

## DISCIPLINE DECISION

IN THE MATTER OF A DISCIPLINE HEARING HELD PURSUANT TO THE MOTOR  
VEHICLE DEALERS ACT 2002, S.O. 2002, C.30, Sch. B

B E T W E E N :

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

- AND -

RIVERSIDE FORD SALES LTD

- and -

SCOT BIRNIE

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

**Date of Decision:** January 10, 2022

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

**Order:**

1. The Dealer is ordered to pay a fine in the amount of \$2,500 no later than **March 31, 2022.**
2. The Dealer is ordered to ensure all sales staff employed by the Dealer have again reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **March 31, 2022.**
3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the Georgian College Automotive Certification course (the "Course"). Current sales staff will be offered the Course no later than **March 31, 2022.** Future sales staff will be offered the Course within 90 days of being retained in this capacity. The Dealer will incur all costs associated with this. It is understood between the parties this clause does

not apply to sales staff who have completed the Course after January 1, 2009, or who are otherwise required to do so pursuant to the Act.

4. The Dealer and Birnie agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Written Reasons:

## **Reasons for Decision**

### **Introduction**

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

### **Agreed Statement of Facts**

#### **Background:**

1. Riverside Ford Sales Limited (the "Dealer") was first registered as a motor vehicle dealer since in or around July 2006.
2. Scot Birnie ("Birnie") was first registered as a motor vehicle salesperson in or around November 1993. At all material times, Birnie was the sole officer, as well as the person in charge of the day-to-day activities, of the Dealer.

#### ***OMVIC registrant education re: all-in pricing***

3. Since the Act was proclaimed, OMVIC has issued various publications and webinars reminding dealers of their obligation to advertise all-inclusive vehicle prices ("all-in pricing"). The dates of said publications are attached hereto as Schedule A. All of these publications continue to be available on OMVIC's website.

#### ***Direct correspondence with Dealer:***

4. During an inspection on or about July 11, 2013, the Dealer was reminded of its all-in pricing obligations.
5. During an inspection on or about September 24, 2019, the Dealer was reminded of its all-in pricing obligations.

### **Dealer's Contravention of the Code of Ethics**

6. On or about July 7, 2021, OMVIC investigators made inquiries about a 2019 Ford Explorer (Stock #21060A), while posing as members of the public. This vehicle was advertised with a selling price of \$40,995 exclusive of tax and licensing fees.

7. A representative of Dealer advised the OMVIC investigators that the above referenced advertised vehicle price was not inclusive of a mandatory \$399 “administration fee”. As such, the advertised price was not all-inclusive. This was contrary to section 36(7) of Ontario Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.

### **Birnie’s Contraventions of the Code of Ethics**

8. Birnie failed to ensure that the Dealer conducted its business in compliance with the Act and Code of Ethics and thus personally contravened sections 6 and 9 of the Code of Ethics.

### **Generally:**

9. The Dealer has since implemented protocols to ensure its advertised vehicle prices will comply with the all-in pricing rules, including but not limited to, ceasing charging an administrative fee on all used vehicles.
10. The Dealer agrees that the individual currently designated as the business manager at the Dealer will successfully complete the OMVIC Key Elements course, no later than **March 31, 2022.**

It is thereby agreed that the Dealer has breached sections 4(1) and 6(1) of the Code of Ethics, as set out in Ontario Regulation 332/08:

*Disclosure and marketing:*

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

*Accountability*

*6. (1) A registered motor vehicle dealer shall ensure that every registered salesperson that the dealer employs or retains to act as a salesperson carries out his or her duties in compliance with this Regulation.*

It is thereby agreed that Birnie has breached section 6(2) and 9(1) of the Code of Ethics, as set out in Ontario Regulation 332/08:

*Accountability*

*6. (2) A registered salesperson shall not do or omit to do anything that causes the registered motor vehicle dealer who employs or retains the salesperson to contravene this Regulation or any applicable law with respect to trading in motor vehicles. O. Reg. 332/08, s. 6 (2).*

*Professionalism*

*9. (1) In carrying on business, a registrant shall not engage in any act or omission that, having regard to all of the circumstances, would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming of a registrant.*

### **Additional written submissions from OMVIC**

OMVIC provided the following information in an additional submission:

- With respect to the jointly sought penalty, the allegations are confined to the agreed facts, and it is acknowledged that the Respondents have no prior Discipline record.

### **Joint Submission on Penalty**

1. The Dealer agrees to pay a fine in the amount of \$2,500 no later than **March 31, 2022.**
2. The Dealer agrees to ensure all sales staff employed by the Dealer have again reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **March 31, 2022.**
3. The Dealer agrees to offer all current and future sales staff the opportunity to complete the Georgian College Automotive Certification course (the "Course"). Current sales staff will be offered the Course no later than **March 31, 2022.** Future sales staff will be offered the Course within 90 days of being retained in this capacity. The Dealer will incur all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the Course after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
4. The Dealer, and Birnie agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

### **Decision of the Chair**

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee hereby concludes that the Dealer and Birnie have breached subsections 4, 6 and 9 of the OMVIC Code of Ethics, as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*. The parties advised the Chair that the named parties had not been the subject of discipline previously. The Chair of the Discipline Committee also agrees with the Parties' Joint Submission on Penalty and, accordingly, makes the following Order:

1. The Dealer is ordered to pay a fine in the amount of \$2,500 no later than **March 31, 2022.**
2. The Dealer is ordered to ensure all sales staff employed by the Dealer have again reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC

with written confirmation from said staff that this has occurred, no later than **March 31, 2022.**

3. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the Georgian College Automotive Certification course (the "Course"). Current sales staff will be offered the Course no later than **March 31, 2022.** Future sales staff will be offered the Course within 90 days of being retained in this capacity. The Dealer will incur all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the Course after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
4. The Dealer and Birnie agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council  
Discipline Committee



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*Paul Burroughs, Chair*