

**DISCIPLINE COMMITTEE OF THE
ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL**

PANEL:	Caroline Brett Jon Lemaire Glen Fenwick	Chair, Public Member Registrant Registrant
--------	---	--

DECISION AND REASONS

IN THE MATTER OF A DISCIPLINE HEARING HELD PURSUANT TO THE MOTOR
VEHICLE DEALERS ACT 2002

B E T W E E N:

Appearances¹:

**REGISTRAR, MOTOR VEHICLE
DEALERS ACT, 2002**

)
) Diana Mojica
) for the Registrar
)

- and -

**TORONTO SMART CARS LTD.
O/A CARHUB NORTH YORK
CHRYSLER/ NATIONAL AUTO
SHIELD WARRANTY**

)
) David Conklin
) for the Registrants
)
)

- and -

MASSOUD JAMALI

Hearing Date: January 17, 2022

Date of Decision: May 31, 2022

¹ Independent legal counsel to the Panel is Edward Marrocco.

DECISION AND REASONS ON ORDER

Introduction

This matter proceeded by videoconference 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 (“**MVDA**”). A three-day hearing was convened on October 22-23 and 30, 2020 (the “**Merits Hearing**”) regarding allegations contained in a Notice of Complaint, dated January 30, 2019 (the “**Notice of Complaint**”). The allegations were made against Toronto Smart Cars Ltd. o/a Carhub North York Chrysler/National Auto Shield Warranty (the “**Dealer**”) and Mr. Massoud Jamali (the “**Registrant**” or “**Mr. Jamali**”).

On October 21, 2021, the Panel released its decision further to the Merits Hearing and made findings against both the Registrant and the Dealer (the “**Merits Decision**”).

On January 17, 2022, a further videoconference was convened during which the parties delivered oral evidence and submissions on the issue of what order would be appropriate with respect to penalty further to the Merits Decision. These are the reasons and decision of the Panel with respect to that order.

Position of the Registrar on Penalty

The Registrar argued that an appropriate penalty in this matter required the imposition of a fine on both the Dealer and the Registrant in his personal capacity. The Registrar sought a fine of \$3,000 payable by the Registrant and \$5,000 payable by the Dealer.

The Registrar asked the Panel to order the Dealer to ensure that all its current sales staff have reviewed the 2017 OMVIC Webinar on Advertising and to direct the Dealer to return a written confirmation of completion to the Registrar accordingly. The Panel understands that this request was not opposed by the Dealer. The Registrar also requested an order that the Dealer offer to fund completion of the OMVIC Certification Course to all current sales staff who wish to take it and who have not already completed the course. The Registrar also asks that the Dealer ensure that all future sales staff are offered the course within 90 days of being employed by the Dealer.

In support of its position with respect to fines, the Registrar relied on the specific breaches found in the Merits Decision. Counsel noted that findings of breaches of the Code of Ethics were made against both the Dealer and against Mr. Jamali by way of his position as “Person in Charge” of the Dealer at the material time. The Registrar emphasized that the absence of any finding of intention on the part of the Dealer or Registrant should not materially diminish the penalty which would otherwise follow. The Registrar encouraged the Panel to focus on the breaches that had been established and make an order accordingly. On the question of the amount of any fine, the Registrar offered a selection of applicable case law and submitted that there was a range of amounts established in other cases which was available to guide the Panel.

Position of the Registrant and Dealer on Penalty

The Registrant and Dealer submitted that fines are not required in this matter. They argued that the Panel can make an order confirming and directing the requisite

commitment of the Dealer and Registrant to adhere to the Code of Ethics and that such an order will satisfy the objectives of penalty.

In the alternative, if the Panel was persuaded to impose a fine, the Registrant and Dealer argued that any fine should be in the low end of the appropriate spectrum and payable by the Dealer only, not the Registrant.

In support of this position, the Registrant and Dealer argued that the error in this matter occurred within the Dealer. More specifically, they submitted that the Registrant did not cause the pricing error at issue and should accordingly not be personally liable to pay any fines. The Registrant and Dealer argued that the findings in this matter arise out of nothing more than an administrative error. They argued that the breaches here all occurred innocently and that the party who in fact committed the main error was a sales manager of the Dealer, not the Registrant himself. They also maintained there was no “intent” behind the conduct and for that reason, that there were no aggravating factors. They noted that there was no suggestion in the Merits Decision that this Panel found any deliberate conduct and they submitted that the administrative error in this matter did not rise to the level of negligence.

No Costs

Neither party made submissions on the issue of costs. The Panel concludes that no costs are being sought and, accordingly, no order is made as to costs.

Evidence of the Registrant and Dealer

The Registrant and Dealer tendered evidence from three witnesses at the penalty hearing.

Peiman Safaei

Mr. Safaei had testified at the Merits Hearing as well. He continues to be the Sales Manager at Caledon Chrysler.

In testifying at the Merits Hearing, Mr. Safaei had confirmed that he oversaw the pricing of new cars for both Caledon Chrysler and the Dealer. He also verified that he priced the 2018 Dodge Ram at issue and had wrongly included the \$1,500 Dodge Ram loyalty discount in the advertised price.

During the penalty hearing Mr. Safaei again confirmed that he was responsible for the mistake, but he went on to say that the error has troubled him. As a result, he outlined the steps that have been taken at the Dealer to update pricing procedures to ensure that the issue which arose in this case does not happen again.

He explained that a new policy and process has been put in place which should ensure that pricing is reviewed more times prior to advertising and that these extra layers of review should prevent any price that is not available to all potential buyers from being listed. The new procedure begins with Mr. Jamali directing the margin of profit he wants obtained on a vehicle. Mr. Safaei then works backwards to set out how that pricing will be achieved. The pricing is done all in one day to avoid oversights or distractions. Mr.

Safaei then diligently reviews any applicable rebate programs, confirms a proposed listing price, and returns the price back to Mr. Jamali for final approval. This requirement for more comprehensive consultation on pricing means that no vehicle price will ever be set without at least two individuals vetting it. In any cases where rebate or discount programs are being used, emails will be circulated to staff explaining the details of each program. Mr. Safaei expects this will minimize the risk of a miscommunication to a member of the public during a vehicle sale. Mr. Safaei confirmed that even the discount and rebate programs will be double checked by others before he returns a proposed sale price to Mr. Jamali. Mr. Safaei testified that he is confident this new two-step process will prevent recurrence of what happened in this matter. Counsel for the Registrar had no cross-examination for Mr. Safaei.

Erfan Afshar

Mr. Afshar has been the Director of Operations at the Dealer since September 2020. He provided additional testimony about new policies and procedures at the Dealer building on the evidence of Mr. Safaei.

Mr. Afshar explained that the Dealer has added layers of review to pricing, auditing, and rebate application to ensure issues regarding pricing of vehicles are identified before a vehicle is advertised to the public. He himself monitors the fine print and disclosure closely and communicates with OMVIC to obtain clarity as necessary.

Mr. Afshar emphasized the high value he places on proper regulatory compliance. He explained that there are now two management sessions every week where regulations are reviewed and shared with the sales staff. He testified that he is confident the Dealer is transparent and upfront with customers and that every relevant detail about a vehicle is accurate and available to customers before they come to the dealership. Counsel for the Registrar had no cross-examination for Mr. Afshar.

Massoud Jamali

Mr. Jamali is the respondent individual Registrant in this matter. He testified at the Merits Hearing and again at the penalty hearing.

Mr. Jamali emphasized that the culture at the Dealer is based on principles of transparency and integrity. At the penalty hearing, he testified that he has found the hearing process to be upsetting and that he takes the issues identified very seriously. Mr. Jamali emphasized importance of exceeding OMVIC requirements. He explained that from his perspective, being upfront and transparent with customers is integral to maintaining a positive professional reputation both personally and as a Dealer.

Mr. Jamali confirmed Mr. Ashfar's evidence that new procedures and extra layers of review have been implemented in the pricing process. Mr. Jamali was unequivocal that all prices now advertised at the Dealer reflect prices only available to every potential consumer. Counsel for the Registrar had no cross-examination for Mr. Jamali.

Decision of the Panel

The Panel makes the following order:

1. The Dealer shall pay a fine in the amount of \$5,000.00 by no later than July 15, 2022.
2. The Dealer will confirm in writing to OMVIC, by no later than August 15, 2022, that all current sales staff have completed the 2017 OMVIC Webinar on Advertising.
3. The Dealer shall offer to fund the OMVIC Certification Course for any current staff, and any future sales staff who wish to take it. Current staff will be offered the course by no later than August 1, 2022 or by a later date as may be agreed between the Dealer and the Registrar. Future sales staff will be offered the course within 90 days of being employed by the Dealer. This shall not apply to individuals who have completed the course after January 1, 2009.
4. The Dealer and the Registrant shall comply with the Act and the Code of Ethics as well as OMVIC published Standards of Business Practice, as they may be amended from time to time.

Reasons for Decision

An appropriate penalty must serve to protect the public. In doing so, it should contemplate both specific/general deterrence and enable remediation/rehabilitation, when reasonably possible. An appropriate penalty must not be disproportionately harsh or a mere slap on the wrist.

The Panel has reviewed previous cases referenced by the parties, considered the submissions of counsel and also notes the remedial steps proactively taken by Mr. Jamali, and the Dealer. The Panel is satisfied that the penalty in this matter is appropriate.

First and foremost, the penalty in this case falls within a range of outcomes in other similar matters. Based on cases presented by the parties, breach of all in advertising rules can result in fines ranging from \$7500 to \$17500 on the high end² to \$1,000 to \$5,000 on the lower end³ depending on the applicable mitigating and aggravating factors and the particular facts.

There are no prior discipline findings against Mr. Jamali or the Dealer. This is a breach of all in advertising rules which arises out of a known issue that occurs when OEMs offer incentives which may not comply with OMVIC regulations, or which may create confusion on the part of dealers with respect to how they are applied.

The Dealer and Registrant and their employee witnesses were honest about the error that occurred in this case. They testified candidly and openly about how a problematic OEM incentive made its way into one of their online advertisements. Evidence at the Merits Hearing even confirmed that the Dealer proactively withdrew from the website service from which the pricing error originated. Mr. Jamali then subsequently took further proactive steps to address the pricing error and the parties came back before the Panel on penalty able to provide detailed evidence about how they will avoid this type of error from occurring again. The Registrant and Dealer have also put in a multi-step process to catch potential errors going forward and implemented salesperson training to

² See for example, cases relied upon by counsel for the Registrar such as *OMVIC v. East Court Ford Lincoln Sales Ltd and Punit "Prince" Sibal* [August 30, 2018] and *OMVIC v. 1681230 Ontario Inc o/a Windsor Chrysler and Joseph Diemer* [July 10, 2020].

³ See for example, cases relied by counsel for the Dealer and Registrant such as *OMVIC v. O'Neil Motors Inc and Andrew O'Neil* [January 10, 2022] and *OMVIC v. V.I.N. Trading Inc o/a Cardealsdirect and Aliaksandr Kaliada and Alexey Malakhov* [January 10, 2022] and *OMVIC v. 7092226 Ontario Limited o/a Dilawri Jeep Dodge Chrysler and Shiv Dilawri*. [December 2, 2021]

ensure that what happened is highlighted and lessons are learned accordingly. Given the proactive steps that the Dealer and Registrant have already taken, the Panel is satisfied that provisions 2 and 3 of the above Order are all that is required with respect to matters of further staff training.

There was no cross-examination on any of the evidence given at the penalty hearing. The Panel takes this to mean that there is no question about its accuracy or veracity and so the Panel accepts the evidence tendered on penalty accordingly.

Despite the proactive steps taken, a fine is warranted in this case. What happened here was not insignificant, even though it was clearly unintentional. A member of the public, Mr. Cairns, was drawn to a dealer after relying on an online advertisement which did not comply with the “all in pricing” rules. Mr. Cairns was told that he didn’t qualify for an advertised discount and purchased the vehicle, nonetheless. However, he testified that he had a negative experience as a direct result of the confusion. The experience left a negative impression of the industry on Mr. Cairns and negatively affected his ability to enjoy his new vehicle. The Dealer’s error had consequences and the Dealer is fined accordingly. The amount ordered is commensurate with the seriousness of the error and considers the negative experience that Mr. Cairns endured.

With respect to Mr. Jamali personally, the Panel is not persuaded that he should pay a personal fine simply because he was the “Person in Charge” of the Dealer at the material time. In other cases, it may be appropriate to order a fine on a “Person in

Charge”, but not in this one. In addition to being entirely cooperative and proactive in addressing the breaches, Mr. Jamali himself played no direct role in what transpired with Mr. Cairns, and he was not involved with the online advertisement at issue. The Dealer clearly had a process for pricing vehicles in place which was being handled by a management level employee. That process likely needed reform, and apparently has been reformed. The evidence the Panel received confirmed that Mr. Jamali was a driving force of that policy reform. Despite that he did breach the Code by failing to catch the issue before it arose, Mr. Jamali was ultimately part of the solution in this particular case, not the problem.

The Panel wants to emphasize that this decision should not be misinterpreted as suggesting that in all cases a “Person in Charge” of a Dealer can only be personally fined if they are shown to have direct involvement in the underlying misconduct. In this specific case, the Panel is satisfied that the goal of public protection and the principles of penalty do not support the imposition of a fine on Mr. Jamali personally.

I, Caroline Brett, sign this decision and reasons for the penalty on behalf of the members of the Discipline Panel as set out below.



Caroline Brett

Date: May 31, 2022

Panel Members:

Caroline Brett
Jon Lemaire
Glen Fenwick

**DISCIPLINE COMMITTEE OF THE
ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL**

PANEL:	Caroline Brett	Chair, Public Member
	Jon Lemaire	Registrant
	Glen Fenwick	Registrant

DECISION AND REASONS

IN THE MATTER OF A DISCIPLINE HEARING HELD PURSUANT TO THE MOTOR
VEHICLE DEALERS ACT 2002

B E T W E E N :

Appearances:

**REGISTRAR, MOTOR VEHICLE
DEALERS ACT, 2002**

)
) Diana Mojica
) for the Registrar
)

- and -

**TORONTO SMART CARS LTD.
O/A CARHUB NORTH YORK
CHRYSLER/ NATIONAL AUTO
SHIELD WARRANTY**

)
) David Conklin
) for the Registrants
)

- and -

MASSOUD JAMALI

Hearing Dates: October 22, 23 and 30, 2020

Date of Decision: October 21, 2021

Findings:

- Breaches of sections 4(2), 9(1) and 9(3) of the Code of Ethics by Mr. Massoud Jamali; and
- Breach of section 6(1) of the Code of Ethics by Toronto Smart Cars Ltd O/A Carhub North York Chrysler

DECISION AND REASONS

Introduction

This matter proceeded by videoconference 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 ("**MVDA**"). A three-day hearing was convened on October 22-23 and 30, 2020 (the "**Hearing**") regarding allegations contained in a Notice of Complaint, dated January 30, 2019 (the "**Notice of Complaint**"). The allegations in this matter are made against Toronto Smart Cars Ltd. o/a Carhub North York Chrysler/National Auto Shield Warranty (the "**Dealer**") and Mr. Massoud Jamali (the "**Registrant**" or "**Mr. Jamali**").

Allegations

The allegations contained in the Notice of Complaint are particularized as follows:

Background

1. Toronto Smart Cars Ltd. o/a Carhub North York Chrysler/National Auto Shield Warranty (the "Dealer") was first registered as a motor vehicle dealer in about June 2003.
2. Massoud Jamali ("Jamali") was first registered as a motor vehicle salesperson in about December 1991. At all material times Jamali was the Person in Charge of the Dealer.

Direct prior warnings regarding advertising restricted pricing:

3. On about March 30, 2011 the Dealer was reminded that advertised vehicle prices must be available to everyone, without restrictions.
4. Furthermore, the Dealer was again reminded, by email, of this obligation on the following dates:
 - a. April 28, 2011
 - b. April 23, 2014
 - c. January 13, 2016

Current advertising non-compliance:

5. On or before July 12, 2018 the Dealer advertised a 2018 Dodge Ram 1500 (stock# RP3066C) with an advertised price of \$36,991 plus HST.
6. When a consumer went to purchase this vehicle, they were advised the advertised price included a \$1500 "Ram loyalty" discount only available to existing pick-up truck owners. As such, the Dealer's advertised price included a discount not available to everyone. This is contrary to section 4 and 9 of the Code of Ethics.
7. The consumer followed through with the purchase and subsequently complained to OMVIC about his inability to qualify for the Ram Loyalty discount, which had been applied to the advertised price of his vehicle.
8. As a result of the consumer complaint, on about September 6, 2018 the Dealer was again reminded by a representative of the Registrar of its obligation to ensure advertised vehicle prices are available to everyone.
9. To date, the Dealer continues to advertise 2018 Dodge Ram units with prices that include the Ram Loyalty rebate. As such, the Dealer's advertised prices on these vehicles are not available to everyone. This is contrary to sections 4 and 9 of the Code of Ethics.
10. As Person in Charge of the Dealer, Jamali failed to ensure the Dealer's advertising complies with the Act and Code of Ethics. As such, Jamali has contravened sections 6, and 9 of the Code of Ethics.

Plea

At the outset of the Hearing, in the course of arraignment on the Notice of Complaint, counsel for the Registrant and Dealer confirmed various positions in respect of the allegations which assisted in narrowing the issues in dispute.

The Notice of Complaint particularizes alleged non-compliance with the MVDA and O/Reg. 332/08 (the “**Code of Ethics**”) by both the Registrant and the Dealer in respect of the advertising and sale of a Dodge Ram in 2018. The Notice of Complaint goes on to allege that the Dealer has failed to subsequently update its advertising practices and that the Registrant is personally responsible for any and all failures to comply due to his current position as the “Person in Charge” of the Dealer.

The Panel understands that there is no dispute surrounding the facts contained in paragraphs 1, 2, 5, 6, 7 and 8 of the Notice of Complaint. This is not to say that the alleged breaches in those paragraphs are admitted, but simply that the facts underlying these paragraphs are not in dispute. As such, the Panel will not reproduce all of the factual evidence heard on these issues.

The Registrant denies any personal breaches of the MVDA or Code of Ethics and all parties deny that the Dealer continues to offer prices on Ram vehicles which are not available to everyone. These are the issues in dispute for the purpose of the Hearing.

Interim Order re: Election of Panel Member Glen Fenwick

In November of 2020, subsequent to the commencement of the Hearing and prior to the issuance of these reasons, Panel member Glen Fenwick was elected to the OMVIC Board of Directors. Ordinarily, Board members would not sit on a Discipline Committee panel.

Independent legal counsel and the parties provided written submissions regarding the propriety of Mr. Fenwick continuing to sit on this Panel for the remainder of this matter. On consent of all parties, the Panel has ruled that Mr. Fenwick may remain as a member of the Panel until this matter has been completed and a final decision on both the facts and penalty, if any, has been reached.

Interim Order re: Witness Exclusion

On the consent of both parties, an order was made at the outset of the hearing directing that all witnesses, with the exception of the Registrant, be excluded from the videoconference until called to testify.

Summary of Exhibits

During the hearing, 38 exhibits were filed in evidence. The Panel reviewed each exhibit as it was filed, and all exhibits were reviewed again during deliberations. Where the Panel has deemed a specific exhibit to be expressly relevant to a particular finding or issue, that exhibit may be referenced and described in these reasons.

Summary of Oral Evidence

Seven (7) witnesses testified at the Hearing. Two (2) individuals testified on behalf of the OMVIC Registrar and five (5) individuals testified on behalf of the Registrant and Dealer. The witness evidence will be summarized below in order of appearance.

1. Adam Cairns

Mr. Cairns was the first of two witnesses called by the Registrar. He is the complainant in this matter.

On July 12, 2018, Mr. Cairns signed an agreement of sale with the Dealer for the Dodge Ram which is the subject of the Notice of Complaint. The vehicle had been advertised online for \$36,991. The listed price included various discounts totaling approximately \$11,494. During purchase negotiations, the Dealer sales representative informed Mr. Cairns that he would not be eligible for \$1500 of the advertised discounts because that amount was based on a loyalty discount available only to current owners of a pick-up truck. Mr. Cairns did not currently own a pick-up truck. Mr. Cairns testified that he was

offered the opportunity to have his brother co-sign for the purchase in order to receive the discount, but Mr. Cairns declined to do that. Mr. Cairns testified that he was aware of the disclaimer at the bottom of the advertisement which read "all generally available manufacturer incentives, including the Ram loyalty, have been applied to the all-inclusive prices" and that he understood he did not qualify for the discount. He proceeded with the purchase nonetheless.

The Panel found Mr. Cairns to be a credible and reliable witness. He testified in a straightforward manner and related his experiences surrounding the purchase of the Dodge Ram with accuracy and a clear recollection. He was directly involved in all of the matters he testified about and was able to provide observations which were wholly consistent with the nature of his involvement in the transaction. His evidence was consistent with contemporaneously made documentary and oral evidence adduced by both sides. He was also forthcoming about acknowledging that he purchased the Dodge Ram despite understanding that he did not qualify for a portion of the discounted price.

2. Andrea Korth

Andrea Korth was the Registrar's second and final witness. She is currently the Manager of Business Standards at OMVIC and has held that position for approximately 12 years.

Ms. Korth gave evidence about her duties and responsibilities at OMVIC - which include dealing with breaches of the Code of Ethics and the rules governing advertising. Her department deals with questions from registrants and, among other things, educates dealers with respect to advertising obligations.

Ms. Korth's evidence about the MVDA and the Code of Ethics was based on her own work experiences and not tendered as opinion evidence. She demonstrated a comprehensive understanding of the rules concerning advertising and, specifically, the

requirement that all advertised vehicle prices must be available to any potential purchaser.

Ms. Korth provided important contextual evidence on vehicle pricing issues. She explained how dealers can encounter complications when the Original Equipment Manufacturer (“OEM”) automatically includes manufacturing incentives. This can be particularly problematic when these incentives impact the pricing on a dealer’s website. These automatic incentives can cause registrants to be in breach of MVDA regulations without intending to do so but there is nonetheless a positive obligation on registrants and dealers to be diligent and not let this happen. Ms. Korth explained that, regardless of who creates a particular advertisement, the dealer is ultimately responsible for it once posted for the public. The rules are the same whether an advertisement is in print or exclusively online.

Ms. Korth also had direct involvement in this case and testified about the specific portions of the Notice of Complaint regarding reminder emails previously sent to the Dealer in March 2011, April 2011, April 2014, and January 2015. These are set out in paragraphs 3 and 4 of the Notice of Complaint.

Ms. Korth stated that she understood an individual named Hossein Totonchian was the Person in Charge of the Dealer up until 2012. As such, the email of April 28, 2011 referenced in paragraph 4 (a) of the Notice of Complaint was addressed to Mr. Totonchian. Ms. Korth recalled sending the email dated March 30, 2011, referenced in paragraph 3 of the Notice of Complaint to Mr. Totonchian. Ms. Korth was unable to confirm that the email of April 23, 2014 referenced in paragraph 4 (b) of the Notice of Complaint was in fact sent to the Registrant in this matter, Mr. Jamali, however she did confirm that the Dealer, North York Chrysler, received direct warnings in March 2011, April 2011, April 2014 and January 2015. She also testified that the email referred to in paragraph 4 (c) of the Notice of Complaint was sent to an individual named Miriam Cohen, not Mr. Jamali.

Ms. Korth explained that advertising is what gets most potential customers through the door to a dealer. Customers search the web for the lowest price, then attend at the lowest price dealer and start talking about the vehicle. Ms. Korth went on to testify that advertising a price that is not available to everyone can accordingly create an unfair advantage in attracting customers. These customers will then be surprised if they find out they do not qualify for the advertised price.

The Panel understands that the portions of the Notice of Complaint which particularize prior notices (*i.e.* paragraphs 3 and 4) are not admitted between the parties and have been put forward by the Registrar as aggravating factors in respect of the 2018 transaction involving Mr. Cairns. The Panel understands that the Registrar's position is that all of the warnings and reminders were directed to the Dealer and that accordingly Mr. Jamali should be found to be infused with knowledge of these prior warnings. There is no dispute that, at the time of the 2018 transaction involving Mr. Cairns, the Registrant, Mr. Jamali, was the Person in Charge of the Dealer. The Panel will address its findings in respect of these disputed warning emails subsequently in these reasons.

The Panel found Ms. Korth to be a credible, forthright, and reliable witness. She testified in a straightforward manner about events that were in her direct knowledge. In cross-examination Ms. Korth made reasonable concessions both when she was unsure of a particular detail or could not fully remember a particular event. She was entirely forthcoming about the limitations of her direct knowledge in respect of issues such as the receipt or non-receipt of warning emails by specific individuals.

3. Michael Croxon

Michael Croxon was the first witness called by the Registrant and Dealer. He is the President and CEO of New Roads Automotive Group – a collection of 7 dealerships located north of Toronto. He has been a dealer for 25 years and was a registrant for 35 years, even before OMVIC existed. He confirmed he is aware of the rules and regulations of the MVDA and that he relies heavily on the operating general managers

of each dealership to comply with them. Mr. Croxon has been a 30% shareholder in the Dealer for the last 7 years.

Mr. Croxon explained, consistent with some of Ms. Korth's observations, that the advertising of manufacturer rebates can create significant confusion and difficulty for dealers. He testified that there is confusion throughout the dealer community because there are two tiers of advertising. The manufacturers can advertise one price (that may not be available to everyone) but the dealers cannot advertise those same prices. OMVIC of course has no jurisdiction over the manufacturers. This leads to confusion for both the customer and the dealer and results in customer dissatisfaction.

Mr. Croxon testified in a calm, factual and unbiased manner. Despite having a potential interest in the Hearing as a result of his ownership stake in the Dealer, Mr. Croxon did not appear to let that interest impact the quality or accuracy of his evidence. He was knowledgeable about the industry including the challenges dealers face and the issues that arise in the day-to-day operation of a dealership. His testimony was clear, cogent, and consistent with common sense.

4. Raham Laridashti

Mr. Laridashti was the second witness called by the Registrant and Dealer. He has been employed by the Dealer since 2011. In 2018, his role was Director of Marketing for both the Dealer and a third-party affiliated dealer, Caledon Chrysler.

He explained how a car is processed for sale once it arrives on a dealer's lot and how its retail price is uploaded to various internet sites using a specific software program. He explained that the advertisement for the 2018 Dodge Ram in this matter was created by Caledon Chrysler but advertised on both Caledon and the Dealer's websites. He explained that the manufacturer's suggested retail price (MSRP) on the advertisements comes directly from the manufacturer and, if a dealer wants to price the vehicle differently, they need to manually add their own sale price. Mr. Laridashti testified that

the manufacturer often changes the MSRP on cars without giving notice to the dealers and that the fine print associated with some of the changes is confusing to both sales managers and consumers.

Mr. Laridashti was forthcoming and clear in his evidence. His explanations about how MSRP on cars are both set and changed were helpful. Mr. Laridashti testified about matters which were clearly within his direct personal knowledge. He did not speculate, and he did not appear to try to advocate for the Dealer despite being one of its employees. His evidence about how MSRP can be changed by a manufacturer without notice to a dealer was insightful, relevant and consistent with the oral and documentary evidence the Panel received.

Peiman Safaeimehrbani (Safaei)

Peiman Safaei was the third witness called by the Registrant and Dealer. From 2015 – November 2019, he was the sales manager at the third-party Caledon Chrysler. Mr. Safaei was in charge of pricing new cars for both Caledon Chrysler and the Dealer when they would come into stock.

Mr. Safaei explained that he would ordinarily get an email from Mr. Jamali or his assistant which would contain the details of exactly how much profit his employer wanted on each type of vehicle. He would then take the cost of the car, add the profit to that and deduct all the rebates or consumer cash that applied to the car. The result he returned was the price the dealership advertised the car for. Mr. Safaei confirmed that he did the pricing for the 2018 Dodge Ram and agreed that he included the \$1,500 Dodge Ram loyalty discount into the advertised price. He indicated that he made a mistake by advertising this vehicle with the Ram loyalty discount included in the price. In the course of his evidence, he explained that the particular circumstances of Mr. Cairns' case are unique because, in Caledon, an overwhelming majority of customers already have trucks or vans or otherwise qualify for a loyalty discount. As such, the issues Mr. Cairns encountered are out of the ordinary for Mr. Safaei. The Panel understood this

evidence was offered for context and was not intended to be an excuse for what occurred.

Mr. Safaei identified Exhibit 31 and reviewed the different discounts offered. The program in place at the time Mr. Cairns purchased his truck was the “Current Truck Owner Program” which offered a \$1500 discount on a Dodge Ram to anyone who currently owned a truck. Mr. Cairns purchased his truck during the Current Truck Owner Program. Mr. Cairns did not qualify for it, nor did he receive the \$1500 discount. This program was then replaced by the “Cash Clearout” – which offered a \$1500 discount to anyone who purchased a V8 engine RAM truck. The Cash Clearout program was available to all regardless of the type of vehicle they currently owned or if they even owned a vehicle.

Mr. Safaei confirmed that from January 3 to January 31, 2019 all customers qualified for the Cash Clearout program. Additionally, he testified that Exhibits 32 and 33 confirm that everyone qualified for the Cash Clearout program if they purchased a vehicle between March 1, 2019 and April 1, 2019. Mr. Safaei also identified Exhibit 35 which indicates that between the dates of April 2, 2019, and April 30, 2019 all consumers qualified for the Ram Loyalty/Conquest Bonus Cash Program.

The Panel accepts Mr. Safaei’s evidence. It was clear, cogent and arose out of matters in which Mr. Safaei had direct involvement. He testified with knowledge, candour, and insight about the specific pricing process of the Dodge Ram in issue at the Hearing.

5. Brian Hoecht

Mr. Hoecht was the fourth witness called by the Registrant and Dealer. He is a Certified Chartered Accountant in Ontario and has been the COO and CFO for the Dealer and Caledon Chrysler since May 2014. He was in charge of the day-to-day business at the material time. He confirmed that both Caledon Chrysler and the Dealer went to great

lengths to ensure transparency in pricing and to provide a hassle-free and easy to understand car buying process for customers.

Mr. Hoecht testified about the weekly meetings of both dealerships where ethical values and other issues were discussed in addition to sales related initiatives. He explained that both businesses had a brand promise to provide honest and high-quality customer service and that employee training was provided to ensure the staff were living up to the brand promise. According to Mr. Hoecht, Mr. Jamali was a proponent of the brand promise and was at almost all the management meetings.

Mr. Hoecht interacted with Mr. Cairns at the time of the purchase in 2018. He confirmed that Mr. Cairns was told he did not qualify for the \$1500 discount as soon as he and the sales representative started discussing the purchase of the vehicle. He also confirmed that the Dealer offered to let Mr. Cairns register the vehicle in the name of a family member in order to get the loyalty discount. There appears to be no dispute that Mr. Cairns declined that offer and proceeded with the purchase of the truck, nonetheless.

Mr. Hoecht confirmed that the advertised prices on the vehicles located at Exhibits 17, 18, 19, 20, 21, 22, 23, were in fact available to everyone. On cross-examination, Mr. Hoecht confirmed that the small print on the last page of Exhibits 17, 18, 19, 20, 21, 22, 23 contained an error in referring to the incentive as Ram Loyalty. His evidence was that the small print likely did not get updated once the Ram Loyalty program expired and the Cash Clearout program began. He confirmed that the Cash Clearout was the \$1500 discount program for V8 engine RAM trucks and, unlike the RAM Loyalty program, the Cash Clearout discount was available to everyone, not just current truck owners.

The Panel accepted Mr. Hoecht's evidence. He spoke openly and gave candid answers about the daily operations of the Dealer and its brand promise. He spoke with knowledge and authority during his evidence and always about information that was within his direct and actual knowledge. The Panel found Mr. Hoecht to be a reliable and credible witness.

6. Massoud Jamali

The final witness for the Registrant and Dealer was the Registrant himself, Mr. Massoud Jamali. He testified that he came to Canada in 1988 as a political refugee and has worked hard to get to where he is today. He started selling cars in 1991 and worked in a variety of roles including sales representative, assistant manager, and rental manager.

In July 2003 along with Mr. Totonchian and Mr. Croxon, Mr. Jamali purchased what was then known as Willowdale Dodge. Ownership was held by Mr. Jamali at 51%, Mr. Totonchian at 39% and Mr. Croxon at 10% as the silent partner. Mr. Totonchian was the General Manager and in charge of daily operations. A few months later, the company name was changed to Toronto Smart Cars operating as North York Chrysler. Eventually the name was changed to Carhub North York Chrysler.

In July 2012, Mr. Jamali purchased Mr. Totonchian's interest in the Dealer which left Mr. Jamali with 70% ownership and Mr. Croxon with 30% ownership. In 2012, Mr. Jamali and Mr. Hoecht opened Caledon Chrysler where Mr. Hoecht was in charge of daily operations.

Mr. Jamali testified that the Dealer was one of the first to have all in pricing – where the advertised price is the price the consumer pays, no negotiating. He said that his whole business principle has been based on integrity, honesty, and transparency. He testified that he would rather have “no business” as opposed to “bad business”.

Mr. Jamali explained how cars are priced at the Dealer. As Mr. Safaei had indicated, Mr. Jamali sets the expectation on the margin he expects from the sale. New vehicles are priced by the sales manager based on manufacturer rebates and the margin. The marketing department then creates advertisements and puts the necessary disclaimers on them.

The Dealer website was operated using another website called "Dealer.com" which gets information directly from Chrysler (the OEM). Mr. Jamali said that the manufacturer rebate rules are quite complex and difficult to understand. At times, Chrysler will push rebates that are not available to all and that price gets automatically uploaded to the Dealer.com website - automatically adjusting the price on the Dealer's own advertisement. The only way for the Dealer to change this is to catch the change and manually adjust the price that that OEM has pushed.

As an example, Mr. Jamali explained that the OEM will advertise a Ram for \$35,000 on TV, websites, and print media. However, that advertised price will include a rebate that may not be available to everyone. The Dealer, if they are to advertise the same vehicle, is required to increase the advertised price to the price that is available to everyone in order to comply with the MVDA and the Code of Ethics. This obviously creates confusion and dissatisfaction from customers who think that the Dealer is inflating the price. Mr. Jamali testified that this has cost his dealerships business because not all of his competitor dealerships necessarily abide by this requirement. Again, the Panel understood this to be contextual evidence and not offered by Mr. Jamali in the nature of an excuse. Mr. Jamali testified that the Dealer has now opted out of Dealer.com altogether to avoid these issues in the future.

Mr. Jamali testified, similar to Ms. Korth, that OMVIC has no jurisdiction over the OEMs and this creates further problems. OEMs continue to run public campaigns using advertised prices that are not available to everyone - contrary to the OMVIC rules which apply to dealers.

Mr. Jamali testified the advertisements placed online as of January 2019 feature prices available to everyone. He conceded that the price advertised for the 2018 Dodge Ram purchased by Mr. Cairns did not contain a price that was available to everyone. The Panel found Mr. Jamali to be an honest and straightforward witness. He gave truthful and candid evidence. He made reasonable concessions in cross-examination by indicating the 2018 Dodge Ram that was sold to Mr. Cairns was indeed advertised at

a price that was not available to everyone. He offered no excuses and he did not try to minimize what had happened. He offered honest insight into the challenges dealers face when an OEM runs an advertisement with a price that may include a rebate that has certain conditions and is therefore not available to everyone.

Findings | Decision and Reasons of the Panel

Onus and Standard of Proof

The Registrar bears the burden of proving the allegations as set out in the Notice of Complaint. The allegations must be proven on the balance of probabilities using evidence that is clear, convincing, and cogent.

Breaches Found

As will be detailed below, the Panel finds that the Registrant, Mr. Jamali, breached section 4(2) of the Code of Ethics by failing to ensure that all representations, including advertising, made on his behalf in connection with the sale of the 2018 Dodge Ram sold to Mr. Cairns, were truthful. Mr. Jamali also breached sections 9(1) and (3) of the Code of Ethics by engaging in an act – the advertising of a 2018 Dodge Ram at a price that was not available to everyone – which would be reasonably regarded as unprofessional conduct by a registrant and he failed to use best efforts to prevent an error in respect of a trade in a motor vehicle.

With respect to the Dealer, North York Chrysler, the Panel finds that it breached section 6(1) of the Code of Ethics by failing to ensure that every registered salesperson that it employed carried out their duties in compliance with these regulations. This is due to the fact that registered salespeople employed by the Dealer failed to properly advertise the price of the 2018 Dodge Ram sold to Mr. Cairns.

The Panel is not satisfied that the Dealer or the Registrant continue to advertise vehicles at prices that are not available to everyone. The allegations pertaining to advertisements other than those involving the sale of the Dodge Ram to Mr. Cairns, are dismissed.

Prior Warnings

Paragraph 3 of the Notice of Complaint references correspondence dated March 30, 2011 reminding the Dealer that advertised prices must be available to everyone, without restrictions. The evidence does not establish that this correspondence reached the Registrant and there is no evidence that the Registrant ignored this warning in his day-to-day operations. The Panel is satisfied however that the Dealer received this prior notice. This is not a standalone finding of a breach against the Dealer, but this finding can be referred to as an aggravating factor given that the Dealer is found to have committed a breach of the Code of Ethics in respect of the 2018 Dodge Ram sale.

The Panel is similarly satisfied that correspondence was delivered to the Dealer as set out in paragraph 4 in the Notice of Complaint. The Panel is not satisfied that any prior warnings noted in paragraph 4(a) or 4(b) were received by the individual Registrant. The Panel does however find that Mr. Jamali received or ought to have been aware of the email sent January 13, 2016 which is noted at paragraph 4(c) of the Notice of Complaint. There is no dispute that Mr. Hoecht received and replied to this email. Given that this email was dealt with by a member of the Dealer's senior staff - who had regular dealings with Mr. Jamali – the evidence establishes that it is more likely than not that Mr. Jamali was aware of this notice. The Panel notes that Mr. Jamali did not deny seeing this email, but simply noted that he had no recollection of seeing it. Once again, these prior warnings may be referred to as aggravating factors on penalty, but they are not standalone breaches. Only the warning in paragraph 4(c) has been established as a prior warning applicable to Mr. Jamali.

Advertised Price of the Dodge Ram

The Registrar alleges that the Dealer sold the Dodge Ram to Mr. Cairns in 2018 in reliance on an advertised price which was not available to Mr. Cairns. The parties have agreed that this factually occurred and so the question for the Panel is whether there is sufficient evidence to establish any breaches on these facts.

The Panel is satisfied that this conduct constitutes a breach by Mr. Jamali of subsections 4(2), 9(1) and 9(3) in the Code of Ethics found in Ontario Regulation 332/08 of the MVDA.

Subsection 4(2) of the Code of Ethics states that:

A registrant shall ensure that all representations, including advertising, made by or on behalf of the registrant in connection with trading in motor vehicles, are legal, decent, ethical, and truthful. O. Reg. 332/08, s. 4 (2).

Given the facts of this case, there can be no doubt that there was advertising in respect of the Dodge Ram sold to Mr. Cairns - made on behalf of Mr. Jamali in his capacity as the Person in Charge of the Dealer - which was untruthful. The Panel is not satisfied that any of the advertisements were indecent or unethical.

Subsection 9(1) of the Code of Ethics states that:

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. O. Reg. 332/08, s. 9 (1).

Advertising a vehicle to the public at a price that is not available to all is unprofessional. Mr. Jamali, as the Person in Charge of the Dealer, had a positive obligation not to engage in unprofessional conduct when he carried on business. He did not meet that obligation.

Subsection 9(3) of the Code of Ethics states that:

A registrant shall use the registrant's best efforts to prevent error, misrepresentation, fraud, or any unethical practice in respect of a trade in a motor vehicle. O. Reg. 332/08, s. 9 (3).

Again, there can be no dispute that an error arose in respect of trade in a motor vehicle in the sale of the Dodge Ram to Mr. Cairns. The Panel is satisfied on the evidence that Mr. Jamali failed to use best efforts to prevent that error and finds accordingly.

In the end, it falls to Mr. Jamali to ensure that all representations made to customers by the Dealer are truthful and free from error.

The Registrar also seeks findings of a breach of subsection 6 of the Code of Ethics for failure to ensure that the Dealer's advertising complied with the MVDA and Regulations both in respect of the 2018 transaction with Mr. Cairns and the alleged subsequent advertisements of Dodge Ram units.

Subsection 6(1) of the Code of Ethics states that:

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. O. Reg. 332/08, s. 6 (1).

The Panel has already dismissed the allegations pertaining to subsequent advertising so that will not be considered again.

With respect to the Dodge Ram sold to Mr. Cairns, as noted above the Panel has found that Mr. Jamali is in breach of portions of sections 4 and 9 of the Code of Ethics.

The advertised price is what drew Mr. Cairns to the Dealer in the first place. Although Mr. Cairns went ahead with the purchase, the Panel accepts Mr. Cairns evidence that

he was uneasy about the fact that he had to pay \$1500 above the advertised price. Mr. Cairns testified that this has negatively impacted his enjoyment of the vehicle. In the circumstances, the Dealer has failed to ensure that every registered salesperson that it employs has carried out their duties in compliance with the Regulation. The Dealer is accordingly in breach of subsection 6(1) of the Code of Ethics.

Further Warning in September 2018

The Panel understands that the parties do not dispute that the Dealer received a warning in September 2018. The Panel is not satisfied that any breaches have been established as against the Dealer or the Registrant after September 2018. As such, this shall not be relied upon as an aggravating factor.

Ongoing Advertising Practices

The Registrar did not establish that the Dealer or the Registrant subsequently advertised or continue to advertise vehicles at prices that are not available to everyone. The Panel finds that the vehicles detailed in Exhibits 17-23 were indeed advertised at prices that were available to everyone. The Panel dismisses the allegation in Paragraph 9 of the Notice of Complaint and all related allegations pertaining to events subsequent to the 2018 sale involving Mr. Cairns.

The evidence on this particular issue received from individuals such as Mr. Hoecht, Mr. Safaei and Mr. Jamali was not unsettled in cross-examination. As above, Mr. Safaei in particular testified that the vehicles listed in exhibit 17-23 were advertised at prices available to everyone. The notice filed at exhibit 30 confirms that the Ram Loyalty/Conquest/Skilled Trades Cash Offer was available to all customers from July 4, 2018 to July 31, 2018. The notice at exhibit 32 indicates that the 2018 RAM 1500 Clearout Cash Program was available to everyone from January 3, 2019 to January 31, 2019. Exhibit 32 also confirms that the RAM Loyalty / Conquest Bonus Cash Offer was available to everyone from March 1, 2019 to April 1, 2019. Exhibit 35 indicates that the

Bonus Cash Offer was available to everyone from April 2, 2019 to April 3, 2019. Mr. Safaei even went on to receive written confirmation from Fiat-Chrysler that “all customers qualify” for the Bonus Cash Offer. This is set out in a series of emails tendered as exhibits 33 and 34.

Although the very fine print on the last page of Exhibits 17-23 indicates a “RAM Loyalty” incentive had been applied to the advertised price, the main body of the advertisements contained prices available to everyone and the evidence before the Panel is that the vehicles were sold at the advertised prices. Mr. Hoecht suggested this fine print was possibly an error that had not been updated when the incentive changed names and there was no evidence tendered to suggest this was not the case. The Panel accepts that the fine print which still contained the words “Ram Loyalty” was at most an oversight. This likely arose when the incentive program changed names and then advertised a price that everyone did in fact qualify for.

There is insufficient evidence to find a breach in these circumstances.

Penalty Hearing

The parties are invited to advise the OMVIC Manager/Discipline if they prefer a written or oral hearing on penalty. If an oral hearing is requested, the parties may schedule with the OMVIC Manager/Discipline accordingly. If a written hearing is requested, the Panel will provide a timetable for the delivery of submissions through independent legal counsel.

I, Caroline Brett, sign this decision and reasons for the penalty on behalf of the members of the Discipline Panel as set out below.



October 21, 2021

Caroline Brett

Date:

Panel Members:

Caroline Brett
Jon Lemaire
Glen Fenwick