not the vehicle has been branded through the Ministry of Transportation. Material facts include but are not limited to, disclosure of salvage, previous salvage, accidented and repaired, frame damage, theft recovery, unibody damage, previous taxi cab, previous police car, previous daily rental, insurance write-off and any other fact, which, in the Registrar's opinion, may affect one's decision to purchase or lease the vehicle. In the case of damaged vehicles, [Khan Trading] further agrees to disclose as much detail as possible with respect to the nature and severity of the damage. [Khan Trading] agrees to make reasonable efforts to research the history of all [of Khan Trading's] vehicles prior to sale to ensure all material facts are disclosed.
3. On or about July 6, 2012, a representative of the Registrar reviewed with Khan, on behalf of Khan Trading, the Standards of Business Practice, as well as Khan Trading's terms and conditions of registration.
4. On or about May 7, 2013, Khan executed terms and conditions of registration on behalf of the Dealer, attached hereto as Schedule B. As per condition 6, the Dealer agreed to comply with Ontario Regulation 332/08, as well as the Code of Ethics. As per condition 24, the Dealer agreed it was under a positive obligation to disclose in writing on the bill of sale all material facts about the vehicles it sells.
5. Withdrawn
6. On or about May 29, 2013, Khan, on behalf of the Dealer, purchased a 2005 Dodge Caravan (VIN 1D4GP25R65B268143), declared as having a \$5,364 accident repair history. On or about July 21, 2013, Khan sold this vehicle on behalf of the Dealer without providing written disclosure disclosing the vehicle's accident repair history. This is contrary to sub section 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.
7. On or about July 29, 2013, Khan, on behalf of the Dealer, purchased a 2001 Toyota Corolla (VIN 2T1BR12E41C847687), declared as having a \$5,601 accident repair

history. On or about October 18, 2013, Khan sold this vehicle on behalf of the Dealer without disclosing the vehicle's accident repair history. This is contrary to sub section 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

8. On or about September 10, 2013, Khan, on behalf of the Dealer, purchased a 2004 Toyota Camry (VIN 4T1BF32K54U574675). This vehicle has a \$4,921 and \$3,534 accident repair histories. On or about September 20, 2013, Khan sold this vehicle on behalf of the Dealer without disclosing either incident involved in the vehicle's accident repair history. This is contrary to sub section 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

### Evidence:

Mr. Khan did not vigorously contest the facts as set out in the Notice of Complaint. He readily acknowledged that he did not provide his customers with written disclosure at the time of the purchases described in the Notice of Complaint. However, Mr. Khan maintained that his customers were aware of the vehicles' accident history, as he advised them of such orally and at the time of the purchase.

OMVIC called two witnesses, Andrea Korth, Business Standards Coordinator and Louise Cohn, OMVIC Inspector, as well as submitted 10 exhibits. Mr. Khan testified on his own behalf and entered exhibits 11 through 14 in support of his testimony.

Witness 1: Ms. Korth took the panel through Exhibit 2 which is the ONBIS corporate inquiry document for Maple Leaf Auto. It established that the dealership was incorporated on March 14, 2013. It is registered as corporation number 002365127 and confirmed the business address of Maple Leaf Auto Inc. It also established Mushtaq Khan as the Director. These records established that prior to Maple Leaf Auto Inc. Mr. Khan operated a corporation known as Khan Trading Corporation.

At Exhibit 3, Ms. Korth reviewed a Licence Appeal Tribunal ("LAT") pre-hearing order between Khan Trading Corporation operating as Maple Leaf Autos Inc. and OMVIC dated May 9, 2012, which finally disposed of a Notice of Proposal to Refuse Registration by way of an agreement to terms and conditions on the Applicants' registration. Those terms and conditions are set out in Exhibit 3. In particular, Ms. Korth drew the panel's attention to paragraph 20, which sets out obligations with respect to disclosure requirements

In reviewing Exhibit 5, Ms. Korth explained that this document is provided to all new dealers, including Mr. Khan. In fact, Exhibit 5 is signed and initialled by Mr. Khan confirming his receipt and review of same. Ms. Korth took the panel to paragraph 6 which states: "*The Registrant will comply with Ontario Regulation 332/08 under the Motor Vehicle Dealers Act, 2002 and the Code of Ethics.*"

The panel's attention was then taken to paragraph 26 which states "*The Registrant agrees that it is under a positive obligation to disclose in writing on the bill of sale all material facts about the vehicles it sells or leases to its customers, whether or not the Registrant agrees with the disclosure and whether or not the vehicle has been branded through the Ministry of*

*Transportation. Material facts include but are not limited to, disclosure of salvage, previous, salvage, accidented and repaired, frame damage, theft recovery, unibody damage, previous taxi cab, previous police car, previous daily rental, previous limousines, emergency service vehicles, insurance write-off and any other material fact which, in the Registrars opinion, may affect one's decision to purchase or lease the vehicle. In the case of damaged vehicles, the Registrant further agrees to disclose as much detail as possible with respect to the nature and severity of the damage. The registrant agrees to make reasonable efforts to research the history of all the Registrants vehicles prior to sale to ensure all material facts are disclosed."*

Ms. Korth also drew the panel's attention to paragraph 27, which reads: "*The Registrant agrees that it is under a positive obligation to disclose in writing on the bill of sale, the distance travelled of motor vehicles sold or leased in accordance with the Motor Vehicle Dealers Act, 2002 and Regulations*" And finally she brought the panels' attention to paragraph 30 which states: "*Without limiting the generality of the foregoing, the Registrant will ensure that all trades in motor vehicle are completed in accordance with sections 39, 40, 41, 42, and 43 of the Ontario Regulation 33/8 where applicable and that any dealer to dealer trades meet the disclosure requirements set out in section 4 of the Code of Ethics."*

For the purposes of this hearing section 42 is the relevant section and in particular subsection 19 which reads:

*42 (19) If the total costs of repairs to fix the damage caused to the motor vehicle by an incident exceed \$3,000, a statement to that effect and if the registered motor vehicle dealer knew the total costs, a statement of the total costs.*

Ms. Korth stated that Mr. Khan successfully completed the OMVIC certification course in order to qualify to operate as a new dealer. She identified that there were a number of resources available to the dealer if he was unsure of his obligations. They included but were not limited to on line material, new dealer inspection and to contact OMVIC directly to make an inquiry. Ms. Korth testified that dealer communication with OMVIC is recorded, but she is unaware of any query contact from this dealer.

Mr. Khan had no cross examination questions for Ms. Korth. When advised by the panel Chair that this would be his only opportunity to question the witness and that he may wish to reconsider his decision not to question her, Mr. Khan stated that he agreed with the information Ms. Korth provided.

Witness 2: Louise Cohn who has been an inspector with OMVIC since 1997 testified that she conducts both scheduled and unscheduled dealer inspections. She stated that she was familiar with Maple Leaf Autos and had met with Mr. Khan during a New Dealer inspection.

Ms. Cohn reviewed for the panel the notes entered into OMVICs' information system by Chad Puddicombe regarding an inspection he performed on July 6, 2012. At the time Maple Leaf Autos was operating as a wholesale business. Mr. Puddicombe performed a new dealer inspection with regard to the wholesale business. During that inspection Mr. Puddicombe reviewed terms and conditions, specific requirements for storing books and records, material facts disclosure, advertising, the Motor Vehicle Dealers Act and a host of other obligations with Mr. Khan. Ms. Cohn testified that Mr. Puddicombe no longer works for OMVIC, but she assured the panel that once Mr. Puddicombe input his report into the information system, other

employees are unable to alter or delete the document.

Ms. Cohn completed a second new dealership inspection on November 11, 2013 as a result of Maple Leaf Auto Inc. changing from wholesale car sales to a retail dealership. Ms. Cohn provided Mr. Khan with a written report of her findings. Amongst other things, Ms. Cohn reviewed the dealer's obligation for disclosure under section 42, books and records requirements, garage register requirements and terms and conditions. Ms. Cohn testified that she reviewed 18 deals in her inspection.

Ms. Cohn's inspection found that on the vehicles cited in the Notice of Complaint at paragraphs 6, 7, and 8 those being, the 2005 Dodge Caravan (VIN 1D4GP25R65B268143), the 2001 Toyota Corolla (VIN 2T1BR12E41C847687) and the 2004 Toyota Camry (VIN 4T1BF32K54U574675), while the auction company acting on behalf of wholesale dealership provided disclosure statements on page 2 of the bill of sale, the second page of each bill of sale was missing from Mr. Khan's records. She also found that the corresponding Car Proofs which were provided to Maple Leaf Auto Inc. by the Auction companies were also missing from Mr. Khan's records. Ms. Cohn reviewed the Ministry of Transportation Ontario Inquiry findings on each of the three vehicles. The Ministry documents confirmed the change of ownership going directly from the wholesaler to Maple Leaf Autos Inc. and subsequently to the private consumer. Ms. Cohn also ran Car Proofs on each of the vehicles. She found that in the each case the vehicles had sustained damages in excess of three thousand dollars.

In the case of the 2005 Dodge Caravan (VIN 1D4GP25R65B268143) an incident occurred on June 30, 2010 in Brampton, Ontario resulting in a collision claim of \$5,264.00. (Documentation located at Exhibit 8)

In the case of the 2001 Toyota Corolla (VIN 2T1BR12E41C847687) and incident occurred in Mississauga, Ontario on May 16, 2007 resulting in a collision claim of \$5,914.00. (Documentation located at Exhibit 9)

In the case of the 2004 Toyota Camry (VIN 4T1BF32K54U574675) an incident occurred on May 3, 2010 resulting in a collision claim in the amount of \$4,921.00, and a further incident which occurred on November 9, 2011 which resulted in damage to the vehicle in the amount of \$3,534.00.

None of these damages were disclosed in writing by Mr. Khan or anyone from the dealership on the bill of sale.

In cross examination, Mr. Khan had only one question for Ms. Cohn and that was with respect to the requirement to maintain records. Ms. Cohn directed Mr. Khan to section 53 of the O. Reg. 333/08.

Once again Mr. Khan did not dispute the testimony of Ms. Cohn.

Witness 3: Mr. Khan testified that he made a mistake. He stated that he never intended to hide anything from his customers. Mr. Khan said that since the inspection he has included the Car Proof with the bill of sale to all of his customers. Mr. Khan said that in good faith he forgot to write the information on the bill of sale. With respect to the three vehicles that are the subject matter of this hearing, Mr. Khan stated that he contacted his customers by mail after the



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inspection and provided them with the Car Proof on each of the respective vehicles. Only two of the customers responded. Mr. Khan submitted the letters which he maintains he received from these two customers regarding the vehicles in question. The Chair noted at the hearing that one of the two letters (Exhibit 12) related to the allegation at paragraph 5 which was withdrawn. The other letter (Exhibit 11) is undated but speaks to the 2004 Toyota Camry (VIN 4T1BF32K54U574675). The letter stated in part, "The dealer disclosed the vehicle history and provided the Car Proof to me. The dealer provided good customer service and I am happy with the car."

During cross examination, Mr. Khan confirmed that the damage amount to the car does not appear on the letter from his customer. He also clarified for the panel that he provided the Car Proof report to his customers after the OMVIC inspection was done not when the car was sold.

### **Decision of the Panel:**

The panel does not accept that Mr. Khan simply made a mistake. The panel finds that Mr. Khan o/a Maple Leaf Autos Inc. breached of Section 42(19) of Ontario Regulation 333/08 and Sections 7 and 9 of the Code of Ethics, as set out in the Ontario Regulation 332/08

### **Reasons for Decision:**

The panel finds that Mr. Khan must have been well aware of his obligations under the Regulations. He has been the owner of two businesses regulated by OMVIC. Each time Mr. Khan registered he was required to review the regulations. As a wholesale dealer, Mr. Puddicombe met with Mr. Khan and reviewed his obligations under the MVDA and the Ontario Regulations at the first New Dealer Inspection. When Mr. Khan applied to be registered as a retail dealer, Mr. Khan settled a Notice of Proposal to Refuse Registration by agreeing to terms and conditions applied to his registration. On May 9, 2012, he signed and initialled that agreement which sets out the conditions on his registration. Amongst those conditions are the requirements to maintain documents for each vehicle and to make full disclosure of damage history in writing on the bill of sale.

Mr. Khan's business, Maple Leaf Autos Inc., was registered with the Ministry of Transportation on March 24, 2013. Mr. Khan was required to successfully complete the OMVIC Certification Course at Georgian College in order to become registered with OMVIC. The certification course teaches and tests the applicant's knowledge of the MVDA 2002 and the associated regulations. Mr. Khan would have been required to pass this course prior to opening his dealership.

On May 7, 2013, Mr. Khan signed Terms and Conditions as a new dealer pursuant to Subsection 6(2) of the Motor Vehicle Dealers Act, 2002. On July 21, 2013, just over two months later, he sold the 2005 Dodge Caravan (VIN 1D4GP25R65B268143) without disclosing in writing on the bill of sale the damage history of the vehicle. Less than a month later on August 12, 2013, he sold the 2004 Toyota Camry (VIN 4T1BF32K54U574675), again without disclosing in writing on the bill of sale the accident history associated with this vehicle. Yet again, on October 18, 2013, Mr. Khan sold the 2001 Toyota Corolla (VIN 2T1BR12E41C847687) without disclosing in writing on the bill of sale the vehicles' accident history.



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The panel does not believe that after completing the process of mediation to resolve a proposal to refuse him registration, signing multiple documents throughout the process of registration confirming his obligation to abide by the regulations and with having completed the OMVIC certification course that Mr. Khan would simply forget one of the most basic obligations, that being disclosure.

The panel was suspicious as to why the second page of the Auction receipts which according to Ms. Cohn's evidence, were missing from Mr. Khans' records for each of these vehicles. Additionally the panel heard that each of these vehicles were sold by the respective Auction companies with a Car Proof report included. None of the Car Proofs were in the documents reviewed for these vehicles despite Ms. Cohn asking Mr. Khan for all documents relating to them.

Mr. Khan's position that he did not mean to breach the regulations is indefensible. It's clear he had to know the regulations but chose not to abide by them until Ms. Cohn discovered the omissions during the inspection she performed. Afterward, Mr. Khan attempted to mitigate the situation by providing his customers with the Car Proof. Mr. Khan appears to want the panel to believe that no harm was done and that as soon as he realized his "mistake" he took steps to inform his customers. Clearly, the intent of the legislation is consumer protection, and as such the dealer is required to provide disclosure before the customer purchases the vehicle not after. Disclosure is intended to provide the purchaser with all material facts which might influence the decision to purchase. Undoubtedly damage or accident history is a material fact that is relevant to the decision of whether or not to purchase. Mr. Khan knows or ought to be well aware of that.

Even if the panel, were to agree, which it does not, that Mr. Khan did not intend to violate the regulations, Mr. Khan is still in breach of them. As Mr. Rusek pointed out in his submissions, the Regulation does not require an element of intent. If this were an isolated incident and the records showed that the dealer's usual practice was to disclose damages in writing on the bill of sale, the panel might be inclined to accept that this was simply an error and be lenient. However, this is not an isolated case. The panel believes the actions of Mr. Khan were deliberate and calculated to give him an advantage over dealers selling similar cars who disclose the damage history. The panel therefore finds that Mr. Khan deliberately breached section 42(19) in order to obtain a competitive advantage in the industry.

Mr. Khan also breached the code of Ethics at section 7 and 9.

Section 7. of O. Reg. 332/08 at subsection (1) states: *A registrant shall ensure that all documents used by the registrant in the course of a trade in a motor vehicle are current and comply with the law.* Obviously, failing to disclose material facts in writing on the bill of sale is not in compliance with the law.

Section 9 of O. Reg. 332/08 at subsections 1, 2 and 3 state the following:

*(1) In carrying on business, a registrant shall not engage in any act or omission that, having regard to all of the circumstances, would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming of a registrant.*

*(2) In carrying on a business, a registrant shall act with honesty, integrity and fairness.*



*(3) A registrant shall use the registrant's best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in a motor vehicle.*

The panel finds that the acts and omissions of Mr. Khan clearly reflect less than his best efforts to prevent error or misrepresentation. They would very much be considered as dishonourable, unprofessional and unbecoming of a registrant. It is a certainty that Mr. Khan's actions fail to demonstrate the traits of honesty, integrity, and fairness.

### **Submissions on Penalty**

Mr. Rusek submitted 2 cases for the panel to consider in their deliberations on penalty. They are both recent decisions of Discipline Committees of The Ontario Motor Vehicle Industry Council. The first is REGISTRAR, MOTOR VEHICLE DEALERS ACT, 2002, and BRAMPTON AUTO SERVICE & USED CARS INC. and WASIF MIR and TAYYEB MIR and ASAD MIR. This decision is based on an Agreed Statement of Fact and a Joint Submission on Penalty. This case Mr. Rusek submitted, involved 4 vehicles in total and the facts represent similar circumstances. The fine was set at \$6,000.00.

The second is REGISTRAR, MOTOR VEHICLE DEALERS ACT, 2002 and BENNETT CHEVROLET CADILLAC BUICK GMC LTD o/a BENNETT GM and DAVID BENNETT. This decision is also based on an Agreed Statement of Facts and a Joint Submission on Penalty. This case involved 4 vehicles, where the bills of sale failed to include written disclosure. Mr. Rusek submitted that it falls within the spectrum of previous panel decisions. The fine in this case was set at \$7,500.00

Both cases involve breaches of section 42 and registrants who failed to disclose material facts. And both involve breaches of Section 7 and 9 of the Code of Ethics. The Bennett decision also includes a finding of an unregistered salesperson which is not reflective of the facts before this panel.

The panel considered both cases as a guide to the range of fines in similar cases.

Mr. Rusek submitted that the dealer has certain obligations under the law and that whether or not Mr. Khan intended to deceive is not the issue before the panel. It is the Registrar's position that the law does not require him to prove Mr. Khan's intent but rather just to prove his actions. Mr. Rusek submitted that the panel may consider intent as a mitigating factor but it is otherwise irrelevant. Mr. Rusek stated that Mr. Khan did not disclose the accident repairs with respect to each of the vehicles which is of itself a breach of Section 42 of the Regulation 333/08 made under the Motor Vehicle Dealers Act, 2002. He further submits that this failure to disclose constitutes a breach of Sections 7 and 9 of the Code of Ethics as set out in Regulation 332/08 made under the Motor Vehicle Dealers Act, 2002.

Mr. Rusek invited the panel to look at sections 7 and 9 of the Code of Ethics. It is the Registrar's position that the panel should give little weight to the letter submitted by Mr. Khan. The letter does not mention the damage amount nor is it dated. He made note that Mr. Khan did not submit a copy of the letter which he sent to his customers which in his opinion would have been more helpful. Mr. Rusek stated there were opportunities for Mr. Khan to get help or information if he need it, but there is no evidence he sought help. Mr. Rusek pointed the panel to the opportunities where Mr. Khan was exposed to the information required to lawfully operate

his business. He stated the first opportunity was with the Licence Appeal Tribunal consent order. The second was when he registered as a new dealer when he was told his obligations and how to meet them. And the third opportunity was when he had the new dealer inspection by Chad Puddicombe.

Mr. Rusek submitted that the Registrar asks the panel to impose a fine of \$6,000.00 and that the panel order Mr. Khan to retake the OMVIC Certification Course at his own expense and that he successfully complete it within 6 months of the date of the order.

Mr. Rusek submitted that \$6,000.00 represented the lower end of the fine spectrum and that this amount represents \$2,000.00 per allegation. He submits that this penalty provides specific deterrence to Mr. Khan not just a cost of doing business. Mr. Rusek stated that he recognized that Maple Leaf Autos Inc. is not a high volume dealership but the penalty should hurt a little bit. Mr. Rusek believes the fine is also a general deterrent to other dealers and will aid in preventing harm to consumers. He stated that enforcing disclosure promotes dealer fairness and prevents the consumer from being blind to damages.

Mr. Khan in his submissions reiterated his position that he did not intend to deceive. He stated that the laws protect the consumers but they should protect the dealers too. Mr. Khan stated he agrees that he did not disclose the information in writing but he did disclose the information. Mr. Khan submitted that his intentions were not bad as he did not intend to hide anything.

With respect to the two previous cases submitted by Mr. Rusek it is the submission of Mr. Khan that the cases do not represent the same circumstances. Mr. Khan stated that after hearing from OMVIC he sent letters to his customers to disclose the damage information. He submitted that he didn't know this situation would come up because he believes every customer knows about Car Proof. Mr. Khan noted for the panel that the Bennett decision included a finding of an unregistered salesperson and as such is not on point with the allegations against Mr. Khan. Mr. Khan agreed he did not give full disclosure but stated that his mistake was not harsh. He stated that he knew he made a mistake but not a serious mistake. Mr. Khan is agreeable to re-taking the OMVIC Certification Course but indicated that he is not in a position to deal with a monetary component of a penalty.

### **Decision on Penalty**

The panel in its deliberations on penalty noted that the two previous decisions both related to allegations regarding four vehicles. In the case of the Bennett decision there was the additional allegation of an unregistered salesperson. While this panel is not privy to what informed the agreement on penalty, the panel surmised that in the case of Brampton Auto Service & Sales Inc. a \$6,000.00 fine applied to four findings of non-disclosure represented \$1,500.00 per finding. In the Bennett decision there were five findings, four of non-disclosure and one of having an unregistered salesperson. If the panel applies the same logic, five findings totalling \$7,500.00 represents \$1,500.00 per finding.

While Mr. Rusek submitted that \$2,000.00 per finding is appropriate, the panel notes it is significantly higher than the other two decisions. While initially the allegations set out in the case against Mr. Khan related to four allegations, and the penalty requested by Mr. Rusek fell

within the range, once the allegation at paragraph 5 of the Notice of Complaint was withdrawn, only three allegations remained and the proportionate penalty escalated.

The panel is satisfied that \$1,500.00 per finding for a total of \$4,500.00 is significant enough to act as a specific deterrent to Mr. Khan, while still sending a message to the industry that breaches of the regulations will not be tolerated. Levying fines significant enough to make dealers take notice also assists in protecting the consumer because dealers recognize the consequences of failing to meet their obligations. While the panel recognizes they are not bound by the decisions of previous discipline committees the panel is satisfied that a fine of \$4,500.00 is fair to the circumstances and in line with the range of fines being applied under similar circumstances.

#### **Reasons for Penalty:**

The panel did not accept Mr. Khan's explanation that he made a mistake and that the mistake was not a harsh one. It was clear to the panel that Mr. Khan while admitting he made a mistake did not take ownership of the consequences. His statement that everyone knows about Car Proof implied to the panel that it was his opinion that the consumer should inform themselves of the vehicles history. That sentiment is completely contrary to the purpose of consumer protection. The panel does not believe that Mr. Khan simply forgot his obligations to disclose, but rather chose to do so to avoid informing his customers of material facts which might deter them from buying his vehicles.

Once again the panel noted that Mr. Khan took and passed the OMVIC certification course and he reviewed and signed OMVIC's terms and conditions at least twice. The Panel cannot accept that he forgot his obligation to disclose.

The Panel agrees with Mr. Rusek's submission that even should the panel determine there was no intention to deceive Mr. Khan is not released from his responsibility. It is Mr. Khan's responsibility to recognize his obligations and practice them in all aspects of his business.

The Panel determined that the penalty must be significant.

The Panel also considered that Mr. Khan appeared not to accept that he did anything that was really wrong. His attitude that it was just a mistake with no real harm done is unacceptable. The Panel is concerned that Mr. Khan appears still to not accept nor appreciate responsibility for his failure to comply to the regulations

The Panel is aware that Mr. Khan's dealership is not a high volume business. The panel decided it was appropriate to set up instalments to facilitate payment of the fine.

**Ontario Motor Vehicle Industry Council  
Discipline Panel**

  
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**Debra Mattina, Chair**  
**Tony Rizzuto, Vice Chair**  
**Wally Pietraszko, Vice Chair**