

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

PANEL:	Sherry Darvish, Chair	Public Member
	Achilles Pelitis	Registrant
	Chris Pinelli	Registrant

**DECISION AND REASONS**

IN THE MATTER OF A DISCIPLINE HEARING HELD PURSUANT TO THE MOTOR  
VEHICLE DEALERS ACT 2002

B E T W E E N :

Appearances<sup>1</sup>:

<b>REGISTRAR, MOTOR VEHICLE DEALERS ACT, 2002</b>	)	Hussein Panju
	)	counsel for the Registrar
- and -	)	
<b>2551276 ONTARIO INC O/A KIA OF NEWMARKET</b>	)	
	)	
<b>and</b>	)	
<b>SAM AGHA</b>	)	
	)	Symon Zucker and Laney Paddock
<b>and</b>	)	counsel for the Registrants
<b>BRANDON AGHA</b>	)	
	)	

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**Date of Hearing:     March 9, 10, 11 and November 15, 2022, February 10, 2023**

**Date of Decision:   July 28, 2023**

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

## **Findings**

- Breach of section 9 of the Code of Ethics by the Dealer
- Breach of Section 9 of the Code of Ethics by Brandon Agha
- Breach of Section 9 of the Code of Ethics by Sam Agha.

## **Introduction**

1. This matter proceeded as a contested hearing 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* (“**MVDA**”). The hearing took place over the course of five days on March 9, 10, 11, and November 15, 2022, with closing arguments on February 10, 2023.
2. At the conclusion of closing arguments, the Panel took its decision under reserve. This is the Panel’s decision and reasons in the matter.

## **Parties**

3. The respondents are two individual registrants and one dealer. 2551276 Ontario Inc. operating as Kia of Newmarket (the “**Dealer**”) was first registered as a motor vehicle dealer in December 2007. Sam Agha (“**SA**”) was first registered as a motor vehicle salesperson in April 1989. SA was an officer and a person in charge of the Dealer during the relevant period. Brandon Agha (“**BA**”) is SA’s son. He was first registered as a motor vehicle salesperson in March 2017. BA testified that he was responsible for employee relations, health and safety and customer complaints at the material time. The Dealer, SA, and BA will collectively be referred to throughout these reasons as the “**Registrants**”.

## Allegations

4. The allegations assert breaches of the Code of Ethics found in Ontario Regulation 332/08 made under the MVDA (the “**Code of Ethics**”). The particulars of the allegations are contained in a Notice of Complaint, dated December 4, 2020, which was made Exhibit 1 in the proceedings (the “**Notice of Complaint**”). The allegations flow from a transaction with a consumer who purchased a 2019 Kia Sorrento (the “**Vehicle**”) from the Dealer (the “**Consumer**”). The material particulars of the allegations are as follows:

### **Consumer Complaint:**

1. On or about August 4, 2020, Consumer A purchased a 2019 Kia Sorrento (VIN 5XYPGDA39KG455081) from the Dealer. The vehicle's advertised price was \$21,495 plus taxes and license. Consumer A was charged an additional \$899 “clay detail” fee. Consumer A alleges this cost was explained to her at the time of purchase as being related to additional sanitizing measures needed due to the Covid19 pandemic.
2. The Dealer failed to provide a more detailed explanation as to what services this fee was for, despite numerous requests made by Consumer A after her purchase. This is unprofessional, contrary to section 9 of the Code of Ethics.
3. On or about September 29, 2020, OMVIC became aware of Consumer A's concerns. Consumer A had also contacted various news media outlets.
4. OMVIC discussed the matter with both S. Agha and B. Agha on behalf of Consumer A. S. Agha and B. Agha stated to the OMVIC representative that the fee was entirely optional and had been explained in detail to Consumer A prior to her following through with the purchase.
5. OMVIC did not make any findings about the truthfulness of S. Agha and B. Agha’s explanations, or about the validity of Consumer A’s complaint, nor did it make any such statements to any of these individuals.

### **Dealer’s mischaracterization to the media:**

6. On or about October 15, 2020, B. Agha corresponded with the media regarding Consumer A’s complaint and OMVIC’s involvement. B. Agha made the following statement to media representatives (the blacked-out portions are redactions of Consumer A’s name):
 

[Redacted] also attempted to mislead OMVIC officials with false information and was caught in a tangled web of her own lies, with the result being that her case was completely closed and dismissed with no wrongdoing or violation of the MVDA 2000 [sic] found by the dealership... [Redacted] went so far as to lie to multiple staff at OMVIC, claiming I never spoke with her whatsoever. I then provided my phone records proving that | both called and spoke to her directly. [Redacted] response to this was for the dealer to cease communications and speak with OMVIC, of which they advised us they agreed with our position that [Redacted] has a contradictory story with multiple falsehoods.

7. B. Agha's mischaracterization of OMVIC's involvement and false statement that OMVIC agreed with his position concerning Consumer A's complaint was dishonest and unprofessional, contrary to section 9 of the Code of Ethics.
  8. As person in charge of the Dealer, S. Agha's failure to ensure the Dealer's staff conduct themselves with honesty and professionalism has caused him to personally breach section 9 of the Code of Ethics as well.
5. The Respondents were arraigned at the outset of the hearing and denied all allegations contained in the Notice of Complaint.

### **Issues**

6. There were three (3) issues before the Panel in this matter:
- a. **Allegation 1**- Did the Dealer fail to provide a detailed explanation of the clay detail fee to the Consumer, and in doing so, breach section 9 of the Code of Ethics?
  - b. **Allegation 2** - Did BA mischaracterize or provide a false statement of OMVIC's involvement in the Consumer's complaint to the media, and in doing so breach section 9 of the Code of Ethics?
  - c. **Allegation 3** – Did SA, as a person in charge of the Dealer, fail to ensure that the Dealer's staff, namely BA, conducted himself with honesty and professionalism and by failing to do so breach section 9 of the Code of Ethics himself?

### **Witnesses**

7. The Consumer, a former OMVIC staff member and complaint handler named Cayma Martinez ("CM"), and a senior OMVIC employee, Andrea Korth ("AK") provided testimony on behalf of the OMVIC Registrar. SA, BA, a business manager from the Dealer named Robert Turcotte ("RT"), and an employee from one of the Registrants' other dealers, Reza Mazaheri ("RM"), provided testimony on behalf of the Registrants.

8. The Panel will review the relevant evidence received from these witnesses throughout these reasons as it describes its analysis of each allegation decided in the proceeding.

### **Decision of the Panel**

9. **The Panel finds that Allegation 1 was proven on a balance of probabilities.** Despite the Consumer's numerous attempts to obtain an answer about the clay detail fee, the Dealer failed to provide the Consumer with a detailed explanation of the clay detail fee. This failure amounted to engaging in conduct which was unprofessional and thereby a breach of section 9(1) of the Code of Ethics by the Dealer.
10. **The Panel finds that Allegation 2 was proven on a balance of probabilities.** BA mischaracterized OMVIC's involvement in the Consumer complaint to the media. BA made a false statement to the media about OMVIC, and name-called or belittled the Consumer. This conduct was unfair to the Consumer and OMVIC. In knowingly making an untrue statement to the media, BA's conduct was dishonourable, unprofessional and unbecoming of a registrant and thereby a breach of section 9(1) of the Code of Ethics.
11. **The Panel finds that Allegation 3 was proven on a balance of probabilities.** The Panel finds that SA failed to ensure that BA conducted himself with honesty and professionalism and thereby failed to ensure that Dealer staff conducted themselves with professionalism. In all the circumstances of this case, SA's omission constitutes a breach of section 9(1) of the Code of Ethics by SA as a person in charge of the Dealer.

**Reasons for Decision**

12. The facts of this matter were ultimately not complex. It can be summarized simply as a situation where a consumer purchased a car and then inquired with the Dealer about a charge for a “clay detail” which did not make sense to her. The Panel accepted the Consumer’s evidence that she made her inquiry to ascertain: (1) what the clay detail fee was and (2) whether it was actually performed.
13. The Vehicle was purchased on August 4, 2020, from the Dealer through a salesperson, Jesse Bruce, who was not a party to these proceedings and not called as a witness. The Consumer paid an additional \$899 for what was described as a “clay detail fee”. The Consumer did not understand what this fee was for and when she asked for clarification, she never received it. This entire ordeal could have easily been resolved had someone from the Dealer answered the Consumer’s question. Instead, the Consumer was left in the dark. In the Panel’s view, it is reasonable for a Consumer to make inquiries if they do not understand a service or product for which they are paying and to determine if the service for which they paid was indeed performed.
14. The Consumer testified that she and her husband first visited the Dealer on July 31, 2020. Documentary evidence tendered at the hearing indicated that the Consumer’s first visit was in fact on July 30, 2020.
15. While all parties agreed that the Consumer’s first visit was at the end of July 2020. Mr. Zucker, on behalf of the Registrants, submitted that the Consumer’s failure to recollect the correct date of her first visit to the Dealer meant that she lacked credibility or that the Panel should place less weight on her testimony.

16. The Panel disagrees with Mr. Zucker on this point and takes this opportunity to provide an initial comment on the overall credibility of the Consumer. The Consumer was testifying about events that had occurred over two years ago. Confusing the exact date of a visit to the Dealer by one day is not, in our view, a significant failure of memory or in any way an indication of a lack of reliability. The Consumer did not exhibit any failings in her recollection regarding the material events relevant to the issues in this matter. In addition, nothing material turned on whether the Consumer's first visit was on July 30 or 31, 2020. As will be discussed throughout these reasons, the Panel found the Consumer's testimony both honest and reliable.
17. During that first visit, the Consumer met with salesperson Jesse Bruce at the Dealer. The Consumer testified that she had already selected the Vehicle she wanted to purchase prior to arriving at the Dealer. However, she test drove a similar car because the Vehicle she had selected had a flat tire at the time. The Consumer and Mr. Bruce discussed trade-in value, the Vehicle price, warranty, leasing fees, and her budget. They agreed on a price.
18. The Consumer paid a \$1,500 deposit on her credit card and was given a copy of the credit card receipt for the transaction. She was not provided with any other paperwork on that day. The Consumer returned home and made insurance arrangements for the Vehicle.
19. The Consumer denied having had any discussion with Mr. Bruce about her health and she denied asking the Dealer to make her car look "new". This evidence ultimately became relevant to the larger narrative.

20. In cross-examination, counsel for the Registrants highlighted that the Consumer received a \$100 discount on the purchase of the Vehicle from the advertised price. In our view, this is not relevant because the issue in this case is not the Vehicle price, but rather, whether the Dealer provided an explanation to the Consumer about the clay detail fee.
21. The Panel accepts the Consumer's testimony that she did not receive any paperwork from the Dealer during her first visit. The Registrants did not provide any evidence to contradict the Consumer's testimony in this respect. The Panel is satisfied there was no discussion about a clay detail fee during this first visit at the end of July 2020.

***Unprofessional Conduct by the Dealer***

22. On August 4, 2020, the Consumer returned to the Dealer with her husband and two children to pick up the Vehicle. She met with the finance manager of the Dealer, RT, to sign the paperwork for the Vehicle. While reviewing the Vehicle's purchase agreement, the Consumer noticed a charge of \$899 for "Clay Detail". The Consumer stated that she asked RT about this clay detail fee, and he responded "thank Covid", it's a "disinfecting fee". The Consumer also testified that RT told her the fee was mandatory.
23. The Consumer did not ask for a refund of the fee. Rather, she asked for more specifics about what the clay detailing was. She testified that she also asked about how the disinfecting was done. RT responded that he would get back to her on that.
24. The Panel finds that RT never provided the Consumer with an answer to her question. In his testimony before this Panel, RT denied advising the Consumer that the clay detail fee was for Covid or that it was a disinfecting fee. He testified that clay detailing is related to the



paint on a car. However, RT also testified that because he meets with thousands of customers, he did not have any specific recollection of his conversation with the Consumer on August 4, 2020. Indeed, RT stated that he could not recall anything about the Consumer. RT's inability to recall anything about his conversation with the Consumer on August 4, 2020, caused the Panel to place reduced weight on his testimony. When contrasted with the Consumer's evidence and specific recollection of what was discussed, without any significant failings in memory, the Consumer had a distinct recollection of both her conversation with RT and the events of August 4, 2020. Her recollection was not meaningfully disturbed in cross-examination. The Panel accepts the testimony of the Consumer over RT and finds accordingly.

25. Following the August 4, 2020, visit to the Dealer, the Consumer testified that she tried several more times to obtain an answer about the clay detail fee. None succeeded.
26. The Consumer stated that she tried to call the Dealer several times, but she was unable to obtain a substantive response. The Consumer testified that on August 5, 2020, she called the Dealer and asked to speak with someone but was told no one was available. She called the Dealer again on August 10, 2020, and was told once again that no one was available to speak with her. The Consumer also testified that she left one voice mail message for Mr. Bruce, the salesperson, asking him to call her back, but he did not return her call. The Dealer did not provide any evidence to contradict the Consumer's testimony that she attempted to call the Dealer on several occasions.

27. The Panel finds that these further attempts by the Consumer to consult with the Dealer by phone were further opportunities for the Dealer to answer the Consumer's question. The Dealer failed to do so.
28. On August 28, 2020, the Consumer received a customer survey from the Dealer's business development center, asking about her vehicle purchase experience. Having not received any response as to why she paid \$899 for a clay detail fee, the Consumer took the opportunity to write her questions in the survey in the hope that someone would answer them. She wrote the following:
- I enjoy my Kia, and I did a lot of research and price comparisons before coming into your dealership, so I knew what I wanted, making it easier for the sales rep. I felt so taken advantage of however, with your clay fee. This was never explained to me before the papers were signed. No one ever mentioned it being disinfected. I don't even know if it was disinfected as there was no tags on the car, no certificate to say it was done and when we asked how it was done, no one could answer.
- I had to ask about the clay fee of \$899, (way over priced as it's generally \$500 anywhere else now that I've looked into) and that was after I signed it. It was passed by me for quick signing. I'm still totally shocked by this and feel that I have lost \$899 as I don't see the car being disinfected. I have spoken to many of my friends and family who are looking at getting a car and have warned them of this.
- CAN YOU PLEASE EXPLAIN how this could have happened without a certificate being given, no tape in the car to show it was done? And no one knowing how it was done? This continues to disappoint me with your dealership.
29. Despite sending the survey to the Dealer, the Consumer did not receive a response. She followed up on September 1, 2020, and was told by the Dealer's business development center that her survey response had been received and had been passed on to management.
30. Unbeknownst to the Consumer at that time, the Panel heard that on September 1, 2020, a business development center representative emailed the Consumer's survey to three representatives of the Dealer: (1) Bruce Anthony (a sales manager), Pedram Mahmoudian (another sales manager), and Ray Agha ("RA"). None of these individuals were called as

witnesses. RA is another individual listed with OMVIC as being a person in charge of the Dealer. RA is SA's brother and BA's uncle. The Panel heard that RA proactively forwarded the survey by email to Mr. Anthony, Mr. Mahmoudian, and BA that same day. In his forwarding email, RA asked for the name of the salesperson who had assisted the Consumer with the purchase of her Vehicle. There was no evidence as to whether anyone responded to RA's email or whether RA followed up further. In any event, it is undisputed that the Dealer did not provide a response to the Consumer's questions at this time.

31. The Panel finds that as of September 1, 2020, BA was aware or ought to have been aware of the Consumer's clay detail fee questions. The Panel finds that he received RA's email which included the Consumer's survey responses. When asked about his knowledge of the Consumer's clay detail fee questions as of September 1, 2020, BA testified that the first time he became aware of the Consumer's concerns was when he received a phone call from a media reporter on September 25, 2020. BA testified that he had not seen the email from his uncle dated September 1, 2020, as it went to his spam folder. BA relied on emails he sent in October 2020 to support his contention that he did not see the September 1, 2020, email from his uncle, RA. In an email from BA to CM, a compliance officer at OMVIC, dated October 3, 2020, BA wrote that the Consumer's survey response went to "archived files in an email (and it was marked spam I believe accidentally) in an email [they] do not use as much." Similarly, in an email to CTV media, dated October 15, 2020, BA stated that he never received the Consumer's survey response because it went to a spam folder because the Dealer "archiv[ed] her original email during an internal email changeover".

32. BA testified that he never received the forwarded email from his uncle on September 1, 2020, containing the Consumer's survey response. Although this is not dispositive of the allegations, the Panel did not find BA's evidence in this regard clear, convincing or cogent.
33. RA's email to BA was sent from RA's personal email account, a Yahoo email account. It was sent to BA's work email at another business owned by the Agha family called Patriot Automotive Group. BA suggested to the Panel that an internal email system changeover at the Dealer may have prevented RA's email from reaching him. The Panel did not receive any explanation for how an email system change at the Dealer would have impacted a separate company – Patriot Automotive Group – or Yahoo mail. Indeed, there was no evidence that Patriot Automotive Group was also undergoing an email system changeover. Apart from the email changeover issue, the Panel finds it unlikely that a spam filter or other email security measure would have prevented BA from receiving an email from a known sender such as his uncle.
34. With respect to the Dealer's obligations, even if the Panel were to accept that BA did not see the September 1, 2020, it would not change the fact that managers at the Dealer had become aware of the issue and yet no one from the Dealer responded to the Consumer's clay detail fee questions. This was therefore another missed opportunity for the Dealer to satisfy the Consumer's reasonable inquiries.
35. By September 2020, it had been over three weeks since the Consumer had first asked about the clay detail fee. She had received no answer from the Dealer. The Consumer testified that she decided to contact someone from the media to help her get an answer. She contacted a

local reporter, Aileen Zangoui (“AZ”), and related the events. She asked AZ for help in obtaining an answer regarding the clay detail fee.

36. AZ called BA on September 25, 2020, to discuss the Consumer’s concerns about the clay detail fee. BA testified that he did not like AZ’s manner of inquiry. He described AZ as “very aggressive” and stated that her questions were “accusatory” in his view. In the Panel’s view, BA’s opinion of AZ was not relevant to the issue. The Consumer had a question about the \$899 clay detail fee. This was a question that had gone unanswered for over a month by this point, despite numerous attempts by the Consumer to obtain a response. BA could have simply ended the matter and answered the question, but he did not. Rather, after the call with the reporter and later that same day, BA sent AZ a follow-up email that included two videos which described a cleaning service. The testimony at the hearing suggested that AZ did not forward BA’s email with the two videos to the Consumer at that time.
37. The two videos were played at the hearing and neither mention anything about a clay detail fee. The word “clay” was not mentioned in the videos at all. Rather, the first video showed someone cleaning and wiping a car and then applying plastic covers. The video talked about sanitization and steam cleaning processes. This video did not appear to be related in any way to a clay detail service. The second video contained screenshots of parts of the first video. The videos do not explain what service was performed on the Vehicle for \$899. The Consumer testified that she only watched the two videos for the first time in February 2022, but nonetheless confirmed to the Panel that they did not answer her question about what service had been performed on her Vehicle. The Panel was shown a third video from YouTube that was about wet sanding and how to sand a car to correct a scratch. Counsel for

the Registrants submitted that this video showed clay detailing, however, the video made no mention of “clay detailing”. The Panel finds that BA’s correspondence with the reporter did not answer the Consumer’s questions regarding the clay detail fee.

38. In our view, even if the Consumer had seen BA’s email response to the reporter in September 2020, and had watched the two videos at the time, it would not have helped answer her inquiry. Specifically, the Panel finds that the contents of BA’s email and the two videos do not answer the Consumer’s questions about whether the clay detail had been performed on the Vehicle or why the Consumer was initially told it was a disinfection fee.
39. The Panel further notes that on September 25, 2020, the Consumer emailed BA directly to provide her consent for the Dealer to discuss the matter with the reporter. In her email, the Consumer once again asked her clay detail fee questions. BA responded by email that same day, but rather than just answer the Consumer’s clay detail fee question, BA referred the Consumer to speak with the reporter, and the balance of his email addressed his frustration with the reporter.
40. Several emails were then exchanged between BA and the Consumer on October 2 and 3, 2020. The Consumer repeated her clay detail fee question in an email of October 2, 2020. Despite the Consumer’s clay detail fee question now having been repeated on numerous occasions, BA still did not provide her with an answer. BA testified that he believed the Consumer had been given an answer to her clay detail fee question. However, at no time as of October 3, 2020, could the Panel identify any example of the Consumer being provided with an answer to her clay detail fee questions by anyone from the Dealer.

41. BA aggravated the situation further by insulting or name-calling the Consumer on several occasions. In an email dated October 3, 2020, from BA to the Consumer and copied to OMVIC, BA refers to the consumer as “an incredibly disingenuous person”. In another email dated October 3, 2020, from BA to OMVIC and the Dealer, BA called the Consumer a “manipulative individual”. In another email dated October 5, 2020, from BA to OMVIC and the Dealer, BA referred to the Consumer as “a silly liar”. BA also threatened to sue the Consumer for defamation. Testimony from CM, the OMVIC complaint handler at the time, further confirmed the critical tenor of BA’s comments regarding the Consumer. CM testified that when she spoke with SA and BA on October 5, 2020, they were both dismissive and belittling in respect of the Consumer. CM stated that BA called the Consumer a liar and she felt the name calling was unwarranted. The Panel finds that while BA was clearly frustrated, it did not justify him speaking on behalf of the Dealer in an unprofessional manner and insulting the Consumer to others.
42. A consumer has a right to obtain an answer regarding the type of service performed for a fee that was paid. The Consumer’s attempts to have her questions answered by contacting the Dealer by phone, asking her questions via a business development survey, asking her questions via emails, seeking the media’s assistance, and finally seeking help through OMVIC, were all reasonable in the circumstances. The Consumer’s persistence in trying to have her questions answered did not make her a liar or manipulative as labelled by BA. Rather, she was doing what any reasonable consumer would have done in her place. In fact, contrary to the Dealer’s attempt to paint the Consumer as a disgruntled individual seeking a refund, nowhere in her testimony did the Consumer say she was seeking a refund. The evidence suggested that the Consumer only wanted to know what the clay detail fee was and

whether the Dealer performed the service on her Vehicle. Even if the Consumer had been seeking a refund, she would still be entitled to have her questions answered. Acting on behalf of the Dealer in this manner, BA's treatment of the Consumer was unprofessional, unbecoming, and his conduct reflects directly on the Dealer.

43. The Consumer's concerns could have been resolved if the Dealer had simply explained the clay detail fee and shown the Consumer the service performed on her Vehicle. BA produced a service record pertaining to the Consumer's Vehicle with a work order number #41121 showing that the Vehicle had a wax polish and a cleaning. Although BA testified that this service record was given to the Consumer when she picked up her Vehicle on August 4, 2020, there was no signature from the Consumer on it. The Consumer had previously testified that she did not receive additional paperwork regarding the Vehicle. In any event, we find that the Consumer did not receive this document from the Dealer when she picked up the Vehicle on August 4, 2020. The document appeared to be an internal service record from the Dealer and, in any event, it did not explain the clay detail fee for which the Consumer was charged \$899. There is no mention of "clay detail" on the document. Furthermore, the document was incomplete as the first page of the document was missing.
44. Despite repeated requests, the Dealer failed to provide the Consumer with information that she was entitled to receive. The Dealer had an obligation to provide the Consumer with an explanation of what was a clay detail fee and to explain to her what service was performed on her Vehicle for that price. The Consumer's repeated pursuit of her inquiry ought to have made it evident to the Dealer that the Consumer was not clear about what the clay detail fee entailed or whether the service had in fact been performed. Despite the Consumer's



numerous attempts to obtain an answer to what was a reasonable question, the Dealer repeatedly failed to satisfy her inquiry.

45. All motor vehicle dealers and salespersons must comply with the Code of Ethics. It contains ethical obligations to ensure that consumers are protected and that registrants conduct themselves with a high degree of professionalism.
46. Section 9(1) of the Code of Ethics provides that 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.
47. As noted above, the Panel finds that the Consumer's inquiry about the clay detailing was reasonable. The concept of the "clay detail fee" was clearly novel to her, unexpected when she collected the Vehicle, and not properly explained. The steps the Consumer took to satisfy her inquiry were all reasonable.
48. The Panel rejects the Registrants' characterization of the Consumer's efforts. The Registrants asserted, among other things, that the Consumer did not take the correct steps to bring her complaint to their attention. For example, BA testified that customers usually send their complaints in writing by email to their salesperson. The Registrants also argued that the Consumer had done her own research and knew by the time she completed the survey what a clay detail fee was and how much other dealers in the industry charged for it. In this regard, they relied on the Consumer's answer to the survey where she wrote that she had asked others about it and the fee was normally \$500. This is immaterial to the professionalism issues.

49. The Panel finds that the Consumer provided the Dealer and BA with opportunities to have her inquiry satisfied, in a series of escalating steps. She asked questions at the time she purchased the Vehicle in August, followed up by contacting the Dealer by phone, followed up again by contacting the Dealer in writing through a survey that she completed, and then sought help from the media. Lastly, she filed a complaint with OMVIC. This was reasonable.
50. What was not reasonable, in our view, was that no one from the Dealer or BA, who assumed carriage of the issue on behalf of the Dealer by responding to the media, addressed the Consumer's reasonable inquiry. The Dealer's repeated failures to respond to the Consumer's questions regarding the clay detail fee were unprofessional and unbecoming of a registrant. A breach of section 9(1) of the Code of Ethics against the Dealer is found accordingly.

***Unprofessional conduct by BA***

51. The Registrar's second allegation relates to BA's October 15, 2020, email to CTV News. The Registrar alleges that BA mischaracterized OMVIC's involvement in the Consumer's complaint by making false statements that OMVIC did not believe the Consumer's version of events. Specifically, BA wrote:

[The Consumer] also attempted to mislead OMVIC officials with false information and was caught in a tangled web of her own lies, with the result being that her case was completely closed and dismissed with no wrongdoing or violation of the MVDA 2000 found by the dealership...  
[The Consumer's] response to this was for the dealer to cease communications and speak with OMVIC, of which they advised us they agreed with our position that [the Consumer] has a contradictory story with multiple falsehoods.

52. BA testified that he spoke by phone with CM on October 5 and 14, 2020. He testified that, during those phone calls, CM told him that OMVIC did not believe the Consumer and that they would close the file. BA testified that during those phone calls, CM told him that

OMVIC agreed with the Dealer's position and that OMVIC did not believe the Consumer's version of events.

53. CM, however, testified that she contacted BA to discuss the Consumer complaint and see if a resolution was possible. CM was clear that she did not make determinations of credibility or determinations about which party was or was not telling the truth. CM denied making any statement to BA regarding the credibility of the Consumer's version of events or who was right or wrong in this situation.
54. The Panel accepts CM's evidence and finds that CM did not make the statements that BA alleges for the reasons that follow.
55. During her testimony, CM referred to her typed notes to refresh her memory. CM stated that she took handwritten notes of her conversation with BA in real-time and that after the call, she typed her handwritten notes to catalogue them in OMVIC's document management system, known as "CARL". Counsel for the Registrants asked CM questions about the process of preparing her handwritten notes, including the steps she took when she transferred them into typed notes. Counsel for the Registrants suggested that CM's typed notes did not reflect the actual conversation between herself and the Dealer, and that she had omitted certain things when she transferred her handwritten notes into typed format. CM was clear that was not the case. There was no evidence before us to suggest that CM inadvertently or intentionally changed her notes or omitted anything when writing her notes, or when converting her handwritten notes into typed format. CM's testimony was clear, convincing, and cogent. To the extent that her notes were used to refresh her memory of conversations, the Panel was shown no evidence of any error or omission which would impact CM's

testimony. The Panel rejects the Registrants' suggestion that CM's notes were incorrect or omitted key details.

56. CM testified that she only communicated with the Dealer on a few occasions and that she was the only OMVIC representative that contacted the Dealer concerning the Consumer complaint. CM testified that all external communications were catalogued in CARL. While counsel for the Registrants questioned CM extensively about this and suggested that she did not catalogue all her communications with the Dealer, there was ultimately no substantive evidence of missing communications or any reason to suggest that CM did not follow OMVIC's regular protocol. There was nothing to substantiate the suggestion that anything was missing from CARL. As such, the Panel accepts CM's testimony that she catalogued all her communications with the Dealer, and that there are no missing communications with the Dealer either from the transcriptions of her notes or on the CARL system.
57. CM testified that her first contact with the Dealer was on October 1, 2020, when she called the Dealer and spoke with SA. CM stated that SA asked her to speak with Mr. Mahmoudian, general manager of the Dealer. A follow-up email from CM to SA of the same date suggests this is accurate.
58. The next communication between CM and the Dealer occurred on October 5, 2020, when CM called the Dealer. CM stated that both BA and SA were on this call. BA testified that in addition to himself and SA, there were other people on the call who were listening. CM stated that during the call of October 5, 2020, she explained that the Consumer wanted to know the purpose of the clay detail fee. BA did not provide an answer. Rather he indicated that it made no sense for a consumer to sign a document and not know what it was for. CM stated BA

and SA were defensive, abrasive, and belittling with respect to the Consumer. We note that rather than telling CM the purpose of the clay detail fee, the Dealer once again failed to answer the question. BA instead tried to deflect the matter back to the Consumer arguing that the situation was somehow her fault for signing a document with what BA alleged was inadequate diligence.

59. It is important to note that during his testimony, SA stated he had no recollection of the October 1, 2020, phone call, no recollection of receiving emails regarding this matter, and no recollection of the October 5, 2020, phone call. However, he recalled CM telling BA that the Consumer's complaint was somehow "wrong". We did not find SA's testimony helpful or persuasive in this regard as he did not recall anything regarding CM's alleged assessment of the complaint with any specificity. In the Panel's view, it is not plausible that SA had no recollection of any phone calls or emails, except that he somehow had selective recollection of one statement that CM made on the October 5, 2020 call which is helpful to the Registrants' theory of the case. SA's testimony regarding this one statement seemed remarkably self-serving. The Panel was not persuaded.
60. The Panel heard evidence from RM who is an insurance broker who was working at one of the Registrants' other dealerships in 2020. RM testified that he was in the room during the October 5, 2020, call. He testified that he overheard CM saying that OMVIC did not believe the Consumer. Once again, the Panel had concerns when weighing RM's testimony against CM's denial. RM agreed in cross-examination that he did not have a clear recollection of this phone call. He did not know why CM was calling nor did he even know who CM was. His recollection of the phone call was inconsistent with other evidence before the Panel. In

particular, RM could not recall who initiated the call even though he said he was in the room. He also stated that SA and SA's wife, along with BA and BA's wife were present during the phone call, whereas the evidence from the other witnesses did not indicate this to be the case. The essence of RM's evidence was that, in his assessment, the person on the phone was siding with BA, not the Consumer. In the aggregate, the Panel does not find RM's evidence regarding the call to be clear, convincing, and cogent. RM's evidence lacked particulars in respect of details that the Panel would expect someone in RM's position to be able to recall. When contrasted with CM's unequivocal denial that she made any of the statements attributed to her by BA, the Panel prefers CM's evidence over RM's.

61. The next communication between BA and CM occurred on October 14, 2020, via email. BA testified that he had a phone call with CM on October 14, 2020, however, when taking a closer look at the emails between CM and BA on October 14, 2020, and their time stamps, it is apparent that no such phone call in fact occurred. At 1:49 pm, BA emailed CM to ask whether a consumer can file a complaint with OMVIC regarding a Dealer. At 2:25 pm, CM responded by email to BA confirming that consumers can file complaints against dealers and repeated the Consumer's position. At 2:38 pm, BA responded by email to CM saying by saying "thank you, I appreciate this." In his testimony, BA claimed that CM had spoken with him by phone that day and had made statements against the Consumer.
62. This is not plausible in our view. Nowhere in these messages is there any reference to a phone call. BA testified that his "thank you, I appreciate this" email was a reference to an earlier phone call. The Panel does not accept that this reply from BA at 2:38pm demonstrates on a balance of probabilities that a phone call took place in the 13 minutes that elapsed between

CM's 2:25pm email and his 2:38pm response. More critically, CM had no record of a phone call with BA on October 14, 2020 on OMVIC's CARL system. There was also no cross-examination of CM in respect of this alleged phone call. The failure to put this alternate theory to CM causes the Panel to place diminished weight on BA's testimony.

63. The Panel also notes that BA's recollection regarding another phone call with OMVIC was incorrect. BA testified that on September 29, 2020, he had a phone call with a different OMVIC representative, Crystal Johns. However, BA's testimony was contradicted by documentary evidence from a December 10, 2020, email that he wrote to Andrea Korth from OMVIC, in which he stated that CM was the "only OMVIC official I spoke with via telephone conversation." When confronted with this contradiction in cross-examination, BA claimed that his lawyer wrote the December 10, 2020, email and had impliedly recounted BA's narrative erroneously.
64. Again, the Panel is not persuaded. We are satisfied on a balance of probabilities, based on the evidence before us, that the September 29 and October 14, 2020 phone calls alleged by BA never occurred.
65. As noted above, CM denied having made any comments to BA to suggest that OMVIC did not believe the consumer's complaint or that the consumer complaint was frivolous. We accept CM's evidence in this regard. As a representative of OMVIC investigating a consumer complaint, CM would have no reason to disparage a consumer to the Dealer. Furthermore, it is highly unlikely for CM to have arrived at any conclusion regarding the merits of the Consumer complaint and, in any event, to relay such conclusions to the Dealer during preliminary calls. Furthermore, for reasons explained above, we do not accept BA's

testimony that OMVIC representatives made anti-Consumer statements to him during phone calls. Thus, the Panel finds that CM did not make any statements about OMVIC's position on the merits of the Consumer complaint, did not make any statements against the Consumer, and did not make any statements regarding the Consumer's credibility or her version of events.

66. Given the above findings of fact, by telling the media that OMVIC made statements about a consumer that were not true, BA misled the media about OMVIC's role and position in this matter as it relates to a consumer complaint.
67. Relaying an untrue statement about OMVIC to the media is undeniably unprofessional and unbecoming of a registrant. However, the Panel finds that BA's conduct was more than simply unprofessional. His conduct contains an element of moral failing and had the ability to negatively impact the publicly perceived integrity of the profession. BA's untrue statements to the media compromised OMVIC's reputation and relationships with the very consumers that OMVIC seeks to protect. This type of conduct, if left unchecked, could lead to a breach of trust between OMVIC and the public. We therefore find BA's conduct to be dishonourable, unprofessional, and unbecoming of a registrant, contrary to section 9(1) of the Code of Ethics.

***Unprofessional conduct by SA***

68. The Registrar seeks to have SA held responsible for the Dealer's failure to address the Consumer inquiry and for failing to prevent BA's untrue statement to the media. Counsel for OMVIC argued that a person in charge is expected to ensure that the Dealer's staff conduct themselves with professionalism. For example, in OMVIC's 2019 Discipline Committee



decision of *Registrar (MVDA) v Oakville Chrysler Dodge Jeep Ram Limited and Reg Nimeck and Gordon Nimeck and Andrew De Clavasio and Camillo Comparone* the Committee found that persons-in-charge had breached the Code of Ethics even though those individual registrants did not directly cause any of the underlying misconduct.

69. The Registrants submitted that SA bears no responsibility for BA's conduct because SA was not involved in the day-to-day affairs of the Dealer. With respect to the Dealer more broadly, the Registrants argued that SA was not in fact a person in charge of the Dealer even though his name was listed as such in OMVIC's records. In this regard, SA testified that he had called OMVIC to remove himself as a person in charge. We did not find this testimony persuasive. There was no record of SA having attempted to remove himself as a person in charge of the Dealer. There was no persuasive explanation as to why SA did not make the request to be removed in writing. We do not accept the Registrants' suggestion that OMVIC was aware that SA was not a person in charge and failed or omitted to remove SA as a person in charge. There was no persuasive evidence in this regard.
70. We agree with the principle that a person in charge can be held responsible for the actions of those for whom they are responsible even though they themselves may not directly cause the underlying misconduct.
71. As noted above, SA testified that he was not involved in the day-to-day operations of the Dealer during the relevant period. The Panel heard that RA was essentially in charge at the material time. SA had, to a large extent, also entrusted his son, BA to handle certain aspects of the Dealer's operations, particularly when it came to customer complaints.

72. However, the Panel finds that SA was still listed as a person in charge of the Dealer and, more critically, was aware of the Consumer complaint in this specific matter. He was also aware of the media's involvement. He was copied on certain emails and present on the phone call with CM.
73. SA bears some responsibility for ensuring that his staff and those he has entrusted to deal with customer complaints, including BA, act in a professional manner. There was no evidence before us that SA took any steps to ensure that the Dealer addressed the Consumer complaint. There was also no evidence that SA took steps to ensure that BA acted in a professional manner in his dealings with the media. The Panel does not accept SA's position that since he was not involved in the day-to-day affairs of the Dealer, he is thereby absolved of all responsibility.
74. If SA was no longer a person in charge, he should have removed himself as a person in charge of the Dealer. He did not do so. SA was aware of, and involved with, the Consumer complaint from early on and could have taken steps to address it. He omitted to do so. We are satisfied on a balance of probabilities that SA's omissions amount to a breach of the Code of Ethics.
75. SA failed to ensure that BA conducted himself with honesty and professionalism. SA failed to ensure that the Dealer conducted itself with professionalism. In all of the circumstances, as a person in charge of the Dealer and based on the facts outlined above, SA's failure is itself an omission that would reasonably be regarded as unprofessional or unbecoming of a registrant and is thereby itself a breach of section 9(1) of the Code of Ethics.

**Penalty Hearing to be Scheduled**

76. The Panel directs the parties to confer and make arrangements through the hearings coordinator to proceed with a hearing on the issue of penalty. The Panel is willing to receive written and oral submissions on penalty subject to the preferences of the parties.

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Sherry Darvish

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Date:

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Achilles Pelitis

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Date:

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Chris Pinelli

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Date: