

**DISCIPLINE COMMITTEE OF THE  
ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL**

PANEL:	Caroline Brett, Chair	Public Member
	Jon Lemaire	Registrant
	Achilles Pelitis	Registrant

**DECISION AND REASONS**

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

B E T W E E N :

Appearances<sup>1</sup>:

<b>REGISTRAR, MOTOR VEHICLE DEALERS ACT, 2002</b>	)	Vlad Bosis
	)	for the Registrar
- and -	)	
<b>STEPHEN FITZGERALD MOTORS LTD.</b>	)	
<b>and</b>	)	Jason Varrin, agent,
	)	for the Registrants Stephen Fitzgerald and Stephen Fitzgerald Motors Ltd.
	)	Vern Potvin, self-represented
<b>STEPHEN FITZGERALD</b>	)	
<b>and</b>	)	
<b>VERN POTVIN</b>	)	Hearing Date: March 8, 2022
	)	Date of Decision: March 8, 2022
	)	

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<sup>1</sup> Independent legal counsel to the Panel is Mr. Edward Marrocco.

## FINDINGS

- Breach of section 6 of the Code of Ethics by each of Stephen Fitzgerald Motors Ltd., Stephen Fitzgerald, and Vern Potvin
- Breach of section 9 of the Code of Ethics by each of Stephen Fitzgerald Motors Ltd., Stephen Fitzgerald, and Vern Potvin
- Breach of section 4 of the Code of Ethics by Stephen Fitzgerald Motors Ltd.

## ORDER

1. The Dealer shall pay a fine in the amount of \$5,000 no later than April 30, 2022.
2. Fitzgerald shall pay a fine in the amount of \$500 no later than April 30, 2022.
3. Potvin shall pay a fine in the amount of \$500 no later than April 30, 2022.
4. Potvin shall successfully complete the MVDA Key Elements course, no later than May 31, 2022.
5. The Dealer shall offer all current and future sales staff the opportunity to complete the Georgian College Automotive Certification course (the "Course"). Current sales staff will be offered the Course no later than December 31, 2022. Future sales staff will be offered the Course within 90 days of being retained in this capacity. The Dealer will incur all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the Course after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
6. The Dealer, Fitzgerald, and Potvin shall comply with the Act and Standards of Business Practice, as may be amended from time to time.

## DECISION AND REASONS

### Introduction

This matter proceeded by videoconference before a panel of the Discipline Committee (the "Panel") of the Ontario Motor Vehicle Industry Council ("OMVIC") pursuant to section 17 of the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Schedule B ("MVDA"). The matter was convened virtually with the consent of the parties.

### Allegations

The allegations against the respondents are set out in a Notice of Complaint, dated August 25, 2021 (the "Notice of Complaint") which is Exhibit 1 on the hearing and the relevant portions are as follows:

#### Background

1. Stephen Fitzgerald Motors Ltd (the "Dealer") was first registered as a motor vehicle dealer since in or around September 1997.
2. Stephen Fitzgerald ("Fitzgerald") was first registered as a motor vehicle salesperson in or around September 1997. At all material times, Fitzgerald was the sole officer, as well as the person in charge of the day-to-day activities, of the Dealer.
3. Vern Potvin ("Potvin") was first registered as a motor vehicle salesperson in or around August 7, 2015. Since on or about January 1, 2017, Potvin has been employed in this capacity by the Dealer.
4. On or about June 17, 2015, Potvin successfully completed the Automotive Certification course (the "Course"). Included in the Course syllabus is Dealers' all-in pricing and Code of Ethics obligations.

#### OMVIC registrant education re: all-in pricing

5. Since the Act was proclaimed, OMVIC has issued various publications and webinars reminding dealers of their obligation to advertise all-inclusive vehicle prices ("all-in pricing"). The dates of said publications are attached hereto as Schedule A. All of these publications continue to be available on OMVIC's website.

#### Prior Discipline Committee Order

6. On or about September 10, 2018, the Registrar issued a Notice of Complaint ("Notice") against the Dealer and Fitzgerald for failing to comply with the all-in pricing regulation.
7. On or about April 2, 2019, the Discipline Committee issued an Order pursuant to a negotiated resolution of the above referenced Notice.

8. Per condition 2 of the Order, Fitzgerald was ordered to successfully complete the Course no later than June 21, 2019.
9. On or about October 23, 2019, Fitzgerald successfully completed the Course.
10. Per condition 4 of the Order, the Dealer was ordered to ensure that all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar (the "Webinar").
11. On or about March 22, 2019, the Dealer provided confirmation that all staff, including Potvin, had reviewed the Webinar.

Dealer's current non-compliance

12. On or about July 8, 2021, OMVIC investigators made inquiries about a 2017 Nissan Frontier (Stock #20-185C), while posing as members of the public. This vehicle was advertised with a selling price of \$29,995 exclusive of tax and licensing fees.
13. Potvin, on behalf of the Dealer, advised the OMVIC investigators that the above referenced advertised vehicle price was not inclusive of a mandatory \$399 "installation and delivery" fee. As such, the advertised price was not all-inclusive. This is contrary to section 36(7) of Ontario Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.

Generally

14. The Dealer has failed to ensure that its registered salespeople carry on their duties in compliance with the Regulations and Code of Ethics, contrary to sections 6 and 9 of the Code of Ethics
15. By adding mandatory fees to the Dealer's advertised price, Potvin has failed to ensure that it carries on business in compliance with the Regulations and Code of Ethics, contrary to sections 6 and 9 of the Code of Ethics.
16. As an officer and person in charge of the Dealer's. day-to-day activities, Fitzgerald has failed to ensure that it carries on business in compliance with the Regulations and Code of Ethics, contrary to sections 6 and 9 of the Code of Ethics.

**Registrants' Position**

The Registrants admitted to the allegations contained in the Notice of Complaint. The Panel conducted an oral plea inquiry at the hearing and was satisfied that all of the admissions were voluntary, informed, and unequivocal. The Panel also inquired and was satisfied that Mr. Varrin was duly authorized to speak as agent for both Stephen Fitzgerald in his personal capacity and the Dealer.

**The Evidence**

The evidence at the hearing was tendered by way of an Agreed Statement of Facts which was entered as Exhibit 2. The parties also jointly argued that, based on the evidence contained in Exhibit 2, findings of breaches of both sections 6 and 9 of the

Code of Ethics should be made as against each of Stephen Fitzgerald Motors Ltd., Stephen Fitzgerald, and Vern Potvin and that a further finding of a breach of section 4 of the Code of Ethics should be made against the Dealer.

The evidence contained in the Agreed Statement of Facts provided as follows:

Stephen Fitzgerald Motors Ltd, Stephen Fitzgerald, and Vern Potvin have breached the following: Sections 4, 6, and 9 of the Code of Ethics, Regulation 332/08

Background

1. Stephen Fitzgerald Motors Ltd (the “Dealer”) was first registered as a motor vehicle dealer since in or around September 1997.
2. Stephen Fitzgerald (“Fitzgerald”) was first registered as a motor vehicle salesperson in or around September 1997. At all material times, Fitzgerald was the sole officer, as well as the person in charge of the day-to-day activities, of the Dealer.
3. Vern Potvin (“Potvin”) was first registered as a motor vehicle salesperson in or around August 7, 2015. Since on or about January 1, 2017, Potvin has been employed in this capacity by the Dealer.
4. On or about June 17, 2015, Potvin successfully completed the Automotive Certification course (the “Course”). Included in the Course syllabus is Dealers’ all-in pricing and Code of Ethics obligations.

OMVIC registrant education re: all-in pricing

5. Since the Act was proclaimed, OMVIC has issued various publications and webinars reminding dealers of their obligation to advertise all-inclusive vehicle prices (“all-in pricing”). The dates of said publications are attached hereto as Schedule A. All of these publications continue to be available on OMVIC’s website.

Prior Discipline Committee Order

6. On or about September 10, 2018, the Registrar issued a Notice of Complaint (“Notice”) against the Dealer and Fitzgerald for failing to comply with the all-in pricing regulation.
7. On or about April 2, 2019, the Discipline Committee issued an Order pursuant to a negotiated resolution of the above referenced Notice. A copy of this Order is attached hereto as Schedule B.
8. Per condition 2 of the Order, Fitzgerald was ordered to successfully complete the Course no later than June 21, 2019.
9. On or about October 23, 2019, Fitzgerald successfully completed the Course.
10. Per condition 4 of the Order, the Dealer was ordered to ensure that all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar (the “Webinar”).
11. On or about March 22, 2019, the Dealer provided confirmation that all staff, including Potvin, had reviewed the Webinar.

Dealer’s current non-compliance

12. On or about July 8, 2021, OMVIC investigators made inquiries about a 2017 Nissan Frontier (Stock #20-185C), while posing as members of the public. This vehicle was advertised with a selling price of \$29,995 exclusive of tax and licensing fees.

13. Potvin, on behalf of the Dealer, advised the OMVIC investigators that the above referenced advertised vehicle price was not inclusive of a mandatory \$399 “installation and delivery” fee. As such, the advertised price was not all-inclusive. This is contrary to section 36(7) of Ontario Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.

#### Generally

14. The Dealer has failed to ensure that its registered salespeople carry on their duties in compliance with the Regulations and Code of Ethics, contrary to sections 6 and 9 of the Code of Ethics
15. By adding mandatory fees to the Dealer’s advertised price, Potvin has failed to ensure that it carries on business in compliance with the Regulations and Code of Ethics, contrary to sections 6 and 9 of the Code of Ethics.
16. As an officer and person in charge of the Dealer’s day-to-day activities, Fitzgerald has failed to ensure that it carries on business in compliance with the Regulations and Code of Ethics, contrary to sections 6 and 9 of the Code of Ethics.
17. The Dealer has since advised they will be hiring an individual specifically to ensure advertisements and paperwork are in compliance with the Act, Regulations, and Code of Ethics, the pandemic having made this process more difficult.
18. The Dealer has since ensured all sales staff employed by the Dealer have again reviewed the August 2017 OMVIC advertising webinar.

It is thereby agreed that the Dealer has breached sections 4(1) and 6(1) of the Code of Ethics, as set out in Ontario Regulation 332/08:

### **Decision of the Panel**

Having considered the admissions of the Registrant, the evidence contained in the Agreed Statement of Facts, and the submissions of counsel, the Panel was satisfied that the Registrants had breached the Code of Ethics in the manner put forward in the parties’ oral submissions and made findings accordingly.

### **Penalty Decision**

The parties were in agreement with respect to the order that should follow from the above findings and presented the Panel with a Joint Submission on Penalty (the “Joint Submission”) which was entered as Exhibit 3. The Joint Submission requested that the Panel make an order as follows:

1. The Dealer shall pay a fine in the amount of \$5,000 no later than April 30, 2022.
2. Fitzgerald shall pay a fine in the amount of \$500 no later than April 30, 2022.
3. Potvin shall pay a fine in the amount of \$500 no later than April 30, 2022.

4. Potvin shall successfully complete the MVDA Key Elements course, no later than May 31, 2022.
5. The Dealer shall offer all current and future sales staff the opportunity to complete the Georgian College Automotive Certification course (the “Course”). Current sales staff will be offered the Course no later than December 31, 2022. Future sales staff will be offered the Course within 90 days of being retained in this capacity. The Dealer will incur all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the Course after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
6. The Dealer, Fitzgerald, and Potvin shall comply with the Act and Standards of Business Practice, as may be amended from time to time.

The Panel accepted the Joint Submission and accordingly made an order on the record at that time consistent with the terms set out as 1-6 above.

### **Reasons for Decision**

The Joint Submission was proportionate to the misconduct found in this case. In its totality, the resulting order meets the principles of penalty, which include specific and general deterrence, rehabilitation where appropriate, transparency, accountability, and public protection.

Joint Submissions must not be interfered with or departed from absent exceptional circumstances. The Panel notes the high threshold confirmed in *Timothy Edward Bradley v. Ontario College of Teachers, 2021 ONSC 2303*:

Any disciplinary body that rejects a joint submission on penalty must apply the public interest test and must show why the proposed penalty is so “unhinged” from the circumstances of the case that it must be rejected.

The Joint Submission is not unhinged from the circumstances of this case. In considering the aggravating and mitigating factors in this case, the Panel finds that a substantial penalty is warranted, and the Joint Submission is structured accordingly.

There are expectations for registrants to meet the requirements of the MVDA and the Code of Ethics. There will be consequences for failing to do so.

Elevated fines are required in this case. The Panel was provided with a copy of a previous discipline decision against two of the respondents. Both the Dealer and Mr. Fitzgerald were the subjects of a Notice of Complaint dated September 10, 2018, for failing to comply with the all-in pricing regulation. A discipline decision dated April 2, 2019, found a breach of sections 4, 6 and 9 of the Code of Ethics. The elevated fines respond to the need for specific deterrence as against these Respondents and the need for general deterrence in respect of the broader motor vehicle industry. They send a clear message to the Registrants and the industry.

The Dealer and Mr. Fitzgerald apparently failed to change their pattern of behaviour. The current allegations show a pattern of repeated breaches of sections 4, 6 and 9 of the Code of Ethics. This is unacceptable and these Registrants should expect to receive even more severe penalty orders if they are brought before the Discipline Committee and found to have committed similar breaches in the future.

Despite the above, the Dealer, Mr. Fitzgerald, and Potvin cooperated with the Registrar in the current matter. They admitted to breaches of the Code of Ethics and took full responsibility for their conduct. Mr. Potvin also agreed to take additional education courses. These admissions alleviated the requirement for a full hearing and saved both the parties and the profession the time and cost of a contested hearing. The Panel also notes that in this case no consumer was harmed. The breaches were identified by way of an internal OMVIC investigation and were not the result of a complaint from a



member of the public. This is not to diminish the seriousness of what occurred but the absence of a negative interaction with a consumer reassures the Panel that the Joint Submission is sufficient to address the public protection objective of an appropriate penalty order. Additionally, the evidence in the Agreed Statement of Facts confirms that the Dealer is proactively taking steps to ensure enhanced training for staff since the date of the Notice of Complaint.

I, Caroline Brett, sign this decision and reasons for penalty on behalf of the members of the Discipline Panel as set out below.



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Ms. Caroline Brett

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Date: April 11, 2022

Panel Members:

Ms. Caroline Brett, Chair  
Mr. Jon Lemaire  
Mr. Achilles Pelitis