

## 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

B E T W E E N :

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

- AND -

1202894 ONTARIO INC. o/a EDWARDS MAZDA /POIRIER NISSAN

- and -

EDWARD POIRIER

---

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:** January 7, 2020

**Findings:** Breach of Sections 4, 6, 7 and 9 of the Code of Ethics

**Order:**

1. The Dealer is ordered to pay a fine in the amount of \$6,000, which will be paid no later than **March 31, 2020.**
2. Poirier is ordered to pay a fine in the amount of \$3,000, which will be paid no later than **March 31, 2020.**
3. The Dealer is ordered to ensure all sales staff employed by the Dealer have reviewed both the June 2015 OMVIC disclosure webinar, and the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **March 31, 2020.**
4. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the Automotive Certification course (the "Course"). Current sales staff will be



offered the Course no later than **March 31, 2020**. 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 or who are otherwise required to do so pursuant to the Act.

5. Poirier is ordered to successfully complete the Course, in person, no later than **May 1, 2020**.
6. The Dealer and Poirier agree to 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. 1202894 Ontario Inc o/a Edwards Mazda/Poirier Nissan (the "Dealer") was first registered as a motor vehicle dealer in about August 1997. Edward Poirier ("Poirier") was first registered as a motor vehicle salesperson in about April 1983. At all material times, Poirier was the sole officer of the Dealer and the person in charge of the day to day activities of the Dealer.

#### **OMVIC registrant education:**

	<b><u>Dealer Standard: Publication Date</u></b>	<b>Subject matter: daily rental disclosure in ads 36(5)</b>	<b>Subject matter: daily rental disclosure on the bill of sale 42(7)</b>
A.	Spring 2010	x	
B.	Summer 2010	x	
C.	Summer 2011	x	
D.	Summer 2012	x	



E.	Spring 2013		X
F.	Fall 2013	X	
	<b>OMVIC bulletins:</b> <i>Publication Date</i>		
G.	September 2012		X
	<b>OMVIC Webinars:</b> <i>Release Date</i>		
H.	December 2014		X
I.	April 2015	X	
I.	June 2015		X
J..	August 2017	X	

2. Since around December 2008, OMVIC has issued the following publications and webinars reminding dealers of their obligations to advertise all inclusive vehicle prices (“all-in pricing”), as well as their obligations to disclose former daily rental vehicles in both advertising and on the bill of sale (“disclosure”). All of these materials continue to be available on OMVIC’s website:
3. In addition to the above referenced subject matters, on or about September 7, 2017 OMVIC issued a bulletin to all registrants reminding them of their obligation to accurately reflect a vehicle’s negative equity on the bill of sale.

**Direct correspondence with Dealer:**

4. OMVIC corresponded with the Dealer and/or Poirier on the following dates regarding the Dealer’s obligations concerning all-in pricing, disclosure, and the necessity to accurately reflect a vehicle’s negative equity on the bill of sale:

***Email correspondence:***

- a. August 12, 2010: daily rental disclosure in advertisements.
- b. December 20, 2010: all in pricing and daily rental disclosure in advertisements.
- c. March 13, 2014: daily rental disclosure in advertisements.

***OMVIC Inspections:***

- d. March 6, 2015: all in pricing and accurately reflecting a vehicle’s negative equity on the bill of sale.
- e. June 12, 2018: all in pricing and accurately reflecting a vehicle’s negative equity on the bill of sale.

***Letter:***

- f. July 16, 2018: accurately reflecting a vehicle’s negative equity on the bill of sale.

**Previous Discipline Committee Orders:**



5. On or about February 3, 2014, the Registrar issued a Notice of Complaint against the Dealer and Poirier. On or about May 9, 2014, the Discipline Committee issued an Order against the Dealer and Poirier, pursuant to a negotiated resolution of the aforementioned Notice of Complaint.
6. As per condition 2 of the Order, Poirier was to successfully complete the Automotive Certification course (the "Course"). As per condition 5, the Dealer was to comply with the Act and Standards of Business Practice, as may be amended from time to time.
7. On or about July 21, 2014, Poirier successfully completed the Course. Included in the Course materials are registrant's advertising and disclosure obligations, as well as how to accurately reflect a vehicle's negative equity on a contract.
8. On or about June 25, 2015, the Registrar issued a Notice of Complaint against the Dealer and Poirier. On or about December 7, 2015, the Discipline Committee issued an Order against the Dealer and Poirier, pursuant to a negotiated resolution of the aforementioned Notice of Complaint.
9. As per condition 3 of the Order, the Dealer was to comply with the Act and Standards of Business Practice, as may be amended from time to time.

**Current non-compliance:**

10. During an inspection on or about April 16, 2019, the following non-compliance issues were discovered:
  - a. On or about February 9, 2019, the Dealer sold a 2019 Mazda CX3 (VIN JM1DKFB72K0413551). The purchaser of this vehicle traded in their 2000 Ford Ranger. The vehicle being traded in had \$8,000 in negative equity which was then added to the purchase price of the 2019 Mazda CX3 and thus not accurately reflected on the bill of sale. As such, the Dealer falsified information on a document relating to the trade of a motor vehicle, contrary to section 26 of the Act, as well as section 9 of the Code of Ethics.
  - b. On or before February 2, 2019, the Dealer advertised a 2017 Ford Fusion (Stock# 21488). This vehicle is a former daily rental unit and the Dealer failed to indicate this information in the advertisement, or on the bill of sale when it was subsequently sold on or about March 4, 2019. This is contrary to sections 36(5) and 42(7) of Regulation 333/08, as well as sections 4, 7, and 9 of the Code of Ethics. The Dealer has attempted to reach out to the purchaser of this vehicle to ensure they are aware of their vehicle's history.
11. In failing to ensure the Dealer is conducting business in compliance with the law, Poirier has personally breached sections 6 and 9 of the Code of Ethics.

By failing to comply with the following sections of the Regulation 333/08 of the Act:



### 36. Advertising:

5. If any of the following is true of a motor vehicle, an advertisement that attempts to induce a trade in the specific vehicle shall indicate, in a clear, comprehensible and prominent manner, that the vehicle was previously,

- (a) leased on a daily basis, unless the vehicle was subsequently owned by a person who was not a registered motor vehicle dealer;
- (b) used as a police cruiser or used to provide emergency services; or
- (c) used as a taxi or limousine.

### 42. Additional information in contracts of sale and leases:

7. 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. (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.

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.(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.

7. (1) 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.

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

6. (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.

It is thereby agreed that the Dealer and Poirier have breached the following section of the Code of Ethics, as set out in Regulation 332/08:



9. (1) In carrying on business, a registrant shall not engage in any act or omission that, having regard to all 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 \$6,000, which will be paid no later than **March 31, 2020.**
2. Poirier agrees to pay a fine in the amount of \$3,000, which will be paid no later than **March 31, 2020.**
3. The Dealer agrees to ensure all sales staff employed by the Dealer have reviewed both the June 2015 OMVIC disclosure webinar, and the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **March 31, 2020.**
4. The Dealer agrees to offer all current and future sales staff the opportunity to complete the Automotive Certification course (the "Course"). Current sales staff will be offered the Course no later than **March 31, 2020.** 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 or who are otherwise required to do so pursuant to the Act.
5. Poirier agrees to successfully complete the Course, in person, no later than **May 1, 2020.**
6. The Dealer and Poirier agree 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 breached subsections 4, 6, 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 \$6,000, which will be paid no later than **March 31, 2020.**



2. Poirier is ordered to pay a fine in the amount of \$3,000, which will be paid no later than **March 31, 2020.**
3. The Dealer is ordered to ensure all sales staff employed by the Dealer have reviewed both the June 2015 OMVIC disclosure webinar, and the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **March 31, 2020.**
4. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the Automotive Certification course (the "Course"). Current sales staff will be offered the Course no later than **March 31, 2020.** 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 or who are otherwise required to do so pursuant to the Act.
5. Poirier is ordered to successfully complete the Course, in person, no later than **May 1, 2020.**
6. The Dealer and Poirier agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council  
Discipline Committee



---

*Paul Burroughs, Chair*

