

## 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 -

PETERBOROUGH CHRYSLER PLYMOUTH LTD.

- AND -

JOHN STEWART

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Pursuant to Rule 1.07 of the Rules of Practice before the Discipline Committee and the Appeals Committee, I, the Chair of the Discipline Committee, have reviewed and considered the written Agreed Statement of Facts and Joint Submission on Penalty together with both Parties' waiver of a Hearing to this Proceeding and provide the following Order:

**Date of Decision:** November 20, 2014

**Findings:** Breach of Sections 4, 7 and 9 of the Code of Ethics

**Order:**

1. The Dealer is ordered to pay a fine in the amount of \$4,000 within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 90 days of acceptance of this offer. Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. 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 or who are otherwise required to do pursuant to the Act.
3. The Dealer shall comply with the Act and Standards of Business Practice, as may be amended from time to time.

Written Reasons:

## **Reasons for Decision**

### **Introduction**

This matter proceeded on the basis of an Agreed Statement of Facts, Joint Submission on Penalty and the Parties' Waiver of Hearing, pursuant to Rule 1.07 of the Rules of Practice before the Discipline Committee and the Appeals Committee.

### **Agreed Statement of Facts**

The parties to this proceeding agree that:

1. Peterborough Chrysler Plymouth Ltd. (the "Dealer") was first registered as a motor vehicle dealer in or around October 1990. John Stewart ("Stewart") was first registered as a motor vehicle sales person in or around April 1983. At all material times, Stewart was the officer of the Dealer.
2. In the winter of 2008, OMVIC issued a Dealer Standard publication which highlighted some of the upcoming changes that would take place when the *Motor Vehicle Dealers Act, 2002* (the "Act") came into effect, including; ensuring vehicle prices include all additional fees, as well as ensuring former daily rental vehicles are disclosed in a clear, comprehensible and prominent manner. The issue also highlighted the requirement to disclose former daily rental status, on contracts.
3. In the summer of 2008, OMVIC issued a Dealer Standard publication which highlighted the requirement to disclose former daily rental vehicles, on both contracts and advertisements.
4. In or around December 2008, OMVIC issued a bulletin reminding dealers of their new advertising obligations under the new Act, including but not limited to; all in pricing requirements and past use disclosure requirements.
5. In or around June 2009, OMVIC issued a bulletin reminding dealers that a consumer is able to cancel a contract within 90 days, if former daily rental disclosure is not made on a contract.
6. In or around January 2010, OMVIC issued a bulletin reminding dealers that all-in advertising is in effect.
7. In or around January 2010, OMVIC issued a bulletin advising dealers that bills of sales must change to satisfy the new disclosure requirements under the new *Motor Vehicle Dealers Act, 2002*. This bulletin also explained that failure to disclose if the vehicle is a previous daily rental that has not been subsequently owned by a consumer, on a contract, can result in automatic rescission within 90 days.

8. In or around April 2010, OMVIC issued a bulletin advising that 75 dealers had recently been charged under the *Provincial Offences Act*, with various advertising offences, including (not limited to); failure to advertise all-in prices and failure to publish if the vehicle is a previous daily rental that has not been subsequently owned by a consumer.
9. In the spring of 2010 OMVIC issued a Dealer Standard publication reminding dealers of common errors in vehicle advertising, including but not limited to, all-in pricing non-compliance.
10. In the summer of 2010 OMVIC issued a Dealer Standard publication reminding dealers of their advertising obligations, including but not limited to, all in pricing and past use disclosure.
11. In the spring of 2011 OMVIC issued a Dealer Standard reminding dealers of their advertising obligations, including but not limited to, all in pricing requirements and past use disclosure requirements.
12. On or about June 7, 2011, a representative of the registrar reminded the Dealer that disclosures in advertisements must be presented in a clear, comprehensible and prominent manner.
13. In or around February 2012, OMVIC issued a bulletin reminding dealers of the requirement to advertise all-in prices.
14. In the summer of 2012 OMVIC issued a Dealer Standard publication reminding dealers of their disclosure obligations on contracts, including but not limited to past use as a daily rental.
15. In or around September 2012, OMVIC issued a bulletin reminding dealers of the requirement to disclose previous daily rental use, in writing, on contracts.
16. On or about October 24, 2012, a representative of the registrar reminded the Dealer that daily rental disclosures in advertisements must be presented in a clear, comprehensible and prominent manner.
17. On or about October 30, 2012, the Dealer purchased a 2012 Chrysler 200 (VIN 1CC3CCBBB9CN101452). This vehicle was registered in the province of Quebec. On or about November 16, 2012, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's out of province status. This is contrary to section 42(22) of Regulation 333/08 as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation that the purchaser was aware of the vehicles out of province status.
18. On or about October 30, 2012, the Dealer purchased a 2012 Chrysler 200 LX (VIN 1C3CCBBB2CN101454). This vehicle was registered in the province of Quebec. On or about December 5, 2012, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's out of province status. This is contrary to section 42(22) of Regulation 333/08 as well as sections 7 and 9 of the Code of Ethics. The

Dealer has since provided OMVIC with confirmation that the purchaser was aware of the vehicles out of province status.

19. In or around April 2013, OMVIC issued a bulletin reminding dealers of the requirement to advertise all-in prices.
20. On or before August 8, 2013, the Dealer advertised a 2013 Dodge Avenger (VIN 1C3CDZCB2DN502055), with a selling price of \$17,900. On or about August 8, 2013, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's prior daily rental use. Furthermore the Dealer sold this vehicle with an additional \$5.00 OMVIC fee, \$289 administration fee and a \$129 nitrogen fee. This is contrary to section 36(7) and 42(7) of Regulation 333/08 as well as sections 4, 7 and 9 of the Code of Ethics. The dealer has subsequently contacted the purchaser to inform them that the vehicle was sold above the advertised price, and has refunded the excess amount.
21. On or about January 11, 2013, the Dealer purchased a 2012 Jeep Patriot Ltd (VIN 1C4NJRAB0CD670880). This vehicle is a former daily rental. On or about August 8, 2013, the Dealer sold this vehicle without providing the purchaser with written disclosure of the vehicle's prior daily rental use. This is contrary to section 42(7) of Regulation 333/08 as well as sections 7 and 9 of the Code of Ethics. The Dealer has since provided OMVIC with confirmation that the purchaser was aware of the vehicles daily rental status.

By failing to comply with the following sections of the *Motor Vehicle Dealers Act, 2002*:

Section 28:

No registrant shall make false, misleading or deceptive statements in any advertisement, circular, pamphlet or material published by any means relating to trading in motor vehicles.

Regulation 333/08:

42 (7) For the purposes of section 30(1) of the Act, the information mentioned in paragraph 22 of subsection 39 (2) and paragraph 11 of subsection 41(1) of this Regulation is the following: If any of the following is true of the motor vehicle, a statement to the effect that the vehicle was previously,

- i. leased on a daily basis, unless the vehicle was subsequently owned by a person who was not registered as a motor vehicle dealer under the *Motor Vehicle Dealers Act* or the *Motor Vehicle Dealers Act, 2002*,
- ii. used as a police cruiser or used to provide emergency services, or
- iii. used as a taxi or limousine.

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.

42 (22) If the motor vehicle previously received treatment in a jurisdiction other than Ontario that was equivalent to having had a permit issued under section 7 of the *Highway Traffic Act* or having been traded in Ontario, a statement to that effect and a statement of which jurisdictions, except if one or more permits have been issued for the vehicle under section 7 of that Act to cover at least the seven previous consecutive years.

It is thereby agreed that the Dealer has breached the following sections of the Code of Ethics, as set out in Regulation 332/08:

4. 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.

7. 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.

9. 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.

### **Joint Submission on Penalty**

1. The Dealer agrees to pay a fine in the amount of \$4,000 within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. The Dealer agrees to offer all current and future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 90 days of acceptance of this offer. Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. 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 or who are otherwise required to do pursuant to the Act.
3. The Dealer agrees to comply with the Act and Standards of Business Practice, as may be amended from time to time.


### **Decision of the Chair**

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee hereby concludes that the Dealer and Stewart breached subsections 4, 7 and 9 of the OMVIC Code of Ethics, as set out in Ontario Regulation 332/08, made under the *Motor*

*Vehicle Dealers Act, 2002.* The Chair of the Discipline Committee also agrees with the Parties' Joint Submission on Penalty and, accordingly, makes the following Order:

1. The Dealer is ordered to pay a fine in the amount of \$4,000 within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 90 days of acceptance of this offer. Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. 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 or who are otherwise required to do pursuant to the Act.
3. The Dealer shall comply with the Act and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council  
Discipline Committee



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Catherine Poultney, Chair