

DISCIPLINE COMMITTEE
OF THE ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL

PANEL: Mr. Robert MacKay, Chair Public Member
 Mr. Jonathan Lemaire, Vice-Chair Registrant
 Mr. Achilles Pelitis, Vice-Chair Registrant

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 :

Appearances:

)	
)	
REGISTRAR, MOTOR VEHICLE)	Ms. Sarah Aouchiche
DEALERS ACT, 2002)	for the Registrar
)	
- and -)	
)	
LEGGAT CHEVROLET BUICK)	
GMC LIMITED)	
)	
and)	Mr. Shaun Laubman
)	for the Registrants
DOUGLAS LEGGAT)	
)	
)	

Date of Hearing: September 27 and November 24 & 25, 2016¹

Date of Decision: January 19, 2017

Findings: Allegations dismissed

¹ Also present at the hearing were independent legal counsel (Mr. Aaron Dantowitz on September 27th and Mr. Justin Safayeni on November 24 & 25), as well as Hearing Administrators Mr. David Daily and Mr. Jeff Ross.

DECISION AND REASONS

Introduction

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

This three day hearing was convened September 27, 2016 (the "Hearing"). At that time, the Fresh as Amended Notice of Complaint dated August 31, 2016² was marked and entered as Exhibit 1 and the Notice of Complaint dated March 27, 2015³ was marked and entered as Exhibit 1b.

Preliminary Matter: Late Disclosure and Adjournment

At the outset of the Hearing on September 27, 2016, Ms. Aouchiche, on behalf of the Registrar, brought a motion to introduce and rely on two small briefs of evidence (the "Motion"). The first small brief had been provided to Leggat Chevrolet Buick GMC Limited and Douglas Leggat (together, the "Registrants") on September 19, and the second small brief on September 23, 2016.

The Notice of Motion, a large brief of April 1, 2016 titled "Book of Documents" (Tabs 3 through 34), a small brief titled "Book of Documents Volume 2" of September 19, 2016 with 3 tabs, and a small brief titled "Book of Documents Volume 3" of September 23, 2016 with 3 tabs, were marked and collectively entered as Exhibit 2.

Later, during the course of the Hearing on the merits, it was agreed that Exhibit 2 would refer only to the large Book of Documents and the Book of Documents Volume 2.

² Exhibit 2 (Book of Documents), Tab 2.

³ Exhibit 2 (Book of Documents), Tab 1.

Submissions on the Motion

The parties were in agreement that Volumes 2 and 3 (the “Late Disclosure”) were provided to the Registrants less than 15 days before the Hearing was scheduled to begin, and that this did not accord with the Rules of the Discipline Committee⁴ (the “Rules”) with respect to disclosure. They further agreed that should the Panel allow the Late Disclosure under rule 6.04 of the Rules, an adjournment would be appropriate to afford the Registrants time to review the Late Disclosure.

Submissions by Ms. Aouchiche on the Motion were essentially that she was fulfilling her obligations of ongoing disclosure, the Late Disclosure was relevant, the witnesses in Volume 3 are “key” to the case of the Registrar, and the Late Disclosure contained no fresh evidence that the Respondent could not have ascertained from the April 1, 2016 disclosure⁵.

Mr. Laubman took the position that the Late Disclosure contained evidence that fundamentally changed the theory of the case and therefore should not be allowed. Or, if it were to be allowed, the Registrants would require time to review the fresh evidence to determine how to respond to the case against them. In particular, counsel for the Registrants noted the disclosure of April 1, 2016 did not contain a witness list or any will-say statements. In agreeing to the need for an adjournment if the Late Disclosure were allowed, Mr. Laubman stated the Respondents would be seeking costs against the Registrar for the delay.

In advance of deciding on the Motion the Panel heard advice from Independent Legal Counsel (“ILC”), and then the parties were given the opportunity to comment on that advice. The Panel recessed to consider the submissions, review Exhibits 1 & 1b, and review and compare the April 1, 2016 disclosure with the Late Disclosure.

⁴ Rules Of Practice Before The Discipline Committee and the Appeals Committee, Rule 6 – Disclosure 6.01 (1)

⁵ Exhibit 2, Tabs 3 through 34

Decision on the Motion

In deciding on the Motion, the Panel considered the likely relevance of the Late Disclosure, fairness to the Registrants with respect to the right to make full answer and defence, the reasons of the Registrar for non-compliance with the rule, the public interest in having complete evidence before the Panel, and any prejudice in granting the Motion and how that could be mitigated.

The Panel granted the Motion allowing the Registrar to rely on the evidence in the Late Disclosure, on the condition that the matter be adjourned to no later than the end of November, or the first two weeks of December, 2016.

Reasons for the Decision on the Motion

The Panel made the following findings:

- Although Ms. Aouchiche stated she was recently assigned to this file, other than “errors were made” there was no reason offered as to why the evidence could not have reasonably been available to the Registrar 15 days before the Hearing;
- On review, it appears the contents of the Late Disclosure could be relevant and useful to the Panel in deciding the issues in the Notices of Complaint⁶;
- The Late Disclosure is such that allowing the Registrar to rely on it and proceeding that day would be unfair to the Registrants with respect to their ability to make full answer and defence; and
- The public interest is better served when all potentially relevant evidence is available to all parties than it may be harmed by further delay in granting an adjournment.

Therefore, granting the Motion with the condition of an adjournment assists in having all the relevant evidence available for decision making and affords the Registrants ample time to consider the Late Disclosure.

⁶ Exhibits I and Ib

Costs

During closing submissions of the Hearing on the merits, Mr. Laubman advised the Panel the Registrants were seeking a costs order against the Registrar with respect to the adjournment on September 27 in the amount of \$2,500.00, pursuant to rule 13 of the Rules.

The parties made oral submissions on the issue of costs. However, following the conclusion of the Hearing, and before the Panel began deliberations, the parties jointly requested an opportunity to make written submissions on costs and provide case law in support of those submissions. The Panel granted that request and reviewed those submissions prior to deliberations.

Mr. Laubman asserts that the failure of the Registrar to disclose witness statements and documents within the required 15 days is unreasonable conduct, which triggered the adjournment. Mr. Laubman notes: "There has been no suggestion that the late disclosure was not available to the Registrar earlier" and that it was the submissions of the Registrar that the Late Disclosure "was relevant and material". Mr. Laubman argues that it is unreasonable for the Registrants to bear the full costs of preparing twice for the Hearing, or the costs of arguing the Late Disclosure motion on September 27, 2016.

Ms. Aouchiche submits that 10 days prior to the hearing "it was noted that disclosure had not been complete, and an additional witness will be called". She asserts that this does not rise to the level of unreasonable conduct, and points out that the Registrar has an ongoing obligation of disclosure. Ms. Aouchiche apologized for having not met the Rules on disclosure in this circumstance.

Decision and Reasons for the Decision on the Costs

The Panel made the following findings:

- It is a significant issue that relevant and material documents were disclosed to the Registrants approximately 8 days before the Hearing and will-say documents

were disclosed to the Registrants approximately 4 days before the Hearing with no explanation why that could not have been reasonably known and produced by the Registrar any time before the 15 days set out in the rules;

- As the party bringing the allegation against the Registrants, the Panel would expect the Registrar to understand and respect rule 6 of the Rules and the underlying principle that a fair process includes the Registrants knowing the case against them in order to make full answer and defence to the allegations;
- It is evident the Registrar had the information, knew the rule and nonetheless as Mr. Laubman suggests “the Registrar elected to pay only passing attention to its disclosure obligations”;
- There is no dispute that the only reason for the adjournment from September 27 to November 24 was the Late Disclosure:
- The Registrants did not indicate where preparation for the second ‘start’ would differ significantly from the September 27 start. However, they did incur the costs of the arguing the Late Disclosure; and
- The Panel looked to rule 13.02(1)(b) of the Rules for guidance in fixing costs.

For those reason the Panel makes the following order:

Order:

The Registrar shall pay costs in the amount of \$1,500 to the Registrants, due within thirty (30) days of the date of this Discipline Committee Decision.

DECISION AND REASONS ON THE MERITS

Overview

Summary of Exhibits

The Hearing was convened September 27, 2016. During the course of the Hearing, the Panel received the following documents, which were accepted and marked as:

- Exhibit 1: Fresh as Amended Notice of Complaint⁷ dated August 31, 2016⁸;
- Exhibit 1b: Notice of Complaint dated March 27, 2015⁹;
- Exhibit 2: Registrar's Books of Documents
 - Large Book of Documents of April 1, 2016 (34 tabs)
 - Book of Documents Volume 2 (3 tabs: 41¹⁰, 42, & 43);
- Exhibit 3: Registrants' Book of Authorities (6 tabs);
- Exhibit 4: Small bundle of emails, including one dated January 13, 2016 (3 pages);
- Exhibit 5: Bundle of emails in relation to the December 9, 2014 inspection;
- Exhibit 6: Three emails between Andrea Korth and Brian Leggat;
- Exhibit 7: April 10, 2015 "Statement of Response"; and
- Exhibit 8: April 30, 2015 letter to Andrea Korth.

Allegations

The subject matter of this Hearing arises after an inspection of the dealership Leggat Chevrolet Buick GMC Limited (the "Dealership"). The Registrar alleges five vehicles were sold for more than their advertised price. The allegations against the Registrants are set out in Exhibit 1, which is attached here as Appendix "A". The parties were in agreement that Paragraphs 1 through 9 of Exhibit 1 are not in dispute. The remaining paragraphs 10 through 15, under the heading "Dealer non-compliance" are at issue in this matter and are set out below:

Dealer non-compliance:

10. During an inspection on or about December 9, 2014, a representative of the Registrar discovered the following non-compliant issues:

Advertising:

11. On or before November 10, 2014, an advertisement was placed by or on behalf of the Dealer for a 2010 Chevrolet Equinox, (VIN 2CNALBEW8A6415169) with a selling price of \$14,995. On or about November 10, 2014 the Dealer sold this vehicle, and charged an additional \$508.54 in fees. As such, the advertisement did not promote an all-inclusive price, contrary to sections 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.

⁷ At the outset, the Registrar advised they were withdrawing paragraphs 4d, 4e, 5e and 5g.

⁸ Appendix "A" to this decision.

⁹ Appendix "B" to this decision.

¹⁰ At the outset the Registrar advised they were withdrawing paragraph 16.

12. On or before November 13, 2014, an advertisement was placed by or on behalf of the Dealer for a 2013 GMC Sierra 1500, (VIN 3GTP2TE76DG354719) with a selling price of \$26,995. On or about November 13, 2014 the Dealer sold this vehicle and charged \$624 in additional fees. As such, the advertisement did not promote an all-inclusive price, contrary to sections 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
13. On or before November 19, 2014, an advertisement was placed by or on behalf of the Dealer for a 2014 Chevrolet Cruze, (VIN 1G1PC5SB4E7346156) with a selling price of \$24,280. On or about November 19, 2014 the Dealer sold this vehicle and charged \$583.70 in additional fees. As such, the advertisement did not promote an all-inclusive price, contrary to sections 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
14. On or before November 29, 2014, an advertisement was placed by or on behalf of the Dealer for a 2014 Chevrolet Cruze, (VIN 1G1PC5SB9E7442039) with a selling price of \$22,920. On or about November 29, 2014 the Dealer sold this vehicle and charged \$499 in additional fees. As such, the advertisement did not promote an all-inclusive price, contrary to sections 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
15. On or before December 1, 2014, an advertisement was placed by or on behalf of the Dealer for a 2014 Chevrolet Equinox, (VIN 2GNFLFE39E6329079) with a selling price of \$31,995. On or about December 1, 2014 the Dealer sold this vehicle and charged \$59 in additional fees. As such, the advertisement did not promote an all-inclusive price, contrary to sections 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.

Plea

At the outset, Mr. Brian Leggat, on behalf of the Registrants, denied all the allegations contained in paragraphs 10 through 15 of the Fresh as Amended Notice of Complaint¹¹.

Preliminary Matter: Request for Witness Exclusion Order

The parties provided the Panel with an overview of their expected time to put forward their cases and expected witnesses. Mr. Laubman requested that all witnesses be excluded from the hearing room while other witnesses were giving their evidence. Ms. Aouchiche objected to the exclusion of Ms. Korth, as she is her client and directs counsel.

¹¹ Exhibit I

Ms. Aouchiche took the position that Ms. Korth is a necessary witness who can assist the Panel in weighing the evidence and that she is an experienced institutional witness who will be under oath.

Mr. Laubman offered that the issue of tainting this witness could be dealt with by having Ms. Korth be called first.

Ms. Aouchiche in reply stated she plans to call Ms. Korth last in order to tie up loose ends and offered that Mr. Laubman can be reassured by the will-say of the witness and can deal with tainting in his cross-examination.

The advice of ILC to the Panel was that there is no clear rule addressing this precise issue, and the Panel has discretion to decide on this objection. He added the guidance that it would be highly unusual to exclude a client from the room, interfering with their ability to direct counsel. However, if we view Ms. Korth as an agent of the client, who is in fact the Registrar, it may be possible for another person to direct counsel and we could consider if that would be an appropriate way to address this issue.

In reply to the advice the Panel received from ILC, Ms. Aouchiche stated that Ms. Korth was the most up-to-date on the file and it would be difficult and create delay to attempt to substitute Ms. Korth at this point.

Having heard the submissions of the parties and the advice of ILC, the Panel carefully considered the objection. In the normal course, motions to exclude all witnesses are granted to assist in providing best evidence. In this circumstance, we must weigh this against the right for the client to instruct counsel. We agreed with Ms. Aouchiche that any risk of the tainting of Ms. Korth can be mitigated by Mr. Laubman in cross-examination and the use of the will-say of Ms. Korth. And in the interest of hearing economy, avoiding further delay of the start of the Hearing in order to replace Ms. Korth outweighs the risk of tainting. The Panel will be mindful of what Ms. Korth had

previously heard when deciding on the use of, and weight to be attributed to, Ms. Korth's oral evidence.

Summary of Oral Evidence

Witnesses – in the order of appearances

Mr. Douglas Rodriguez

Mr. Rodriguez was called by the Registrar and was the Operations Manager at the Dealership at the time of the inspection on December 9, 2014 (the "Inspection") from where the allegations arise. He was useful to the Panel in that he was present for and participated in the Inspection. Given his language skills, one of his responsibilities was to deal with the Spanish advertising of the Dealership. He told us the OMVIC inspector brought samples of those Spanish newspaper advertisements to the Inspection. None of the allegations arise from those advertisements. His evidence was that the English advertisements were done by "the CFO". The Panel did not hear from the CFO of the Dealership.

Mr. Rodriguez described how he was not able to access "The Back End" – a part of the "Dealer Solutions" computer product used to manage information about vehicle inventory and publish advertisements to Auto Trader¹² and other online websites.

Mr. Rodriguez described the first page in each of Tabs 30 through 34 of Exhibit 2 as printouts from The Back End. His evidence was clear that he did not have a user login or password to access The Back End, and therefore could not print, edit, or do inputting with The Back End. Despite this, he stated that when you click "save" on The Back End, everything excluding the "Invoice"¹³ column goes to the public website of Auto Trader. Mr. Rodriguez explained how he had to go to someone else (Mr. Kelvin Sin – Sales

¹² Autotrader.com, Inc. is an online marketplace for car shoppers and sellers.

¹³ Mr. Rodriguez described the Invoice figure as the price the Dealer paid for the vehicle.

Manager) to have the printouts done, which he then gave to the OMVIC inspector on December 9, 2014. It was Mr. Rodriguez's evidence with respect to all five pages of The Back End printouts (Tabs 30 through 34) that the dollar amounts shown in the "Price" column are the last advertised price of that vehicle. Behind each of The Back End printouts at Tabs 30 through 34 is the bill of sale of the corresponding vehicle. In each case, the actual selling price was higher than the "Price" listed on The Back End printouts¹⁴. The variance ranged from \$59 to \$624.

During the course of the evidence of this witness, there was a discrepancy about under what circumstance Mr. Rodriguez left his employment with the Dealership. The witness repeatedly stated he resigned, yet at one point said he was wrongfully dismissed. Also, his oral evidence and Exhibit 4 reveal there is a dispute between the Dealership and Mr. Rodriguez over funds that may or may not be owed to the Dealership in the amount of \$53,110. These two issues may put the witness in a position to have some interest in the outcome of this matter.

During cross-examination, Mr. Rodriguez said he could not tell from The Back End printouts when the vehicle was advertised, and that he himself did not see the vehicles shown in Tabs 30 through 34 advertised on Auto Trader.

We rely on Mr. Rodriguez's description of how the Inspection was conducted and who was present. We found his understanding of The Back End and Dealer Solutions to be less helpful.

Mr. Brian Leggat

Mr. Leggat was called by the Registrants and, on agreement between the parties, heard out of the usual order of witnesses to accommodate scheduling. This witness was the employer of Mr. Rodriguez at the time of the Inspection, and the son of Mr. Douglas

¹⁴ Each of these 5 tabs correspond with the 5 allegations in paragraphs 11 thru 15 of Exhibit 1

Leggat who is named in the Notice of Complaint¹⁵. Mr. Leggat was helpful to the Panel as he was able to confirm that the Dealership receives communication from OMVIC with respect to updates about the rules governing the Dealership, stating “yes we get all of them”. This confirms what the parties are in agreement about in paragraphs 3, 4, and 5 of Exhibit 1.

The witness stated he understands the MVDA and the Code of Ethics (O. Reg. 332/08) (the “Code of Ethics”). He agrees with “All-in-Pricing” so that the consumer has no surprises and it creates a level playing field.

The evidence of Mr. Leggat was sometimes at odds with the evidence of Mr. Rodriguez about the monies owed and why, however he confirmed there was disagreement about this.

When presented with The Back End printouts, Mr. Leggat stated he did not work with them and could not provide insight into what they reveal.

Mr. Leggat was forthcoming and appeared honest throughout. No significant portions of his oral evidence were contradicted by other oral evidence or documents; we therefore rely on what he did tell us.

Ms. Marcela Coellar

Ms. Coellar was called by the Registrar. She has been an employee at OMVIC for nine years and is currently an inspector. She was useful to the Panel as she participated in the Inspection of the Dealership that is the subject of this Hearing. Her account of how the Inspection happened is consistent with Mr. Rodriguez on key points, such as the fact that she brought Spanish newspaper advertisements and printouts of Leggat online advertisements to the Inspection. However, the vehicles in those documents were either not sold, or did not become the subject matter of the allegations here. Subsequently,

¹⁵ Exhibit 1

during the Inspection, Mr. Rodriguez provided her with a five page printout of The Back End, and the bills of sale of sold vehicles. From that printout, Mr. Rodriguez selected 10 random sold vehicles for Ms. Coellar to review¹⁶.

Ms. Coellar was helpful in explaining the inspection report, the typed notes, and the Inspection Findings from the December 9, 2014 inspection at Tab 29 of Exhibit 2.

In relation to whether the "Price" column on The Back End printouts were the All-in-Price that was last published online on the Auto Trader website, Ms. Coellar stated repeatedly that she was relying on Mr. Rodriguez, who verbally stated this to her. On that basis, she compared the amount listed under "Price" with the amount on the bill of sale. It was her oral evidence that she did not ask Mr. Rodriguez if he was familiar with Dealer Solutions.

The witness admitted in cross-examination that she knew The Back End printouts were not actual ads, but what she called a synopsis of the online advertisements. She also stated that vehicle ads could run during a sale and the vehicle could sell after a sale for a higher price. Ms. Coellar agreed with Mr. Laubman's statement that one element you need to know (to determine if there is a breach of the All-in-Pricing requirement) is whether the vehicle was advertised at the lower price at the same time it was sold at a higher price. Ms. Coellar further admitted Mr. Rodriguez indicated that the "Price" column was the last advertised price, but he did not indicate on what date it was advertised.

Ms. Coellar confirmed she uses Auto Trader as a tool, can search by dealership, and can print off lists of advertisements. In this Inspection, the online ads she had were of vehicles still in inventory.

¹⁶ Five of those 10 appear in the Fresh As Amended Notice of Complaint at paragraphs 11 through 15.

The witness had a good recollection of the events at and surrounding the Inspection and appeared honest at all times.

Ms. Andrea Korth

This witness was called by the Registrar and is employed by OMVIC as the Business Standards Coordinator. One of her responsibilities is drafting Notices of Complaint. She was able to describe for the Panel how the MVDA and the Code of Ethics are used when reviewing an Inspection Report and highlighted the importance of All-in-Pricing and clear and truthful advertising of vehicles as this is “extremely important” in protecting the public and ensuring a level playing field for dealerships.

Ms. Korth identified the communications from OMVIC to registrants at Tabs 4 through 13 of Exhibit 2, and stated that they were reminders to dealerships about things like All-in-Pricing.

In cross-examination, Ms. Korth agreed that OMVIC exercises care when investigating dealerships, uses the best evidence available, and ensures allegations are accurate. She agreed she did not see the advertisements in relation to the allegations in this matter.

Ms. Korth was knowledgeable about the MVDA and OMVIC’s communication of the rules governing Registrants, but that matter was not in dispute in this case. She had a good memory about the things she testified to and appeared truthful throughout.

Mr. Chris Samadh

Mr. Samadh was called by the Registrants and is employed by Trader Corporation, which is a re-seller of Dealer Smart Solutions. Mr. Samadh is a Senior Manager of the Customer Support Team. The witness was able to describe most of how Dealer Solutions works and how it can be customized to suit the needs of the user. He stated the primary purpose of the software is to manage information about vehicles and post

information to online advertisements on websites like Auto Trader and on dealership websites.

Mr. Samadh confirmed that The Back End is not a public system and in order to use it a username and password are required. He explained that it was up to the user to decide what information goes in each column. Some of the information is automatically populated into the appropriate fields (i.e. make, model, color, year) after a VIN is entered. Other fields like "Price" and "Invoice" are manually entered. The user can also decide which fields are posted to the online advertisements. The witness stated a vehicle and its associated information can be entered into Dealer Solutions without ever being sent to an online advertisement.

When shown The Back End printouts at the first page of Tabs 30 to 34 of Exhibit 2, Mr. Samadh stated that it does not reveal when, or if, the vehicles were advertised online.

Mr. Samadh was knowledgeable about the things he gave evidence on, seemed honest and forthcoming at all times, and he had no apparent interest in the outcome of this matter. The Panel relied on his oral evidence.

Onus and Standard of Proof

The Registrar bears the onus of proving the allegations. As for the standard of proof, we have applied the test set out in *F.H. v. McDougall*¹⁷ where the Supreme Court of Canada has made it clear that there is only one standard of proof in civil cases at common law, and that is proof on the balance of probabilities, which can be expressed as whether it is more likely than not that the factual events underlying the allegations occurred. The evidence must be sufficiently clear, cogent and convincing to satisfy this test.

¹⁷ 2008 SCC 53

Conclusion

In relation to what The Back End printouts reveal, the Panel favored the oral evidence of Mr. Samadh over that of Mr. Rodriguez. Mr. Rodriguez admitted he did not work with The Back End and did not know when, or even if, advertisements were published online with respect to the five vehicles at the center of allegations¹⁸. Mr. Samadh has greater insight into the software and has no apparent interest in the outcome of this matter. We accept and rely on the uncontested evidence of Mr. Samadh when he said that a dealer can take a vehicle off Auto Trader and re-introduce a vehicle onto Auto Trader, and that The Back End printouts do not indicate when or even if any of those actions occurred.

Ms. Coellar in her evidence stated that there can be no breach if an advertisement and sale happen at different times. The only evidence before the Panel that the vehicles were ever advertised is Mr. Rodriguez's statement that "Price is the last advertised price"¹⁹. He based that assessment on The Back End printouts, which he admits he did not use, as he had no username or password and therefore had no access. Mr. Samadh, who had significant knowledge of Dealer Solutions, tells us you cannot learn from The Back End printouts whether the vehicles in question were the subject of online advertisements or not.

When Ms. Coellar brought a sampling of the online advertisements of Leggat Chevrolet Buick GMC Limited and found those vehicles were still in inventory, she relied on The Back End printouts to do the inspections. It is the view of the Panel, supported by the evidence above, that The Back End printouts do not establish an advertised price, or a time of advertisement, for the vehicles in question.

There is no clear, cogent, and convincing evidence as to when the vehicles were advertised and indeed there is no evidence before the Panel that the vehicles referred to in paragraphs 11, 12, 13, 14, and 15 of the Exhibit 1 were ever advertised. In the

¹⁸ Exhibit 1, Notice of Complaint paragraphs 11 thru 15

¹⁹ Mr. Rodriguez, examination in chief re: Exhibit 2 Tabs 30 thru 34

absence of these necessary elements, the Panel finds that the allegations have not been established.

Accordingly, the Panel concluded that the Registrants did not breach Regulation 333/08 (under the MVDA) or the Code of Ethics, as alleged.

I, Robert MacKay, sign this decision and reasons for the decision as Chair of this discipline panel and on behalf of the members of the discipline panel as listed below.



Mr. Robert MacKay, Chair

Date: January 19, 2017

Panel Members:

Mr. Robert MacKay
Mr. Jonathan Lemaire
Mr. Achilles Pelitis

IN THE MATTER OF
THE VIOLATION OF THE CODE OF ETHICS and Standards of Business Practice

TO: Leggat Chevrolet Buick
GMC Limited
360 Rexdale Boulevard
Toronto, ON, M9W 1R7

AND TO: Douglas Leggat
202 Northshore Boulevard East
Burlington, ON, L7T 1W4

FRESH AS AMENDED
NOTICE OF COMPLAINT

Whereas by a Notice of Complaint dated March 27, 2015 the Registrar, Motor Vehicle Dealers Act, 2002 (the "Act") did issue a Notice of Complaint against Leggat Chevrolet Buick GMC Limited and Douglas Leggat for breaches of the Code of Ethics regulation and the Standards of Business Practice:

AND WHEREAS further information has come to the attention of the Registrar relating to the breaches of the Code and Standards;

NOW THEREFORE TAKE NOTICE THAT THE REGISTRAR REPEATS THE REASONS AS SET OUT IN THE NOTICE OF COMPLAINT DATED MARCH 27, 2015 AND IS PROVIDING THE FOLLOWING FURTHER AND OTHER PARTICULARS:

FURTHER PARTICULARS

It is further alleged as follows:

PARTICULARS

The reasons for this notice are:

1. Paragraphs 1-17 as set out in the Notice of Complaint dated March 27, 2015 are deleted and replaced by the following.
2. Leggat Chevrolet Buick GMC Limited (the "Dealer") was first registered as a motor vehicle dealer in or around January 1983. Douglas Leggat ("Leggat") was first registered as a motor vehicle salesperson in or around February 1983. At all material times, Leggat was the sole officer and director of the Dealer.

OMVIC publications:

3. 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 Dealer Act, 2002* (the "Act") came into effect. Included in the bulletin was the requirement for dealers to advertise all inclusive vehicle prices in advertisements ("advertising"), as well as the requirement to provide written disclosure of a vehicle's history and condition, such as accident repair histories and previous daily rental histories ("disclosure").
4. After the Act was proclaimed, OMVIC further issued the following Dealer Standard publications reminding dealers of their advertising and/or disclosure obligations:
 - a. Spring 2010 (advertising)
 - b. Summer 2010 (advertising)
 - c. Spring 2011 (advertising)
 - d. Summer 2011 (disclosure)
 - e. Summer 2012 (disclosure)
 - f. Winter 2013 (advertising and disclosure)
 - g. Spring 2013 (advertising)
 - h. Fall 2013 (advertising and disclosure)
5. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of the requirement for dealers of their advertising and/or disclosure obligations:
 - a. January 2010 (2: advertising, 1: disclosure)
 - b. April 2010 (2: advertising)
 - c. February 2012 (advertising)
 - d. August 2012 (advertising)
 - e. September 2012 (disclosure)
 - f. April 2013 (advertising)
 - g. December 2013 (disclosure)
 - h. June 2014 (advertising)

Direct communication with the Dealer:

6. By email dated January 27, 2010, a representative of the Registrar reminded the Dealer of its obligation to advertise all inclusive vehicle prices.
7. By email dated September 30, 2011, a representative of the Registrar reminded the Dealer of its obligation to advertise all inclusive vehicle prices.
8. On or about November 27, 2013, OMVIC issued a Notice of Complaint against the Dealer, regarding *inter alia*, non-compliance of section 4 of the Code of Ethics, as copy of which is attached hereto as Schedule A.
9. On or about February 10, 2014, the Discipline Committee issued an Order, pursuant to a negotiated resolution of the above mentioned Notice, a copy of which is attached hereto as Schedule D. As per condition 3 of the Order, the Dealer agreed to ensure that all future advertising would be published in accordance with the Act and Standards of Business Practice, as may be amended from time to time. As per condition 4 of the Order, the Dealer agreed to comply with the Code of Ethics and Standards of Business Practice, as may be amended from time to time.

Dealer non-compliance:

10. During an inspection on or about December 9, 2014, a representative of the Registrar discovered the following non-compliant issues:

Advertising:

11. On or before November 10, 2014, an advertisement was placed by or on behalf of the Dealer for a 2010 Chevrolet Equinox, (VIN 2CNALBEW8A6415169) with a selling price of \$14,995. On or about November 10, 2014 the Dealer sold this vehicle, and charged an additional \$508.54 in fees. As such, the advertisement did not promote an all-inclusive price, contrary to sections 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
12. On or before November 13, 2014, an advertisement was placed by or on behalf of the Dealer for a 2013 GMC Sierra 1500, (VIN 3GTP2TE76DG354719) with a selling price of \$26,995. On or about November 13, 2014 the Dealer sold this vehicle and charged \$624 in additional fees. As such, the advertisement did not promote an all-inclusive price, contrary to sections 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
13. On or before November 19, 2014, an advertisement was placed by or on behalf of the Dealer for a 2014 Chevrolet Cruze, (VIN 1G1PC5SB4E7346156) with a selling price of \$24,280. On or about November 19, 2014 the Dealer sold this vehicle and charged \$583.70 in additional fees. As such, the advertisement did not promote an all-inclusive price, contrary to sections 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
14. On or before November 29, 2014, an advertisement was placed by or on behalf of the Dealer for a 2014 Chevrolet Cruze, (VIN 1G1PC5SB9E7442039) with a selling price of \$22,920. On or about November 29, 2014 the Dealer sold this vehicle and charged \$499 in additional fees. As such, the advertisement did not promote an all-inclusive price, contrary to sections 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
15. On or before December 1, 2014, an advertisement was placed by or on behalf of the Dealer for a 2014 Chevrolet Equinox, (VIN 2GNFLFE39E6329079) with a selling price of \$31,995. On or about December 1, 2014 the Dealer sold this vehicle and charged \$59 in additional fees. As such, the advertisement did not promote an all-inclusive price, contrary to sections 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.

STATEMENT OF RESPONSE

Since you have previously supplied a Statement of Response to the Notice of Complaint, issued, March 27, 2015, you do not need to file an additional Response, however if you dispute the additional particulars set out herein you are required to set out your reasons in writing, and forward them to OMVIC.

The Discipline Committee can order one or more of the following:

- Dismiss the file
- Order a fine up to \$25,000, per party
- Require the registrant to take further educational courses
- If the Registrant is a motor vehicle dealer, require the motor vehicle dealer to fund educational courses for salespersons employed by the dealer or to arrange and fund such educational courses
- Award Costs

Decisions of the Discipline Committee will be published. Hearings before the Discipline Committee will be recorded.

APPLICATION OF THE *STATUTORY POWERS PROCEDURE ACT*

The *Statutory Powers Procedure Act*, R.S.O 1990 c.s.22, applies to the hearing to be held by this Discipline Committee. A party to a proceeding may be represented by counsel or an agent.

The Registrar states that the good character, propriety of conduct or competence of the Dealer shall be an issue in any hearing before the Discipline Committee and OMVIC has, therefore, furnished herein reasonable information of allegations with respect thereto.

The Rules of Practice of the Discipline Committee will apply, copy attached. A Notice of Hearing and Book of Disclosure will be provided in accordance with the Rules of Practice of the Discipline Committee.

Take note that as per the attached Rules of Practice, failure to attend a hearing before the Discipline Committee will result in a decision being determined *ex parte*, in your absence.

APPLICATION OF THE RULES OF PRACTICE OF THE DISCIPLINE COMMITTEE

This is to serve notice that the Registrar shall make application for its cost pursuant to Rule 13 of the Rules of Practice.

FURTHER PARTICULARS/SUPPLEMENTAL NOTICE

The Registrar may provide further and other particulars in respect of any other matters herein or in respect to any other matter including further particulars of violations of the Code of Ethics, Standards of Business Practice.

DATED at Toronto, this 31st day of August 2016.

Mary Jane South
Registrar,
Motor Vehicle Dealers Act, 2002

IN THE MATTER OF
THE VIOLATION OF THE CODE OF ETHICS and Standards of Business Practice

TO: Leggat Chevrolet Buick
GMC Limited
360 Rexdale Boulevard
Toronto, ON, M9W 1R7

AND TO: Douglas Leggat
202 Northshore Boulevard East
Burlington, ON, L7T 1W4

NOTICE OF COMPLAINT

Take notice that pursuant to section 17 of the *Motor Vehicle Dealers Act, 2002*, (the "Act"), the Registrar is issuing a Notice of Complaint against LEGGAT CHEVROLET CADILLAC BUICK GMC LIMITED, and DOUGLAS LEGGAT for violating the Code of Ethics, as set out in Ontario Regulation 332/08.

REASONS

Section 17 of the Act establishes a Discipline Committee and empowers the Discipline Committee to deal with breaches of the Code of Ethics. The Code of Ethics applies to all Registrants registered under the *Motor Vehicle Dealers Act, 2002*. Any Registrants that disregard or violate the Code of Ethics are subject to having their conduct reviewed by the Discipline Committee. The Code of Ethics requires that all Registrants conduct business with Integrity, Accountability, Compliance, Respect and Professionalism as well as ensuring that minimum requirements are met when it comes to Disclosure in Marketing and the Disclosure of Information in Contracts of Sale and Lease. LEGGAT CHEVROLET CADILLAC BUICK GMC LIMITED, and DOUGLAS LEGGAT have violated one or more of the principles of the Code of Ethics and should therefore have their conduct reviewed by the Discipline Committee.

PARTICULARS

The reasons for this notice are:

1. Leggat Chevrolet Cadillac Buick GMC Limited ("the Dealer") was first registered as a motor vehicle dealer in or around January 1983. Douglas Leggat ("Leggat") was first registered as a motor vehicle salesperson in or around February 1983. At all material times, Leggat was the sole officer and director of the Dealer.

Advertising compliance:

OMVIC publications:

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 Dealer Act, 2002* ("the Act") came into effect. Included in the bulletin was the requirement for dealers to advertise all inclusive vehicle prices in advertisements.
3. After the Act was proclaimed, OMVIC further issued the following Dealer Standard publications reminding dealers of the requirement for dealers to advertise all inclusive vehicle prices:
 - a. Spring 2010
 - b. Summer 2010
 - c. Spring 2011
 - d. Winter 2013
 - e. Spring 2013
 - f. Fall 2013
 - g. Winter 2014
4. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of the requirement for dealers to advertise all inclusive vehicle prices:
 - a. January 2010 (2 publications)
 - b. April 2010 (2 publications)
 - c. February 2012
 - d. August 2012
 - e. April 2013
 - f. June 2014

Direct communication with the Dealer:

5. In an email dated January 27, 2010, a representative of the Registrar reminded the Leggat Chevrolet of their obligation to ensure advertised vehicle prices include all additional fees, as required by sub section 36(7) of Regulation 333/08, as well as section 4 and 9 of the Code of Ethics.

Previous Discipline Committee decision:

6. On or about November 28, 2013, OMVIC issued a Notice of Complaint ("Notice") against the Dealer, regarding non-compliance of section 4 of the Code of Ethics, along with other issues, a copy of which is attached hereto as Schedule A.
7. On or about February 10, 2014, the Discipline Committee issued an Order, pursuant to a negotiated resolution of the above mentioned Notice, a copy of which is attached hereto as Schedule B. As per condition 3 of the Order, the Dealer agreed to ensure that all future advertising would be published in accordance with the Act and Standards of Business Practice, as may be amended from time to time. As per condition 4 of the Order, the Dealer agreed to comply with the Code of Ethics and Standards of Business Practice, as may be amended from time to time.

Dealer non-compliance issues:

8. During an inspection on or about December 9, 2014, a representative of the Registrar discovered the following non-compliant advertising issues:
9. On or before November 10, 2014, an advertisement was placed by or on behalf of the Dealer for a 2010 Chevrolet Equinox, (VIN 2CNALBEW8A6415169) with a selling price of \$14,995. On or about November 10, 2014 the dealer sold this vehicle, and charged an additional \$508.54 in fees. As such, the advertisement did not promote an all-inclusive price, contrary to sections 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
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Warranty non-submittal:

14. In or around June 2010, OMVIC issued a bulletin reminding dealers of their obligation to ensure that the proceeds from the sale of extended warranties are submitted to the warranty provider within 7 days of the date of sale.
15. During the previously referenced December 9, 2014 inspection, the representative of the Registrar also found the following warranty submittal issues.

16. Between on or about September 1, 2014 and on or about October 1, 2014, the Dealer failed to remit the proceeds of extended warranty products to the warranty provider within 7 days of the date of sale, This is contrary to section 47(7) of Regulation 333/08, as well as section 3 and 7 of the Code of Ethics.

17. Between on or about October 3, 2014 to November 1, 2014, the Dealer failed to remit the proceeds of extended warranty products to the warranty provider within 7 days of the date of sale, This is contrary to section 47(7) of Regulation 333/08, as well as section 3 and 7 of the Code of Ethics.

If you disagree with the allegations contained in this notice, please provide a written Statement of Response to the particulars set out above, to OMVIC within 15 days of service of this notice.

The Discipline Committee can order one or more of the following:

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Take note that as per the attached Rules of Practice, failure to attend a hearing before the Discipline Committee will result in a decision being determined *ex parte*, in your absence.

