

IN THE MATTER OF

*THE CONSUMER PROTECTION AND BUSINESS PRACTICES ACT, SS 2013, c C-30.2*

AND

1973566 Alberta Ltd. (BARLOW MOTORS Saskatoon)

**DECISION AND DEMAND FOR FORFEITURE OF FINANCIAL SECURITY**

**Re Notice of Proposed Demand for Forfeiture of Financial Security dated March 15, 2021**

**Introduction**

1. The within Demand for Forfeiture of Financial Security (“Demand”) is made in respect to the financial security filed by 1973566 Alberta Ltd o/a Barlow Motors Saskatoon (“Barlow Motors”) pursuant to section 59 of *The Consumer Protection and Business Practices Act, SS 2013, c C-30.2* [the Act].
2. Section 5-1 of *The Consumer Protection and Business Practices Regulations, SS 2013, c C-30.2, Reg 1 [Regulations]* provides authority to the Director, which includes the Deputy Director, to demand that financial security be forfeited if certain situations, including if the person with respect to whose conduct the financial security is conditioned contravenes the *Act* or *Regulations* (section 5-1(2)(d)(i)).
3. After consideration and the investigation of several complaints, as Deputy Director, I have decided to demand forfeiture of financial security because I am satisfied that Barlow Motors contravened the *Act* and *Regulations* in its dealings with consumers. In this decision, I am not deciding how moneys realized from the bond should be paid pursuant to section 5-1(6) of the *Regulations*.
4. Before I made my decision, I provided Western Surety Company (Western Surety) and Barlow Motors a Notice of Proposed Demand for Forfeiture of Financial Security (Proposed Notice of Forfeiture) along with disclosure materials and supplemental disclosure materials (Disclosure Materials).

5. Western Surety and Barlow Motors were provided the opportunity to provide written submissions with respect to whether I should demand forfeiture of Barlow Motors' financial security. Western Surety and Barlow Motors were requested to provide other information, evidence or law, and comment on whether any of the grounds in the Proposed Notice of Forfeiture were mistaken and whether I misinterpreted the applicable law.

6. I received written responses from Western Surety. Western Surety confirmed it did not dispute the findings or information contained in the Proposed Notice of Forfeiture or Disclosure Materials. Western Surety accepted liability under the bond subject to its terms and limitations.

7. I served the Proposed Notice of Forfeiture and disclosure materials on the Barlow Motors' power of attorney in Saskatchewan. I did not receive a response from Barlow Motors.

**Demand of the Deputy Director:**

8. Section 59 of the *Act* provides the filed security may be forfeited in the manner provided in the regulations to the *Act*.
9. Section 5-1 of *The Consumer Protection and Business Practices Regulations, SS 2013, c C-30.2, Reg 1 [Regulations]* provides authority to the director, which includes the Deputy Director, to demand that financial security be forfeited if certain situations, including if the person with respect to whose conduct the financial security is conditioned contravenes the *Act* or *Regulations* (section 5-1(2)(d)(i)).
10. Pursuant to section 5-1 of the *Regulations*, in my capacity as Deputy Director, I have decided to demand the financial security Barlow Motors filed in the form of a bond pursuant to section 59 of the *Act* in the amount of \$25,000 be forfeited to the Crown in right of Saskatchewan.

**Grounds supporting the demand:**

*Forfeiture of Financial Security for Contraventions of the Act and Regulations  
(Regulations, s 5-1(2)(d)(i))*

11. The Deputy Director is a director for the purposes of the *Act* and *Regulations*.
12. Pursuant to section 59 of the *Act*, the then director required, and Barlow Motors filed, financial security in the amount of \$25,000 as a requirement to carry on business under its licence as a vehicle dealer.
13. Barlow Motors held a licence as a vehicle dealer under the *Act and Regulations* until November 6, 2018.
14. Barlow Motors was also a supplier who carried on the business of selling goods and services on a retail basis under section 2(j) of the *Act*.
15. Barlow Motors carried on business as a supplier and a licensed vehicle dealer with respect to its dealings with consumers.

16. Consumers are individuals who participate in transactions involving goods and services ordinarily used or provided for personal, family or household purposes provided by a supplier under sections 2(b), 2(e) and 2(h) of the *Act*.

17. Consumers are also persons who for buy, lease or otherwise acquire a vehicle from a dealer under Section 5-7 (d) of the *Regulations*.

18. The individuals mentioned below are consumers for the purposes of the provisions of the *Act* and the vehicle dealer provisions in the *Act* and *Regulations*.

19. Section 5-1(2)(d)(i) of the *Regulations* gives authority to the director to demand that financial security in the form of a bond filed pursuant to section 59 of the *Act* be forfeited to the Crown in right of Saskatchewan if the director renders a written decision “stating in effect that, after consideration and investigation of a complaint, the director is satisfied that the person with respect to whose conduct the bond is conditioned, or any agent or representative of that person”, has contravened any provision of the *Act* or *Regulations*.

20. An investigation was conducted in respect to Barlow Motors and various complaints.

21. Based on the Proposed Notice of Forfeiture, the Disclosure Materials, Western Surety’s written response, and as further detailed below, I am satisfied, in my capacity as Deputy Director, Barlow Motors contravened various sections of the *Act* and *Regulations* in their dealings with the following consumers;

- a. Consumer 1 - T R
- b. Consumer 2 - B R
- c. Consumer 3 - B R
- d. Consumer 4 - K B
- e. Consumer 5 - C C

(collectively, the “Claimants”)

## **Consumer 1**

22. Consumer 1 filed a complaint and a request for compensation with the Consumer Protection Division of the Financial and Consumer Affairs Authority (CPD) describing his concern Barlow Motors used his third party warranty coverage to pay for vehicle repairs without his consent.

23. Consumer 1 purchased a 2010 BMW on or about August 12, 2017, from Barlow Motors Saskatoon. Barlow Motors arranged financing through the Royal Bank of Canada (RBC). Consumer 1 purchased the vehicle as a personal use family vehicle. In addition, Consumer 1 purchased a third party warranty which was sold by Barlow Motors with the insurer iA Pacific General. The bill of sale recorded 134,578 KM on the vehicle at the time of purchase.

24. The consumer states that during the course of a test drive he noticed that the vehicle had an oil drip. According to Consumer 1, the salesperson, JR indicated that they would have it fixed.

25. The consumer took possession of the vehicle and soon after smoke started to appear inside the vehicle's cabin. The vehicle was taken back to Barlow Motors to be repaired.

26. An invoice dated August 22, 2017 provided by the consumer from Bema Autosport BMW, Saskatoon (Bema) indicates that Barlow Motors had the oil leak diagnosed. The cause according to the invoice was "inspect engine, distribution block under inlet manifold for turbocharger lines and divers side valve cover gaskets are leaking (passengers side valve cover is seeping only)". According to the invoice, Barlow Motors was provided with a quote for repair, which it declined. According to that invoice the vehicle had 135,884 KM on the vehicle at the time. While in the shop for repairs, the battery was replaced.

27. At the time the consumer brought the vehicle back to Barlow Motors to deal with the smoke in the cabin he also raised a number of other concerns with Barlow Motors, namely the tires were very bad and there was a banging sound under the driver floor while the vehicle was under hard acceleration.

28. In response to these concerns, Barlow Motors agreed to replaced the tires and fix the noise.

29. When the consumer went to pick up his vehicle he noticed that a fender was now cracked and the underneath fender support was broken. Barlow Motors indicated that they would fix it, but

the vehicle would have to be taken to Calgary on a truck. The consumer agreed, with the understanding that when the vehicle was returned all of the issues he identified would be fixed.

30. According to the consumer the vehicle was in Calgary for nearly 7 months. When the consumer attended to retrieve his vehicle he found out that his vehicle was driven to Calgary, not trucked. And according to the vehicle's GPS, the vehicle was also driven from Calgary to White Rock, BC while in the dealer's possession, without the consumer's knowledge or consent. The fender that they agreed to replace, according to the consumer, was only patched, rather than being replaced.

31. The consumer initially refused to take back possession of the vehicle as it had not been repaired as promised. The consumer eventually picked the vehicle up upon threat by Barlow Motors that it would be towed if he didn't come and get it.

32. Once the consumer drove the vehicle he discovered it was still smoking under the hood and in the cabin. The consumer then took the vehicle to Bema to have the issue diagnosed.

33. An invoice dated September 27, 2018 provided by the consumer from Bema indicates that both valve covers leaking, turbo block leaking, turbo coolant lines leaking. The vehicle had 152,904 KM at the time of the inspection. According to the invoice, Bema carried out the following repairs: Dropped the engine and replaced both valve covers, turbo return block gaskets and associated hoses and clamps. In addition, they replaced the aux water pump, multiple leaking coolant hoses, driver's airbag gas generator, installed new O2 sensor, removed and replaced transfer case, replaced all four solenoids, rethread catalytic converter, replaced windshield, Total cost of repair \$14,089.12. The third party warranty covered \$10,000.00; SGI covered \$1,540.51 for the windshield repair; Consumer 1 paid the balance of \$2,548.61.

34. In addition to the repairs completed there remains outstanding damage to the fender which has yet to be repaired. The consumer estimates the cost to repair the fender damaged while the vehicle was in Barlow Motors possession is \$3,200.00.

35. Based on Consumer 1's statement as outlined and the additional information discussed above, Barlow Motors was aware of the oil leak at the time it was sold, promised to repair it and then later declined to do so. Consumer 1 was required to utilize his third party warranty to cover the majority of the repairs.

*Contraventions of the Act and Regulations*

36. My view is Barlow Motors contravened the *Act* and the *Regulations* in its dealings with Consumer 1.

37. The *Act* provides an unfair practice may occur before, during or after a transaction involving goods or services.

9(1) An unfair practice may occur before, during or after a transaction involving goods or services or whether or not a transaction involving goods or services takes place.

(2) An unfair practice may consist of a single act or omission.

38. Barlow Motors committed unfair practices under section 6 of the *Act*

6 It is an unfair practice for a supplier, in a transaction or proposed transaction involving goods or services, to:

(a) do or say anything, or fail to do or say anything, if as a result a consumer might reasonably be deceived or misled;

(b) make a false claim;

39. Consumer 1 complained because he was misled and believed that the vehicle had an oil leak that Barlow Motors was going to address. Consumer 1 entered into the bill of sale understanding that the problem would be addressed by Barlow Motors. Barlow Motors had knowledge of the true issue and severity of the issue as shown in the Bema invoice dated August 22, 2017 and failed to remedy it.

40. Barlow Motors promised to fix the banging sound under the driver floor and chose not to. When the consumer refused to take possession until the repairs were done, Barlow Motors said it was going to have the vehicle towed. Consumer 1 had the problem diagnosed and the vehicle repaired.

41. Barlow Motors' promise it would repair the vehicle mislead the consumer and was false claim.

42. Barlow Motors contravened section 8 of the *Act* by engaging in the unfair practices mentioned above.

8(1) No supplier shall commit an unfair practice.

(2) No employee, agent, salesperson or representative of the supplier shall commit an unfair practice.

43. Barlow Motors contravened section 16 the *Act* when it failed to fulfill its promise to the consumer to fix the oil leak. Section 16(1) describes the circumstances when an express warranty is deemed to be given.

16(1) Any promise, representation, affirmation of fact or expression of opinion or any action that reasonably can be interpreted by a consumer as a promise or affirmation relating to the sale or to the quality, quantity, condition, performance or efficacy of a consumer product or relating to its use or maintenance is deemed to be an express warranty if it would usually induce a reasonable consumer to buy the consumer product, whether or not the consumer actually relies on the warranty.

(2) Subsection (1) applies to a promise, representation, affirmation of fact or expression of opinion made verbally or in writing directly to a consumer or through advertising by:

(a) a retail seller or manufacturer; or

(b) an agent or employee of a retail seller or manufacturer who has actual, apparent or usual authority to act on his or her behalf.

44. Barlow Motors provided the consumer with a promise to repair the oil leak problem. Barlow Motors followed up by having the vehicle diagnosed by Bema. This promise, would be one that would usually induce a reasonable consumer to buy this vehicle. Consumer 1 indicated that he entered into the bill of sale on the understanding that the problem would be addressed. Barlow Motors' failure to fix the problem was a breach of an express warranty given to the consumer contrary to section 16 of the *Act*.

45. Barlow Motors contravened the disclosure provisions in section 5-22 of the *Regulations*

5-22(1) In this section, "**material fact**" means information that is known to the dealer or that the dealer should reasonably be expected to know that could reasonably be expected to influence a reasonable consumer's decision to buy or lease, or refuse to buy or lease, a vehicle from the dealer...



(2) Every dealer must disclose in writing the following to the prospective purchaser or lessee before the contract of sale or lease is entered into by the purchaser or lessee:

(a) all material facts, as known by the dealer or that the dealer should reasonably be expected to know at the time the vehicle contract is entered into;

46. Barlow Motors did not disclose all material facts to the consumer. Given that Barlow Motors was aware of the oil leak, they should reasonably be expected to know that the turbo block was leaking prior to the consumer entering into the contract. Barlow Motors would have been expected to conduct itself in a duly diligent manner, which, had they done so, would have revealed the cause of the oil leak, of which they were aware. This information could reasonably be expected to influence the consumer's decision to buy or not to buy the vehicle. Barlow Motors did not disclose a material fact – the cause of the oil leak – to Consumer 1 and contravened section 5-22 of the *Regulations*.

47. Barlow Motors contravened section 5-29 of the *Regulations* when it failed to honor the minimum power train warranty.

**5-29(1)** In this section, “**power train**” means the engine, transmission, drive shafts, differential and the components required to deliver torque to the drive wheels of a vehicle.

(2) For any sale or lease of a used vehicle by a dealer, if the vehicle has been driven a distance less than 200 000 kilometres, the dealer must provide a minimum warranty on the power train for 30 days or 1 000 kilometres, whichever occurs first.

(3) Subject to subsection (4), for the purposes of subsection (2), if any component of the power train fails during the warranty period, it is deemed to be a breach of substantial character within the meaning of clause 28(1)(b) of the Act.

(4) The dealer may require the consumer to pay a maximum of \$200 towards the cost of repair of the vehicle or recovery pursuant to clause 28(1)(b) of the Act.

(5) The warranty provided by subsection (2) does not diminish any other warranty provided by the Act, the dealer, the manufacturer or any other party.

(6) The warranty provided by subsection (2) does not apply if:

(a) it can be demonstrated that, during the minimum warranty period, the vehicle was used or misused in a manner that was not reasonably intended when it was sold; or

(b) the problem with the component that resulted in the failure was disclosed in writing to the consumer before or at the time the consumer signed the vehicle contract and the consumer acknowledged the disclosure in writing.

48. Barlow Motors promised Consumer 1 it would fix the oil leak before he bought the vehicle on or about August 12. The Bema invoice dated August 22, 2017, dated 10 days later shows Barlow Motors knew the source oil leak within the 30-day warranty period and failed to repair the turbo. The leaking turbo, as part of the engine, was a powertrain failure. Barlow Motors contravened the *Regulations* when it failed to repair the vehicle contrary to the power train warranty provisions.

49. In light of the contraventions of the *Act* and *Regulations* outlined above, I demand forfeiture of the security filed by Barlow Motors with respect to its dealings with Consumer 1.

## **Consumer 2**

50. Consumer 2 filed a complaint and a request for compensation with the Consumer Protection Division of the Financial and Consumer Affairs Authority (CPD) describing his concern that Barlow Motors misrepresented the vehicle and did not provide full disclosure about the vehicles history prior to entering into the transaction.

51. Consumer 2 indicates that he leased a 2006 Maserati Gran Sport from Barlow Motors on May 16, 2018. He purchased the vehicle for personal use. He says he leased it for the sum of \$32,995.00 and made a partial down payment of \$19,000.00 and the remaining amount of \$20,490.00 was leased through First West Leasing Ltd. He had bi-weekly payments of \$452.07 and at the end of the lease, Consumer 2 would have the option to purchase the vehicle for \$1,437.45.

52. Consumer 2 states that when the car was delivered it was around 9:00 pm and it was pouring rain out. The vehicle was immediately put in his storage unit and was not inspected. The consumer claims that he was told that there were no accidents reported. The Barlow Motors'

representative said that after Consumer 2 had a chance to look over the car to call him to let him know what cosmetic or mechanical might be wrong and they would fix it.

53. Consumer 2 states he did not receive any paperwork at the time of purchase.

54. Within two weeks he went back to his storage unit to examine the vehicle and drive it. The consumer states that at that time he found out that the vehicle was in miles, not kilometres as represented. He also found a number of dents on the body of the vehicle, the underside of the front bumper was broken, a speaker cover broken and the e-brake was not holding.

55. When Consumer 2 identified these concerns with Barlow Motors he was told to bring the vehicle back to Saskatoon and they would fix what was wrong with the car.

56. Consumer 2 also said to Barlow Motors that the odometer reading was in miles not kilometers. Barlow Motors said no it is Kilometers.

57. In the first week of July Consumer 2 drove the vehicle back to Saskatoon. During the course of the drive, the check engine light came on. The vehicle was dropped off at Barlow Motors in Saskatoon where they said they would take care of it.

58. Two weeks passed and the consumer says that his vehicle had not moved. When he called to check in, he was told that Barlow Motors did not have a certified mechanic to look at it and they had to wait for someone from Calgary to come look at it.

59. About two weeks later Barlow Motors sent the vehicle to Maserati of Saskatoon to look at it. An invoice dated August 25, 2018 from Maserati of Saskatoon indicates "multi-point inspection, brake fluid and coolant at min, lights have wrap and signal lights do not flash, aftermarket rims incorrect size, and rub on fender, damage to heat shield and front bumper underside, battery not secured, right door speaker cover missing, dents all over body, windshield sprayers not aimed correctly."

60. Barlow Motors declined the repairs and told the consumer that he would be responsible for paying for them.

61. While the vehicle was in Barlow Motors storage compound they closed the business and moved all vehicles within the compound onto the street. The consumer states that the City of Saskatoon had these vehicles towed to the impound lot. The consumer has provided receipts dated

February 4, 2019 for \$180.15 from the City of Saskatoon Municipal Impound lot for fees owing and a receipt dated February 5, 2019 for \$103.16 from Brad's towing.

62. Consumer 2 provided an invoice dated September 7, 2014 from Ferrari Maserati of Alberta which included an estimate of \$19,542.69 for parts and labour to repair the vehicle which was in an accident. The invoice states that the "vehicle was brought into the shop and lifted on hoist to inspect for damage caused by accident. Removed front bumper to gain access to damage behind bumper. Noted damage to right front fender. Sent vehicle to body shop for repairs due to accident. Replaced right headlight due to damage, replaced front bumper, replaced damaged grill, replaced damaged emblem and repaired fender. Repaired hood and front spoiler. Installed new protective film to front end after paint cured." The consumer says that this accident history was not disclosed to him prior entering into the contract with Barlow Motors.

63. An Auto Trader advertisement shows a Maserati Gran Sport was advertised for sale with 32,730 Kilometers.

64. Consumer 2 also provided copies of documentation he received from the previous owners showing the vehicle had been in an accident.

65. Based on Consumer 2's statement corroborated by the additional information discussed above, Barlow Motors represented the vehicle had no accidents reported, failed to disclose the cosmetic and mechanical damage to the vehicle, failed to provide a copy of the contract and material disclosure at the time of delivery, failed to disclose the vehicle was in an accident and misrepresented the vehicle's odometer reading.

#### *Contraventions of the Act and Regulations*

66. My view is Barlow Motors contravened the *Act* and the *Regulations* in its dealings with Consumer 2.

67. The *Act* provides an unfair practice may occur before, during or after a transaction involving goods or services.

9(1) An unfair practice may occur before, during or after a transaction involving goods or services or whether or not a transaction involving goods or services takes place.

(7) An unfair practice may consist of a single act or omission.

68. Barlow Motors' claim that there were no accidents reported and the vehicles odometer represented KM rather than miles was a false claim. Barlow Motors committed unfair practices under section 6 *Act*.

6 It is an unfair practice for a supplier, in a transaction or proposed transaction involving goods or services, to:

(a) do or say anything, or fail to do or say anything, if as a result a consumer might reasonably be deceived or misled;

(b) make a false claim;

69. Consumer 2 complained because he believed that the vehicle had no accidents reported. However, a CARFAX report dated February 19, 2021 indicates that there was accident damage reported on this vehicle. The report further states that on August 4, 2013, when the vehicle had 25,867 KM, Insurance Records Calgary, Alberta, Canada reported right front corner damage.

70. Additionally, Consumer 2 believed that based on the Barlow Motors' representations that the vehicles' use was in kilometres, not miles. However, the odometer measured in miles not kilometres which means the vehicle had 52,674 KM on it at the time of purchase not 32,730 KM which was indicated on the bill of sale. The information provided on the Motor Vehicle (Out of Province) Record of Inspection confirms the vehicle's odometer is measured in miles which is also consistent with the vehicle history report provided by Consumer 2. Consumer 2 was deceived or misled by Barlow Motor's false claim.

71. Consumer 2 was also led to believe that the vehicle was used less than it was. Barlow Motors' representation the vehicle was used to extent different from the actual facts and no accidents reported was an unfair practice under section 7 of the *Act*.

7. The following are unfair practices

“(e) representing that goods have been used to an extent different from the fact or that they have a particular history or use if the supplier knows it is not so;

72. Barlow Motors contravened section 8 of the *Act* by engaging in the unfair practices described above.

8(1) No supplier shall commit an unfair practice.

(2) No employee, agent, salesperson or representative of the supplier shall commit an unfair practice.

73. Barlow Motors contravened section 16 of the *Act* when it represented the vehicle odometer was in kilometers when in fact it was in miles and no accidents reported. Barlow also promised to fix cosmetic or mechanical issues after the consumer had a chance to inspect the vehicle. Section 16(1) describes the circumstances when an express warranty is deemed to be given.

16(1) Any promise, representation, affirmation of fact or expression of opinion or any action that reasonably can be interpreted by a consumer as a promise or affirmation relating to the sale or to the quality, quantity, condition, performance or efficacy of a consumer product or relating to its use or maintenance is deemed to be an express warranty if it would usually induce a reasonable consumer to buy the consumer product, whether or not the consumer actually relies on the warranty.

(2) Subsection (1) applies to a promise, representation, affirmation of fact or expression of opinion made verbally or in writing directly to a consumer or through advertising by:

(a) a retail seller or manufacturer; or

(b) an agent or employee of a retail seller or manufacturer who has actual, apparent or usual authority to act on his or her behalf.

74. Barlow Motors' representations about the odometer reading and no accidents reported were express warranties as to the condition of the vehicle. Barlow Motors' promise to fix the vehicle for cosmetic and mechanical issues and when requested by the consumer, were an express warranty to repair the vehicle. A reasonable consumer would be induced to buy the vehicle based on Barlow Motors' representations. Barlow Motors contravened section 16 of the *Act* when it breached its express warranties.

75. Barlow Motors did not accurately record the odometer reading in kilometres in the vehicle contract and contravened section 5-25(2)(f) of the *Regulations*.

**5-25(1)** On the sale or lease of a vehicle, the dealer must complete a form of vehicle contract that meets the requirements of this section and that has been filed with the director pursuant to section 5-13.

(2) Each vehicle contract must contain, at a minimum:

- (a) the names and addresses of the purchaser or lessee and the dealer;
- (b) the date of the contract;
- (c) the make, model and year of the vehicle and any specific model identifier;
- (d) the VIN;
- (e) particulars of extra equipment or accessories to be provided;
- (f) the odometer reading;

76. Barlow Motors did not immediately provide the consumer with a copy of the contract or leasing documents at time of sale. Barlow Motors contravened section 5-25(7)(b) of the Regulations.

5-25(7) For each vehicle contract mentioned in subsection (1) entered into by the dealer, the dealer shall ensure that:

- (a) the contract is signed by the parties; and
- (b) the purchaser or lessee receives a copy of the contract immediately after signing it.

77. Barlow Motors contravened the disclosure provisions in section 5-22 of the *Regulations*.

5-22(1) In this section, “**material fact**” means information that is known to the dealer or that the dealer should reasonably be expected to know that could reasonably be expected to influence a reasonable consumer’s decision to buy or lease, or refuse to buy or lease, a vehicle from the dealer...

(2) Every dealer must disclose in writing the following to the prospective purchaser or lessee before the contract of sale or lease is entered into by the purchaser or lessee:

(a) all material facts, as known by the dealer or that the dealer should reasonably be expected to know at the time the vehicle contract is entered into;

78. Dealers are reasonably expected to know if vehicle odometer measures distance in kilometers or miles and the cosmetic and mechanical condition of the vehicle. The condition of the vehicle could reasonably be expected to influence the decision to buy the vehicle. Barlow Motors failed to disclose in writing to the consumer the correct odometer reading and the condition of the vehicle before the contract for sale was entered into. Barlow Motors contravened section 5-22(2) of the *Regulations*.

79. Barlow Motors failed to provide a VIN search result provided by Saskatchewan Government Insurance and failed to disclose a material fact to the consumer contrary to 5-22(2) of the *Regulations*.

5-22(1) In this section, “**material fact**” means information that is known to the dealer or that the dealer should reasonably be expected to know that could reasonably be expected to influence a reasonable consumer’s decision to buy or lease, or refuse to buy or lease, a vehicle from the dealer, and includes:

(b) in the case of a used vehicle:

(i) a current printed VIN search result provide by Saskatchewan Government Insurance:

80. Barlow Motors mislead or deceived consumers by advertising the vehicle’s condition in KM and not in accordance with actual conditions contrary to section 5-21(2)(c) of the *Regulations*;

**5-21(2)** A dealer must ensure that every advertisement for a dealer’s business that promotes the purchase or lease of a vehicle from the dealer:

(b) uses descriptions and makes promises only in accordance with actual conditions, situations and circumstances;



81. In light of the contraventions of the *Act* and *Regulations* outlined above, I demand forfeiture of the security filed by Barlow Motors with respect to its dealings with Consumer 2.

### **Consumer 3**

82. Consumer 3 filed a complaint and a request for compensation with the Consumer Protection Division of the Financial and Consumer Affairs Authority (CPD) describing her concern that Barlow Motors did not provide full disclosure about the vehicles accident history prior to entering into the transaction. Additionally, Consumer 3 has raised concerns in regards to the inaccurate amount indicated as a deposit on the bill of sale.

83. Consumer 3 purchased a 2011 Chevrolet Cruz from Barlow Motors in Saskatoon on September 14, 2018 for \$9,975.00 with a deposit being represented on the bill of sale as \$500.00. The vehicle was financed through Carfinco with bi-weekly payments of \$215.38 and an interest rate of 27.26%. The consumer purchased the vehicle for personal use.

84. According to the consumers she initially placed a \$700.00 deposit by debit transaction down on the vehicle on September 11, 2018. On September 14, 2018 she placed an additional \$500.00 deposit in cash on the same vehicle. The consumer provided bank records to support a deposit was made on September 11, 2018 by debit to Calgary Auto Emporium. The consumer was not provided a receipt for the cash deposit made on September 11, 2018 nor was it considered or applied to the purchase on the bill of sale.

85. The bill of sale presented and executed by Consumer 3 did not match the form of contract filed for approval by the director under Section 5-13 of the *Regulations*.

86. According to the SGI Saskatchewan VIN Search there have been 6 previous claims on this vehicle including \$1,700.33 from collision damage on October 7, 2017 and \$2,791.18 of damage from a collision dated August 12, 2012

87. According to the consumer, she did not receive any disclosure about the vehicle's previous history from Barlow Motors prior to entering into the contract.

88. Based on the consumer's statement corroborated by the additional information discussed above, Barlow Motors used a form of contract (bill of sale) not approved by the director, failed to

record a deposit on the bill of sale, and failed to disclose the vehicle's accident history and provide material disclosure to the consumer.

*Contraventions of the Act and Regulations*

89. My view is Barlow Motors contravened the *Act* and the *Regulations* in its dealings with Consumer 3.

90. Barlow Motors contravened the disclosure provisions in section 5-22 of the *Regulations*

5-22(1) In this section, "**material fact**" means information that is known to the dealer or that the dealer should reasonably be expected to know that could reasonably be expected to influence a reasonable consumer's decision to buy or lease, or refuse to buy or lease, a vehicle from the dealer...

(2) Every dealer must disclose in writing the following to the prospective purchaser or lessee before the contract of sale or lease is entered into by the purchaser or lessee:

(a) all material facts, as known by the dealer or that the dealer should reasonably be expected to know at the time the vehicle contract is entered into;

91. Dealers are reasonably expected to know if vehicle was in an accident and disclose this to the consumer before the contract of sale is entered into. Whether a vehicle has been in an accident could reasonably be expected to influence a consumer's decision to purchase the vehicle. Barlow Motors did not disclose all materials facts. Barlow Motors contravened section 5-22(2)(a) of the *Regulations*.

92. Barlow Motors failed to provide a VIN search result provided by Saskatchewan Government Insurance and failed to disclose a material fact to the consumer.

5-22(1) In this section, "**material fact**" means information that is known to the dealer or that the dealer should reasonably be expected to know that could reasonably be expected to influence a reasonable consumer's decision to buy or lease, or refuse to buy or lease, a vehicle from the dealer, and includes:

(b) in the case of a used vehicle:

(i) a current printed VIN search result provide by Saskatchewan Government Insurance:

93. Providing the VIN search to the consumer in this case would have disclosed whether the vehicle had been in a prior accident.

94. According to the SGI Saskatchewan VIN Search there have been 6 previous claims on this vehicle.

95. Barlow Motors contravened section 5-22(2)(a) of the *Regulations* when it failed to disclose a material fact - the Vin search result.

96. Barlow Motors contravened the deposit taking requirements in section 5-24 of the *Regulations*:

**5-24(1)** A dealer shall accept a deposit from a consumer before entering into a vehicle contract only in accordance with this section.

(2) No dealer shall require or accept a deposit that is greater than 2% of the purchase price of the vehicle.

(3) If a consumer does not enter into a vehicle contract for the vehicle for which the deposit mentioned in subsection (1) was given, no dealer shall retain a deposit given by the consumer unless the deposit was used to defray an actual expense to acquire a vehicle that was not in the possession of the dealer at the time the deposit was taken.

(4) On or before the payment of a deposit by the consumer, the terms and conditions of the deposit taken by the dealer must be provided to the consumer in writing and must include conditions for the return of the deposit.

(5) Any deposit that is returned to the consumer must be in the same form as it was provided.

(6) A consumer is entitled to the return of the full deposit if the dealer fails to comply with this section.

97. Barlow Motors did not provide the consumer with the terms and conditions of the \$700.00 deposit in writing, retained the deposit and did not apply it to the purchase price of the vehicle. According to Consumer 3, Barlow did not return the deposit even though it contravened the deposit taking requirements in section 5-24.

98. Barlow Motors contravened the vehicle contract requirements in section 5-25 of the *Regulations*:

5-25(1) On the sale or lease of a vehicle, the dealer must complete a form of vehicle contract that meets the requirements of this section and that has been filed with the director pursuant to section 5-13.

(2) Each vehicle contract must contain, at a minimum:

(a) the names and addresses of the purchaser or lessee and the dealer;

99. The bill of sale presented and executed by Consumer 3 does not match the form of contract filed for approval by the director under Section 5-13 of the *Regulations*. The bill of sale signed lists the seller as 1565950 Alberta Limited. The bill of sale filed with the Director for use by Barlow Motors identifies the dealer as 1973566 Alberta Limited d/b/a Barlow Motors Saskatoon. Barlow Motors contravened 5-21 (1) and (2)(a) of the *Regulations*.

100. Barlow Motors contravened the filing of vehicle contract requirements in section 5-13 of the *Regulations*:

**5-13(1)** Every dealer shall file with the director two copies of each form of contract for sale, lease or consignment that he or she uses or proposes to use when entering into an agreement with a consumer.

- (2) No dealer shall use a form of contract for sale, lease or consignment unless
- (a) the form of contract complies with section 5-25 or 5-27, as the case may be; and
  - (b) a copy of the form of contract has been returned to him or her bearing an endorsement by the director to the effect that the form has been accepted for filing.

101. Barlow Motors used a form of contract other than the contract filed for approval by the directory contrary to 5-13(2) of the *Regulations*.

102. Barlow Motors contravened the vehicle contract requirements in section 5-25(2)(i) of the *Regulations* when it failed to include the \$700.00 deposit in the vehicle contract.

5-25...

(2) Each vehicle contract must contain, at a minimum:

(i) the actual amount of the down payment or deposit, if any;

103. In light of the contraventions of the *Act* and *Regulations* outlined above, I demand forfeiture of the security filed by Barlow Motors with respect to its dealings with Consumer 3.

#### **Consumer 4**

104. Consumer 4 filed a complaint and a request for compensation with the Consumer Protection Division of the Financial and Consumer Affairs Authority (CPD) describing his concern that Barlow Motors failed to honor the statutory powertrain warranty as provided in the *Act* and *Regulations*.

105. Consumer 4 indicates in his statement that in July 2018 he was shopping for a car at Barlow Motors of Saskatoon and within a couple of days they called and indicated they found a Subaru for him.

106. Consumer 4 states that he met with MC (Dealer Principal) in Rosetown on or about August 1, 2018 as they needed some papers signed so they could bring the vehicle in from Calgary. At that point in time the Consumer had only seen pictures of the vehicle.

107. According to the bill of sale provided by Consumer 4 a 2012 Subaru Impreza was purchased from Barlow Motors on July 31, 2018 for \$26,100.00. Consumer 4 purchased the vehicle for personal use. The purchase was financed through Carfinco Inc. (Carfinco) with bi-weekly payments in the amount of \$370.36 which has been confirmed by the conditional sales contract provided by the Consumer.

108. Consumer 4 states that on or about August 8<sup>th</sup> he went to Barlow Motors on Faithful Avenue in Saskatoon to pick up the car and finish signing the paper work with EL who is the General Sales Manager. Consumer 4 further states that EL was very pushy and was not providing him time to read. Consumer 4 was told that they had the car registered and plated for him but the car would have to come back to Barlow Motors because it had not passed a safety inspection. Consumer 4 states that he did not receive any paper work and that he proceeded to drive home to Kindersley.

109. Consumer 4 stated that on or about August 9<sup>th</sup> while driving to a friend's house while on cruise control, the cruise came off and the check engine light came on as well as other dash lights.

110. Consumer 4 states that on or about August 10<sup>th</sup> he called Barlow Motors and explained the problem, they told him to stop driving it. He stopped in Vanscoy and the car stalled. Consumer 4 checked the oil and it was barely on the dipstick. He purchased oil and EL gave him a loaner to return to Kindersley.

111. Within the next few weeks calls back and forth between Consumer 4 and Barlow were made as to what was wrong with the car. He had understood that it may have been the fuel pump.

112. Consumer 4 states that on August 21, 2018 he went to Barlow Motors with CA and spoke with MC because he still did not have his car. Consumer 4 states that during this conversation they raised the Provincial 30 day used powertrain warranty and they asked out of their contract.

113. According to Consumer 4, MC refused to allow this and stated that only through civil court. Consumer 4 was still asking for a copy of his paperwork in which MC did not provide. They left Barlow Motors in the loaner car as his Subaru was still not running.

114. Consumer 4 states that on August 23, 2018 he received a call from a mechanic from Barlow Motors who left a voicemail indicating that the engine needs to be replaced.

115. Consumer 4 states that he filed a complaint with the Consumer Protection Division on or about August 27/28<sup>th</sup> 2018.

116. Consumer 4 states that on August 29, 2018 he realized his temporary registration would expire on September 4 without a safety inspection being completed so he put on a package policy to cover the vehicle while it was in Saskatoon. At that time, the local SGI office also provided a copy of the bill of sale used to license the Subaru.

117. Consumer 4 states that's when he realized that it was an Alberta numbered company that sold him the vehicle. Consumer 4 states that this was the paperwork that Barlow Motors needed on July 31, 2018 which was signed in Rosetown on August 1, 2018.

118. A period of time passed and on October 30, 2018 he engaged counsel who drafted a demand letter to Barlow Motors Saskatoon and to 1565950 Alberta Ltd operating as Calgary Auto Emporium.

119. Consumer 4 states that he received a voicemail on November 19, 2018 stating that the engine is in the car and it's almost ready.

120. Consumer 4 states that he received a voicemail on November 21, 2018 stating that the car is ready to go.

121. Consumer 4 states that he did not pick up the vehicle because they were in dispute with respect to the 30-day power train warranty and felt if they picked it up they would be accepting the remedy.

122. On January 6, 2018 Consumer 4 filed a complaint with the Alberta Motor Vehicle Industry Council (AMVIC)

123. On January 18, 2018 received a letter from Investigator NM who indicated that Calgary Auto Emporium had until January 28, 2019 to respond.

124. Consumer 4 states that on February 14, 2019 CA saw an ad on the internet from Calgary Auto Emporium which pictured three Subaru's together. One looked like his car. CA proceeded to

drive to Saskatoon only to find out that Barlow Motors was closed and Consumer 4's car did not appear to be on the premise.

125. Consumer 4 states that Investigator NM from AMVIC was contacted on February 15, 2019 and informed that the missing car might be in Calgary. The investigator went to the dealership and confirmed that the serial number matched the one he purchased.

126. Consumer 4 states that on April 11 and April 12, 2019 that he attempted to make contact with BL, Director of Calgary Auto Emporium to pick up the Subaru as they had closed their business and that his car was in a locked compound.

127. On April 12, 2019 he received a call from a representative of Calgary Auto Emporium who told Consumer 4 that he had to come pick up the car that evening.

128. Consumer 4 states that he re-registered the Subaru and drove to Calgary to pickup.

129. When he arrived the representative had the wrong key and left to get the proper key. Consumer 4 received a phone call and was told that they are refusing to give him his car.

130. Consumer 4 states he called the Calgary City Police who stated they could help if a representative of Calgary Auto Emporium came back. Consumer 4 could not get anyone to return his calls.

131. On April 13, 2019 Consumer 4 noticed a for rent sign on the storage lot and called the number on it. He was told for \$1,500 cash they would release his Subaru.

132. Once inside Consumer 4 states he noticed damage to front bumper which was not previously there. When started the vehicle, the check engine light came on. He then proceeded to drive it back to Kindersley where he later found out that the left rear axle boot was also torn.

133. On April 24, 2019 he dropped the car off at Saskatoon Subaru Dealer to repair the axle.

134. On May 6, 2019 the vehicle was returned to Kindersley where it was parked.

135. Consumer 4 provided a copy of the bill of sale showing his purchase of the 2012 Subaru Impreza VIN # XXXXXXXX from 1565950 Alberta Limited dated July 31, 2018. A conditional sales contract from Carfinco dated August 8, 2018 for the same vehicle was also provided.



136. Consumer 4 has provided a quote dated November 6, 2019 from Auto Gallery, Subaru in Regina for \$9,106.52 to repair the engine and a second quote dated November 8, 2019 from KC Valley Automotive, Kindersley for \$11,122.02 to replace the engine with a rebuilt one.

137. Consumer 4 has provided receipts to support his claim for expenses he has incurred.

138. The bill of sale presented and executed by Consumer 4 does not match The bill of sale filed with the director for use under 5-13 of the *Regulations*.

139. Based on the consumer statements corroborated by the information outlined above, Barlow Motors used a form of contract not approved by the director, failed to provide a copy of the paperwork at the time of sale, promised to inspect and repair the vehicle so it would pass a safety inspection, and failed to accept the consumer rejection of the vehicle when the powertrain failed.

#### *Contraventions of the Act and Regulations*

140. In my view, Barlow Motors contravened the *Act* and the *Regulations* in its dealings with Consumer 4.

141. The *Act* provides an unfair practice may occur before, during or after a transaction involving goods or services.

9(1) An unfair practice may occur before, during or after a transaction involving goods or services or whether or not a transaction involving goods or services takes place.

(7) An unfair practice may consist of a single act or omission.

142. Barlow Motors actions gave the appearance that Barlow Motors was selling the Subaru. This was a misleading and a false claim. Barlow Motors committed unfair practices under section 6 of the *Act*.

6 It is an unfair practice for a supplier, in a transaction or proposed transaction involving goods or services, to:

(a) do or say anything, or fail to do or say anything, if as a result a consumer might reasonably be deceived or misled;

(b) make a false claim;

143. Consumer 4 believed he had purchased a vehicle from Barlow Motors. He dealt with Barlow Motors and its representatives in Saskatoon before and after the transaction. He says did not receive a copy of the paperwork and Barlow Motors refused to provide copies of the paper when asked by the consumer. Consumer 4 received a copy of the bill of sale when he registered the car with SGI and discovered another numbered company, 1565950 Alberta Limited, as the seller on the bill of sale. 1565950 Alberta Limited was not licenced as a vehicle dealer and not eligible to carry on business in Saskatchewan. Consumer 4 was misled or deceived by Barlow Motors' conduct that it was the seller of the vehicle.

144. Barlow Motors contravened section 8 of the *Act* by engaging in the unfair practices described above.

8(1) No supplier shall commit an unfair practice.

(2) No employee, agent, salesperson or representative of the supplier shall commit an unfair practice.

145. Barlow Motors contravened section 16 the *Act* when it failed to fulfill an express warranty to inspect and repair the vehicle. Section 16(1) describes the circumstances when an express warranty is deemed to be given.

16(1) Any promise, representation, affirmation of fact or expression of opinion or any action that reasonably can be interpreted by a consumer as a promise or affirmation relating to the sale or to the quality, quantity, condition, performance or efficacy of a consumer product or relating to its use or maintenance is deemed to be an express warranty if it would usually induce a reasonable consumer to buy the consumer product, whether or not the consumer actually relies on the warranty.

(2) Subsection (1) applies to a promise, representation, affirmation of fact or expression of opinion made verbally or in writing directly to a consumer or through advertising by:

(a) a retail seller or manufacturer; or

(b) an agent or employee of a retail seller or manufacturer who has actual, apparent or usual authority to act on his or her behalf.

146. Barlow Motors provided the consumer with assurances that the vehicle needed to pass a safety. This promise, would be one that would usually induce a reasonable consumer to buy the vehicle, and in fact, Consumer 4 entered into the bill of sale on the understanding that the vehicle would have to come back to pass a safety inspection. Barlow Motors acknowledged this promise by temporarily plating the vehicle for the consumer and telling Consumer 4 to drive the vehicle back to Saskatoon to have the vehicle inspected. Barlow Motors' failure to follow up on its promise to inspect and fix the problems with the vehicle was a breach of an express warranty to the consumer and contravened section 16 of the *Act*.

147. Barlow's Motors contravened the statutory warranty set out in section 19 of the *Act* when it purported to sell a vehicle that was not durable for a reasonable period.

19 If a consumer product is sold by a retail seller, the following warranties are deemed to be given by the retail seller to the consumer:

(g) that the consumer product and all its components are to be durable for a reasonable period, having regard to all the relevant circumstances of the sale, including:

(i) the description and nature of the consumer product;

(ii) the purchase price;

(iii) the express warranties of the retail seller or manufacturer; and

(iv) the necessary maintenance the consumer product normally requires and the manner in which it has been used;

148. Consumer 4 told Barlow Motors the vehicle had mechanical issues shortly after he took possession. He was told to stop driving the vehicle. Barlow Motors' mechanic said the motor needed to be replaced. Consumer 4 made numerous attempts to have the mechanical issues addressed by Barlow Motors and the Alberta numbered company. Barlow Motors contravened a statutory warranty when it sold a consumer product that was not durable for a reasonable period of time.

149. Barlow Motors contravened the vehicle contract requirements in section 5-25 of the *Regulations*:

5-25(1) On the sale or lease of a vehicle, the dealer must complete a form of vehicle contract that meets the requirements of this section and that has been filed with the director pursuant to section 5-13.

(2) Each vehicle contract must contain, at a minimum:

(a) the names and addresses of the purchaser or lessee and the dealer;

150. The bill of sale presented and executed by Consumer 4 does not match The bill of sale filed with the director for use under 5-13 of the *Regulations*. The bill of sale presented and executed by Consumer 4 lists the seller as 1565950 Alberta Limited. The bill of sale filed with the Director for use identifies the dealer as 1973566 Alberta Limited d/b/a Barlow Motors Saskatoon. Barlow Motors contravened section 5-25(1) and 25(2)(a) of the *Regulations*.

151. Barlow Motors contravened the filing of vehicle contract requirements in section 5-13 of the *Regulations*:

**5-13(1)** Every dealer shall file with the director two copies of each form of contract for sale, lease or consignment that he or she uses or proposes to use when entering into an agreement with a consumer.

(2) No dealer shall use a form of contract for sale, lease or consignment unless

(a) the form of contract complies with section 5-25 or 5-27, as the case may be;  
and

(b) a copy of the form of contract has been returned to him or her bearing an endorsement by the director to the effect that the form has been accepted for filing.

152. Barlow Motors used a form of contract other than the contract filed for approval by the director contrary to section 5-13(2) of the *Regulations*.

153. Barlow Motors did not immediately provide the consumer with a copy of the contract or leasing documents at time of sale contrary to section 5-25(7)(b) of the *Regulations*.

5-25(7) For each vehicle contract mentioned in subsection (1) entered into by the dealer, the dealer shall ensure that:

- (a) the contract is signed by the parties; and
- (b) the purchaser or lessee receives a copy of the contract immediately after signing it.

154. Barlow Motors contravened the power train warranty in section 5-29 of the *Regulations*.

**5-29(1)** In this section, “**power train**” means the engine, transmission, drive shafts, differential and the components required to deliver torque to the drive wheels of a vehicle.

(2) For any sale or lease of a used vehicle by a dealer, if the vehicle has been driven a distance less than 200 000 kilometres, the dealer must provide a minimum warranty on the power train for 30 days or 1 000 kilometres, whichever occurs first.

(3) Subject to subsection (4), for the purposes of subsection (2), if any component of the power train fails during the warranty period, it is deemed to be a breach of substantial character within the meaning of clause 28(1)(b) of the Act.

(4) The dealer may require the consumer to pay a maximum of \$200 towards the cost of repair of the vehicle or recovery pursuant to clause 28(1)(b) of the Act.

(5) The warranty provided by subsection (2) does not diminish any other warranty provided by the Act, the dealer, the manufacturer or any other party.

(6) The warranty provided by subsection (2) does not apply if:

- (a) it can be demonstrated that, during the minimum warranty period, the vehicle was used or misused in a manner that was not reasonably intended when it was sold; or
- (b) the problem with the component that resulted in the failure was disclosed in writing to the consumer before or at the time the consumer signed the vehicle contract and the consumer acknowledged the disclosure in writing.

155. Consumer 4 picked up and drove the vehicle from Saskatoon to Kindersley on August 08. He drove it back to Saskatoon on August 10<sup>th</sup> as instructed by Barlow Motors due to engine trouble. Barlow Motors was well aware of the engine concerns and declined to fix the power train or accept rejection of the vehicle. Barlow Motors failed to repair the vehicle contrary to the power train warranty provisions in the *Regulations*.

156. Barlow Motors contravened section 28(1)(b) of the *Act* by refusing to accept the consumer's rejection of the vehicle for a breach of a statutory warranty and the breach of the power train warranty.

**28(1)** If there is a breach by a manufacturer or retail seller of a statutory warranty mentioned in section 19 or of an express warranty mentioned in section 16 and if:

(a) the breach is remediable and not of a substantial character:

(i) the party in breach shall, within a reasonable period, make good the breach free of charge to the consumer but, if the breach has not been remedied within a reasonable period, the consumer is entitled to have the breach remedied elsewhere and to recover from the party in breach all reasonable costs incurred in having the breach remedied; and

(b) the breach is of a substantial character or is not remediable, the consumer, at his or her option, may exercise the remedies pursuant to clause (a) or, subject to subsections (2) and (3), the consumer may:

(i) reject the consumer product; and

(ii) if he or she exercises his or her right to reject, he or she is entitled to recover the purchase price from the party in breach and to recover damages for any other losses that he or she has suffered and that were reasonably foreseeable as liable to result from the breach.

(ii) the consumer is entitled to recover damages for losses that he or she has suffered and that were reasonably foreseeable as liable to result from the breach regardless of whether the breach is remedied;

157. Barlow Motors purported to sell a vehicle that wasn't durable for a reasonable period of time. The vehicles' lack of durability was a substantial departure from what Consumer 4 expected in the circumstances given its purchase price. The lack of durability was a substantial breach of the statutory warranty under section 19 of the *Act*. A breach of the power train warranty provisions of the *Act* is deemed to be a breach of substantial character contrary to section 28(1)(b) of the *Act*. Barlow Motors refused to accept Consumer 4's request to get out of the contract and contravened the consumer's right to reject the consumer product contrary to section 28 of the *Act*.

158. In light of the contraventions of the *Act* and *Regulations* outlined above, I demand forfeiture of the security filed by Barlow Motors with respect to its dealings with Consumer 4.

### **Consumer 5**

159. Consumer 5 filed a complaint and a request for compensation with the Consumer Protection Division of the Financial and Consumer Affairs Authority (CPD) describing her concern that Barlow Motors sold her an unsafe vehicle.

160. Consumer 5 purchased a 2015 Toyota Sienna on April 21, 2017 from Barlow Motors Saskatoon for \$26,995.00 and financed it through the Royal Bank of Canada. Consumer 5 purchased and used the vehicle for personal and family use.

161. Consumer 5 indicates in her statement that in April 2017 she went to Barlow Motors to purchase a 2015 Toyota Sienna. She proceeded to take the vehicle for a test drive and everything seemed to be in working order.

162. Consumer 5 states that the salesperson provided her with a Car Fax report which showed that the vehicle had been in a previous accident in the province of British Columbia and sustained \$9,000 in damage.

163. She says she asked about the accident and the salesman said that a slight fender bender with newer vehicles especially Toyota's can cost up to \$9000.00.

164. Before she purchased the vehicle she asked to have an SGI inspection done to be sure that there were no problems with it. She reviewed the SGI inspection and proceeded in purchasing the vehicle.

165. Consumer 5 provided a copy of the SGI light vehicle inspection certificate completed by Saskatoon Wholesale Tire on April 21, 2017 which indicates the vehicle passed inspection.

166. In January 2020 the vehicle was in an accident.

167. In February 2020 Consumer 5 states that she took the vehicle to get repaired at Magic Paint and Body in Saskatoon. They took it in to get some minor frame damage fixed to the front passenger side bumper. When they took it to the frame shop they discovered that both the left and right frame rails had issues from a previous accident. She further states that SGI would not give her anything because the damage was as a result from a previous accident.

168. Consumer 5 provided a letter and Notice and Order she received from SGI dated March 13, 2020 for her 2015 Toyota Sienna which states "Regarding Sask Claim XXXXXXXX previous collision damage evident. Right frame rail exhibits poor and improper spot welds, missing corrosion protection inside frame rail. With use of borescope internally a kink in the frame rail is evident. Rad supports welded to frame rail improperly. Left frame rail exhibits signs of heating upon inspection with borescope. Frame rails must be repaired to ICAR or OEM standard".

169. The vehicle failed the inspection and is not currently roadworthy in Saskatchewan.

170. The investigation into the consumer's complaint revealed the bill of sale presented and executed by Consumer 5 does not match The bill of sale filed with the director for use under 5-13 of the *Regulations*.

#### *Contraventions of the Act and Regulations*

171. My view is Barlow Motors contravened the *Act* and the *Regulations* in its dealings with Consumer 5.

172. The *Act* provides an unfair practice may occur before, during or after a transaction involving goods or services.

9(1) An unfair practice may occur before, during or after a transaction involving goods or services or whether or not a transaction involving goods or services takes place.

(2) An unfair practice may consist of a single act or omission.



173. Barlow Motors committed unfair practices under section 6 of the *Act*.

6 It is an unfair practice for a supplier, in a transaction or proposed transaction involving goods or services, to:

(a) do or say anything, or fail to do or say anything, if as a result a consumer might reasonably be deceived or misled;

(b) make a false claim.

174. Barlow Motors committed an unfair practice when it indicated that a slight fender bender with newer vehicles especially Toyotas can cost up to \$9000.00. The extent of the frame damage rendered the vehicle non-roadworthy. Barlow Motors misled Consumer 5 as to the extent of the damage to induce Consumer 5 into purchasing the vehicle.

175. Barlow Motors contravened section 8 of the *Act* by engaging in the unfair practice described above.

8(1) No supplier shall commit an unfair practice.

(2) No employee, agent, salesperson or representative of the supplier shall commit an unfair practice.

176. Barlow Motors failed to disclose all material facts to the consumer and contravened the disclosure provisions in section 5-22 of the *Regulations*:

5-21(1) In this section, “**material fact**” means information that is known to the dealer or that the dealer should reasonably be expected to know that could reasonably be expected to influence a reasonable consumer’s decision to buy or lease, or refuse to buy or lease, a vehicle from the dealer...

(2) Every dealer must disclose in writing the following to the prospective purchaser or lessee before the contract of sale or lease is entered into by the purchaser or lessee:

(a) all material facts, as known by the dealer or that the dealer should reasonably be expected to know at the time the vehicle contract is entered into;

177. Barlow Motors was responsible for taking all reasonable steps in order to know and understand the vehicles history so that a reasonable consumer could make an informed decision.

178. In this case, the fact vehicle was in an accident was disclosed and an SGI mechanical inspection was provided. However, providing assurances that \$9000.00 in damage to a Toyota is a fender bender and obtaining a history report or reports does not replace the importance of a thorough vehicle inspection. There may be circumstances where previous accident damage is not disclosed in an accident report and the information is not available on a history report available to the public. If a vehicle has been in an accident, a body integrity inspection should be done along with the mechanical safety. Dealers are reasonably expected to know the material facts about body integrity for vehicles that have been in accidents particularly for a vehicle that had \$9000.00 in repairs.

179. Dealers and salespeople have more resources, knowledge and experience than the consumer does in determining the facts about a vehicle. Dealers and salespeople have an obligation to disclose all "material facts" about the vehicle, even if the Consumer does not ask.

180. A material fact is information that a dealer is reasonably expected to know that could reasonably be expected to influence a reasonable Consumer's decision to purchase or lease the vehicle if he or she knew about it.

181. Consumer 5 was concerned about the extend of the damage to the vehicle before she bought it, not just that the vehicle had been in an accident.

182. In this case Barlow Motors failed to disclose material facts by not disclosing the extent of the damage to the vehicle including its body integrity. Barlow Motors contravened section 5-21 of the *Regulations*.

183. Barlow Motors failed to disclose that the vehicle was non-roadworthy at the time of sale given the vehicle was in an accident. Barlow Motors contravened Section 5-20 (2) and (3) the *Regulations*.

5-20(2) No dealer shall sell or lease to a consumer a vehicle that is not equipped as required by section 114 of The Traffic Safety Act unless:

(a) the dealer has identified on the vehicle contract that the vehicle is not equipped as required by that section; and

(b) the consumer has acknowledged in writing that he or she does not intend to drive the vehicle on a highway until the vehicle is equipped as required by that Act

(3) No dealer shall sell a used vehicle to a consumer unless the dealer has provided information with respect to the availability of and information that can be obtained from a search of other jurisdictions, including jurisdictions outside Canada, for vehicle damage information.

184. Section 114 of *The Traffic Safety Act* states:

114. No person engaged in the business of buying, selling or exchanging vehicles shall sell or give in exchange a vehicle that the person to whom it is sold or given intends to drive on a highway if the vehicle is not equipped in accordance with this Act and regulations.

185. Based on the information provided by Consumer 5, Barlow Motors did not provide Consumer 5 with information about how she could obtain damage information about the extent of the accident and the inspection conducted to ensure the vehicle was road worthy.

186. It is prohibited to sell a non-roadworthy vehicle to a consumer without disclosing and listing the specific defects and the consumer acknowledges in writing that they will not drive it on the highway until meets the minimum safety requirement. Barlow Motors contravened 5-20 of the *Regulations*.

187. Barlow Motors contravened the vehicle contract requirements in section 5-25 of the *Regulations*:

5-25(1) On the sale or lease of a vehicle, the dealer must complete a form of vehicle contract that meets the requirements of this section and that has been filed with the director pursuant to section 5-13.

(2) Each vehicle contract must contain, at a minimum:

(a) the names and addresses of the purchaser or lessee and the dealer;

188. The bill of sale presented and executed by Consumer 5 does not match The bill of sale filed with the Director for use under 5-13 of the *Regulations*. The bill of sale listed the seller as 1565950 Alberta Limited. The bill of sale filed with the Director for use identifies the dealer as 1973566 Alberta Limited d/b/a Barlow Motors Saskatoon. Barlow Motors contravened section 5-25(1) and 25(2)(a) of the *Regulations*.

189. Barlow Motors contravened the filing of vehicle contract requirements in section 5-13 of the *Regulations*:

**5-13(1)** Every dealer shall file with the director two copies of each form of contract for sale, lease or consignment that he or she uses or proposes to use when entering into an agreement with a consumer.

(2) No dealer shall use a form of contract for sale, lease or consignment unless

(a) the form of contract complies with section 5-25 or 5-27, as the case may be;  
and

(b) a copy of the form of contract has been returned to him or her bearing an endorsement by the director to the effect that the form has been accepted for filing.

190. Barlow Motors used a form of contract other than the contract filed for approval by the directory contrary to section 5-13(2) of the *Regulations*.

191. In light of the contraventions of the *Act* and *Regulations* outlined above, I demand forfeiture of the security filed by Barlow Motors with respect to its dealings with Consumer 5.

**Materials and Information Relied Upon:**

192. Proposed Notice of Forfeiture;

193. Disclosure Materials; and

194. Written submissions received by the Deputy Director pursuant to the Proposed Notice of Forfeiture.

**Applicable Acts and Regulations:**

195. *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2, ss 2(b), 2(e), 2(h), 2(j) 6-9, 16, 19, 28, 59.

196. *The Consumer Protection and Business Practices Regulations*, SR 2013, c C-30.2 Reg 1, ss 5-1, 5-7, 5-13, 5-20, 5-21, 5-22, 5-24, 5-25, 5-27, 5-29.

197. *The Traffic Safety Act* c. T-18.1, ss 114.

**Appeal Information**

198. If you are directly affected by my decision you may appeal to the court. Section 85 of the Act provides as follows:

85(1) Any person who is directly affected by an order or decision of the director pursuant to this Act may appeal the order or decision to the court.

(2) An appeal must be made within 20 business days after a decision or order of the director.

(3) An appellant shall serve a notice of appeal on the director and any other person that the court may order.

199. Please see the Act for further details If you wish to appeal.

DATED at Regina, Saskatchewan, this 27<sup>th</sup> day of May 2021.



Denny Huyghebaert  
Deputy Director under the *Consumer Protection and Business Practices Act*