

Findings:

With respect to the respondent, Gesavan Sritharan: Breaches of Sections 4(1), 4(2), 6(2) and 9(3) of the Code of Ethics

With respect to the respondent, 1502026 Ontario Limited o/a Agincourt Hyundai: Breach of Sections 4(2) and 9(3) of the Code of Ethics

With respect to Nicolas Koundouros: Breach of Sections 6(2) and 9(3) of the Code of Ethics

Introduction

1. On May 10, 2024, the Ontario Motor Vehicle Industry Council ("OMVIC") issued a Notice of Referral to Discipline ("Notice"). The respondents, 1502026 Ontario Limited operating as Agincourt Hyundai (the "Dealer"), Nicolas Koundouros ("Mr. Koundouros"), and Gesavan Sritharan ("Mr. Sritharan") dispute the allegations. This hearing before a Panel of the Discipline Tribunal was held pursuant to s. 17 of the Act to determine whether the respondents have failed to comply with the Code of Ethics.

2. Prior to the hearing, the parties consented to certain amendments to the Notice. Most particularly, the person in day-to-day control of the Dealer was identified in the Notice as Savvas Koundouros. Unfortunately, Savvas Koundouros is in poor health and has been since before the impugned events set out in the Notice. The Panel was saddened to hear this and wishes him well in the hopes of a full recovery. The parties agree that at all material times his son, Nicolas Koundouros, was the General Manager of the Dealer in charge of day-to-day operations. With the consent of Nicolas Koundouros, and the consent of all other parties, the Notice was amended to remove Savvas Koundouros's name and substitute Nicolas Koundouros. The parties also withdrew a number of non-material particulars relating to the past interactions between the Dealer and the Registrar, particularly paragraphs 5 through 14, except for paragraph 7, about which we heard evidence.

3. The Notice alleges that the Dealer advertised a 2020 Hyundai Tucson for sale at a price of \$34,991 plus licencing and taxes. It alleges that when an investigator from the OMVIC attended at the Dealer's premises posing as a consumer ("mystery shopper") to enquire about purchasing the vehicle she was quoted a higher price that included approximately \$1,000 of added fees. The Notice alleges that quoting a higher price is a breach of the all-in advertising provisions set out in s. 36(7) of O. Reg 333/08. By breaching the all-in adverting regulations, the Dealer, Mr. Koundouros in his role as General Manager and Mr. Sritharan as the salesperson are alleged to have breached various provisions of the Code of Ethics set out in O. Reg 332/08.

4. The respondents deny any breaches of the all-in advertising regulations, and by extension, any breach of the Code of Ethics. The Dealer and Mr. Koundouros deny the allegations on the basis that their internal sales control procedures are so stringent that the behaviour described by the investigator could not have happened. Mr. Sritharan denied that the transaction described by the investigator happened at all. He took the position that he had never seen the investigator before the day of the hearing, and that the only person he has ever dealt with in terms of the sale of the subject vehicle was a middle-aged man of colour and not the investigator, who is a blond woman.

5. For the reasons below, the Panel finds that OMVIC has proven the allegations in the Notice on a balance of probabilities. While the Dealer may have stringent policies on how to conduct sales, Mr. Koundouros's evidence assumed the actors in the sale had no discussions about the vehicle beyond a mute entry of data into a computer program followed an invitation to enter into discussions with the sales manager as mandated in the procedure. There was no allowance for the normal human intercourse surrounding a car sale. Nor was there any allowance for the financing quote Mr. Sritharan gave based on the higher price.

6. Mr. Sritharan's evidence shaded towards the fantastical. We gave it no weight for several reasons which will be explored further below. Overall, his evidence was at odds with earlier statements he made, at odds with the documentation, and at odds with the investigator's evidence which was supported by documentation. His version of events was also not put to the investigator while she was testifying so she could address his denial of the entire transaction.

All-in Pricing

7. Dealers advertise cars for sale. When they do so, the regulations require that the advertised vehicle must be available when the ad is published and that the advertised price include all fees and other charges. There must be no hidden fees. These provisions protect consumers from being lured in by false representations. Specifically, the all-in pricing regulation set out in s. 36(7) of O. Reg 333/08 states:

If an advertisement indicates the price of a motor vehicle, the price shall be set out in a clear, comprehensible and prominent manner and shall be set out as the total of,

(a) the amount that a buyer would be required to pay for the vehicle; and

(b) subject to subsections (9) and (10), all other charges related to the trade in the vehicle, including, if any, charges for freight, charges for inspection before delivery of the vehicle, fees, levies and taxes.

8. In the current case, it is not disputed that the Dealer advertised a 2020 Hyundai Tucson Urban Edition for \$34,991. The vehicle was identified by stock number, #P454. Accordingly, this specific vehicle had to be available to consumers at a price of \$34,991 inclusive of all extra fees and charges, except for tax and registration fees. There is no prohibition against selling the vehicle for less than the advertised price, but the regulations prohibit the addition of fees in excess of the advertised price. \$34,991 must be the starting point for any price negotiation.

Witnesses

9. The Panel heard from five witnesses, two on behalf of OMVIC and three on behalf of the respondents. Of these, only two had direct evidence of the impugned transaction, Jodi Hughes, an investigator in the Registrar's office and the respondent, Gesavan Sritharan. The second witness for OMVIC, Emma Didier, an inspector in the Registrar's office, testified about a 2023 inspection of the Dealer where she reviewed the all-in pricing rules because the Dealer had been adding a prohibited charge to the advertised price. The respondents' two remaining witness were Adam Parsons, Director of Sales for the software company that sells the pricing software used by the Dealer, who reviewed the operation of the software, and the respondent, Nicolas Koundouros, general manager of the Dealer, who testified about the internal policies of the Dealer in preparing quotes for customers. While Mr. Koundouros was passionate in his evidence about the reputation and operation of the Dealer, he was not involved in the impugned transaction so his evidence in that regard was of little assistance. It is from the conflicting evidence of Jodi Hughes and Mr. Sritharan that the Panel must glean the facts.

Two versions of the transaction

10. Jodi Hughes has been the manager of the mystery shop program since February, 2022. Prior to that she worked as an investigator for OMVIC, from September 2010. She spent 22 years as a police officer before joining OMVIC.

11. Ms. Hughes explained the mystery shop program. In response to consumer complaints or on their own initiative, Ms. Hughes and her colleagues will review dealer advertisements. They will select a list of dealers they intend to visit and choose two advertisements for each dealer.

Then, posing as consumers they will attend the chosen dealers and ask to see one or more of the advertised cars. They will have a discussion about the price of the car, document the discussion as best they can, and then leave. Where the price is greater than the advertised price, they may ask for some clarification of the added charges, either on the spot or, as happened in this case, by calling the salesperson later. On return to the office in the case of a greater price, Ms. Hughes will move the matter on for enforcement.

12. In and around October 31, 2023, Ms. Hughes was scheduling dealer visits for the next several days. She came across two ads from the Dealer on its website, one was for a 2023 Hyundai Kona and the second was for the subject vehicle. She visited the Dealer's premises on November 2, 2023 and met with Mr. Sritharan. She took contemporaneous notes of her October 31 search and her November 2 visit. She testified that she remembered the events but referred to her notes to refresh her memory.

13. There was no-one immediately available when Ms. Hughes first arrived at the Dealer. She found the subject vehicle and took several photographs on her phone, including one of the VIN # confirming it was the subject vehicle (Exhibits 21 and 22). After some time, Mr. Sritharan approached her, and she expressed an interest in the vehicle. They went inside to a desk where Mr. Sritharan pulled up the ad on a computer screen. Mr. Sritharan then entered the stock number into the Dealer's computer pricing program. The price and financing details were automatically entered into fields on the screen. Two of those fields were prepopulated with fixed amounts, one with the amount of \$641 simply entitled "Fees" and the second with the amount of \$395 entitled "F&I." The total price shown on the screen was the advertised price of \$34,991 plus the added fees for a total price of \$36,027. Ms. Hughes then asked about financing for 84 months. The computer then generated financing details. Mr. Sritharan advised Ms. Hughes that financing would be at the interest rate would be 9.9%, with an 84-month repayment term, and bi-weekly payments would be \$312.86. Mr. Sritharan went on to explain that for another \$2,000 Ms. Hughes could get an extended warranty and a lower interest rate of 7.99%. Her bi-weekly payments would drop to \$309.

14. Ms. Hughes asked if she could take a photograph of the computer screen. With Mr. Sritharan's consent she did so (Exhibit 24). She took Mr. Sritharan's business card and left. Later that same day Ms. Hughes called Mr. Sritharan to clarify the two prepopulated fees. Mr. Sritharan explained that the \$641 was an administrative fee that everyone had to pay. The second was a security fee and Ms. Hughes could talk to the sales manager about seeing if it could be removed.

15. Prior to the commencement of Mr. Sritharan's evidence his layperson representative, Chris Catsanos, advised the Panel that he had just learned for the first time that Mr. Sritharan did not recognize Ms. Hughes and had never dealt with her. The Panel then proceeded to hear Mr. Sritharan's evidence.

16. Despite having sold 100 – 120 cars while employed at the Dealer, Mr. Sritharan testified that he had only shown the subject vehicle once, to a middle-aged brown man. In his version of the transaction, the consumer asked about the car. He brought the consumer inside and began by entering the stock number into the computer program, resulting in the screen being prepopulated with the base price, \$34,991 and the two fees described seen in Exhibit 24, the \$641 fees entry and the \$395 F & I fee. He asked the consumer for his personal details. The consumer declined to give them. He asked the consumer if he would like to meet the sales manager to discuss pricing. The consumer declined. Without discussing pricing details with the consumer, Mr. Sritharan went to the sales manager to discuss preparing a quote, leaving the consumer alone. He did not share his computer screen with the consumer or give him permission to photograph it. The sales manager sent Mr. Sritharan back to the consumer to get his personal details but the consumer stated that he had what he came for and left.

17. In reconciling these two irreconcilable versions of the events of November 2, 2023, the Panel rejects the evidence of Mr. Sritharan as tailored to show that he followed the Dealer's administrative processes. On every level his evidence is inconsistent with other evidence and the documentary back-up for that evidence, particularly the photos taken by Ms. Hughes of the vehicle and the computer screen. It is also inconsistent with Mr. Sritharan's earlier statements (which we review below) with no convincing explanation of how a vague memory nearer to the events became such finely detailed evidence.

18. Ms. Hughes testified that after leaving the Dealer and returning to her office, she forwarded the information about the transaction to the enforcement department. That department then began the process that led to the issuance of the Notice. The Notice was sent to the respondents in and around May 10, 2024. On May 13, 2024, Mr. Catsanos, the Dealer's sales manager, and the used car manager, Tom Pitsikos, interviewed Mr. Sritharan about the impugned transaction. They advised OMVIC of the following: "Mr. Gesavan Sritharan was interviewed. The said infraction was vaguely a distant memory but a memory that was not denied none the less." This statement has the ring of truth to it. There was nothing in the transaction that would specifically stand out. In essence, a consumer came in, asked for a price and then left. Six months later, after

selling a number of cars in the interim, it is to be expected that Mr. Sritharan's memory of the events would be vague.

19. Mr. Sritharan was asked if he told Messrs. Catsanos and Pitsikos his current version of the events of November 2 at the May 13 meeting described above. His initial answer was yes. When the above statement was put to him, he changed his story to state that it was when he read Ms. Hughes's notes in OMVIC's documentary disclosure that his memory of the transaction came flooding back. When pressed, he stated that he had not read the notes when they were first delivered in January 2025. He had read them just before the hearing. These two versions of events stand in contrast to the submission related to the Panel by Mr. Catsanos, that Mr. Sritharan had told him during the lunch break that it was because he did not recognize Ms. Hughes at the hearing that he recalled the earlier details.

20. Mr. Sritharan's statement that reading the notes of someone he claims he never met triggered a highly detailed recall of a totally different transaction involving a middle-aged man does not have an air of reality about it. His evidence was that he has sold in the region of 70 to 90 cars since Ms. Hughes's visit. To recall specific minute details of a brief meeting not leading to a sale strains credulity.

21. The documentary evidence supports Ms. Hughes's evidence. Of note are the photographs from Ms. Hughes's phone, especially Exhibit 24 which is both date and location stamped. The Panel finds that Ms. Hughes's phone was at the Dealer on the morning of November 2, 2023 and, it is more likely than not that Ms. Hughes was attached to it taking photographs. Ms. Hughes's subsequent actions in forwarding the matter for enforcement strongly support her version of the events.

Breach of the All-in Advertising Rules

22. The facts of this matter are otherwise straightforward. Having considered the evidence from the only two witnesses with first-hand knowledge of the events on the morning of November 2, 2023, the Panel finds, on a balance of probabilities, that Mr. Sritharan quoted Ms. Hughes a price for the purchase of the subject vehicle that was in excess of the advertised price. The quote included two additional fees that, according to s. 36(7)(b) of O. Reg 333/08, are to be included in the advertised price. Mr. Sritharan then used the inflated price to calculate the bi-weekly repayment amount.

23. There was evidence from Mr. Koundouros and Mr. Parsons about what they both referred to in slightly different terms as quoting software. The thrust of the position, particularly from Mr. Koundouros, being that what is captured in Exhibit 24 is not a quote. It is clear that Mr. Sritharan entered a stock number into the software. The software then prepopulated various fields with data. It was Mr. Sritharan's evidence that he could not make any changes to the data in the prepopulated fields. Only the sales manager or other management staff could make such changes. Mr. Koundouros testified that, in the normal course, the appropriate manager would remove the two fees, and the quote would be amended to the advertised price. It is clear however from the evidence of Ms. Hughes regarding the telephone discussion that Mr. Sritharan did not understand the nature of the fees, telling Ms. Hughes that one fee was charged on all vehicles, but the second fee might be negotiable. It was Mr. Parson's evidence that the starting price and total price in the quoting software could be altered by management when initially entering the data. Thus, the advertised sale price could have been entered as the total final price in the software, and Mr. Sritharan would not have been misled. It is not against the regulations to charge such fees provided they are included in the advertised sale price.

24. The evidence, then, discloses that Mr. Sritharan lacked adequate training in the software at the time of the sale to properly provide a final price to Ms. Hughes. That lack of training could have been offset by management making slight modifications to the quoting software.

25. We note that the respondents argued strongly that Ms. Hughes had never been given a formal quote, and absent a formal quote there was no misrepresentation. They took great exception to the photograph Ms. Hughes took of the computer screen with the quoting software, arguing strenuously that it was not taken on consent and was an internal working document only. With respect, they miss the focus of the regulations. The regulations do not use the word "quote." Rather they recognize that buying a vehicle does not involve a mute exchange of written numbers resulting in a quote or a bill of sale. It involves a much wider-ranging interaction between the salesperson and the consumer wherein the salesperson may make any number of statements. The regulatory wording focuses on "describing features and benefits ...," and making "representations." The photo of the computer screen simply represents evidence of the broader discussion between Ms. Hughes and Mr. Sritharan. It evidences the numbers discussed, but it is the fact of the discussion, and the representations therein that constitute the regulatory breach, not the whether the computer screen is a quote.

26. We do not accept the technical argument that this screenshot somehow fails to meet the definition of a quote for purposes of consumer protection under the Code of Ethics.

Breaches of the Code of Ethics

27. With respect to breaches of the Code of Ethics on the part of Mr. Sritharan, the Panel finds that he has breached s. 4(1), 4(2), 6(2) and 9(3). Sections 4(1) and 4(2) state:

(1) A registrant shall be clear and truthful in describing the features, benefits and prices connected with the motor vehicles in which the registrant trades and in explaining the products, services, programs and prices connected with those vehicles.

(2) A registrant shall ensure that all representations, including advertising, made by or on behalf of the registrant in connection with trading in motor vehicles, are legal, decent, ethical and truthful.

28. By quoting a price in excess of the advertised price, Mr. Sritharan was not clear and truthful in describing or making representations about the subject vehicle. He had recently completed the OMVIC certification course and was aware of the all-in pricing rules. He viewed the ad before entering data into the quoting software, yet he still advised a person whom he believed to be a consumer of a price greater than the advertised price and represented that at least one of the fees was non-negotiable. This was untruthful and in breach of O. Reg 333/08.

29. It follows that, in misquoting the sales price for the subject vehicle, Mr. Sritharan also ran afoul of his obligations as set out s. 6(2) of the Code of Ethics, which states:

(2) A registered salesperson shall not do or omit to do anything that causes the registered motor vehicle dealer who employs or retains the salesperson to contravene this Regulation or any applicable law with respect to trading in motor vehicles.

30. His actions have caused the Dealer to breach of the all-in pricing regulations.

31. Section 9(3) of the Code of Ethics addresses both intentional and unintentional breaches. It creates a best-efforts standard, as follows: "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." There is no direct evidence that Mr. Sritharan made any efforts to clarify the price. As shown above, Mr. Sritharan denies the whole transaction, so he has no evidence of any efforts he made to ensure the correct price was quoted. Also, despite Mr. Koundouros's insistence that the Dealer's procedures are incapable of generating an improper quote, he was not present at

the time of the infringement, and he has no evidence of efforts made to comply. The only direct and reliable evidence of the transaction came from Ms. Hughes. Her evidence indicates a total lack of any attempt to prevent the improper quote. In fact, she gave Mr. Sritharan some time to inform himself of the true state of affairs. She did not ask to clarify the fees immediately but called back later to discuss them. There was no evidence that Mr. Sritharan made any attempt to discuss the advertised price and the fees with the sales manager in the interim. In the absence of evidence of best efforts, we find that Mr. Sritharan breached s. 9(3) of the Code of Ethics.

32. This is a case where the Dealer has also breached the Code of Ethics. The Dealer has breached s. 4(2) and s. 9(3) by not advertising the all-in price and by not being clear and truthful about the products, services, programs and prices and by not ensuring that all representations were truthful.

33. In his capacity as General Manager of the Dealer, Mr. Koundouros has a duty to ensure that the Dealer complies with the Code of Ethics. The evidence discloses an overreliance on procedure to ensure that there were no breaches of the Code of Ethics. The procedure did not address the lack of training given to Mr. Sritharan with respect to all-in pricing, a responsibility squarely within the control of Mr. Koundouros. The Panel finds, on a balance of probabilities, that Mr. Koundouros has breached s. 6(2) and 9(3) of the Code of Ethics.

Next Steps

34. Having found that the respondents have breached the Code of Ethics, the Panel must now consider the penalty to be imposed. The Tribunal office will set a reattendance date for the penalty hearing.

35. I, Greg Flude, sign this decision on merits as Chair of this discipline Panel and on behalf of the members of the discipline Panel as listed below.



Mr. Greg Flude, Chair

Date: July 9, 2025

Panel Members:

Mr. Greg Flude
Mr. Nelson Caetano
Mr. Joe Malfara