

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*
("OMVIC")

- AND -

PAL AUTO SALES INC. o/a

- AND -

HARPAL BADESHA
("Registrants")

Date of Hearing: November 18, 2014 (adjourned); March 5, June 9-10 and August 19, 2015

Date of Decision: November 30, 2015

Findings: Breaches of section 42 of Ontario Regulation 333/08, and sections 7 and 9 of the Code of Ethics (Ontario Regulation 332/08).

Order:

1. Pal Auto Sales Inc. ("**Pal Auto**") shall pay a fine in the amount of \$14,000, of which \$5,000 is due within 6 months of the date of this Order, and the remaining balance is due within 15 months of the date of this Order.
2. Harpal Badesha ("**Badesha**") shall pay a fine in the amount of \$5,000, of which \$1,000 is due within 2 months of the date of this Order, and the remaining balance is due within 10 months of the date of this Order.
3. Badesha shall successfully complete the OMVIC automotive sales course offered by Georgian College within 6 months of the date of this Order, at his own expense.
4. Badesha shall successfully complete the automotive language course offered by Georgian College within 6 months of the date of this Order, at his own expense.
5. Pal Auto shall ensure that all future salespeople hired by Pal Auto must successfully complete the OMVIC automotive sales course offered by Georgian College.



Reasons for Decision

Introduction

This matter proceeded before a Panel of the Discipline Committee pursuant to section 17 of the *Motor Vehicle Dealers Act, 2002* (the “**Act**”).

The Registrar was represented by Angela La Viola (March 5), and Michael Rusek and Nicole Pace (June 9-10, August 19). The Registrants were represented by an employee of Pal Auto, Harvey Dennis. The Panel consisted of Caroline Brett (Chair), Neil Joosse (Vice-Chair), and Bruce Wilson (Vice-Chair). Justin Safayeni attended as Independent Legal Counsel to the Panel.

Throughout these Reasons, “the Registrants” refers to both Pal Auto and Badesha.

The Panel marked the following documents during the course of the hearing:

- Exhibit #1: the Notice of Complaint (dated March 6, 2014) and the Notice of Further and Other Particulars (dated December 2, 2014)
- Exhibit #2: Registrar’s Book of Documents, Volume I
- Exhibit #3: Registrar’s Book of Documents, Volume II
- Exhibit #4: UCDA Used Vehicle Bill of Sale
- Exhibit #5: UCDA Used Vehicle Retail Seller’s Disclosure Statement
- Exhibit #6: 3 Photographs of 2010 Ford Focus
- Exhibit #7: GMC Know Your Vehicle Form
- Exhibit #8: Impact Bill of Sale – 2009 Ford Escape XLT
- Exhibit #9: 2009 Ford Escape Condition Report
- Exhibit #10: UCDA Customer Information, Appraisal and Disclosure for Trade-In Vehicles (4 pages)
- Exhibit #11: UCDA Used Vehicle Bill of Sale (same as Exhibit #4)
- Exhibit #12: Pal Auto Document Brief
- Exhibit #13: Tiger Auto Parts Invoice
- Exhibit #14: Star Auto Glass Ltd. Invoice

The Allegations

The allegations against Pal Auto and Badesha are set out in the Notice of Complaint and the Notice of Further and Other Particulars (Exhibit #1).

As stated in the Notice of Complaint, the background factual allegations and allegations of the breach of the Code of Ethics against Pal Auto and Badesha are as follows:

1. Pal Auto Sales Inc. (the “Dealer”) was first registered as a motor vehicle dealer in or around September 2007. Harpal Badesha (“Badesha”) was first registered as a motor vehicle salesperson in or around September



2007. At all material times, Badesha was the sole officer and director of the Dealer.

2. On or about September 17, 2007, Badesha executed terms and conditions on behalf of the Dealer, attached hereto as Schedule "A". As per condition 6, the Dealer agreed to comply with the Code of Ethics and Standards of Business Practice, as may be amended from time to time. As per condition 20, the Dealer agreed it is under a positive obligation to provide purchasers with written disclosure of all material facts about the vehicles it sells.
3. During an inspection on or about October 12, 2007, a representative of the Registrar reviewed with Badesha, on behalf of the Dealer, the Dealer's terms and conditions of registration. The Dealer was also reminded of its obligation to provide purchasers with written disclosure of all material facts about the vehicles it sells.
4. 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 the requirement for dealers to provide purchasers with written disclosure of a vehicle's accident repair history on the bill of sale. In addition to this, dealers were reminded of their obligation to provide purchasers with written disclosure, as outlined by the Act, if a vehicle's true distance travelled is unknown.
5. In the spring of 2009, OMVIC issued a Dealer Standard publication which reminded dealers of their obligation under the Act to provide purchasers with written disclosure of a vehicle's accident repair history on the bill of sale. In addition to this, dealers were reminded of their obligation to provide purchasers with written disclosure, as outlined by the Act, if a vehicle's true distance travelled is unknown.
6. In or around January 2010, OMVIC issued a bulletin reminding dealers of their obligation to provide purchasers with written disclosure of a vehicle's accident repair history on the bill of sale.
7. During an inspection on or about June 15, 2010 a representative of the Registrar reminded Badesha, on behalf of the Dealer, of the Dealer's obligation to provide purchasers with written disclosure of all material facts about the vehicles it sells.
8. In the summer of 2011, OMVIC issued a Dealer Standard Publication which reminded dealers of their obligation to provide purchasers with written disclosure of a vehicle's accident repair history on the bill of sale.



9. In the summer of 2012, OMVIC issued a Dealer Standard Publication which reminded dealers of their obligation to provide purchasers with written disclosure of a vehicle's accident repair history on the bill of sale.
10. On or about August 21, 2012, the Dealer purchased a 2010 Honda Civic (VIN 2HGFG1B30AH006530) with the following declarations;
- Vehicle has been declared a total loss by the insurer
 - The manufacturers [sic] warranty has been cancelled
 - Repair estimate: 16,005.85

On or about October 5, 2012, the Dealer sold this vehicle without providing the purchaser with written disclosure of b, or c, above. This is contrary to sections 42(19) and 42(20) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

11. On or about August 22, 2012, the Dealer purchased a 2010 Chevrolet Cobalt (VIN 1G1AD5F5XA7243938) with the following declarations;
- Vehicle has been declared a total loss by the insurer
 - The manufacturers [sic] warranty has been cancelled
 - Repair estimate: 10,212.56

On or about February 14, 2013, the Dealer sold this vehicle without providing the purchaser with written disclosure of c, above. This is contrary to section 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

12. On or about August 23, 2012, the Dealer purchased a 2005 Cadillac CTS (VIN 1G6DM56T050218339) with the following declarations:
- Vehicle has been declared a total loss by the insurer
 - The manufacturers [sic] warranty has been cancelled
 - Repair estimate: 9,709.24

On or about October 31, 2012, the Dealer sold this vehicle without providing the purchaser with written disclosure of c, above. This is contrary to section 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

13. On or about September 5, 2012, the Dealer purchased a 2010 Ford Focus (VIN 1FAHP3FNXAW145814) with the following declarations:
- Vehicle has been declared a total loss by the insurer
 - The manufacturers [sic] warranty has been cancelled
 - Repair estimate: 11,831.25



On or about October 16, 2012, the Dealer sold this vehicle without providing the purchaser with written disclosure of c, above. This is contrary to section 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

14. On or about September 14, 2012, the Dealer purchased a 2012 Mazda 3 (VIN JM1BLUF6C1531187) with the following declarations:

- a. Vehicle has been declared a total loss by the insurer
- b. The manufacturers [sic] warranty has been cancelled
- c. Repair estimate: 6,746.00
- d. This vehicle was previously used as: DAILY RENTAL

On or about October 16, 2012, the Dealer sold this vehicle without providing the purchaser with written disclosure of c, above. This is contrary to section 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

15. On or about September 18, 2012, the Dealer purchased a 2012 Chevrolet Equinox (VIN 2GNALDEK7C6400251) with the following declarations:

- a. Vehicle has been declared a total loss by the insurer
- b. The manufacturers [sic] warranty has been cancelled
- c. Repair estimate: 24,217.98

On or about February 7, 2013, the Dealer sold this vehicle without providing the purchaser with written disclosure of b, or c, above. Moreover, the Dealer indicated that the vehicle's manufacturer warranty had not been cancelled. This is contrary to sections 42(19) and 42(20) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

16. In or around September 2012, OMVIC issued a bulletin reminding dealers of their obligation to provide purchasers with written disclosure of a vehicle's accident repair history on the bill of sale.

17. On or about October 16, 2012, the Dealer purchased a 2012 Chrysler 200 (VN 1C3CCBHG1CN236248) with the following declarations:

- a. Vehicle has been declared a total loss by the insurer
- b. The manufacturers [sic] warranty has been cancelled
- c. Repair estimate: 17,297.64

On or about February 16, 2013, the Dealer sold this vehicle without providing the purchaser with written disclosure of b, or c, above. Moreover, the Dealer indicated that the vehicle's manufacturer warranty



had not been cancelled. This is contrary to sections 42(19) and 42(20) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

18. On or about November 22, 2012 the Dealer purchased a 2010 Buick Lacrosse (VIN 1G4GE5EV1AF100233) with the following declarations:

- a. Vehicle has been declared a total loss by the insurer
- b. The manufacturers [sic] warranty has been cancelled
- c. Repair estimate: 19,839.61
- d. Total distance vehicle has driven is unknown, but as of 11/06/2012 it was believed to be 20477KM. The total distance driven is believed to be higher than the distance indicated. Odometer is: UNREADABLE

On or about February 6, 2013, the Dealer sold this vehicle without providing the purchaser with written disclosure of c, or d, above. Moreover, the Dealer indicated that the odometer was not broken, faulty, replaced, or rolled back. This is contrary to sections 42(4), 42(19), and 42(20) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

19. On or about January 3, 2013, the Dealer purchased a 2005 Cadillac CTS (VIN 1G6DM56T150231147) with the following declarations:

- a. Vehicle has been declared a total loss by the insurer
- b. The manufacturers [sic] warranty has been cancelled
- c. Repair estimate: 7,410.99

On or about February 16, 2013, the Dealer sold this vehicle without providing the purchaser with written disclosure of c, above. This is contrary to section 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.

As stated in the Notice of Further and Other Particulars, the amended allegations and additional particulars of allegations against Pal Auto and Badesha are as follows:

20. Paragraphs 1-19 as set out in the Notice of Complaint dated March 6, 2014, are repeated.

21. Paragraph 7 as set out in the Notice of Complaint is amended to read as follows:

“During an inspection on or about June 15, 2010 a representative of the Registrar reminded Badesha on behalf of the Dealer, of the Dealer’s obligation to provide purchasers with written disclosure of all material facts about the vehicles it sells.”



22. Paragraph 14 as set out in the Notice of Complaint dated March 6, 2014 is amended to read as follows:

“On or about September 14, 2012, the Dealer, purchased a 2012 Mazda 3 (VIN JM1BLUF6C1531187) with the following declarations:

- a. Vehicle has been declared a total loss by the insurer
- b. The manufacturers [sic] warranty has been cancelled
- c. Repair estimate: 6,746.00
- d. This vehicle was previously used as: DAILY RENTAL

On or about October 16, 2012, the Dealer sold this vehicle without providing the purchaser with written disclosure of b and c, above. This is contrary to section 42(19) and section 42(20) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics.”

23. During an inspection on or about August 26, 2011, a representative of the Registrar reminded Badesha, on behalf of the Dealer, of the Dealer's obligation to disclose in writing all material facts about the vehicles it sells, including but not limited to, a vehicle's repair estimate.

24. By letter dated October 21, 2011, a representative of the Registrar reminded Badesha, on behalf of the Dealer, of the Dealer's obligations to provide purchasers with written disclosure of all material facts about the vehicles it sells.

25. On or about December 13, 2012, a representative of the Registrar received a consumer complaint alleging the Dealer had sold a vehicle without providing written disclosure of the vehicle's accident repair history. As a result of the non-disclosure, the consumer refused to take delivery of the vehicle and a dispute arose between the Dealer and the consumer with respect to the consumer's deposit. The matter was eventually resolved in the Superior Court of Justice, with the consumer being awarded a full refund of her deposit.

26. As a result of the above mentioned complaint, on or about May 2, 2013, a representative of the Registrar attended the Dealer for a scheduled inspection.



Registrants' pleas

On behalf of Pal Auto and himself, Badesha denied the allegations set out in the Notice of Complaint and the Notice of Further and Other Particulars.

Evidence

The following is an overview of the evidence presented at the hearing.

By way of background, in preparing bills of sale for the transactions at issue in this hearing, Pal Auto and Badesha used common industry agreements and contracts acquired from the Used Car Dealers Association of Ontario (“**UCDA**”). These documents are discussed in further detail below.

Andrea Korth (Business Standards Coordinator, OMVIC)

Ms. Korth is the Business Standards Coordinator at OMVIC. In her testimony, Ms. Korth stated that in 2007, upon registration, Badesha reviewed and signed Terms and Conditions (Exhibit 2, Tab 3).

Evidence was presented about inspections of Pal Auto and Badesha that took place in 2010 and 2011. Ms. Korth directed the Panel to a caution letter, dated October 21, 2011, she sent to the Registrants (Exhibit 3, Tab 3), indicating deficiencies found. The caution letter includes references to sections 42(19), 42(20) and 42(21) of Regulation 338/08, which address the requirements for written disclosure in a retail bill of sale.

Ms. Korth testified that the Dealer Standard bulletins are sent from OMVIC by e-mail to every registrant in the province.

Ms. Korth reviewed the Winter 2008 issue of The Dealer Standard bulletin (Exhibit 2, Tab 5, pg 22), which outlines the disclosure requirements under the Act, specifically the monetary threshold of damage that must be disclosed; the requirement to disclose if the vehicle has ever been declared a total loss by an insurer, even if it did not result in it being branded; and the process to be followed if true mileage is unknown.

A further Dealer Standard bulletin was issued in Spring 2009 (Exhibit 2, Tab 6). Ms. Korth summarized it as a bulletin that was issued to remind the dealer what they need to know when the Act comes into effect, specifically the paragraph on pg 29 regarding disclosure of damage over \$3,000.

Ms. Korth then examined the January 2010 issue of The Dealer Bulletin (Exhibit 2, Tab 7), which reviewed items on the bills of sale that must change. Specifically, it referred to disclosing material facts that apply to the vehicle. Ms. Korth also directed the Panel to The Dealer Standard (Exhibit 2, Tab 9) issued in Summer 2011, which at pg 42 discussed mandatory disclosure of accident damage exceeding \$3,000, as well as



disclosure of “any other fact about the motor vehicle that, if disclosed, could reasonably be expected to influence the decision of a reasonable purchaser or lessee to buy or lease the vehicle.”

Ms. Korth proceeded to bring the Panel’s attention to The Dealer Bulletin 2012 (Exhibit 2, Tab 18), which clearly states all disclosures **MUST** be written; that customers are entitled to the disclosure of any fact that could reasonably be expected to influence their decision to purchase or lease a vehicle; and that “all required disclosures must be written on the contract in a Clear, Comprehensible and Prominent (CCP) manner.”

On cross examination, Ms. Korth was questioned as to how the dealer is made aware of the Dealer Standard bulletins that are issued. Her evidence was that they are sent by e-mail, in addition to being posted on the OMVIC website, and it is the dealer’s responsibility to stay up to date with these bulletins.

On cross examination, Ms. Korth gave testimony that the warranty box on the UCDA Used Vehicle Bill of Sale form (Exhibit 4) (the “**UCDA Bill of Sale**”) had nothing to do with the vehicle’s history, and that disclosure should take place in the “comments” section of the UCDA Bill of Sale.

Mr. Dennis introduced a document from UCDA entitled Retail Seller’s Disclosure Statement (Exhibit 5) (“**UCDA Disclosure Statement**”) and asked if it was approved by OMVIC. Ms. Korth indicated OMVIC does not approve bills of sale or contracts in general used by the industry. She testified that the dealer is required to ensure all required information is presented on the bill of sale in a clear, comprehensible and prominent manner, it is acceptable to attach a separate page to the bill of sale if necessary.

Cross examination proceeded to discuss previous damage exceeding \$3,000. Ms. Korth gave evidence that if damage is not disclosed by IMPACT Auto Auctions (“IMPACT”) – an auction house for vehicles that are usually declared a “total loss” – and that if a vehicle history report indicates physical damage, then everything the dealer is aware of should be disclosed – including the repair estimate on the IMPACT bill of sale – in an effort to not mislead the consumer.

Mr. Dennis directed Ms. Korth to the documents relating to the 2010 Ford Focus SE (Exhibit 2, Tab 15). Tab 15 contains the insurance repair estimate of \$11,831.25 and the actual repair bill from Pal Auto Services for \$2,005.75. (Pal Auto Services is the in-house repair shop for vehicles sold by Pal Auto). Ms. Korth’s testimony with respect to this vehicle was that disclosing only the repair bill of \$2,005.75 to the consumer does not give a true picture of the vehicle – and that for transparency reasons, consumer-friendly disclosure practice is to disclose to the consumer what IMPACT discloses to the dealer. She also testified that IMPACT discloses everything in their possession and that they have no vested interest in giving a lower repair estimate amount.



Anisah Patel (Compliance Inspector, OMVIC)

Ms. Patel testified that she has been with OMVIC since 2010 and her current role is that of Compliance Inspector for new and existing dealers.

Ms. Patel conducted an inspection of Pal Auto on August 26, 2011 (Exhibit 3, Tab 2) as a result of a consumer complaint. Ms. Patel gave evidence that she provided Badesha with her Inspection Findings (Exhibit 3, Tab 2, pg 14). She also indicated that the dealer (Pal Auto) was not disclosing total loss in writing on all deals as applicable, and that the dealer was providing weak disclosure by writing “accident repaired” on most bills of sale, but failing to disclose dollar amount or details of accidents. Ms. Patel stated that she reminded Badesha to indicate the required disclosure under the “comments” section on the UCDA Bill of Sale. She reported that Badesha replied by saying the estimates from the insurance companies are inflated and that his customers trust him because it costs less to actually repair the vehicle. Ms. Patel reported that she reminded Badesha that legislation requires the disclosure of all known material facts, such as repair estimates.

On May 9, 2013, Ms. Patel conducted a subsequent inspection of Pal Auto (Exhibit 2, Tab 11) and she stated that she brought several items to the dealer’s attention. She found instances where the Registrants failed to disclose the dollar amounts of claims and the cost to repair in writing on bills of sale, not disclosing the fact that the car was previously a daily rental where applicable, not making proper disclosure for odometer discrepancies as required and was using lower claim/damage information when completing the disclosure statement for applicable disclosures. Ms. Patel testified that she discussed with Badesha his obligation to pass along all disclosure requirements to consumers, such as warranties being cancelled and the fact that a car was declared a total loss. Ms. Patel also stated that she told Badesha to make all disclosures in writing on the sales contract, and that he was not using the proper document to provide disclosure. During cross examination, Ms. Patel denied Badesha’s claim that she told him previously not to make disclosures on a bill of sale, but to use the UCDA Disclosure Statement instead.

Ms. Patel reviewed an IMPACT bill of sale for a 2010 Honda Civic DX-G (VIN 2HGFG1B30AH006530) to Pal Auto (Exhibit 2, Tab 12), where IMPACT disclosed the following on the bill of sale:

- a. Vehicle has been declared a total loss by the insurer
- b. The manufacturers [sic] warranty has been cancelled
- c. Repair estimate: 16,005.85

Ms. Patel then reviewed the repair invoice from Pal Auto Services, which had a total repair cost of \$3,121.06. Next, she examined the retail bill of sale to the consumer



(Exhibit 2, Tab 12, pg 64) and noted that there was no disclosure of the repair estimate or the actual repair amount on the bill of sale, nor was there any disclosure that the vehicle was declared a total loss. Ms. Patel then turned to a UCDA document entitled Customer Information, Appraisal and Disclosure for Trade-In Vehicles (the “**UCDA Trade-In Disclosure**” form) (Exhibit 2, Tab 12, pg 65). She testified that although there was some disclosure on this document, it was not the proper form and did not contain full or proper disclosure. While the form did indicate there was previous damage and disclose the vehicle was a total loss, it failed to contain a dollar amount for the estimate or the actual repair.

Ms. Patel reviewed an IMPACT bill of sale for a 2010 Chevrolet Cobalt (VIN 1G1AD5F5XA7243938) to Pal Auto (Exhibit 2, Tab 13), where IMPACT disclosed the following on the bill of sale

- a. Vehicle has been declared a total loss by the insurer
- b. The manufacturers [sic] warranty has been cancelled
- c. Repair estimate: 10,212.56

Ms. Patel examined the IMPACT bill of sale (Exhibit 2, Tab 13, pg 67) and pointed out the distance driven and the repair estimate of \$10,212.56. She then reviewed the repair invoice from Pal Auto Services (Exhibit 2, Tab 13, pg 69), which indicated a total repair cost of \$2,373.00. Ms. Patel pointed out a hand written notation (Exhibit 2, Tab 13, pg 78) indicating the vehicle had “no warranty”. After examining the bill of sale from Pal Auto to the consumer (Exhibit 2, Tab 13, pg 79), Ms. Patel testified that it did not contain all required disclosure. Ms. Patel stated that the UCDA Trade-In Disclosure form (Exhibit 2, Tab 13, pg 80) did indicate the warranty had been cancelled and that the vehicle had been declared a total loss, but there was no written disclosure of the total repair estimate.

Ms. Patel reviewed an IMPACT bill of sale for a 2005 Cadillac CTS (VIN 1G6DM56T050218339) to Pal Auto (Exhibit 2, Tab 14), where IMPACT disclosed the following on the bill of sale:

- a. Vehicle has been declared a total loss by the insurer
- b. The manufacturers [sic] warranty has been cancelled
- c. Repair estimate: 9,709.24

Ms. Patel then examined the UCDA Trade-In Disclosure form (Tab 14, pg 94) and testified that it contained disclosure that the vehicle had been declared a total loss and that the manufacturer’s warranty was cancelled. She also testified that there was no repair amount indicated. She noted that on the bill of sale from Pal Auto to the consumer (Exhibit 2, Tab 14, pg 95) there were no disclosures noted in the comments section.



Ms. Patel reviewed an IMPACT bill of sale for a 2010 Ford Focus (VIN 1FAHP3FNXAW145814) to Pal Auto (Exhibit 2, Tab 15) where IMPACT disclosed the following on the bill of sale

- a. Vehicle has been declared a total loss by the insurer
- b. The manufacturers [sic] warranty has been cancelled
- c. Repair estimate: 11,831.25

Ms. Patel examined the retail bill of sale to the consumer (Exhibit 2, Tab 15, pg 112) and noted there were no written disclosures in the comments section of the bill of sale. She then turned her attention to the UCDA Trade-In Disclosure form (Exhibit 2, Tab 15, pg 113) where she indicated that it contained disclosure the vehicle had been declared a total loss and that the manufactures warranty had been cancelled. However, she noted that neither document contained a dollar amount indicating the repair estimate.

Ms. Patel reviewed an IMPACT bill of sale for a 2012 Mazda 3 (VIN JM1BLUF6C1531187) to Pal Auto (Exhibit 2, Tab 16), where IMPACT disclosed the following on the bill of sale:

- a. Vehicle has been declared a total loss by the insurer
- b. The manufacturers [sic] warranty has been cancelled
- c. Repair estimate: 6,746.00
- d. This vehicle was previously used as: DAILY RENTAL

Ms. Patel examined the dealer repairs (Exhibit 2, Tab 16, pg 121) and indicated the total cost of repairs was \$3,056.65. She turned to the retail bill of sale (Exhibit 2, Tab 16, pg 124) and noted that the comments section did not contain any material disclosures about the vehicle. Ms. Patel also examined the UCDA Trade-In Disclosure (Exhibit 2, Tab 16, pg 124) and testified that although it did declare the vehicle had been declared a total loss, it did not indicate that the warranty had been cancelled, nor did either document disclose the cost of a repair exceeding \$3,000.

Ms. Patel reviewed an IMPACT bill of sale for a 2012 Chevrolet Equinox (VIN 2GNALDEK7C6400251) to Pal Auto (Exhibit 2, Tab 17) where IMPACT disclosed the following on the bill of sale:

- a. Vehicle has been declared a total loss by the insurer
- b. The manufacturers [sic] warranty has been cancelled
- c. Repair estimate: 24,217.98

Ms. Patel examined the dealer repairs (Exhibit 2, Tab 17, pg 129) and testified that the total cost of the repair was \$7,863.67. She then gave evidence that the retail bill of sale (Exhibit 2, Tab 17, pg 136) did not contain any disclosure the vehicle was declared as a total loss or that the warranty was cancelled, nor did it indicate the actual repair cost or the repair estimate. Ms. Patel then examined the UCDA Trade-In Disclosure form (Exhibit 2, Tab 17, pg 137) and testified that although the form did declare the vehicle



was a total loss and did indicate there was damage exceeding \$3,000, it failed to include the dollar amount of the repair. Ms. Patel pointed to a discrepancy between this document and the retail bill of sale. The UCDA Trade-In Disclosure form declared that the warranty had NOT been cancelled.

Ms. Patel reviewed an IMPACT bill of sale for a 2012 Chrysler 200 (VIN 1C3CCBHG1CN236248) to Pal Auto (Exhibit 2, Tab 19) where IMPACT disclosed the following on the bill of sale:

- a. Vehicle has been declared a total loss by the insurer
- b. The manufacturers [sic] warranty has been cancelled
- c. Repair estimate: 17,297.64

Ms. Patel examined the Condition Report from IMPACT showing photographs of the vehicle and a damage estimate of \$17,298.00 (Exhibit 2, Tab 19, pg 145) and she indicated that the purchaser initialed the document. She then examined the retail bill of sale (Exhibit 2, Tab 19, pg 148) and testified there was no disclosure indicating the total repair cost, the repair estimate, the fact that the vehicle had been declared a total loss or that the warranty had been cancelled. Ms. Patel then looked at UCDA Trade-In Disclosure (Exhibit 2, Tab 19, pg 149) and gave evidence that it did not contain a dollar amount of the repair, the repair estimate and the manufacturer warranty had not been cancelled. In addition, the form indicated there was a repair exceeding \$3,000, but failed to indicate the dollar value of that repair.

Ms. Patel reviewed an IMPACT bill of sale for a 2010 Buick Lacrosse (VIN 1G4GE5EV1AF100233) to Pal Auto (Exhibit 2, Tab 20) where IMPACT disclosed the following on the bill of sale:

- a. Vehicle has been declared a total loss by the insurer
- b. The manufacturers [sic] warranty has been cancelled
- c. Repair estimate: 19,839.61
- d. Total distance vehicle has driven is unknown, but as of 11/06/2012 it was believed to be 20477KM. The total distance driven is believed to be higher than the distance indicated. Odometer is: UNREADABLE

Ms. Patel testified that the retail bill of sale (Exhibit 2, Tab 20, pg 163) did not provide any written disclosure showing details of the repair or accident damage or the odometer reading.

Ms. Patel reviewed an IMPACT bill of sale for a 2005 Cadillac CTS (VIN 1G6DM56T150231147) to Pal Auto (Exhibit 2, Tab 21) where IMPACT disclosed the following on the bill of sale:

- a. Vehicle has been declared a total loss by the insurer
- b. The manufacturers [sic] warranty has been cancelled



c. Repair estimate: 7,410.99

Ms. Patel reviewed the invoice from IMPACT to Pal Auto (Exhibit 2, Tab 21, pg 166); the repair invoice from Pal Auto Services (Exhibit 2, Tab 20, pg 168) and the retail bill of sale to the consumer (Exhibit 2, Tab 20, pg 173). She noted it did not contain any written disclosure with respect to a, b, or c above. Ms. Patel also discussed the contents of the UCDA Trade-In Disclosure form (Exhibit 2, Tab 21, pg 174) and noted it did disclose the fact that the manufacturer's warranty had been cancelled, the vehicle was declared a total loss by the insurer and there was damage exceeding \$3,000. However, the disclosure was limited to an explanation of "accident repaired".

Ms. Patel gave further evidence that if the UCDA Trade-In Disclosure form (a clean version of which was marked as Exhibit 10) was received by the consumer and became part of the bill of sale, in her opinion it could comply with rules for disclosure.

She gave further testimony that Badesha understood his disclosure obligations because she personally explained to him what needed to be passed on to the consumer. Ms. Patel indicated that Badesha told her his customers understand what they are buying when he tells them that the cars are "accident repaired".

On cross examination, Mr. Dennis referred to the 2010 Honda Civic DX (Exhibit 2, Tab 12). He showed Ms. Patel photographs and asked if the damage looked to be as extensive as the insurance company quoted to which Ms. Patel indicated that she is not an expert in that department. Ms. Patel also stated that often the dealer does not get an update of warranty status immediately. She indicated that a declaration had already been made to Badesha that the warranty had been cancelled at the time of the purchase by Pal Auto. She gave further evidence that the UCDA Trade-In Disclosure form was not the correct form for use as a retail bill of sale.

Mr. Dennis then referred to the 2010 Chevrolet Cobalt LT (Exhibit 2, Tab 13) and brought the Panel's attention to photographs (Exhibit 2, Tab 13, pg 68) where the consumer appears to have signed the document. Ms. Patel gave evidence that this may be acceptable as sufficient disclosure because it shows the damage estimate of \$10,213.00 on the document. She did indicate that if this was to be relied on as disclosure, then it should indicate on the sales contract that this document forms part of that contract. Mr. Dennis provided a Carfax (Exhibit 2, Tab 13, pg 70) and Auto Check Report (Exhibit 2, Tab 13, pg 73) and pointed out that neither company showed that there was any damage to the car. Ms. Patel testified that they are third party reports and that the real-time report is the IMPACT report. Again, Ms. Patel gave evidence that the UCDA Trade-In Disclosure form being used by Badesha does not satisfy the legislation in that it does not meet the disclosure requirements.

During cross examination, Ms. Patel testified that photographs of the 2010 Ford Focus SE (Exhibit 2, Tab 15) may not show external damage, but the frame could be damaged internally. She referred to the list of parts and labour (Exhibit 2, Tab 15, pg 101)



provided by the insurance company. Ms. Patel gave evidence that she took all the documents that had been provided to the dealer at face value.

With respect to the 2012 Mazda 3 GS (Exhibit 2, Tab 16), a Carfax report (Exhibit 2, Tab 16, pg 117) was presented that reported no total loss. Ms. Patel again testified that the document from IMPACT is the most current and in doing his due diligence Badesha should disclose this information.

Cross examination of evidence given regarding the 2012 Chevrolet Equinox LT (Exhibit 2, Tab 17) brought the Panel's attention to photographs of the vehicle (Exhibit 2, Tab 17, pg 128), which appeared to contain the initials of the consumer and the damage estimate of \$24,218.00.

When cross-examined on the 2012 Chrysler 200 S (Exhibit 2, Tab 19), Ms. Patel confirmed that the consumer appears to have initialed each page of the Auto Check Report (Exhibit 2, Tab 19, pgs. 142-145) along with the Pal Auto Services invoice (Exhibit 2, Tab 19, pg 146).

On cross examination of her evidence regarding the 2010 Buick Lacrosse (Exhibit 2, Tab 20), counsel raised the issue of a discrepancy between the mileage IMPACT reported for the vehicle (Exhibit 2, Tab 20, pg 151), the mileage on the Ministry of Transportation's Used Vehicle Information Package (Exhibit 2, Tab 20, pg 156) and the actual mileage (Exhibit 2, Tab 20, pg 164). Ms. Patel replied that in the case of an odometer discrepancy, it is the dealer's responsibility to make disclosure to the consumer of those details.

Tim Hines (Complaint Handling Manager, OMVIC)

Mr. Hines has been the Manager of Complaints at OMVIC since 2001. Mr. Hines testified that he was aware of the general matters before the Panel, which began in 2011 with a consumer complaint for non-disclosure. He also testified that he has no record of the Registrants contacting OMVIC for assistance with disclosure obligations.

Mr. Hines gave evidence about the overview of a consumer complaint and broke it down into 3 functions:

1. OMVIC gives advice to questions from consumers
2. OMVIC sends the consumer back to speak to the dealership
3. Sometimes administration issues arise during the course of a complaint, which then become escalated.

Mr. Hines discussed a consumer complaint with allegations concerning past history disclosures. This matter was resolved at Small Claims Court in favour of the consumer.

Mr. Hines gave evidence on the issue of providing the "repair estimates" (as reflected in the IMPACT bill of sale) to the consumer. He stated that the story of a vehicle is



important and a consumers need to know this information to get a full picture of the vehicle. He suggested a consumer may no longer wish to purchase a vehicle knowing the extent of damage. Mr. Hines addressed the issue of “estimate” vs “claim amount” and replied by saying all the information should be relayed to the consumer, even if the vehicle was actually repaired for less. This gives the consumer all the pieces of the puzzle and lets them have a full understanding of the vehicle.

Mr. Hines spoke about the UCDA Trade-In Disclosure form (Exhibit 10) and gave evidence that this is a document that should be used when a car is traded in. He reviewed the specific form used for the eventual sale of the 2009 Ford Escape to another customer (Tab 4, pg 91) and noted that on this form the vehicle was branded as “rebuilt”. He then reviewed the retail bill of sale to the above-referenced consumer, and noted that on the bill of sale the comments section was blank and there was no dollar amount for the repair or repair estimate provided. Mr. Hines also commented that the bill of sale failed to indicate there was a second page that also formed part of the contract.

Mr. Hines summarized his evidence by stating that a dealer should “just disclose what they know to the customer”.

James Hamilton (Legal Services Director, UCDA Ontario)

Mr. Hamilton was called by the Registrants as a fact witness. He is lawyer and a salaried employee at UCDA who holds the position of Legal Services Director. UCDA provides services for new and used dealers including invoices and bills of sale. Mr. Hamilton was presented with a UCDA Bill of Sale (Exhibits 4 and 11) and gave evidence that dealers can purchase this 2010 version of the Bill of Sale. He also gave evidence that they check with OMVIC to see if they conform and that these documents change from time to time. Mr. Hamilton testified that he was involved in the design of the UCDA Bill of Sale.

Mr. Hamilton spoke about the “comments” box on the UCDA Bill of Sale and testified that inducements should be itemized here and it is also used for other comments. He also said that accident details are also to be written on the contract.

Mr. Hamilton was presented with the UCDA Trade-In Disclosure form (Exhibit 10). He gave evidence that it was a trade-in disclosure statement and that a customer who is trading in a car would fill out page 1 to inform the dealer about their ownership experience. Pages 1 and 2 remain in the dealers file, page 3 goes to the selling file and page 4 is given to the buyer when the car is sold and it is signed by the vendor. He testified that the UCDA Trade-In Disclosure form does not provide the full extent of disclosure requirements. Mr. Hamilton’s evidence was that the dealers are told to use their forms as a “tickler” to remind them of what they are to disclose. He also testified that the UCDA Trade-In Disclosure form was intended to work in tandem with the bill of sale and the comments box is to be used to indicate this document forms part of the bill of sale.



Mr. Hamilton also put into evidence the means by which Auto Check obtains its information. The Insurance Bureau of Canada obtains information from the insurance companies when a claim has been paid out and the report will often include the dollar amount paid out and the reason. The report may indicate the date of loss, collision information and the amount of repairs that were required.

Mr. Hamilton indicated that a vehicle can be in an accident, but the information may not always be in the vehicle history report. He said the data available depends on timing and these searches are simply a tool in a tool box and are not meant by themselves to be “due diligence”. In fact, the search services inform dealers upon purchase that information included is “what they know”.

Mr. Hamilton cautioned about dealers putting too much reliance on a “clean” vehicle history report and dealers are in a position to catch gaps in search results. He gave an example of using a “paint tester” (device used to measure paint thickness) to see if there is aftermarket paint on panels/doors etc. Dealers should examine the vehicles themselves and should rely on the person they acquired the vehicle from the history of the vehicle.

Troy Edwards (Director of Buyer Development, IMPACT Auto Auctions)

Mr. Edwards was called as a fact witness by the Registrants. He is the Director of Buyer Development at IMPACT. He testified that IMPACT has various contracts with different insurance companies and when IMPACT is called, it brings the vehicle to IMPACT’s facility, completes a condition report, takes photographs, identifies mileage if possible and lists the vehicle for sale once the insurance company has settled with the insured. He also gave evidence that IMPACT passes along all the information it is provided from the insurer regarding a vehicle to ensure maximum transparency for the customer.

Mr. Edwards discussed the concept of “total loss” and explained it as terminology used by an insurance company to disclose when the value of repairs exceeds the actual cash value of the vehicle. He also indicated that total loss is not the actual “damage” to the vehicle, and that IMPACT does not guarantee the estimate or the content of an estimate.

John Bellisario (Registrants’ expert)

Mr. Bellisario is an Independent Insurance Appraiser and is the owner of *Property Damage Appraisal*. He has been in the industry for 35 years, but has no formal qualifications or credentials. He was presented by the Registrants as an expert witness.

Mr. Bellisario’s qualifications as an expert were challenged by counsel to the Registrar. The Panel heard submissions from the Registrants and the Registrar with respect to the admissibility of the expert’s evidence. The Panel considered the admissibility of Mr.



Bellisario's opinion by applying the following test: i) is his evidence relevant, ii) would it help the panel make a decision, iii) was Mr. Bellisario properly qualified and iv) was there any other reason to exclude the evidence. The Panel had some concerns with respect to the degree of relevance of Mr. Bellisario's anticipated evidence to the Notice of Complaint. Ultimately, the Panel decided to hear Mr. Bellisario's evidence, but cautioned Mr. Dennis to focus on the issues that relate to the Notice of Complaint.

Mr. Bellisario gave evidence that there is no consistent standard for appraisals. When an insurance company decides a car is a total loss, it means that repairs to the vehicle have reached 65% of the value of the vehicle. It does not mean the insured was paid that amount of money.

Mr. Bellisario provided repair estimates for each of the vehicles at issue in the Notice of Complaint. He testified that he arrived at his estimates by viewing photographs, and by relying on information from Badesha about whether or not a vehicle needed suspension work. Upon reviewing an insurance estimate, Mr. Bellisario said he was able to significantly reduce it by providing a combination of used and after-market parts and discounted material and labour. His evidence was that by using less expensive parts the cost of repair to the following vehicles would be:

2010 Honda Civic (VIN 2HGFG1B30AH006530) (Exhibit 2, Tab 12) \$4,467.28

2010 Chevrolet Cobalt (VIN 1G1AD5F5XA7243938) (Exhibit 2, Tab 13) \$4,231.78

2005 Cadillac CTS (VIN 1G6DM56T050218339) (Exhibit 2, Tab 14) \$3,334.63

2010 Ford Focus (VIN 1FAHP3FNXAW145814) (Exhibit 2, Tab 15) \$1,148.25

2012 Mazda 3 (VIN JM1BLUF6C1531187) (Exhibit 2, Tab 16) \$2,402.24

2012 Chevrolet Equinox (VIN 2GNALDEK7C6400251) (Exhibit 2, Tab 17) \$6,192.99

2012 Chrysler 200 (VIN 1C3CCBHG1CN236248) (Exhibit 2, Tab 19) \$4,725.54

2010 Buick Lacrosse (VIN 1G4GE5EV1AF100233) (Exhibit 2, Tab 20) \$4,701.02

2005 Cadillac CTS (VIN 1G6DM56T150231147) (Exhibit 2, Tab 21) \$2,250.00

On cross examination, Mr. Bellisario testified that he sources hundreds of after-market and used parts suppliers to arrive at his repair estimates. He also testified that he did not question any of Pal Auto Services's receipts, nor did he physically examine any of the vehicles in question.

Harpal Badesha (Salesperson, Pal Auto)

Badesha has been the registered owner of Pal Auto since 2007 and he received his dealer's license in 2010. He testified that he usually purchases his vehicles from IMPACT, ADESA and Manheim and that all cars are repaired, safetied and e-tested.



He also indicated that he has been a licensed mechanic since 1998 and is a certified drive-clean technician.

Badesha testified that Pal Auto was inspected by OMVIC in October 2007 (Exhibit 2, Tab 4) and no deficiencies were found. Pal Auto was also inspected in June 2010 (Exhibit 2, Tab 8) when Badesha's brother, Harjit Badesha, met with the inspector. At that time, the inspector reminded them all material facts must be disclosed in writing on the bill of sale.

Badesha testified that in August 2011, Pal Auto was inspected again (Exhibit 3, Tab 2). At that time, the inspector left them with inspection findings (Exhibit 3, Tab 2, pg 14). Badesha said that although he signed the document, he did not understand what the inspector meant when she said "dealer disclosure on some deals is weak", nor did he understand when she said total loss and repair estimates are to be in writing "where applicable". Badesha indicated that as a result of this inspection, he started using the UCDA Trade-In Disclosure forms (Exhibit 10).

Badesha stated he has never attended an OMVIC information seminar, nor did he receive the letter from OMVIC dated October 21, 2011 (Exhibit 3, Tab 3, pg 15) outlining his disclosure obligations. Counsel for the Registrar directed the Panel's attention to the Fed Ex receipt concerning delivery of the letter (Exhibit 3, Tab 3, pg 31). Mr. Badesha's evidence was that he opens all his mail at the office and always gets the e-mails from OMVIC. He uses the OMVIC website to renew his license, but never checks the website for information or updates.

Badesha testified that Pal Auto was inspected again in May 2013 (Exhibit 2, Tab 11) and at that time his brother, Harjit Badesha, met with the inspector. He gave evidence that Harjit Badesha called to tell him the inspector said all material facts must be included in writing on the bill of sale. Badesha testified that after this inspection he did not know what to believe and was not told anything about what has to be disclosed. Furthermore, he testified that all the vehicles before the Panel today were sold prior to this inspection.

Badesha determines whether or not he will purchase a vehicle by seeing the damage and purchases them on line by viewing photographs. He further testified that you cannot rely on Carfax to give a true history of the vehicle.

Badesha spoke about the course at Georgian College and indicated it did not provide anything about disclosure. He said the course only discussed the bill of sale, and that there is no column on the bill of sale to itemize repair details.

Badesha's evidence is as follows for the vehicles identified below:



2010 Honda Civic (VIN 2HGFG1B30AH006530) (Exhibit 2, Tab 12)

The repair was \$2,762.00, plus tax (Exhibit 2, Tab 12, pg 61). Badesha was not sure why he indicated on the UCDA Trade-In Disclosure form (Exhibit 2, Tab 11, pg. 65) the damage exceeded \$3,000. He testified that it could have been an error.

2010 Chevrolet Cobalt (VIN 1G1AD5F5XA7243938) (Exhibit 2, Tab 13)

The customer signed the IMPACT Condition Report, which shows the damage estimate of \$10,213.00 (Exhibit 2, Tab 13, pg. 68). Badesha gave evidence that the repair invoice from Pal Auto Services for this vehicle was \$2,373.00, including tax (Exhibit 2, Tab 13, pg. 69) and that he indicated on the UCDA Trade-In Disclosure form (Exhibit 2, Tab 13, pg. 80) the damage on the vehicle did exceed \$3,000.

2005 Cadillac CTS (VIN 1G6DM56T050218339) (Exhibit 2, Tab 14)

According to the Pal Auto Services invoice, the repair amount was \$1,395.50, including tax (Exhibit 2, Tab 14, pg. 84). The safety and e-test (Exhibit 2, Tab 14, pg. 85) cost was \$15.95, including tax. The UCDA Trade-In Disclosure form (Tab 14, pg. 94) showed the damage on the vehicle was less than \$3,000.

2010 Ford Focus (VIN 1FAHP3FNXAW145814) (Exhibit 2, Tab 15)

Badesha testified that this vehicle was not branded and had a declaration of “XCons”, which meant it could possibly be a consignment sale from a body shop. His evidence was that items 15 – 24 on the repair estimate (Exhibit 2, Tab 15, pg. 101) did not need any repair at all, the frame was straight and the vehicle did not require any front end repair. The repair cost to this vehicle was \$2,005.75 (Exhibit 2, Tab 15 pg. 99), as reflected on the Pal Auto Services invoice, and the lack of any indication of whether or not the damage exceeded \$3,000 on the UCDA Trade-In Disclosure form (Exhibit 2, Tab 15, pg. 113) was a mistake.

2012 Mazda 3 (VIN JM1BLUF6C1531187) (Exhibit 2, Tab 16)

Badesha testified that the parts referred to on the Pal Auto Services invoice (Exhibit 2, Tab 16, pg. 121) are after-market parts and he obtains them from auto wreckers. He referred to his notes (Exhibit 2, Tab 16, pg. 123) regarding the vehicle being a daily rental and the warranty was good until October 28, 2014. He also referred to the UCDA Trade-In Disclosure form (Exhibit 2, Tab 16, pg. 125) where it indicated the vehicle was declared a total loss by the insurer.

2012 Chevrolet Equinox (VIN 2GNALDEK7C6400251) (Exhibit 2, Tab 17)

Badesha brought the Panel’s attention to photographs of the vehicle (Exhibit 2, Tab 8, last page) and questioned the extent of the damage based on them. Badesha also testified that the consumer signed all pages of the Auto Check and Carfax reports (Exhibit 2, Tab 17, pg. 130-134) and the IMPACT Condition Report (Exhibit 2, Tab 17, pg. 128), which indicates a damage estimate of \$24,218.00. Badesha gave evidence



that he showed the Pal Auto Services invoice to the consumer for the repairs completed.

2012 Chrysler 200 (VIN 1C3CCBHG1CN236248) (Exhibit 2, Tab 19)

Badesha referred the Panel to certain photographs of the vehicle (Exhibit 2, Tab 19, pg. 141) and questioned the damage. His evidence was that despite the information from IMPACT (Exhibit 2, Tab 19, pg. 140) declaring the vehicle a total loss with damage of \$17,297.64, the vehicle only needed a left front headlight. There was no damage to the right fender, or the radiator or condensers. Badesha indicated that notes in the file (Exhibit 2, Tab 19, pg. 147) suggest the warranty was available until April 14, 2015. He also referred to the invoice from Pal Auto Services, which was initialled by the consumer, showing a total repair cost of \$5,184.98. Additionally, he said the consumer signed all pages of the Auto Check and Carfax reports (Exhibit 2, Tab 19, pg. 142 - 144), as well as a photograph of the damaged vehicle (Exhibit 2, Tab 19, pg. 145).

Badesha also testified that he indicated on the UCDA Trade-In Disclosure form (Exhibit 2, Tab 19, pg. 149) that the damage repairs exceeded \$3,000 and the vehicle had been declared a total loss. He confirmed that his note on this form meant that the manufacturer's warranty had not been cancelled.

2010 Buick Lacrosse (VIN 1G4GE5EV1AF100233) (Exhibit 2, Tab 20)

Badesha testified that the IMPACT bill of sale denoted a repair estimate of \$19,539.61 and the mileage was believed to be greater than 20,477 km. Badesha referred to the Panel to photographs (Exhibit 3, Tab 6, last page) and testified that the repairs were \$4,972.00 (Exhibit 2, Tab 20, pg. 153), as reflected on the Pal Auto Services invoice. According to Badesha, this amount was significantly less than the insurance repair estimate because he bought after-market parts. When he sold the vehicle, he advised the consumer about the accident and the consumer initialled all pages of the Carfax report (Exhibit 2, Tab 20, pg. 157 – 159). He also stated that the consumer was aware of the repairs and that the UCDA Trade-In Disclosure form (Exhibit 2, Tab 20, pg. 164) indicates the damage repair of over \$3,000.00.

Badesha reported when he started the engine, the odometer indicated a reading of 20,500 km.

2005 Cadillac CTS (VIN 1G6DM56T150231147) (Exhibit 2, Tab 21)

Badesha gave evidence that the repair invoice was for \$2,012 plus tax; that the UCDA Trade-In Disclosure form (Exhibit 2, Tab 21, pg. 174) indicated the vehicle was declared a total loss by the insurer; the manufacturer's warranty had been cancelled and there was previous damage exceeding \$3,000.00.

On cross examination, Badesha testified that the IMPACT bill of sale and photographs (Exhibit 2, Tab 12, pg 59 and 60) are useful in that they influence his decision to purchase a vehicle. He gave further evidence that a retail customer should not see his bills of sale from IMPACT, and a retail customer would not care about or understand



what the repair estimate on the IMPACT bill of sale means. Badesha's evidence was that he disagrees with the IMPACT repair estimate, he does not believe the estimates on the IMPACT bill of sale are accurate, and there is therefore no use in disclosing these estimates to his consumers.

Badesha was not able to provide evidence of where on the bill of sale he disclosed the dollar amount of a damage repair. He stated that the consumer signed the IMPACT Auto Condition Report (Exhibit 2, Tab 13, pg 68), which contained photographs of the damaged vehicle and the repair estimate of \$10,213.00. Badesha also testified that OMVIC does not provide bills of sale and additionally, there was no place on the UCDA Bill of Sale that he was using to put the disclosure that was required.

Harjit Badesha (Salesperson, Pal Auto)

Prior to Badesha's testimony, the Panel had to consider the issue of a breach of an exclusion order, where Harjit Badesha sat through the testimony of OMVIC's witnesses in this matter. OMVIC's position was that the witness exclusion breach was not accidental, there was an exclusion order made on March 5 (and again on June 9), and the witness had the benefit of hearing opening statements, legal arguments and evidence. The Panel allowed Harjit Badesha to testify and cautioned that they would consider the amount of weight that would be given to his testimony.

Harjit Badesha testified that he is a sales representative at Pal Auto and has been licensed since 2008.

Harjit Badesha stated he participated in the sale of 4 of the vehicles before the Panel in this matter and was in attendance during the inspection of June 15, 2010 (Exhibit 2, Tab 8). At that inspection, he testified that the OMVIC inspector told him to write disclosure on the bill of sale. He was also in attendance for the August 26, 2011 (Exhibit 3, Tab 2) inspection. At that inspection, Harjit Badesha indicated that he did not understand what the inspector meant when she said to disclose when a vehicle is a total loss and provide the repair estimate in writing. He testified that the inspector told him to use a second sheet if there was not space on the bill of sale, and that there were a lot of documents available that he could attach to the bill of sale. Harjit Badesha was also present at the May 2013 Inspection (Exhibit 2, Tab 11), where he was told that he was using the wrong form.

Harjit Badesha testified that there is no space on the forms to write the repair estimates or repair amounts, that he and Badesha tell the customers verbally about the damage, and that they show customers the repair bill from Pal Auto Services and photographs of the damaged vehicle. He does not put the repair estimate on the bill of sale because that would be lying to the customer, since Pal Auto Services can repair the vehicle for much less than the estimate.



Harjit Badesha was directed to paragraph 20 of the Terms and Conditions signed by Harpal Badesha (Exhibit 2, Tab 3) on September 17, 2007. Harjit Badesha questioned which estimate should be disclosed, if there are 2 or 3 different amounts.

Decision of the Panel

The Panel finds the Registrants committed the following breaches of the sections 7 and 9 of the Code of Ethics:

Vehicle	Written declarations missing from bill of sale	Sections of Regulation 333/08 breached
2010 Honda Civic (VIN 2HGFG1B30AH006530)	Manufacturer's warranty has been cancelled Repair estimate: \$16,005.85	42(19) and 42(20)
2010 Chevrolet Cobalt (VIN 1G1AD5F5XA7243938)	Repair estimate: \$10,212.56	42(19)
2005 Cadillac CTS (VIN 1G6DM56T050218339)	Repair estimate: \$9,709.24	42(19)
2010 Ford Focus (VIN 1FAHP3FNXAW145814)	Repair estimate: \$11,831.25	42(19)
2012 Mazda 3 (VIN JM1BLUF6C1531187)	Repair estimate: \$6,746.00	42(19)
2012 Chevrolet Equinox (VIN 2GNALDEK7C6400251)	Repair estimate: \$24,217.98	42(19)
2012 Chrysler 200 (VIN 1C3CCBHG1CN236248)	Repair estimate: \$17,297.64	42(19)
2010 Buick Lacrosse (VIN 1G4GE5EV1AF100233)	Repair estimate: \$19,839.61	42(19)
2005 Cadillac CTS (VIN 1G6DM56T150231147)	Repair estimate: \$7,410.99	42(19)

Reasons for Decision

Onus and standard of proof

At the hearing, the onus, or burden of proof, is on the Registrar to prove, on a balance of probabilities that a finding should be made against the Registrants.

The standard of proof in this matter is the civil standard of proof, which is proof on a balance of probabilities. Proof on a balance of probabilities is a level of proof determined on the basis of whether something is more likely to be true than not. It is



this standard that the Registrar must reach in order for the Panel to make a finding against the Registrants.

The Registrants' approach to disclosure

Before turning to the specific allegations at issue in the Notice of Complaint and the specific evidence put before the Panel, it is useful to make some general comments about the Registrants' disclosure obligations, their knowledge of those obligations, the nature of the disclosure made in this case, and the Registrants' evidence in support of that disclosure.

The Registrants were aware that OMVIC is the regulator for the industry and that OMVIC's mandate is to ensure the protection of the consumer. Part of ensuring this protection is the requirement to pass on to the consumer, in writing, any material fact that would influence their decision to purchase the vehicle. Both Ms. Patel and Ms. Korth gave evidence that on numerous occasions the Registrants were sent bulletins, were personally visited by OMVIC inspectors, and were informed of their disclosure requirements under the Regulation and the Code of Ethics. (As outlined above, although Badesha said he did not receive OMVIC's letter dated October 21, 2011, which outlined his disclosure obligations, the Panel was brought to a FedEx receipt confirming its delivery. Additionally, Badesha confirmed that he opens all his mail at the office and that he always gets OMVIC's e-mails.)

In addition, on September 17, 2007, Badesha signed Terms and Conditions for registration as a motor vehicle dealer (Exhibit 2, Tab 3). Paragraph 20 of the Terms and Conditions clearly states that the Badesha is under a positive obligation to disclose in writing on the bill of sale all material facts about the vehicles it sells or leases to customers, whether or not the Badesha agrees with the disclosure. This document goes on to list what constitutes a material fact and included in this list is insurance write off. Paragraph 20 also states that in the case of damaged vehicles, Badesha agrees to disclose as much detail as possible with respect to the nature and severity of the damage.

The Registrants' rationale for their approach to disclosure was made clear at the hearing. As discussed above, Ms. Patel gave evidence that Badesha maintained that the estimates from the insurance companies are inflated. Badesha himself testified that a retail customer should not see the bill of sale from IMPACT because they would not understand it. He also said he does not believe the estimates on the IMPACT bill of sale are accurate and there is no use in disclosing these estimates to the consumers. Thus, it is clear material facts were deliberately kept from consumers for many of the vehicles listed in this Notice of Complaint, as discussed in further detail below.

In some cases, it appears consumers had signed certain documents provided to them by the Registrants, showing information relating to IMPACT repair estimates for the vehicle, accident reports and/or photographs of the vehicle. The Panel heard evidence



from James Hamilton that a dealer can indicate in the comments box on the bill of sale that another document forms part of the sales contract. The Panel agrees this is an acceptable means of including the required disclosure in the bill of sale. However, as outlined further below, Badesha failed to do this in each transaction.

The Pal Auto Services invoices and the Registrants' expert evidence

The Registrants relied repeatedly on invoices from Pal Auto Services and on the expert evidence of John Bellisario.

The Panel did not consider the Pal Auto Services repair invoices to be reliable, and so gave them very little weight. These invoices showed significantly lower repair costs than what was indicated on the IMPACT bills of sale. For example, the argument that the 2010 Buick Lacrosse, with a detailed report outlining a repair estimate from IMPACT Auto Sales of \$19,539 can be repaired safely for \$4,972 according to Pal Auto Services lacks complete credibility. While the IMPACT repair estimate contained a detailed itemization of all repairs required including specific parts, part numbers, labour estimates, the Pal Auto Service repair invoices failed to indicate what specific repairs had been performed or which parts had been used. Instead, the Pal Auto Services invoices contained very little detail and rounded amounts for parts and labour. The Panel also questioned the charges of \$5.00 for a safety standards certificate and \$10.00 for an emission test. These are far less than industry standards and are simply not a believable reflection of the repair cost of vehicles today.

The Panel also gave very little weight to Mr. Bellisario's evidence. His estimates also reflected a wide discrepancy with the IMPACT bill of sale. For example, the argument that the 2010 Buick Lacrosse, with a detailed report outlining a repair estimate from IMPACT Auto Sales of \$19,539 can be repaired safely for \$4,701.02 according to Mr. Bellisario, lacks complete credibility. Another reason that little weight was given to Mr. Bellisario's evidence was that by his own admission, he did not physically examine any of the vehicles; he did not question any of the Pal Auto Services receipts; and he took the Registrants word at face value that the vehicles did not require suspension work. The Panel found him to lack credentials in addition to being a somewhat hostile witness.

The disclosure required by the Regulation and the Code of Ethics

Although the specific allegations in the Notice of Complaint will be dealt with below, it is useful to make some general comments about how the Panel interpreted and applied some of the requirements set out in Regulation 333/08 and the Code of Ethics.

There was a certain theme in the evidence presented about the issue of the requirement to disclose repair damage of \$3,000 (Regulation 333/08, section 42(19)). In order to comply with 42(19) of Regulation 333/08, the dealer must indicate in writing on the bill of sale if the total cost of repairs exceeded \$3,000. Additionally, the dealer



must indicate on writing on the bill of sale the total amount of repair, if it was known to them.

Section 7 of the Code of Ethics requires Registrants to ensure that all documents are current and comply with the law. In this case, while Badesha made some effort to provide disclosure using the UCDA Trade-In Disclosure form (Exhibit #10), because the bills of sale did not indicate it formed part of the contract, these documents were not considered by the Panel to form part of the bills of sale. In any event, there were many instances where this document failed to meet disclosure obligations. All material facts must be disclosed to the consumer on the bill of sale. The Panel found that at no time was the IMPACT repair estimate disclosed to the consumer or written on either the Pal Auto bill of sale or the UCDA Trade-In Disclosure form.

Section 9 of the Code of Ethics deals with professionalism. It requires a registrant to refrain from engaging in any act, or omission that would be disgraceful, dishonourable, unprofessional or unbecoming of a registrant. It requires a registrant to act with honesty, integrity and fairness and use their best efforts to prevent error, misrepresentation, fraud or any other unethical practice. The simple act of withholding the knowledge that a vehicle sustained substantial damage, as indicated in the IMPACT repair estimates, certainly contravenes this section of the Code of Ethics. In addition, at times, the Panel felt the consumers were misled with respect to their warranties being in effect. Although the Registrants obtained warranty information, Ms. Patel gave evidence that often the dealers do not get an update of the status of the warranty immediately. Given the Registrants' knowledge that vehicles had been declared a total loss and the fact that the IMPACT bill of sale indicated the warranty had been cancelled, the Registrants should have passed on the information to the consumer.

The allegations in the Notice of Complaint

2010 Honda Civic (VIN 2HGFG1B30AH006530)

The Panel found that sufficient evidence was presented by the Registrar with respect to the allegation the Registrants had failed to disclose the cancellation of the manufacturer's warranty. The hand written notes found at Exhibit 2, Tab 12, pg 62, failed to give adequate detail about the vehicle in question, who the caller spoke to and which manufacturer was contacted. Regulation 333/08 requires written disclosure that a manufacturer's warranty has been cancelled, and this was not provided in writing to the consumer.

The Panel found the Registrants in breach of section 42(19) of Regulation 333/08 by the simple fact that neither the repair amount (\$3,121.06), nor the IMPACT repair estimate (\$16,005.85), was indicated in writing on the Pal Auto bill of sale. The Panel finds further that the Registrants breached sections 7 and 9 of the Code of Ethics by failing to ensure their documents comply with the law, and by failing to disclose to the consumer all material facts about the vehicle, especially the repair estimate of \$16,005.85 disclosed on the IMPACT bill of sale.



2010 Chevrolet Cobalt (VIN 1G1AD5F5XA7243938)

Although Badesha gave evidence the repair cost for this vehicle was \$2,372.00, the Panel considered the combination of Mr. Bellisario's repair quote of \$4,231.78 and the IMPACT repair estimate of \$10,212.56. The Panel then looked to the Pal Auto Services repair invoice and found it to be lacking in significant detail. It failed to indicate parts used or part numbers, it contained no breakdown of labour costs and no itemization. Given the significant detail on the repair estimate found at Exhibit 2, Tab 13, pg. 75, the Panel did not believe this vehicle was actually repaired for the amount Badesha indicated.

As such, the Panel found that the Registrants breached section 42(19) of Regulation 333/08. The Panel also found that Registrants breached sections 7 and 9 of the Code of Ethics by failing to ensure their documents comply with the law and for failing to disclose to the consumer all material facts about the vehicle, especially the repair estimate of \$10,212.56 disclosed on the IMPACT bill of sale.

2005 Cadillac CTS (VIN 1G6DM56T050218339)

Badesha gave evidence that the repair cost was less than \$3,000. The Panel considered the combination of the evidence given by the Registrants' expert witness, Mr. Bellisario, who indicated his appraised repair would be \$3,334.63 and the IMPACT bill of sale, which indicated a repair estimate of \$9,709.24. Again, the Pal Auto Services repair invoice relied upon by the Registrants contained very little detail. The Panel found that it did not present an accurate picture of the repair and dismissed their repair invoice as inaccurate.

As a result, the Panel found that both Badesha and Pal Auto breached section 42(19) of Regulation 333/08. The Panel also found that the Registrants breached sections 7 and 9 of the Code of Ethics by failing to ensure their documents comply with the law and for failing to disclose to the consumer all material facts about the vehicle, especially the repair estimate of \$9,709.24 disclosed on the IMPACT bill of sale.

2010 Ford Focus (VIN 1FAHP3FNXAW145814)

Badesha gave evidence that the repair cost was less than \$3,000. The Panel also considered the IMPACT bill of sale, which indicated a repair estimate of \$11,831.25. The incredible discrepancy between the IMPACT bill of sale repair estimate and the repair invoice from Pal Auto Services caused the Panel to seriously question whether the Registrants painted an accurate picture of the repair costs. As discussed above, the Panel dismissed the Pal Auto Services invoice as an inaccurate account of the repairs.

As a result, the Panel found that the Badesha and Pal Auto breached section 42(19) of Regulation 333/08. The Panel also found that Registrants breached sections 7 and 9 of the Code of Ethics by failing to ensure their documents comply with the law and for



failing to disclose to the consumer all material facts about the vehicle, especially the repair estimate of \$11,831.25 disclosed on the IMPACT bill of sale.

2012 Mazda 3 (VIN JM1BLUF6C1531187)

The Panel dismissed the allegation the Registrants had failed to provide written disclosure that the manufacturer's warranty had been cancelled because they accepted the hand written notes found in Exhibit 2, Tab 16, pg. 123 as credible evidence Badesha was informed and therefore believed that the vehicle still had warranty.

The Panel found the Registrants breached section 42(19) of Regulation 333/08 for failing to disclose the actual repair cost of \$3,056.65 and the IMPACT repair estimate of \$6,746.00. Additionally, the registrants were found to have breached sections 7 and 9 of the Code of Ethics by failing to ensure their documents comply with the law; by failing to alert the consumer to the fact that there may be a problem with the warranty; and by failing to disclose to the consumer all material facts about the vehicle, especially the repair estimate from IMPACT.

2012 Chevrolet Equinox (VIN 2GNALDEK7C6400251)

The Panel dismissed the allegation that the Registrants had failed to provide written disclosure that the manufacturer's warranty had been cancelled. As with the previous vehicle, the Panel gave weight to Badesha's hand written note found in Exhibit 2, Tab 17, page 135. The note indicated the name of the dealership that was contacted, who was spoken to, and the end date of the warranty. It provided enough information for the Panel to believe Badesha made the appropriate inquiry.

The Panel found the Registrants breached section 42(19) of Regulation 333/08 for failing to disclose the IMPACT repair estimate and the Pal Auto Services repair amount of \$7,863.67 on the bill of sale. Although the consumer signed the IMPACT Auto condition report showing damage of \$24,217.98, the Panel did not find any evidence that the repair amount of \$7,863.67 was indicated on the Pal Auto bill of sale, or that the bill of sale had a notation which attached another document to it that would indicate this repair amount. Additionally, the Registrants were found to have breached sections 7 and 9 of the Code of Ethics by failing to ensure their documents comply with the law; by failing to alert the consumer to the fact that there may be a problem with the warranty and by failing to disclose to the consumer all material facts about the vehicle, especially the IMPACT repair estimate.

2012 Chrysler 200 (VIN 1C3CCBHG1CN236248)

The Panel dismissed the allegation that the Registrants had failed to provide written disclosure that the manufacturer's warranty had been cancelled because the hand written notes found at Exhibit 2, tab 19, pg. 140, indicate that the vehicle was still under warranty.

The Panel also noted that the consumer initialled the Pal Auto Services repair invoice showing a repair of \$5,814.98, but the bill of sale has no indication of the repair amount,



nor does it refer to the repair invoice as forming part of the bill of sale. The Panel found the Registrants breached section 42(19) of Regulation 333/08 for failing to indicate the repair amount on the bill of sale. The Panel also found that the Registrants breached sections 7 and 9 of the Code of Ethics by failing to alert the consumer to the fact that there may be a problem with the warranty and by failing to disclose to the consumer all material facts about the vehicle, especially the IMPACT repair estimate of \$17,297.64

2010 Buick Lacrosse (VIN 1G4GE5EV1AF100233)

With respect to the allegation that the Registrants failed to disclose the vehicle's proper mileage information and the state of the odometer, the Panel considered the notes found in Exhibit 2, Tab 20, pg. 151, 156 and 164 which indicate the Registrants provided suitable evidence to support a minor discrepancy with the mileage. The mileage discrepancy was minor (20,477 vs 20,447 vs 19,803) and would have little impact on the buyer's decision to purchase the vehicle. Accordingly, the Panel dismissed this allegation.

Because the Registrants failed to indicate the repair amount of over \$3,000 on the bill of sale, the Panel found that they breached 42(19) of Regulation 333/08. In addition, the Registrants breached sections 7 and 9 of the Code of Ethics by failing to ensure their documents comply with the law and by failing to disclose to the consumer all material facts about the vehicle, especially the IMPACT repair estimate of \$19,539.61.

2005 Cadillac CTS (VIN 1G6DM56T150231147)

The Panel considered the significant repair estimate from IMPACT and decided that although the Registrants provided an invoice for a lesser amount than \$3,000, the fact that they failed to inform the customer of the repair estimate from IMPACT constitutes a breach of 42(19) of Regulation 333/08. The Panel also found that sections 7 and 9 of the Code of Ethics were breached by failing to ensure their documents comply with the law and for failing to disclose to the consumer all material facts about the vehicle, especially the repair estimate of \$7,410.99 disclosed on the IMPACT bill of sale.

Decision on Penalty

1. Pal Auto shall pay a fine in the amount of \$14,000, of which \$5,000 is due within 6 months of the date of this Order, and the remaining balance is due within 15 months of the date of this Order.
2. Badesha shall pay a fine in the amount of \$5,000, of which \$1,000 is due within 2 months of the date of this Order, and the remaining balance is due within 10 months of the date of this Order.
3. Badesha shall successfully complete the OMVIC automotive sales course offered by Georgian College within 6 months of the date of this Order, at his own expense.



4. Badesha shall successfully complete the automotive language course offered by Georgian College within 6 months of the date of this Order, at his own expense.
5. Pal Auto shall ensure that all future salespeople hired by Pal Auto must successfully complete the OMVIC automotive sales course offered by Georgian College.

Submissions on Penalty

Registrar

Mr. Rusek, for the Registrar, submitted 5 cases with respect to penalty for consideration.

With respect to the principles governing the amount of the monetary penalty, Mr. Rusek relied on *R. v. Cotton Felts Ltd* [1982] O.J. No. 178, where the Court of Appeal stated that only fines that hurt would have any effect whatsoever. He also relied on *R. v. Metron Construction Corporation*, [2013] ONCA 541, where the Court of Appeal for Ontario stated (at para 98) that an organization's ability to pay should not be treated as a prerequisite to the imposition of a fine.

Finally, Mr. Rusek referred to three OMVIC Discipline Hearing Decisions that speak to differing fines for different scenarios:

- Registrar, *Motor Vehicle Dealers Act, 2002* and Prestige Carline agreed to an \$18,000 fine with no hearing.
- Registrar, *Motor Vehicle Dealers Act, 2002* and Best Rate Auto agreed to a \$20,000 fine with no hearing.
- Registrar, *Motor Vehicle Dealers Act, 2002* and Kingston Nissan and Carone and Trevor Cotton agreed to a \$25,000 fine plus \$2,000 in costs for attendance at a 1 day hearing.

On behalf of the Registrar, Mr. Rusek requested a fine of \$18,000 to Pal Auto and a fine of \$7,000 to Badesha. He further requested that Badesha take the OMVIC Certification Course in person, that he offer it to all current and future employees and that he assume their cost of taking the course. In addition, Mr. Rusek submitted that Badesha take the Automotive Language Prep Course to assist with certain language contained in the legislation.



Registrants

On behalf of the dealer, Mr. Dennis submitted that fines should not be in the range that has been requested by the Registrar. Additionally, he submitted that there should be no personal fine at all against Mr. Badesha. Mr. Dennis suggested that there may be 1 – 3 sales where the full information was not made available to the consumer and that a fine in the range of \$1,000 for each deal would be appropriate. He again submitted that the dealer cannot give proper information because each deal has discrepancies.

Reasons for Penalty

Badesha, by his own admission, withheld critical information from consumers about his vehicles. His reasoning was that consumers would not understand the IMPACT repair estimates. The Panel is not convinced that the continuous lack of disclosure was an oversight. It appears to have been a deliberate and intentional act to avoid providing information that may deter a consumer from purchasing a vehicle.

Badesha's suggestion that the course at Georgian College failed to provide any information about disclosure, that OMVIC misled him with respect to which forms to use and that he was confused following an inspection about what disclosure was required was unconvincing. Badesha was visited on several occasions by Ms. Patel, Compliance Inspector for OMVIC, who gave evidence that she personally reviewed his disclosure obligations with him. Additionally, Mr. Badesha gave evidence that he receives all the e-mails that OMVIC sends out and that he opens all OMVIC mail at his office, which confirms that he receives the information bulletins. As well, he successfully completed the OMVIC certification course at Georgian College and reviewed and signed OMVIC's Terms and Conditions. The Panel does not accept that he was unaware of his disclosure obligations.

Badesha's complaint that OMVIC does not provide bills of sale and that there is no space on the UCDA Bill of Sale to write disclosure obligations did not garner any support from the Panel. As outlined above, the Panel heard evidence from James Hamilton, Legal Services Director at UCDA, that a dealer can indicate in the comments box on the bill of sale that another document forms part of the sales contract. The Panel agrees that this is an acceptable means of including the required disclosure in the bill of sale. However, Badesha failed to do this in each transaction. The Panel did, however, recognize there were instances where the impact auto estimate was initialled by the consumer.

Moreover, Badesha's insistence that he did nothing wrong and accepts no responsibility for the breaches does little to provide any mitigating factors.

With respect to penalty, the Panel considered the protection of the public, specific deterrence, general deterrence, rehabilitation and the presence of any mitigating or aggravating factors. The Act, which regulates the motor vehicle industry, is consumer



protection legislation and the Registrar has the duty to ensure the public is protected from registrants who act contrary to the public interest.

The Panel is satisfied this penalty is appropriate to the circumstances and that the penalty is sufficient to deter the Registrants from similar acts. The Panel also considered the number of violations as an aggravating factor.

Ontario Motor Vehicle Industry Council
Discipline Panel



Caroline Brett, Chair
Neil Joosse, Vice Chair
Bruce Wilson, Vice Chair

