IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Crown Auto Body and Auto Sales Ltd. v. Motor Vehicle Sales Authority of British Columbia,* 2014 BCSC 894

Date: 20140522
Docket: S135114
Registry: New Westminster

Between:

Crown Auto Body and Auto Sales Ltd. and Jaweed Jooya

Petitioners

And

The Motor Vehicle Sales Authority of British Columbia, David Knapp, the Attorney General of Canada and the Attorney General of British Columbia

Respondents

Before: The Honourable Mr. Justice Blok

On judicial review from a decision of the Deputy Registrar of Motor Dealers dated September 21, 2009, and the reconsideration decision of the Registrar of Motor Dealers dated March 18, 2011

Reasons for Judgment

Counsel for the Petitioners:	D. Gautam
Counsel for the Respondent, the Motor Vehicle Sales Authority of British Columbia:	R.P. Hrabinsky
Place and Dates of Hearing:	New Westminster, B.C. June 22 and November 22, 2012
Written Submissions Received:	November 28, 2012 and December 3, 2012
Place and Date of Judgment:	New Westminster, B.C. May 22, 2014

I. Introduction

[1] The petitioners apply for judicial review of two decisions made by the Registrar of Motor Dealers. They seek to quash those decisions.

[2] Crown Auto Body and Auto Sales Ltd. ("Crown Auto Body") is an auto body business. Mr. Jooya is its principal. At the material time Crown Auto Body was a licenced motor dealer and Mr. Jooya was a licenced salesperson. The decisions in question arise out of Crown Auto Body's purchase, repair and resale of a 2005 Toyota Prius (the "Prius") to David Knapp.

[3] Crown Auto Body purchased the Prius from the Insurance Corporation of British Columbia ("ICBC") as a salvage vehicle, rebuilt it and then sold the Prius to Mr. Knapp on June 7, 2008. The purchase and sale agreement represented that the Prius had 40,188 kilometres on it.

[4] A month after purchasing the Prius, Mr. Knapp took the Prius to a Toyota dealer for servicing, where he learned that the Prius had at least 114,168 kilometres on it rather than the 40,188 kilometres shown in the purchase agreement. This formed the basis of a complaint made by Mr. Knapp to the Motor Vehicle Sales Authority of British Columbia on July 14, 2008, a complaint made pursuant to the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 [*BPCPA*] .

[5] Shortly after making the complaint, Mr. Knapp moved to Ontario. By Ontario law the Prius had to pass a safety and structural integrity assessment before being registered and insured in that province. The Prius failed that inspection. Mr. Knapp then revised his complaint to allege that Crown Auto Body had sold a vehicle that was not roadworthy and could not be repaired.

[6] A hearing was held before the Deputy Registrar of Motor Dealers for the Province of British Columbia on April 8 and May 27, 2009. In a decision dated September 21, 2009 (the "Original Decision"), the Deputy Registrar concluded that the Prius was not rebuilt or repaired to a state consistent with the manufacturer's

structural integrity specifications and that, as rebuilt, the vehicle was unsafe. As to the incorrect kilometrage, the Deputy Registrar noted that while the petitioners said they relied on the accuracy of a representation from ICBC that the vehicle had 40,000 kilometres on it, they failed to make any inquiries to verify that information. The Deputy Registrar concluded:

> 82. I am satisfied on the evidence that Crown and Mr. Jooya rebuilt the Prius in a manner that did not restore its structural integrity to the manufacturer's specifications. I am also satisfied on the evidence that as rebuilt, the Prius is unsafe for use as it has a severely diminished ability to protect its passengers from an impact, and that it cannot be repaired to make it roadworthy. I am satisfied that Crown and Mr. Jooya represented to Mr. Knapp by words and by conduct, that the Prius was roadworthy, when it was not. I find that Crown and Mr. Jooya have committed a deceptive act or practice as defined by the BPCPA.
>
> 83. I also find that Crown was negligent in making its statutory declaration of the kilometers travelled by not making any reasonable inquiries about the true kilometrage travelled by the Prius. The evidence falls short of suggesting Crown and/or Mr. Jooya deliberately manipulated the odometer reading. I find that Crown and Mr. Jooya made a negligent misrepresentation about the Prius's kilometrage: *Motley*. I find this negligent misrepresentation constitutes a deceptive act or practice under the BPCPA as it is a misrepresentation of the Prius's history and quality that formed part of the Knapps' decision to purchase the Prius, to their detriment.

[7] The Deputy Registrar issued a compliance order under s. 155(4) of the *BPCPA*. In brief, the petitioners were ordered to (1) refund to the Knapps the total purchase price ($19,040) and to arrange to take back the Prius at their own expense; (2) reimburse the Knapps for the cost associated with the Ontario inspection of the Prius; and (3) reimburse the Motor Vehicle Sales Authority's costs of $2,831.11.

[8] In addition to that compliance order, the Deputy Registrar imposed administrative penalties under s. 164 of the *BPCPA* of $20,000 against Crown Auto Body and $2,000 against Mr. Jooya.

[9] Finally, the Deputy Registrar considered sanctions under the *Motor Dealer Act*, R.S.B.C. 1996, c. 316. He noted that if a motor dealer is found to have contravened Parts 2 or 5 of the *BPCPA,* then that finding provides grounds to

consider cancelling the motor dealer's registration. After considering and rejecting lesser sanctions, the Deputy Registrar found it in the public interest that Crown Auto Body's motor dealer registration be cancelled, and so ordered.

[10] The petitioners requested a reconsideration of the Deputy Registrar's decision pursuant to s. 181 of the *BPCPA*. In a decision dated March 18, 2011 (the "Reconsideration Decision"), the Registrar of Motor Dealers ("Registrar") referred to, among other things, his powers on reconsideration, being limited by s. 182 (2) to situations where he "is satisfied that new evidence has become available or has been discovered that: (a) is substantial and material to the determination, and (b) did not exist at the time of the review or did exist at that time but was not discovered and could not through the exercise of reasonable diligence have been discovered." The Registrar accepted that he might also intervene if a party established a breach of the duty of fairness.

[11] The Registrar concluded that none of the proffered evidence was new, nor was it sufficient to allow for a reconsideration of the Original Decision. He also found no breach of a duty of fairness. As a result of these conclusions the Registrar dismissed the petitioners' application for reconsideration.

II. Positions of the Parties

[12] I begin this section by addressing the extent of participation by the respondent Motor Vehicle Sales Authority of British Columbia ("MVSA"). The respondent David Knapp, the purchaser of the Prius, did not participate in the hearings below or in this judicial review. The petitioners objected to the participation of the MVSA to fill that void, submitting that the proper role of the MVSA was restricted to such uncontroversial subjects as its mandate and the standard of review.

[13] I am satisfied that wider participation by the MVSA was appropriate in this case. In *Global Securities Corp. v. British Columbia (Executive Director, Securities Commission)*, 2006 BCCA 404, 56 B.C.L.R. (4th) 79 the Court said:

> [60] I conclude with the following observation, prompted by some of the submissions of the Intervenors. What was said in *Northwestern Utilities* [*Northwestern Utilities Ltd. v. Edmonton (City)*, [1979] 1 S.C.R. 684] to the extent that it has been taken as an invariable rule, may be due for a re-evaluation. The decision of the Ontario Court of Appeal in *Ontario (Children's Lawyer) v. Ontario (Information and Privacy Commissioner)* (2005), 253 D.L.R. (4th) 489 provides support for that view. In that case, Goudge J.A. expressed the opinion that the standing of administrative tribunals on reviews of their own decisions must be considered contextually rather than by reference to an *a priori* rule.

[14] In the second case referred to in that quote, *Ontario (Children's Lawyer) v. Ontario (Information and Privacy Commissioner)* (2005), 253 D.L.R. (4th) 489 (Ont. C.A.), the Court said:

> [37] In *Paccar*, La Forest J. articulated the importance of having a fully informed adjudication of the issues before the court. Because of its specialized expertise, or for want of an alternative knowledgeable advocate, submissions from the tribunal may be essential to achieve this objective. In these circumstances, a broader standing adds value to the court proceedings. Because sound decision making is most likely to come from a fully informed court, this consideration will frequently be of most importance.
>
> …
>
> [43] Ultimately, if the legislation does not clearly articulate the tribunal's role, the scope of standing accorded to a tribunal whose decision is under review must be a matter for the court's discretion. The court must have regard in each case, to the importance of a fully informed adjudication of the issues before it and to the importance of maintaining tribunal impartiality. The nature of the problem, the purpose of the legislation, the extent of the tribunal's expertise, and the availability of another party able to knowledgeably respond to the attack on the tribunal's decision, may all be relevant in assessing the seriousness of the impartiality concern and the need for full argument.
>
> [44] The last of these factors will undoubtedly loom largest where the judicial review application would otherwise be completely unopposed. In such a case, the concern to ensure fully informed adjudication is at its highest, the more so where the case arises in a specialized and complex legislative or administrative context. If the standing of the tribunal is significantly curtailed, the court may properly be concerned that something of importance will not be brought to its attention, given the unfamiliarity of the particular context, something that would not be so in hearing an appeal from a lower court. In such circumstances the desirability of fully informed adjudication may well be the governing consideration.

[15] In the present case, had the MVSA been limited in its participation to such uncontroversial matters as the nature of the regulatory scheme and the standard of

review, this judicial review would have been completely unopposed. For this reason I considered it appropriate to also allow the MVSA to explain: (1) facts or evidence that were before the decision-makers; (2) matters within the MVSA's expertise; (3) the record; and (4) the law on the issues raised in this proceeding.

[16] I also accept the submission of the MVSA that it ought to be given greater latitude in its participation because it has an ongoing interest in consumer protection and protecting the public interest.

A. The Petitioners

[17] In their amended petition the petitioners advanced a wide range of grounds for review, but they did not press all of those grounds at the hearing. In part because of this, on the final day of hearing I directed that counsel for the petitioners file a concise synopsis of the petitioners' position. The following is a summary of that synopsis.

[18] As to the standard of review, the petitioners submit that questions of statutory interpretation ought to be assessed on a standard of correctness, and only those areas falling within an aspect of specialized expertise should be assessed on a standard of reasonableness.

[19] As to the incorrect odometer reading, the petitioners say that the decisions below were in error insofar as they required Crown Auto Body to investigate the accuracy of information supplied to it.

[20] As to the evidence of lack of structural integrity, the petitioners submit that:

a) the Deputy Registrar erred in accepting that both the Ontario autobody witness (Lance Stevens) and the British Columbia autobody witness (Mike Srigley) were qualified to give opinion evidence in the area;

b) no notice was given to the petitioners of Mr. Stevens' evidence, thus breaching a duty of procedural fairness; and

c) the petitioners made no representation to the purchaser that the Prius would pass Ontario registration requirements.

[21] The petitioners also alleged there were further breaches of procedural fairness in that:

a) the petitioners, who were unrepresented, were warned not to seek an adjournment lest costs be assessed against them;

b) the Deputy Registrar unreasonably interfered with Mr. Jooya's cross-examination of Mr. Stevens.

[22] The petitioners submit that although the Deputy Registrar purported to consider the factors set out in s. 164(2) of the *BPCPA* before imposing the penalties and sanctions, he did "not elaborate on the manner in which he appreciated [those provisions] in the context of this case".

[23] Finally, the petitioners say that a reasonable apprehension of bias arises because the Registrar involved himself in settlement discussions before issuing his Reconsideration Decision.

B. The Motor Vehicle Sales Authority of British Columbia (MVSA)

[24] MVSA submits as follows:

a) standard of review: the issues in this case involve issues of mixed fact and law in the context of a specific industry and a unique body of legislation. These considerations engage the expertise of the regulator and therefore "reasonableness" is the proper standard of review;

b) incorrect odometer reading: the Deputy Registrar found that the petitioners committed a "deceptive act or practice" within the meaning of the *BPCPA* by representing that the Prius had been driven 40,188 kms when it had actually been driven at least 114,163 kms. In finding that the

petitioners were negligent in failing to make reasonable inquiries about the true kilometrage travelled, the Deputy Registrar correctly held that the petitioners were under a positive duty to inquire;

c) structural integrity: the evidence concerning the Prius's structural integrity was extensive and was thoroughly addressed in the Original Decision;

d) expert evidence: the original notice of hearing delivered to the petitioners was accompanied by an affidavit that set out in detail the evidence Mr. Stevens would be giving at the hearing, the petitioners cross-examined Mr. Stevens at the hearing and they did not seek an adjournment in connection with the evidence of Mr. Stevens or otherwise.

e) procedural fairness: assisting the parties in the resolution of their dispute is part of the Registrar's statutory mandate. The regulatory scheme provides that, on reconsideration, the Registrar may only vary or cancel a determination if new evidence is put forward that is: (1) substantial and material to the determination, and (2) did not exist at the time of the review or did exist at that time but was not discovered and could not through the exercise of reasonable diligence have been discovered. No reasonable apprehension of bias can be grounded in the Registrar's awareness of the evidence received, and findings made, in a decision that is subject to review only where there is new evidence put forward;

f) penalty: the Deputy Registrar gave full reasons for imposing the sanctions he did.

III. The Regulatory Scheme

[25] The nature of the applicable regulatory scheme was well-summarized in the submissions of the MVSA, which are reproduced below:

> 13. The motor vehicle industry has been in existence in the Province for over eighty years. Presently, there are approximately 1,450 motor dealers

and 7,000 salespeople and consumer-related business staff employed by motor dealers within the Province. Collectively, motor dealers in the Province contribute over $10 billion to the annual economy and remit more than $1.5 billion in taxes annually.

14. The retail motor vehicle industry has long been interested in self-management. In November, 1997, a study group began to explore the feasibility of modernizing the regulatory framework applicable to British Columbia motor dealers. Their intent was to make the regulatory framework more effective and efficient, to reduce the costs of regulation and, most importantly, to increase the scope of effective consumer protection in the motor dealer industry. It was decided that these objectives would best be achieved by creating a new organization - a delegated administrative authority - to administer and enforce the *Motor Dealer Act,* R.S.B.C. 1996, c. 316 and the Regulations made under that Act.

15. On July 21, 2003, the Motor Dealer Council of British Columbia (the "Motor Dealer Council"), was incorporated pursuant to the laws of British Columbia as a society, for the specific purpose of receiving delegated authority to administer the *Motor Dealer Act,* R.S.B.C. 1996, c. 316 and the Regulations made under that Act. The Motor Dealer Council has its head office at Suite 208 - 5455 152nd Street, Surrey, B.C., V3S 5A5, and operates as the "Motor Vehicle Sales Authority of British Columbia".

16. The primary responsibility of the Motor Dealer Council is to maintain and enhance consumer protection and consumer confidence within the motor dealer industry. Specifically, the government has given the Motor Dealer Council a mandate to administer licensing, standards and enforcement, consumer complaint resolution, consumer protection, and public industry education.

17. Pursuant to section 1.1 and subsection 24.2(1) of the *Motor Dealer Act,* R.S.B.C. 1996, c. 316, and subsections 1(1) and (2) of the *Motor Dealer Delegation Regulation* (B.C. Reg. 129/2004), the Motor Dealer Council is vested with the authority to administer, among other things, the *Motor Dealer Act,* R.S.B.C. 1996, c. 316 (the "Act") and the *Motor Dealer Act Regulation* (B.C. Reg. 447/78) (the "Regulation").

18. Pursuant to section 24.2 of the Act, and subsection 1(2) of the *Motor Dealer Delegation Regulation* (B.C. Reg. 129/2004), the Registrar of Motor Dealers is appointed by the Directors of the Motor Dealer Council and has the statutory authority and powers as enumerated in the Act and its Regulations (the "Registrar").

19. The Crown's expectations of the Directors of the Motor Dealer Council when they appoint the Registrar are found in paragraph 12 of the Administrative Agreement dated March 24, 2004 between Her Majesty the Queen in right of the Province of British Columbia (the "Crown"), as represented by the Minister responsible for the Motor Dealer Act (the "Minister") and the Motor Dealer Council of British Columbia (the "MDC"), a society incorporated under the laws of British Columbia, (the "Administrative Agreement").

20. In particular, pursuant to paragraph 12 of the "Administrative Agreement", the following minimum standards of experience and skill that the Registrar must possess have been prescribed:

> 12. Appointment of the Registrar
>
> …
>
> (b) A person appointed as Registrar will have demonstrable skills and experience in the following areas:
>
> i. a regulatory field similar to the regulation of Motor Dealers and involving consumer or public protection, and
>
> ii the exercise of unfettered discretion and the application of principles of administrative fairness in regulatory decision-making and the performance of statutory duties.
>
> …
>
> (d) The Authority acknowledges that the Registrar exercises statutory duties that require independent decision-making and, for the purpose, the Board will not interfere with the independent exercise of these statutory functions.

21. The B.C. Legislature and the Lieutenant Governor in Council have put in place specialized legislation empowering the Registrar to protect the public interest and to regulate the motor dealer industry generally, such as:

(a) The *Motor Dealer Act,* R.S.B.C. 1996, c. 316;

(b) Prescribed sections of the *Business Practices and Consumer Protection Act,* S.B.C. 2004, c. 2;

(c) The *Motor Dealer Act Regulation* (B.C. Reg. 447/78);

(d) The *Motor Dealer Consignment Sales Regulation* (B.C. Reg. 101/95);

(e) The *Motor Dealer Delegation Regulation* (B.C. Reg. 129/2004); and

(f) The *Salesperson Licensing Regulation* (B.C. Reg. 241/2004).

22. The Registrar is vested with further powers and authority pursuant to s. 8.1 of the Act and section 29 of the Regulation, to exercise the powers and authority of those prescribed sections of the *Business Practices and Consumer Protection Act,* S.B.C. 2004, c.2 (the "BPCPA"). For example:

(a) Pursuant to subsection 29(1) of the Regulation, the Registrar is prescribed the authority to review infractions of sections 4 to 6 [deceptive acts or practices] and sections 7 to 10 [unconscionable acts or practices] of the BPCPA;

(b) Pursuant to subsection 29(2)(a) of the Regulation, the Registrar retains all rights and powers conferred under the Act with respect to the investigation of deceptive and unconscionable acts or practices. In addition to these existing rights and powers, subsection 29(2)(b) confers on the Registrar certain investigative rights and powers of the BPCPA Authority. Generally, these additional rights and powers under the BPCPA include: the power to enter the business premises of any person at any reasonable time [s. 150(1)(a)]; the power to remove and retain records, goods and things [s. 150(1)(g) and (h)]; the power to summon and enforce the attendance of witnesses [s. 151]; and the power to enter a private dwelling with warrant issued by a justice [s. 152];

(c) Pursuant to subsections 29(2)(b) and 29(4) of the Regulation, the Registrar may, among other things, impose administrative penalties in accordance with ss. 164 to 168, and 170 of the BPCPA in response to a violation or violations by a motor dealer of sections 4 to 10 of the BPCPA. A notice of administrative penalty can be filed in the Provincial Court or in the British Columbia Supreme Court. Once filed, it is deemed an order of the respective court for all purposes except for appeal; and

(d) Pursuant to subsections 29(2)(b) and 29(4)(b) of the Regulation, the Registrar may make a compliance order under section 155 of the BPCPA to remedy a deceptive or unconscionable act or practice. A compliance order can be filed in the British Columbia Supreme Court. Once filed, it is deemed an order of the respective court for all purposes except for appeal.

23. Through the above delegation of powers to the Registrar, the B.C. Legislature and the Lieutenant Governor in Council have provided the Registrar with extensive authority and powers in relation to:

(a) Motor Dealer Council policy formation;

(b) Educating the industry and the general public on any aspect of the motor vehicle industry;

(c) Administrative matters;

(d) Approving, or not, applications for or placing conditions on motor dealer registrations;

(e) Investigations;

(f) Adjudicative hearings;

(g) Enforcement powers in relation to the decisions of the Motor Dealer Customer Compensation Fund Board; and

(h) Enforcement powers for quasi-criminal and civil violations of the Act, its regulations and the BPCPA,

in matters related to the motor dealer industry in British Columbia.

> 24. The Registrar conducts the day-to-day operations of the Motor Dealer Council in overseeing the regulation of, and the protection of consumers interacting with, the motor dealer industry. For this reason the Registrar must have specialized knowledge peculiar to the motor dealer industry, such as:
>
> (a) transactions involving the sale, lease or exchange of motor vehicles;
>
> (b) the advertising and marketing of vehicles for sale, lease or exchange that are unique to the industry;
>
> (c) the unique risks within the motor dealer industry to consumers when they purchase, lease or exchange motor vehicles; and
>
> (d) the various avenues available to protect consumers from unconscionable, deceitful and or other unlawful conduct by motor dealers that are peculiar to the motor dealer industry.

IV. Discussion

[26] In judicially reviewing both the Original Decision and the Reconsideration Decision it is important to bear in mind that the *BPCPA* is consumer protection legislation that places a reverse onus of proof on a supplier of goods in a consumer transaction:

> 5 (1) A supplier must not commit or engage in a deceptive act or practice in respect of a consumer transaction.
>
> (2) If it is alleged that a supplier committed or engaged in a deceptive act or practice, the burden of proof that the deceptive act or practice was not committed or engaged in is on the supplier.
>
> [Emphasis added]

[27] Accordingly, once there was evidence indicating the odometer reading on the Prius was misstated and the car was sold to a consumer in an unroadworthy state, the onus was then on the petitioners to show that they had not committed a deceptive act or practice in the transaction.

[28] It is also important to bear in mind that a deceptive act or practice need not be intentional and may arise even if the supplier has an honest belief in the accuracy of the information relayed to the consumer. In *Rushak v. Henneken* (1991), 59 B.C.L.R. (2d) 250 (C.A.) the Court cited with approval the following extract from *Findlay v. Couldwell*, [1976] 5 W.W.R. 340 (B.C.S.C.), both of which dealt with iterations of the *Trade Practice Act*, R.S.B.C. 1979, c. 406:

> I should note here that a deceptive act does not necessarily involve deliberate intention to deceive. Deception need only have the capability of deceiving or misleading and it may be inadvertent yet still sufficient to avoid the transaction under the statute, which is directed to the welfare of the consumer, not the punishment of the vendor.

[29] The *BPCPA* superseded the *Trade Practice Act*, but in this regard the treatment of "deceptive act or practice" is the same: *The Consumers' Association of Canada v. Coca-Cola Bottling Company*, 2006 BCSC 863.

[30] These principles were more recently affirmed in *Cummings v. 565204 B.C. Ltd.*, 2009 BCSC 1009.

[31] With those broad principles in mind, I turn to the specific issues raised in this judicial review.

A. Standard of Review

[32] The standard of review applicable to decisions of the Registrar of Motor Dealers was considered in *Applewood Motors Inc. v. Ratte* (unreported, B.C.S.C., April 13, 2010, Vancouver registry no. S094126) [*Applewood Motors*]. The allegation in that case was that a dealer had not disclosed to a purchaser that the car in question was a rebuilt vehicle.

[33] In *Applewood Motors*, Willcock J. (as he was then) concluded that:

a) matters of general law (for example, whether non-disclosure in any circumstances could constitute a deceptive trade practice) were to be reviewed on a standard of correctness; but that

b) where the Registrar of Motor Dealers is required to decide whether non-disclosure amounted to a deceptive practice in particular circumstances, this raised both factual and legal issues. He said:

> [30] … [The petitioner's] submission acknowledges that the Registrar may conclude that silence is a deceptive trade practice in some circumstances. … That determination, in my view, requires the Registrar to address both factual and legal issues. In *Dunsmuir* the court noted, at

> para. 53, that reasonableness is the ordinary standard for judicial review of questions where the legal and factual issues are intertwined and cannot be easily separated.
>
> [31] Further, it is a question open to a number of reasonable conclusions. It is one clearly within the range of questions referred by the legislature to this specialized tribunal, which is familiar with the market in which the trade practice occurs. There can be, in my view, few clearer examples of mixed fact and law for which the Registrar is particularly suited.
>
> [Emphasis added.]

[34] The petitioners argue that *Applewood Motors* ought not to be followed because the *BPCPA* gives persons who suffer loss or damage as a result of contraventions of the *BPCPA* the right to bring actions in the courts (*BPCPA*, s. 171), meaning that there is no specialized expertise involved in these sorts of claims.

[35] I do not see that the concurrent jurisdiction the *BPCPA* grants means that a deferential standard of review is not engaged when the tribunal is called on to apply its specialized knowledge and expertise. If an action is brought in court, expert evidence may be required to establish a standard or practice in the field. A deferential standard would apply to those issues on appeal, e.g.: was there evidence before the court on which a jury, properly instructed, could have come to that decision? If the complaint is instead brought before a tribunal with particular expertise in a trade or industry, the tribunal itself may well have the required expertise such that expert evidence is not required. Again, a deferential standard would apply.

[36] I conclude that *Applewood Motors* correctly describes the standard of review applicable to this case.

B. The Incorrect Odometer Reading

[37] Most of the facts concerning the odometer reading have been set out earlier. Certain additional facts were before the Deputy Registrar at the time of the first hearing:

a) MVSA's investigator determined that the ICBC estimator who assessed the damage to the Prius was unable to turn it on so he guessed the kilometres;

b) when the Prius was sent to salvage, the 40,000 kms "guess" was transferred onto the salvage document when sold;

c) the salvage invoice, evidencing the sale from ICBC to Crown Auto Body, states the kilometres as "40,000" -- that is, 40,000 kms even; and

d) at the hearing, the investigator testified that she obtained a vehicle history report from CarProof that disclosed an odometer reading of 116,417 kms as of April 3, 2008 (which was two months before the Prius was sold to Mr. Knapp). The CarProof report was marked as an exhibit at the hearing.

[38] As noted earlier, when Mr. Knapp purchased the Prius the odometer read 40,188 kms and that same figure was contained in Crown Auto Body's bill of sale to Mr. Knapp. Mr. Jooya testified that he relied on the 40,000 figure contained in the salvage invoice and was unaware that the figure was a "guess" on the part of an ICBC estimator. He said that when he repaired the car and turned it on, the odometer read 40,000. He denied rolling back the odometer and said he would not even know how to do that.

[39] In the Original Decision the Deputy Registrar said:

> 71. A motor dealer is "to the best of its information and belief" disclose the true kilometrage travelled by a motor vehicle it sells: section 23(e) of the [Motor Dealer Act Regulations]. In making such a declaration, a motor dealer cannot rely on the representations of a prior owner, including ICBC, and must make its own reasonable inquiries: *Clark v. Abbotsford Imports (1983) Ltd.*, [1992] B.C.J. No. 471 (B.C. Supreme Court) and *Motley v. Regency Plymouth Chrysler Inc.* 2002 BCSC 1885 (B.C. Supreme Court). Failing to make reasonable inquiries in order to discharge this duty is negligence and can constitute a negligent misrepresentation: *Motley*. If such a negligent misrepresentation about the odometer reading has occurred, the purchaser would generally be entitled to damages only and not to cancel the contract: *Balderston v. Cheng et al* 2006 BCPC 0064 (B.C. Provincial Court) at paragraph 10.

> 72. Mr. Knapp has provided evidence from two sources to show that the Prius had over 114,163 km on it when it came into the possession of Crown. Crown has provided no evidence that the 40,188 km it declared to the Knapps was true. Its defense on this point is that it relied on ICBC's written representation of 40,000 km. This representation has turned out to be a guess on the part of ICBC, the owner of the Prius at the time it was sold to Crown. Crown made no inquiries on its own to determine the true kilometrage of the Prius.
>
> 73. Crown and Mr. Jooya admit that the odometer was not working when it purchased the Prius. However, they did not question the accuracy of the ICBC representation of 40,000 km. Crown, as owner of the Prius, could have inquired with Toyota about the service history of the Prius as Mr. Knapp did when he became the owner. Had they done so they would have discovered the 114,163 km when the odometer first came on after repair.
>
> 74. I find it too much of a coincidence that the 40,000 km declaration made by ICBC, which was a guess, in fact registered on the Prius's odometer when it was finally repaired. Especially as it should have read over 114,163 km when the odometer first came on after repair.
>
> …
>
> 83. I also find that Crown was negligent in making its statutory declaration of the kilometers travelled by not making any reasonable inquiries about the true kilometrage travelled by the Prius. The evidence falls short of suggesting Crown and/or Mr. Jooya deliberately manipulated the odometer reading. I find that Crown and Mr. Jooya made a negligent misrepresentation about the Prius's kilometrage: *Motley*. I find this negligent misrepresentation constitutes a deceptive act or practice under the BPCPA as it is a misrepresentation of the Prius's history and quality that formed part of the Knapps's decision to purchase the Prius, to their detriment.

[40] In the Reconsideration Decision the Registrar said:

> 13. Presented in evidence at the July 12th, 2010 hearing in this matter were two affidavits one by JAWEED JOOYA dated October 19th, 2009, and the other sworn by SEAN BATH, also [sic] dated October 16th, 2009.
>
> 14. Dealing firstly with the JOOYA affidavit – all of what is contained in Mr. JOOYA'S affidavit regarding the number of kilometers showing on the odometer of the Prius, is not new, nor is this evidence, that on its own would be sufficient to allow for the reconsideration of [Deputy Registrar] Mr. Christman's decision.
>
> 15. The Motor Dealer Act and the Business Practices and Consumer Protections Act, whether read together or separately, both make it clear that when a registered Motor Dealer sells a vehicle to the public that is for personal or family use, the Dealer needs to declare the correctness of the odometer reading that is on the vehicle or otherwise declare the vehicle as "kilometers unknown" – and this needs to be done on both the Bill of Sale and the APV9T transfer form.

> 16. The legislation makes it clear that registered Motor Dealers have a positive duty to enquire and disclose all material facts to purchasers and they cannot rely solely on ICBC records when making representations regarding odometer readings on vehicles that they are selling, and, I also do not accept the argument that the difference between 40,000 km and a 114,000 km on a fairly new vehicle is somehow immaterial.
>
> > Robillard v. Comox Valley Ford Sales (1964) Ltd. And Gordon Leo Rug (Third Party) and Port Chevrolet Oldsmobile Ltd. (Fourth Party)(1995), B.C.J. No. 436 (BC Court of Appeal)
> >
> > Motley v Regency Chrysler 2002 BCSC 1885 (BC Supreme Court).

[41] The petitioners' chief complaint on the subject of the odometer reading is that both decisions placed an inordinate burden on them by requiring "a never ending chain of inquiry". They submit that, absent circumstances that would alert a dealer that the information received is not accurate, a dealer has no duty to make inquiries to confirm that information.

[42] It is common ground that this issue is governed by s. 23 of the *Motor Dealer Act Regulation*, B.C. Reg. 447/78 (the "Regulation"), which reads:

> 23 A motor dealer shall ensure that in every written representation in the form of a sale or purchase agreement respecting his offering to sell or selling a motor vehicle he discloses, to the best of his knowledge and belief:
>
> > (a) whether the motor vehicle has been used as a taxi, police or emergency vehicle or in organized racing;
> >
> > (b) whether the motor vehicle has
> >
> > > (i) in the case of a new motor vehicle, sustained damage requiring repairs costing more than 20% of the asking price of the motor vehicle, or
> > >
> > > (ii) in the case of a used motor vehicle, sustained damages requiring repairs costing more than $2 000;
> >
> > (c) whether the motor vehicle has been used as a lease or rental vehicle;
> >
> > (d) whether a used motor vehicle has been brought into the Province specifically for the purpose of sale;
> >
> > (e) <u>whether the odometer of the motor vehicle accurately records the true distance travelled by the motor vehicle</u>.
> >
> > [Emphasis added]

[43] That provision has been considered in a number of cases, including *Clark v. Abbotsford Imports (1983) Ltd.*, [1992] B.C.J. No. 471 (S.C.) [*Clark*]; *Robillard v.*

Comox Valley Ford Sales (1964) Ltd., [1995] B.C.J. No. 436 (C.A.) [*Robillard*]; and *Motley v. Regency Plymouth Chrysler Inc.,* 2002 BCSC 1885 [*Motley*].

[44] In *Clark* the plaintiff purchased a used car from a dealer. The car had been traded in to the dealer by another customer in an earlier transaction. The dealer represented to the purchaser that the car had not sustained damage requiring repairs exceeding $2,000. That statement was not true. The damage would have been readily apparent to an experienced automobile repairer, but the dealer instead relied on a statement from the previous owner that the car had not sustained that sort of damage. Boyle J. said the following about the duty imposed by s. 23 of the Regulation:

> The Regulation placed a positive duty on the Defendant to make its own assessment of prior damage, not simply to accept the word of a prior owner. That duty is one tested by reasonableness and, where extensive prior damage is apparent to an experienced automotive repair person as it was here but has not been noted and disclosed to a prospective purchaser, then that duty is not met. It is a material requirement that ought to have been met both as to observation and as to disclosure. There was negligence in not doing so.

[45] I note that nothing in the circumstances of that case suggested the dealer ought to have been put on an inquiry about possible damage exceeding $2,000.

[46] *Robillard* arose out of the trade-in of a used car to a dealer and its subsequent resale by the dealer to a consumer purchaser. It emerged that the car had been previously damaged in an amount exceeding $2,000, but the person who traded in the car did not disclose that fact. The dealer, in turn, did not disclose any prior damage to the purchaser. The Court of Appeal concluded that the person who sold the car to the dealer made a negligent misrepresentation to the dealer in relation to the prior damage. The Court said:

> 13 In relation to the position of Comox [the dealer], it must be borne in mind that Comox had a positive duty under s. 23 of the *Motor Dealer Act* regulations, that is, s. 23(b)(ii), in relation to its sale of this car to Mr. Robillard [the ultimate purchaser]. If it has a positive duty in relation to Mr. Robillard then that provides a context for thinking of its duty to protect itself in relation to its purchase from Mr. Rugg [who traded in the car]. There is, on the basis of the evidence that we have been given, much to be said for saying there is

> no basis for distinguishing between the degree of negligence of Mr. Rugg and the degree of negligence of Comox, with the result that applying the provisions of the contributory negligence legislation, there would be an attribution of fault of 50% to each of them. But we are not in a position to make that order in this appeal. There has been no finding by a trial judge of negligence on the part of Comox, and there has been no assessment of the relative degrees of fault.

[47] The Court of Appeal thus held that the dealer had a positive duty to verify information supplied to it by the person who traded in the car. There is nothing in the judgment that suggests there were circumstances that should have put the dealer on inquiry.

[48] *Motley* involved the purchase of a used car from a dealer, where the dealer misrepresented that the car had not been used as a lease or rental vehicle. While the dealer disclosed that the car had been registered in another jurisdiction, the dealer failed to answer the section in the form by which the name of the jurisdiction was to be provided. The dealer said they relied on the information provided by a broker. After reviewing both *Clark* and *Robillard*, Parrett J. said:

> [8] In each case the court found that s. 23 of the Regulations cast upon the vendor making the declarations a positive duty. That burden is not met, in my respectful view, by what the defendant relies upon in the present case.
>
> [9] The defendant here says that in Exhibit 5 they have the information conveyed to them by the broker from whom they purchased the vehicle in question. Mr. Lee, the defendant's business manager, relied upon this document in drafting the agreement and making the declarations in question on the defendant's behalf.
>
> [10] Even the most rudimentary examination of Exhibit 5 reveals that it is little more than an invoice with some details written upon it. The defendant relies upon a note that the vehicle in question was out of province and the absence of any other note as being a reasonable basis for the declarations in question.
>
> [11] With the greatest of respect, this document and the process described by Mr. Lee is completely inadequate to meet the burden and the "positive duty" imposed on the vendor by the regulations.
>
> [12] This document lacks any purported certification or assurance upon which any reasonable person could rely.
>
> [13] I am satisfied on the evidence before the court and, in particular, that found in Exhibit 3 that declaration number 3 is, in fact, untrue. It is clear that the vehicle in question was in fact a lease vehicle for a period of time. This in

> and of itself demonstrates the completely inadequate nature of the brokers bare invoice as constituting a reasonable base from which to make the declarations in question.

[49] Again, the Court affirmed that there is a positive duty imposed on car dealers to ensure that the required disclosure representations are true. A mere invoice with details written on it was found to be an inadequate basis on which to rely.

[50] Here, the petitioners made no inquiries to confirm the accuracy of the kilometrage shown on the ICBC salvage invoice, which I note was a remarkably round figure. It appears from the record of the proceedings that verifying this sort of information is easy to do.

[51] Applying the *Applewood Motors* standards of review, I conclude that in both decisions below the adjudicators correctly articulated the general law that imposed on the petitioners a positive duty to ensure that the representations made by them to Mr. Knapp were correct. In applying that general law to the circumstances of this case the tribunal below invoked its knowledge of the industry. It is clear from the transcripts, for example, that the tribunal was aware of the ease by which a vehicle's kilometrage could be checked. The sorts of inquiries that can be made or should be made are matters within the specialized knowledge of this tribunal. A deferential standard of review is called for in these circumstances.

[52] Applying the language of *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para. 151, I am satisfied that the outcome on the kilometrage issue in both decisions below was within the scope of reasonable responses open to the decision-makers under their statutory authority.

C. Structural Integrity

[53] The following is some further background relating to this issue:

a) before the purchase Mr. Jooya told Mr. Knapp that the only repairs done to the vehicle were on the driver's side and that no repairs were done to the car's frame because it was untouched by the accident. The petitioners

did not challenge the evidence about what was said. The Deputy Registrar concluded that the evidence established that repairs were also done to the frame and other parts of the car;

b) the Ontario inspection was done by Lance Stevens of Miltowne Collision in Milton, Ontario. Mr. Stevens has been a licensed auto body repair person for 30 years in Ontario. The petitioners did not cross-examine him on his qualifications;

c) Mr. Stevens gave evidence at the hearing before the Deputy Registrar. He went through a number of photographs of the vehicle and criticized the repairs that had been done. The following are some extracts from his testimony:

   i. he stated, “that is not the way you splice a panel, nor the correct place, nor correctly done”, the latter referring to the fact that “spot welding” was done;

   ii. he criticized the use of a used part that itself was structurally damaged;

   iii. he said, “In a collision this car is … is half folded up already, so if it ever got hit again it would just fold up prematurely”, and “the structural integrity is not there at all”; and

   iv. he said, “We cannot fix this vehicle. This vehicle should not be repaired and should not be on the road”.

d) the April 8, 2009 hearing was adjourned so that a British Columbia expert could give an opinion on the vehicle and its repairs, in case the provinces had differing standards;

e) MVSA obtained a report from Mike Srigley of Sunshine Auto Body Ltd. and sent a copy of that report to the petitioners on May 1, 2009 together with a notice of hearing for the resumption date;

f) Mr. Srigley testified that he has been in the collision repair industry for 34 years and has extensive training in estimating. Among other things he is a past chair of the Collision Repair Division of the Automotive Retailers Association, past chair of the Advisory Council, Apprenticeship Training Authority - auto collision repair and finishing, and past chair of the Advisory Council at BCIT for its collision repair program. Mr. Srigley was not cross-examined on his qualifications;

g) in his report Mr. Srigley said that, based on photographs of the repairs he reviewed, the vehicle was not repaired to factory specifications or industry standards and that it was evident that the vehicle was not repaired to a safe standard. He concluded:

> Based on the pictures supplied to me of the [Prius] I am of the opinion that the vehicle is not structurally sound and was not repaired in a safe and proper manner. The vehicle is not safe and would not hold up structurally if it was hit in the rear again.

h) Mr. Srigley's testimony at the hearing was to the same effect. He said that the repairs seen in the photographs were not up to factory or industry standards in British Columbia;

i) at the hearing before the Deputy Registrar the petitioners' primary response was that the Prius had passed two inspections, a B.C. Provincial Private Vehicle Inspection, conducted by J. Kam Auto Repair Ltd. and a Structural Integrity Assessment, conducted by Cale Collision Rebuilders.

[54] On judicial review, the primary thrust of the petitioners' submissions is that neither Mr. Stevens nor Mr. Srigley had expertise in vehicle structural integrity and so they should not have been qualified to give opinion evidence in that field.

[55] Dealing first with Mr. Stevens, the petitioners focus on the following excerpt from transcript of the proceedings:

> THE REGISTRAR: Mr. Stevens, could you just maybe give us a little background about who you are, what you do, how long you've been doing it and your qualifications to do it?

> LANCE STEVENS: Yes. I'm a licensed body man in Ontario, 30 years licensed. I'm also a government structural safety inspection station --
>
> THE REGISTRAR: Okay.
>
> LANCE STEVENS: -- for the Government of Ontario.
>
> THE REGISTRAR: Okay. And how long have you been licensed by the government of Ontario to do that?
>
> LANCE STEVENS: About ten years. Since we implemented their procedures here in Ontario.

[56] The petitioners submit that the Deputy Registrar erred in assuming that Mr. Stevens was himself a structural safety inspector. They point to the following evidence from the MVSA investigator's affidavit:

> 23. On October 10, 2008 I contacted Lance Stevens of Miltowne Collision Inc, Milton Ontario. Stevens has been the mechanic involved in the Toyota Prius. Stevens had the Ontario Inspector come in to look at the Toyota Prius. The Toyota Prius was in worse condition than they had originally observed …

[57] From this statement the petitioners argue that Mr. Stevens did not fail the vehicle; instead, it was an inspector from the government of Ontario who failed it.

[58] Even if true -- and from an examination of the record this is not at all apparent -- the petitioners' argument here is beside the point. The issue was not who formally pronounced the vehicle unsafe in Ontario, it was whether the vehicle sold to Mr. Knapp was roadworthy.

[59] In the case of Mr. Srigley, the petitioners submit that he "clearly did not have any experience in structural integrity assessment".

[60] In his report Mr. Srigley said:

> I am the president and owner/operator of Sunshine Auto Body for the past 34 years. I hold B.C. exemption certificates in Collision Repair and Refinishing since 1996. I have extensive experience in estimating vehicle damage.

[61] In his testimony Mr. Srigley said:

> THE REGISTRAR: Could you please -- I know it's in your report, but could you please elaborate on your qualifications and experience.
>
> MR. SRIGLEY: Um, I've been in business for 34 years in the collision repair industry. I have exemption permits for both autobody and painting. I've had

> extensive training in estimating. I am a past president of the Automotive Retailers' and a past chair of the Collision Repair Division, so I've had many years of contact with people in the field.
>
> I'm also the past chair of the Advisory Counsel for the Apprenticeship Training Authority, auto collision repair and finishing. I held that position approximately for nine years and I was also the chair of the Advisory Council that put the training at BCIT when they first started doing collision repair and training there.
>
> THE REGISTRAR: Okay. And in terms of assessing structural integrity?
>
> MR. SRIGLEY: Yes. Our shop does a lot of heavy -- or extensive repairs, so we see it on a regular basis.
>
> THE REGISTRAR: Okay. And your particular experience is based out of working at your shop?
>
> MR. SRIGLEY: Yes.
>
> THE REGISTRAR: All right. And have you had any training regarding structural integrity?
>
> MR. SRIGLEY: Ah, yes, I've had -- I've attended many courses over the years. Most of my recent ones are more on the management level, but earlier in my career I attended numerous courses.
>
> THE REGISTRAR: Just so we have it on the record, can you give me a couple of examples.
>
> MR. SRIGLEY: In 1981 I took an advanced estimating course in Aveo Tech in California. I think it was just one -- I have taken high car training courses.
>
> THE REGISTRAR: Sorry. The --
>
> MR. SRIGLEY: High car. They're recognized training before ICBC brought in their own training modules.
>
> THE REGISTRAR: Okay. And have you taken ICBC training modules as well?
>
> MR. SRIGLEY: Earlier on I have, yes.

[62] From the foregoing it is clear there was evidence before the Deputy Registrar on which he could conclude that Mr. Srigley had the required expertise to give an opinion on the structural integrity of vehicles.

[63] In considering this issue generally it must be remembered that the issue before the Deputy Registrar was whether the vehicle sold to Mr. Knapp was roadworthy. Both Mr. Stevens and Mr. Srigley said it was not. Both of these witnesses had many years of experience in the field of collision repairs. Just what Mr. Stevens meant when he said he "I'm also a government structural safety

inspection station … ” is not clear from the record, but it is important to note that the petitioners did not at any time challenge Mr. Stevens’ expertise to give the opinion he did as a licensed auto body repair person with 30 years’ experience. The petitioners only challenged his expertise after having an adverse decision made against them.

[64] Further, even if it could be said that Mr. Stevens lacked required expertise, in that he did not specifically say he had personal expertise in the area of structural integrity, this was not the case with Mr. Srigley, who confirmed he had experience and training in that area. Mr. Srigley agreed with the conclusions of Mr. Stevens and confirmed that the repairs were not up to British Columbia standards.

[65] This latter point answers another issue raised by the petitioners on judicial review (though not in their synopsis), where they submitted that they never represented that the Prius could be registered in Ontario. Mr. Srigley specifically addressed the inadequacy of the repairs according to British Columbia standards.

[66] In *Western Forest Products Limited v. HMTQ*, 2009 BCCA 354, the Court considered, among other things, the admissibility of expert evidence concerning the technical area of stumpage rates and stumpage assessment practices. While that subject-matter is not germane to the issues in the present case, the following statement provides general guidance on the matter of expert evidence before administrative tribunals:

> [26] It is unclear whether the chambers judge was referred to s. 148.6 of the *Forest Act*, which states that the Commission may admit evidence in an appeal “whether or not given or proven under oath or admissible as evidence in a court” provided it is relevant to the subject matter at hand. This provision is consistent with the principle, affirmed by this court in *Cambie Hotel (Nanaimo) Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)* 2006 BCCA 119, that an administrative tribunal, as “master of its own procedure” may admit hearsay evidence unless its receipt would amount to a clear denial of natural justice. (At para. 30, quoting from J. Sopinka, S.N. Lederman and A.W. Bryant, *The Law of Evidence in Canada*, 2d ed. (1999) at 308.)

> [27] The rules of evidence relating to expert reports and testimony admit of more discretion than the hearsay rule and, I would have thought, should be less susceptible to judicial interference.
>
> [Emphasis added.]

[67] I take from that excerpt that courts should apply a deferential standard of review in considering whether an administrative tribunal ought to have received expert evidence.

[68] But no matter what standard is applied, correctness or reasonableness, the acceptance by the tribunal below of the opinions of persons experienced in the field, particularly where their expertise was not in any way challenged, was reasonably based and has not been shown to be incorrect.

D. Allegation of Post-Sale Damage

[69] There is one further issue under the general subject of roadworthiness. The petitioners point to evidence elicited in Mr. Srigley's cross-examination that one of the photographs appeared to show damage to the right rear quarter panel, which Mr. Jooya asserted was not there when he had the car. Mr. Srigley agreed that this "could be new damage", but he could not say whether it would affect the structure of the vehicle unless he was able to see the back of the panel at the same time.

[70] The suggestion that a photograph showed damage to another area of the car was not put to Mr. Stevens, who was the person who took the photographs and who reviewed the repairs in person.

[71] The petitioners raised the issue in their application for reconsideration. In response, the MVSA investigator filed a further affidavit, stating in part:

> 2. On October 21, 2009 I emailed David Knapp at 07:56 am requesting he contact the office of the MVSA. I received a call from David Knapp at 09:35 am. Knapp states that he has never been in or reported an accident with respect to the Prius. Knapp [said] he would contact Lance Stevens as to whether there was damage to the right rear of the Prius and if there was how it would have occurred.
>
> 3. On October 23, 2009 Knapp contacted me via email and stated he believed he had reviewed the Prius and pictures with respect to the apparent

> damage. Knapp indicated that what we were actually seeing was a reflection of trees on the right rear side of the Prius. Knapp forwarded five photographs of the Prius taken by Lance Stevens. Attached as EXHIBIT "A", are copies of those photographs. Photograph two, and three clearly show the right rear side of the Prius and the reflection.
>
> 4. On October 26, 2009 I received an email from Lance Stevens stating there was no damage to the right rear side of the Prius.

[72] From my reading of the transcript of the reconsideration hearing, this issue was not advanced by the petitioners in their oral submissions, possibly because it had been answered by the investigator's affidavit. Perhaps because it was not addressed in oral submissions the Registrar did not deal with this point in the Reconsideration Decision. I do not consider it appropriate that the Court be asked to consider this point as a ground for judicial review where it was not advanced on reconsideration below.

[73] In the event I am wrong on this issue I would nonetheless reject this ground because: (1) there was evidence before the tribunal on reconsideration that demonstrated that there was, in fact, no subsequent damage to the car; and (2) there was no evidence before the tribunal that any subsequent damage, even if it had occurred, affected the safety or roadworthiness of the vehicle.

E. Procedural Fairness

[74] The breaches of the duty of procedural fairness alleged by the petitioners are as follows:

a) no notice was given to the petitioners of Mr. Stevens' evidence or that he would testify;

b) the Deputy Registrar interfered in Mr. Jooya's cross-examination of Mr. Stevens; and

c) the MVSA failed to ascertain the contents of a conversation between Mr. Stevens and Mr. Srigley that occurred before Mr. Srigley provided his opinion.

1. Notice of Expert Evidence

[75] A Notice to Attend Hearing (the "Notice") was issued to the petitioners on March 4, 2009. The Notice set out the allegations, possible penalties, nature of the hearing, ability to be represented by counsel, and so on. Included with the Notice was an affidavit from the MVSA investigator, and the Notice indicated the investigator would be present at the hearing and that the petitioners could question her. The affidavit contained the following paragraph:

> 23. On October 10, 2008 I contacted Lance Stevens of Miltowne Collision, Milton Ontario. Stevens has been the mechanic involved in the Toyota Prius. Stevens had the Ontario Inspector come in to look at the Toyota Prius. The Toyota Prius was in worse condition than they had originally observed, the estimate to complete the work would be over $7,000. Knapp had already paid them $800.00 and they had started the work. They had ordered parts and cut the rear body panel and trunk floor. The Toyota Prius would not be released to B.C. without the work being completed as they were afraid it would just be patched back together and sold. Stevens would provide the estimate and all photographs of the Toyota Prius.

[76] The petitioners say that they were denied procedural fairness because they were not told that Mr. Stevens would be giving expert evidence at the hearing.

[77] The MVSA says that notice of Mr. Stevens' evidence was given in the affidavit of the investigator, and Mr. Jooya cross-examined Mr. Stevens on the first day of the hearing. Mr. Jooya did not seek an adjournment of the hearing. But the Deputy Registrar adjourned the hearing in any event, as he asked the MVSA to obtain a written opinion from a British Columbia expert on the repairs shown in the photographs. At the time of that adjournment the Deputy Registrar told Mr. Jooya that he would be sent a copy of that opinion and would be given an opportunity to respond to it. That opinion, prepared by Mr. Srigley, was sent to the petitioners on May 1, 2009. Mr. Srigley gave evidence at the resumed hearing on May 27, 2009 and was cross-examined by Mr. Jooya.

[78] The present issue was raised as a ground for reconsideration before the Registrar. In the Reconsideration Decision the Registrar said:

> 26. It is clear that [the Deputy Registrar] relied on some of the evidence provided by LANCE STEVENS in making his final decision in this matter so I have carefully considered this argument as to its merits.
>
> 27. I cannot accept these arguments as to [there] being a breach of a "duty of fairness" because of what happened both before, and after the April 8th, 2009 hearing, in that, firstly, the affidavit filed and served on Mr. JOOYA prior to the April hearing outlined in detail what Mr. Stevens' evidence regarding the repairs to the vehicle would be.
>
> 28. Secondly, and more importantly, following the April 8th, 2009 hearing [the Deputy Registrar] adjourned the proceedings to obtain additional evidence as to the mechanical safety of the Prius, and the details of this evidence were made available to Mr. JOOYA well in advance of the next hearing date, which was May 27th, 2009.
>
> 29. This additional evidence was provided in a report prepared by Mike Srigley, an expert in body repair retained by the [MVSA], whose detailed report was provided to Mr. JOOYA in the Notice to Attend served on him the first week in May, 2009.
>
> 30. It should also be noted that this adjournment from April 8th, 2009 to May 27th, 2009, provided Mr. JOOYA, ample opportunity to obtain his own legal counsel, which is something he was encouraged to do, but chose not to.

[79] I am unable to agree with the Registrar's comment that the investigator's affidavit "outlined in detail what Mr. Stevens' evidence regarding the repairs to the vehicle would be". It is not clear, for example, that Mr. Stevens was expected to give evidence beyond describing his examination of the Prius and what was depicted in his photographs of the vehicle.

[80] The transcript of the proceedings on April 8, 2009 shows that the investigator (Holly Childs) concluded her evidence, and then said:

> HOLLY CHILDS: Okay. That's all the evidence I have at this time. I do have available Mr. Lance Stevens who can describe the pictures and what he found when he examined the vehicle for registration in Ontario.
>
> THE [DEPUTY] REGISTRAR: Okay. Mr. Stevens, it would be helpful to me if you could maybe take -- take me through and just describe to me what these pictures are showing me.

[81] The Notice indicated that Ms. Childs would be giving evidence, and her affidavit referenced the photographs taken by Mr. Stevens. I conclude that this reasonably alerted the petitioners to the likelihood that photographs of the Prius would be referred to at the hearing.

[82] The issue is with the opinion evidence. This arose in the following way during the review of one of the photographs:

> THE [DEPUTY] REGISTRAR: And maybe it would be good at the -- at each -- each stage to tell us why you think maybe this is particularly problematic or why --
>
> LANCE STEVENS: This is not the way you splice a panel, nor the correct place, nor correctly done.
>
> …
>
> THE [DEPUTY] REGISTRAR: And also maybe you could inform me -- Remember you're sort of teaching me here.
>
> LANCE STEVENS: Yeah. Yeah. No problem.
>
> THE [DEPUTY] REGISTRAR: In what way does this affect the safety or structural integrity of the vehicle?

[83] Mr. Stevens then proceeded to give his opinion on the quality of the repairs and their effect on safety as he reviewed various photographs.

[84] While it is clear that notice of the full extent of Mr. Stevens' evidence was not given to the petitioners in advance of the hearing, the circumstances described above provide the context as to how expert evidence came to be given by Mr. Stevens at the hearing.

[85] Had the hearing ended that day then the petitioners might well have had legitimate grounds for asserting a complaint of procedural unfairness. I conclude, however, that the subsequent adjournment addressed any procedural unfairness because it afforded the petitioners time to address any prejudice, actual or perceived, that might have resulted from unexpected opinion evidence on the first day of the hearing. The options available to them included: (1) asking that Mr. Stevens be recalled for further cross-examination; and (2) presenting contrary opinion evidence of their own. Of course, they could also have objected to the evidence at the time on the basis that no notice was given to them, or asked that they be granted an adjournment before any cross-examination took place. They did none of those things.

[86] I appreciate that Mr. Jooya was unrepresented at the hearing (despite being told he could have counsel present) and that reasonable latitude should be given to lay litigants to allow for their unfamiliarity with law and legal proceedings. But there is a limit to this; he cannot stand idle and complain only after an adverse decision is issued in circumstances where he was given the opportunity to remedy the issue himself.

[87] I also find no substance to the petitioners' complaint that Mr. Jooya was deterred from asking for an adjournment by the wording of the Notice. First of all, there is no evidence in the record that he was deterred by the Notice. Second, the Notice was benign in tone, and factual:

> … You must come prepared to answer the above allegations and to present any documentary evidence you wish to rely on at the hearing. If you seek an adjournment at the hearing you may be required to pay for any additional costs associated with an adjournment. It is in your best interest to come prepared in order to support your position. At your own cost, you may have a lawyer represent you at the hearing.
>
> [Emphasis in original.]

[88] The parties agreed that fairness is to be decided on a standard of correctness. I note that this terminology may now have been superseded by *Seaspan Ferries Corporation v. British Columbia Ferry Services Inc.*, 2013 BCCA 55, where the Court said:

> [52] I agree with the submissions of Seaspan (with which BCFS is in substantial agreement) that the standard of review applicable to issues of procedural fairness is best described as simply a standard of "fairness". A tribunal is entitled to choose its own procedures, as long as those procedures are consistent with statutory requirements. On review, the courts will determine whether the procedures that the tribunal adopted conformed with the requirements of procedural fairness. In making that assessment, the courts do not owe deference to the tribunal's own assessment that its procedures were fair. On the other hand, where a court concludes that the procedures met the requirements of procedural fairness, it will not interfere with the tribunal's choice of procedures.

[89] However the standard is described, the issue in essence is whether the proceedings were conducted fairly. I conclude that they were.

2. Interference in Cross-Examination

[90] In their synopsis the petitioners allege, without any elaboration, that the Deputy Registrar interfered in their cross-examination of Mr. Stevens.

[91] I have reviewed the transcript and find no foundation for this complaint.

3. Failure to Ascertain Contents of Conversation between Witnesses

[92] The petitioners allege that the MVSA failed to ascertain the contents of a conversation between Mr. Srigley and Mr. Stevens before Mr. Srigley gave evidence at the resumed hearing. Again there is no elaboration on this complaint.

[93] If the two witnesses spoke to each other before the resumed hearing it was open to the petitioners to question Mr. Srigley on that during cross-examination. But they did not. I see no basis for this complaint.

F. Apprehension of Bias

[94] This issue arises out of settlement discussions between the MVSA and petitioners' counsel that took place after the Registrar reserved his decision on reconsideration. The Petitioners submit that in these discussions the Registrar acted as an advocate of Mr. Knapp's interests instead of "fairly adjudicating the matter on merits".

[95] The communication specifically referenced by the petitioners is an email from the MVSA manager of compliance to petitioners' counsel dated December 30, 2010. There, the compliance manager outlined a settlement proposal after introducing the subject this way:

> I have spoken to Registrar Ken Smith and we have a proposal we would like to offer: …

[96] Registrar Ken Smith is the adjudicator for the Reconsideration Decision. At the time of the email his decision was under reserve.

[97] I note that this was not the first time the subject was raised. The Deputy Registrar refers in the Original Decision to an offer made by Crown Auto Body:

> 88. I specifically note this is the first compliance activity taken against Crown. In Crown's favour I also take into consideration its offer to take back the Prius and refund the customer the purchase price. However, it was subject to the Prius being returned to Crown in the same state it sold it to the Knapps. …

[98] The subject of settlement was also raised during the reconsideration hearing on July 12, 2010, where the following exchange took place between the Registrar and counsel for the petitioners:

> THE REGISTRAR: If I accept this argument what does your client want instead?
>
> DEEPAK GAUTAM: I will seek instructions momentarily on this and we'll get back. I will make submissions with respect to what we would --
>
> THE REGISTRAR: Well, you could write it in. You don't have to do it today, but I do need to know what you want.

[99] Later in the hearing counsel for the petitioners set out his clients' settlement position.

[100] The Registrar referred to these matters in his Reconsideration Decision:

> 10. On July 12, 2010 I held a hearing in this matter to determine if pursuant to Section 182 of the Business Practices and Consumer Protection Act the final decision of [Deputy Registrar] Mr. Christman should be reconsidered.
>
> 11. Since this date, with some encouragement from our manager of compliance, Dennis Savidan, the parties have been attempting to resolve their issues.
>
> 12. I am advised the final negotiating deadline in the settlement discussions passed on March 1, 2011; it is therefore time for my final decision in this matter.

[101] The MVSA emphasizes that it is a "multi-function" authority. It has delegated powers of investigation and decision-making together with such other responsibilities as receiving complaints, licensing, inspections, providing policy advice to government and the exercise of powers prescribed by the *BPCPA*. The MVSA is also given the specific power to assist consumers and dealers in the voluntary

mediation of disputes, as shown in the Delegated Administrative Authority Agreement made pursuant to the *Motor Dealer Act*:

> **7. Core Business Functions to be Delegated**
>
> (a) Subject to the Delegation Regulation, the Authority's administration of the *Act* will include the following core business functions:
>
> …
>
> iii. provision of information and assistance, including the voluntary and impartial mediation of disputes, to consumers and Motor Dealers regarding their rights and responsibilities under the Act and any other applicable consumer protection statutes, …

[102] The MVSA submits that the Registrar acted in accordance with his statutory mandate in assisting the parties in a possible resolution. The MVSA emphasizes a reconsideration hearing is not a hearing *de novo*. The Registrar's role on reconsideration is limited to ascertaining if there is "new evidence" that is "substantial and material" and either did not exist at the time or could not with reasonable diligence have been discovered. This limited role on reconsideration means that the Registrar is not expected to proceed as if the prior findings against the petitioners were never made.

[103] Administrative tribunals have much greater latitude in carrying out multiple functions than do the courts, where involvement in settlement discussions would normally be seen as disqualifying a judge from later adjudicating a lawsuit. Statements supporting that greater latitude are found in a variety of sources.

[104] In Brown & Evans, *Judicial Review of Administrative Action in Canada* (Looseleaf Edition: July 2006), the authors state at p. 11-19:

> It is by no means unusual for regulatory administrative agencies to combine the functions of law-makers, law-enforcers and adjudicators. And for some agencies, such as those administering human rights legislation, conciliation has also been an important device for resolving disputes. Accordingly, to mechanically impose the concept of bias as it has been developed to reflect the adversarial structure of criminal justice onto multi-functional agencies may undermine the agency's ability to perform its regulatory functions effectively.

[105] In *Brosseau v. Alberta (Securities Commission)*, [1989] 1 S.C.R. 301 at 309-310 [*Brosseau*], the Court said:

> The appellant contends that a reasonable apprehension of bias arose by the fact that the Chairman, who had received the investigative report, was also designated to sit on the panel at the hearing of the matter. He objects to the Chairman's participation at both the investigatory and adjudicatory levels.
>
> The maxim *nemo judex in causa sua debet esse* underlies the doctrine of "reasonable apprehension of bias". It translates into the principle that no one ought to be a judge in his own cause. In this case, it is contended that the Chairman, in acting as both investigator and adjudicator in the same case, created a reasonable apprehension of bias. As a general principle, this is not permitted in law because the taint of bias would destroy the integrity of proceedings conducted in such a manner.
>
> As with most principles, there are exceptions. One exception to the "*nemo judex*" principle is where the overlap of functions which occurs has been authorized by statute, assuming the constitutionality of the statute is not in issue. A case in point relied on by the respondents, *Re W. D. Latimer Co. and Attorney-General for Ontario* (1973), 2 O.R. (2d) 391, affirmed *sub nom. Re W. D. Latimer Co. and Bray* (1974), 6 O.R. (2d) 129, addresses this particular issue with respect to the activities of a securities commission. In that case, as in this one, members of the panel assigned to hear proceedings had also been involved in the investigatory process. Dubin J.A. for the Court of Appeal found that the structure of the Act itself, whereby commissioners could be involved in both the investigatory and adjudicatory functions did not, by itself, give rise to a reasonable apprehension of bias. He wrote at pp. 140-41:
>
> > Where by statute the tribunal is authorized to perform tripartite functions, disqualification must be founded upon some act of the tribunal going beyond the performance of the duties imposed upon it by the enactment pursuant to which the proceedings are conducted. Mere advance information as to the nature of the complaint and the grounds for it are not sufficient to disqualify the tribunal from completing its task.
>
> In order to disqualify the Commission from hearing the matter in the present case, some act of the Commission going beyond its statutory duties must be found.
>
> Administrative tribunals are created for a variety of reasons and to respond to a variety of needs. In establishing such tribunals, the legislator is free to choose the structure of the administrative body. The legislator will determine, among other things, its composition and the particular degrees of formality required in its operation. In some cases, the legislator will determine that it is desirable, in achieving the ends of the statute, to allow for an overlap of functions which in normal judicial proceedings would be kept separate. In assessing the activities of administrative tribunals, the courts must be sensitive to the nature of the body created by the legislator. If a certain degree of overlapping of functions is authorized by statute, then, to the extent

> that it is authorized, it will not generally be subject to the doctrine of "reasonable apprehension of bias" per se. In this case, the appellant complains that the Chairman was both the investigator and adjudicator and that therefore, the hearing should be prevented from continuing on the grounds of reasonable apprehension of bias.

[106] The Court concluded that since the chairman was acting within the bounds of his statutory authority a reasonable apprehension of bias did not arise.

[107] This principle has been affirmed by the Supreme Court of Canada in subsequent decisions, including: *Bell Canada v. Canadian Telephone Employees Assn.*, [2003] 1 S.C.R. 884; *Canadian Union of Public Employees (C.U.P.E.) v. Ontario (Minister of Labour)*, [2003] 1 S.C.R. 539; and *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, [2001] 2 S.C.R. 781 [Ocean Port Hotel].

[108] In *Ocean Port Hotel* the general manager of the Liquor Control and Licensing Branch delegated the functions of investigator, prosecutor and adjudicator to senior inspectors. At a hearing to consider allegations of licensing infractions one senior inspector prosecuted the case before another senior inspector, as the adjudicator. The Court said:

> 40 … The mere fact that senior inspectors functioned both as investigators and as decision makers does not automatically establish a reasonable apprehension of bias. The respondent relies on *Régie*, where the Court held that an apprehension of bias arose from the plurality of functions performed by the Régie's lawyers and directors. *Régie*, however, is clearly distinguishable from the case at bar. The apprehension of bias in *Régie* resulted from the possibility of a single officer participating at each stage of the process, from the investigation of a complaint through to the decision ultimately rendered. The central concern in *Régie*, succinctly stated by Gonthier J., was that "prosecuting counsel must in no circumstances be in a position to participate in the adjudication process" (para. 56; see also paras. 54 and 60).
>
> 41 The respondent makes no similar allegations in the present case. Its concern hinges solely on the fact that the Branch's hearing officers were employed by the same authority as its prosecuting officers. However, as Gonthier J. cautioned in *Régie*, "a plurality of functions in a single administrative agency is not necessarily problematic" (para. 47). The overlapping of investigative, prosecutorial and adjudicative functions in a single agency is frequently necessary for a tribunal to effectively perform its

> intended role: *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623. Without deciding the issue, I would note that such flexibility may be appropriate in a licensing scheme involving purely economic interests.
>
> 42 Further, absent constitutional constraints, it is always open to the legislature to authorize an overlapping of functions that would otherwise contravene the rule against bias. Gonthier J. alluded to this possibility in *Régie*, at para. 47, quoting from the opinion of L'Heureux-Dubé J. in *Brosseau*, *supra*, at pp. 309-10:
>
> > As with most principles, there are exceptions. One exception to the "*nemo judex*" principle is where the overlap of functions which occurs has been authorized by statute, assuming the constitutionality of the statute is not in issue.
> >
> > ...
> >
> > In some cases, the legislator will determine that it is desirable, in achieving the ends of the statute, to allow for an overlap of functions which in normal judicial proceedings would be kept separate... . If a certain degree of overlapping of functions is authorized by statute, then, to the extent that it is authorized, it will not generally be subject to the doctrine of "reasonable apprehension of bias" *per se*.
>
> 43 Thus, even assuming the plurality of functions performed by senior inspectors would otherwise offend the rule against bias, it may well be that this structure was authorized by the Act at the relevant time.

[109] In one of the cases referred to in the foregoing quote, *2747-3174 Québec Inc. v. Quebec (Régie des permis d'alcool)*, [1996] 3 S.C.R. 919 [*Régie*], Gonthier J. (for the majority) expressed concern about tribunals that combine several functions in a single person. Gonthier J. was particularly concerned about lawyers employed by the Régie (an issue which, he said, was at the heart of the appeal: para. 54), who might give be called upon to review files in order to advise the Régie on the action to be taken, prepare files, draft notices of summons, present arguments to the directors and draft opinions. He concluded that prosecuting counsel “must in no circumstances be in a position to participate in the adjudication process” (para. 56).

[110] It is difficult to assess the extent to which the principles in *Régie* apply here because *Régie* focused on interpreting Québec’s *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12, which guarantees a right to a hearing before an independent and impartial tribunal. Gonthier J. nonetheless drew from common law sources in formulating the following test:

> 44 As a result of *Lippé*, *supra*, and *Ruffo v. Conseil de la magistrature*, [1995] 4 S.C.R. 267, *inter alia*, the test for institutional impartiality is well established. It is clear that the governing factors are those put forward by de Grandpré J. in *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369, at p. 394. The determination of institutional bias presupposes that a well-informed person, viewing the matter realistically and practically -- and having thought the matter through -- would have a reasonable apprehension of bias in a substantial number of cases. In this regard, all factors must be considered, but the guarantees provided for in the legislation to counter the prejudicial effects of certain institutional characteristics must be given special attention.
>
> 45 This test is perfectly suited, under s. 23 of the *Charter*, to a review of the structure of administrative agencies exercising quasi-judicial functions. Whether appearing before an administrative tribunal or a court of law, a litigant has a right to expect that an impartial adjudicator will deal with his or her claims. As is the case with the courts, an informed observer analysing the structure of an administrative tribunal will reach one of two conclusions: he or she either will or will not have a reasonable apprehension of bias. That having been said, the informed person's assessment will always depend on the circumstances. The nature of the dispute to be decided, the other duties of the administrative agency and the operational context as a whole will of course affect the assessment. In a criminal trial, the smallest detail capable of casting doubt on the judge's impartiality will be cause for alarm, whereas greater flexibility must be shown toward administrative tribunals. As Lamer C.J. noted in *Lippé*, *supra*, at p. 142, constitutional and quasi-constitutional provisions do not always guarantee an ideal system. Rather, their purpose is to ensure that, considering all of their characteristics, the structures of judicial and quasi-judicial bodies do not raise a reasonable apprehension of bias.
>
> [Emphasis added.]

[111] Although *Régie* expresses concerns about one person fulfilling multiple roles assigned to a tribunal, it is clear from *Brosseau* that there is no blanket prohibition against this practice. In *Brosseau* a securities commission chair was appointed to a hearing panel after being involved at the investigative stage of the same matter, yet the Supreme Court of Canada found no reasonable apprehension of bias in that case.

[112] It is clear from all of the cases that considering an allegation of apprehension of bias requires an examination of all of the circumstances of the case, including the statutory mandate and the practice of the tribunal. Additionally, from *Brosseau* it appears that a tribunal's role in protecting the public is also a relevant factor. Of the securities commission in that case, the Court said:

> 33 This protective role, common to all securities commissions, gives a special character to such bodies which must be recognized when assessing the way in which their functions are carried out under their Acts.

[113] In the present case the MVSA has been given a number of functions, including assisting in mediating disputes between a consumer and a dealer. I also accept that a substantial part of its mandate is protecting the public. The subject of settlement was mentioned at the first hearing and was canvassed in an open hearing at the time of reconsideration. It was canvassed again in correspondence, starting with an email of December 30, 2010. From the contents of that email it appears that the Registrar was involved, at least in some way, in formulating a proposal by which the parties might settle their dispute, though the proposal was in fact sent by the MVSA's manager of compliance. There is nothing in the record that shows that the petitioners responded to that proposal in any substantive way. I also note that the petitioners, who by this point had counsel, did not object at that time to the apparent involvement of the Registrar in the attempt to bring the parties to a settlement.

[114] The Registrar's involvement was brief, it was part of the general mandate of the MVSA to assist in the resolution of disputes (as well as its mandate to protect the public), and his role on reconsideration was, by the terms of the governing statute, relatively limited in scope. Applying the test set out in *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 S.C.R. 369 at 394, I am unable to conclude that an informed person, viewing the matter realistically and practically -- and having thought the matter through -- would think that the decision-maker would not decide the matter fairly.

G. Compliance Orders, Penalties and Sanctions

[115] Counsel agree that the reviewing standard is one of reasonableness for the sanctions imposed in this case.

[116] As noted earlier, the compliance orders, penalties and sanctions the Deputy Registrar imposed were as follows:

a) Compliance order issued under s. 155(4) of the *BPCPA*: the petitioners were required to (1) abide by the *BPCPA*; (2) ensure that they do not misrepresent the quality of goods they sell to consumer, and specifically not to represent a motor vehicle as roadworthy when it is not; (3) reimburse Mr. Knapp and his wife for the purchase price and expenses, and to take back the Prius at their own expense; and (4) reimburse the MVSA for costs and expenses;

b) Administrative penalties imposed under s. 164 of the *BPCPA*: $20,000 against Crown Auto Body and $2,000 against Mr. Jooya;

c) Sanctions under the *Motor Dealer Act*: the Deputy Registrar ordered that the motor dealer registration of Crown Auto Body be cancelled.

[117] On judicial review, the petitioners emphasize that the breaches found by the Deputy Registrar were not deliberate. The kilometrage representation was merely negligent, and it occurred because the petitioners relied on information supplied to them by ICBC. Although the Prius was found not to be roadworthy, the petitioners had the vehicle inspected by third parties and they reasonably relied on that fact when selling the Prius to Mr. Knapp. The petitioners submit that given their lack of culpability and the absence of any prior complaint or enforcement activity against them, the punishments imposed were excessive and disproportionate.

[118] The petitioners make an additional argument on the administrative penalties imposed, asserting that the Deputy Registrar failed to consider the required factors set out in s. 164(2) of the *BPCPA*.

[119] The MVSA submitted that the Deputy Registrar considered all of the factors set out in s. 164(2) of the *BPCPA* and gave full reasons for imposing the administrative penalties he did.

[120] I agree with MVSA's submission on this point. The Deputy Registrar went through the s. 164(2) factors and referred to other cases for guidance in setting the

administrative penalty amounts. Those penalties were in line with those imposed in other cases. Significantly, he found that the repairs to the Prius were done in a way to conceal or hide the substandard repairs, "such that only a thorough inspection after dismantling part of the Prius revealed its unsafe condition".

[121] The cancellation of Crown Auto Body's motor dealer licence is a severe penalty. The petitioners characterize their conduct as merely negligent, or perhaps innocent in the sense that they relied on others, but, as noted earlier, this characterization was not accepted by the Deputy Registrar.

[122] In the course of discussing the option of cancelling the motor dealer licence of Crown Auto Body the Deputy Registrar said:

> 92. If a motor dealer has been found to have contravened Part 2 or Part 5 of the BPCPA, that is grounds to consider cancelling their motor dealer registration: section 8.1(4)(b) of the MDA. In considering canceling a registration, I must first consider whether a suspension or adding conditions to its registration would be an appropriate alternative. I must also consider whether the administrative penalty already issued acts as a sufficient deterrent to address and regulate Crown's conduct and the potential for future harm. I am mindful of the importance of being able to properly regulate Crown's sales of motor vehicles to consumers, especially when safety is in question. …
>
> 93. Cancelling a motor dealer's registration generally deprives it of a source of revenue not only affecting the company, but its employees'' livelihoods. I am mindful of the cautions stated in various court decisions such as *Pacific International et al v. B.C. Securities Commission* 2002 BCCA 421 at paragraphs 11-13 and also see *Zenner v. College of Optometrists (Prince Edward Island),* [2005] 3. S.C.R. 645 (Supreme Court of Canada). Even so, the public interest is paramount: *Pacific International et al.*

[123] The Deputy Registrar went on to consider whether placing conditions on, or suspending, Crown's registration would be appropriate. He concluded that although conditions were imposed in other cases he noted that those were cases where mechanical issues could be visually identified. As to the present case, he said:

> 94. … In this instance, the repairs are structural and are not assessed by a PVI [Provincial Private Vehicle Inspection]. Further, the structural issues here were hidden and were only discovered by a partial tear down of the rear of the Prius. I note the evidence of Mr. Stevens that a vehicle may outwardly look structurally sound when it is in fact not sound. I also note that that Crown had both a PVI and a SIA [Structural Integrity Assessment] done on

> the Prius -- passing both. It is apparent that repairs can be done in order to meet the SIA, but the vehicle is in fact still unsafe. In this instance both a PVI and SIA failed to find the unsafe state of the Prius.
>
> [Emphasis added.]

[124] In the result, the Deputy Registrar concluded that neither conditions nor a licence suspension would adequately address public safety concerns or ensure Crown Auto Body would not commit a similar deceptive act in future. In considering cancellation of Crown Auto Body's motor dealer licence, he said:

> 97. I note in the case of Crown that operating as a motor dealer is but one aspect of its operations. It is a collision repair shop generating income from that part of its business (I have no jurisdiction over that aspect of its operations.) I must also consider the public interest in ensuring that only safe vehicles are sold by motor dealers, or if they are unsafe, that consumers are made aware of that fact. B.C. motor dealers have a statutory duty to so inform consumers. As shown by this case, the public interest goes beyond British Columbia as a motor vehicle can be moved from place-to-pace and is often owned by many people during its operational life. In considering the above analysis, the severity of the issue here of selling a vehicle that was not structurally sound, and misrepresenting it as being roadworthy; plus the real possibility of harm to the general public and individual consumers; I find it in the public interest that [Crown's motor dealer licence] be cancelled effective immediately; and I so order it cancelled.

[125] It is important to remember that the MVSA is, in essence, a body created by the industry itself for the purposes regulating motor dealers, promoting public confidence in the industry and protecting the public interest. Though the sanctions imposed in this case are heavy ones, applying the deferential standard of reasonableness on this judicial review I find that there was a reasoned, rational and sound basis for all of them. There is no basis on which the Court ought to interfere.

V. Conclusion

[126] The petition is dismissed. In accordance with the usual practice in these matters, there will be no costs to any party.

"Blok J."