

IN THE MATTER OF
THE CONSUMER PROTECTION AND BUSINESS PRACTICES ACT, SS 2013, c C-30.2
AND
MACNEIL MOTORS INC.
DECISION AND DEMAND FOR FORFEITURE OF FINANCIAL SECURITY

Introduction

1. This is a Demand for Forfeiture of Financial Security ("Demand") made in respect to the financial security filed by MacNeil Motors Inc. ("MacNeil Motors") in the amount of \$100,000 pursuant to section 59 of *The Consumer Protection and Business Practices Act, SS 2013, c C-30.2 [Act]*.

2. Subsection 5-1(2)(d)(i) of *The Consumer Protection and Business Practices Regulations, SS 2013, c C-30.2, Reg 1 [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*.

3. The Deputy Director appointed pursuant to subsection 77(1) of the *Act* may exercise the powers and responsibilities of the director under the *Act* and *Regulations*. (ss 2-1 and 2-36 of *The Legislation Act SS 2019, c-L10.2*).

4. An investigation was conducted in respect to various complaints that MacNeil Motors sold numerous vehicles to consumers and did not pay the outstanding loans on vehicles sold or taken on trade.

5. For the reasons below, which are largely based on the information in the disclosure materials and supplemental disclosure materials (collectively the "Disclosure Materials"), the Proposed Notice

of Forfeiture, and the written responses, I am satisfied, in my capacity as Deputy Director, that MacNeil Motors contravened various sections of the *Act* and *Regulations* in its dealings with the following consumers:

- I. Consumer 1
- II. Consumer 2
- III. Consumer 3
- IV. Consumer 4 / Consumer 5
- V. Consumer 6
- VI. Consumer 7
- VII. Consumer 8 / Consumer 9

(collectively, the "Consumers")

6. In this decision, I am not deciding how moneys realized from the bond will be paid pursuant to subsection 5-1(6) of the *Regulations*. Instead, my concern is whether MacNeil Motors contravened the *Act* such that I have the authority to demand that its bond be forfeited.

7. Before making a decision, I provided Federated Insurance Company of Canada ("Federated") and MacNeil Motors with a Notice of Proposed Demand for Forfeiture of Financial Security ("Proposed Notice of Forfeiture") along with the Disclosure Materials. I also provided Federated and MacNeil Motors with an opportunity to make written submissions with respect to whether I should demand forfeiture of MacNeil Motors's bond. I received written responses from Federated, Jeff MacNeil on behalf of MacNeil Motors, and Dealer Representative 1 on behalf of Jeff MacNeil and Brenon MacNeil. (the "written responses"). Jeff and Brenon MacNeil were directors and officers of MacNeil Motors.

8. MacNeil Motors's response to the consumers' complaints as set out in the Proposed Notice of Forfeiture as well as in the Disclosure Materials contained an update of the status of the outstanding loans on vehicles sold or taken on trade. Additionally, MacNeil outlined further efforts it made to payout the outstanding loans and resolve the claims. MacNeil Motors's representations did not challenge the merits of the grounds in the Proposed Notice of Forfeiture that support the Demand.

9. Federated responded to the Proposed Notice of Forfeiture and Disclosure Materials by email March 30, 2021 and attached the surety bond change endorsement, cancellation notices, and Canada Post Registration Receipt. Federated stated in its email that “At this time Federated takes the position that the bond was cancelled effective October 26, 2019”. This was the extent of Federated’s response.

10. Federated did not provide any written submissions in direct response to any of the contraventions set out in the Proposed Notice of Forfeiture that support the Demand.

Background

11. On October 8, 2009, a penal bond with policy number 0101902.3 that was dated effective October 1, 2009 (the “Penal Bond”) was provided to the then Registrar of Motor Vehicles in the amount of \$20,000 as a condition of MacNeil Motors’s licence application as a motor dealer under the *Motor Dealer Act*. Notwithstanding the enactment of the *Act* and repeal of the *Motor Dealers Act*, the obligations under the penal bond remain in effect and continued and can be enforced and otherwise dealt with pursuant to the *Act* as if the requirement or obligation had been made pursuant to the *Act* (*Act* subsection 123(3)).

12. On December 28, 2016, pursuant to section 59 of the *Act*, the Deputy Director required, and MacNeil Motors filed, financial security in the amount of \$100,000 to carry on business under its licence as a vehicle dealer.

13. Federated provided a copy of a surety bond change endorsement in its March 30, 2021 email showing the Penal bond was amended to read \$100,000 effective January 12, 2017. The bond change endorsement was processed January 24, 2017.

14. MacNeil Motors held a licence as a dealer under the *Act* and *Regulations* until December 6, 2019. MacNeil Motors was authorized under its licence to carry on the business of a dealership selling vehicles.

15. MacNeil Motors was also a supplier who carried on the business of selling goods and services on a retail basis under subsection 2(j) of the *Act*.

16. MacNeil Motors carried on business as a supplier and a licensed vehicle dealer with respect to its dealings with consumers.

17. Consumers are individuals who participate in transactions with suppliers involving goods and services ordinarily used or provided for personal, family or household purposes (*Act*, ss 2(b), 2(e) and 2(h)) Consumers are also persons who buy, lease, or otherwise acquire a vehicle from a licensed dealer (*Regulations*, s 5-7(d)).

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

Issues

19. Federated took the position the bond was cancelled. That said, Federated's written response did not explain why I cannot demand forfeiture of the security filed by MacNeil Motors under the *Act* and *Regulations* or under the terms of the bond. No submissions were filed that fleshed out the bare assertion that the bond was cancelled. It is therefore not clear what Federated's reasoning is, nor what legal authority Federated is relying on in support of its position. In any event, taken at its highest, Federated's position seems to imply that because Federated gave notice that it would cancel the bond, and because the bond was ultimately cancelled before Federated received the Notice of Demand for Forfeiture, this Demand cannot be made.

20. With this in mind, I will address the following issues in this decision:

- I. Do I have the authority to demand forfeiture of the security filed by MacNeil Motors in the present circumstances where the bond was cancelled prior to the Notice of Demand for Forfeiture being made?
- II. If yes, did MacNeil Motors contravene the *Act* or the *Regulations* in its dealings with Consumers such that a demand for forfeiture can be made?

Analysis

Can I demand Forfeiture of Security?

21. Whether I can demand forfeiture of the bond depends on my authority under the *Act* and *Regulations* and the terms of the financial security or bond filed by MacNeil Motors.

22. Pursuant to section 59 of the *Act* and subsection 5-1(2)(d)(i) of the *Regulations*, I have authority to demand that financial security in the form of a bond that has been filed when there have been contraventions of the *Act* or *Regulations*.

23. The *Act* and *Regulations* do not specify when I must decide whether there was a contravention. In my view, I can make that determination before or after the bond is cancelled subject to the terms of the security.

24. In reviewing the terms of the bond filed by MacNeil Motors, those terms state that the obligations under the bond remain in effect for 27 calendar months following the registrar's receipt of a notice to cancel the bond.

25. Federated states that the penal bond was cancelled on October 26, 2019 and implies that I cannot make my demand for the bond to be forfeited. This position is based on the contents of email dated March 30, 2021 and an attached document titled "Cancellation at Request of Insured" that was addressed to MacNeil Motors. The cancellation document attached to the email states it was prepared on July 16, 2020. The attachment included another "Cancellation at the Request of the Insured" addressed to the Department of Justice Consumer Protection Branch with respect to the Penal Bond (the "CPD Notice") which was also prepared on July 16, 2020. The CPD Notice stated the cancellation date was effective January 29, 2020. The CPD Notice cancellation date is 3 calendar months and 3 days after October 26, 2019.

26. One possible explanation for why there is a difference in the two cancellation dates is the CPD Notice "cancellation date" may well be an estimate of when the actual notice of intent to cancel was expected to be received by the registrar. In its email, Federated also attached a copy of a Canada Post registered receipt addressed to the Department of Justice stamped "received Nov 6 2019". Federated

appears to be of the view this is the date the notice of cancellation was received by the Saskatchewan Department of Justice.

27. In any event, and with all due respect to Federated's position, it is not the date the bond is "cancelled" that determines whether I can make a demand under the legislation and in consideration of the terms of the bond. As I will explain below, under the terms of the bond, the date the notice of intention to cancel is received by the then registrar starts ticking the clock on the 27-month period the obligations under the bond will remain in effect.

28. According to the terms of the penal bond, the obligation to pay the proceeds of the bond to Her Majesty the Queen in right of Saskatchewan is subject to forfeiture under the provisions of the former *Motor Dealers Act* and, for the reasons mentioned previously, now the *Act*.

"NOW THE CONDITION of the above obligation is such that if the said obligation does not by reason of any act, matter or thing at any time hereafter become or be forfeit under the Motor Dealers Act, then the said obligation shall be void, but otherwise shall be and remain in full force and effect and shall be subject to forfeiture as provided by the said Act."

29. Any obligation under the bond shall cease and determine twenty-seven calendar months after the then registrar, now the deputy director, received notice in writing of the Surety's intention to terminate the obligation. The terms specifically state the following:

"PROVIDED that if the Principal or Surety at any time gives notice in writing to the Registrar of The Motor Dealers Act of intention to terminate the obligation hereby undertaken then this obligation shall cease and determine in respect only of any act, matter or thing taking place, arising or done subsequent to twenty-seven calendar months after receipt by the Registrar of such notice."

30. As noted above, the obligation shall cease and determine in respect of any act, matter or thing taking place, arising or done subsequent to 27 calendar months after receipt of such notice. The obligation however remains for any act, matter or thing taking place, arising or done (including

compliance with my demand regarding contraventions that have occurred) up to 27 calendar months after the registrar receives notice of intention to cancel.

31. The terms of the bond also make expressly clear that a claim under the bond with respect to any act, matter or thing taking place needs to be made before the expiration of the 27 calendar months after the receipt of notice of intention to terminate.

“PROVIDED FURTHER that if such notice has been given, any claim hereunder shall be made on the Surety before the expiration of the aforesaid twenty seven months.”

32. In addition, the terms state that no proceeds of the bond are to be paid with respect to contracts entered into 3 calendar months or more after the receipt of the notice.

“AND PROVIDED FURTHER that no proceeds of this bond shall be paid to any person in respect of a contract entered three calendar months or more after receipt by the Registrar of any such notice.”

33. In other words, the proceeds of the bond can be paid to a person in respect of contracts entered into up to three calendar months after receipt of any notice of cancellation. Three calendar months after receipt of notice of cancellation is on or about February 6, 2020.

34. Contrary to Federated’s apparent position, the bond does not state that the Deputy Director must demand forfeiture of the bond before it is cancelled or within three months of notice of intent to cancel was received by the then registrar. Instead, it makes clear that a claim under the bond, which would include this demand for forfeiture under the *Act* and *Regulations*, may be made up to 27 months after notice has been given. This demand is made well within that timeline.

35. My demand is made under the *Act* and *Regulations* based on contraventions of the *Act* and *Regulations* by MacNeil Motors with respect to its dealings with consumers on matters that arose before February 6, 2020 and with respect to contracts entered into before February 6, 2020.

36. As noted above, the Canada Post registered receipt addressed to the Department of Justice was stamped “received Nov 6 2019”. According to the terms of the bond, the obligation would cease and determine 27 calendar months later, on or about February 6, 2022. Even if notice of cancellation was received by the registrar as early as October 26, 2019, 27 calendar months from the that date is January 26, 2022. Again, this demand is being made well within the 27-month timeline.

37. It is for these reasons I may demand forfeiture under the terms of the bond regardless of whether Federated cancelled the bond October 26, 2019 or January 29, 2020 under the CPD notice. The obligations under the bond continued and continue to this day.

38. In reaching my decision on this issue, I also considered whether the decision in *R v. Western Surety Co.* [1982] SJ No 688 (QL) [*Western Surety*] might be the basis for Federated’s position.

39. In this case, the Court considered whether a demand for forfeiture was valid in a situation involving *The Direct Sellers Act*, RSS 1978, c D-28 [*Direct Sellers Act*] and a court decision being rendered against the principal. The registrar under to the *Direct Sellers Act* demanded forfeiture of a bond because a judgment of a court had been rendered against the principal, but that judgment had only been rendered after the bond had been cancelled. The Court held that the demand was not valid because the judgement, which was a necessary condition for forfeiture according to the *Direct Sellers Act*, was issued after the bond was cancelled. In the words of the Court:

“The agreed facts and the exhibits... indicate that the **bond** terminated, at the very latest, on the 18th day of December, 1979, almost a year before judgment was given against Arpo Industries Ltd.”

“There is no doubt that the Registrar under The Direct Sellers Act applied s. 19(3)(b) to forfeit the bond, and I am of the view that the necessary condition giving rise to forfeiture had not occurred *while the bond was in full force and effect*, and accordingly the application by way of originating notice is dismissed with costs to the defendant.”

[emphasis added]

40. In my respectful view, the present case is distinguishable from *Western Surety* for several reasons. Firstly, the legislative provisions of the *Direct Sellers Act* that were at issue in *Western Surety* are different from the legislative provisions I am making my demand under pursuant to the

Act. The operative provision of the *Direct Sellers Act* at issue in *Western Surety* reads:

19 (3) Every bond delivered under subsection (1) shall be forfeited upon demand of the registrar where:

(b) judgment in respect of a claim arising out of a direct sales contract has been given against the person in respect of whose conduct the bond is conditioned or against any representative, agent or salesman of that person;

41. *Western Surety* held that a trigger of this provision is contingent upon a judgment existing at a time when the bond is still in full force and effect. The present case is not based on a judgment existing at all, but instead on the existence of contraventions occurring at a time the bond was in full force and effect. In addition, and as explained already above, my Demand is being made at time when the bond is still in full force and effect as we are still operating within the 27-month window after the notice of cancellation of the bond was provided.

42. Moreover, I emphasize that the actual provisions of the bond in the present case are substantially different from the wording of the bond in *Western Surety*. As set out by the Court in respect to the bond in *Western Surety*:

“PROVIDED that if the said Principal or Surety at any times gives three calendar months' notice in writing to the Registrar of Companies of intention to terminate the obligation hereby undertaken then this obligation shall cease and determine in respect only of any act, matter or thing taking place, arising or done subsequent to the date named in the notice of termination of the obligation hereby undertaken but shall remain in full force and effect in respect of all acts, matters and things taking place, arising or done from the date hereof to the date of such termination. Notice of any claim hereunder shall be made upon the Surety within two years following the date of termination as herein provided”.

43. The terms of this bond state that once a notice of cancellation is provided, the obligations under the bond only remain in full force and effect up to the date of termination. While notice of any claim could be provided up to two years following the termination date, the obligations cease as of the date of termination.

44. In the present circumstances, however, terms of the bond are different in a key way. The terms state that the obligations under the bond only cease and determine after 27 calendar

months from the date of notice of intention to terminate is received by the director. Put another way, the obligations under the bond remain in full force and effect for 27 months after notice of termination of the bond is received from the director. Unlike *Western Surety*, the obligations under the bond in the present case do not cease and determine on the termination date.

45. Accordingly, it is my view that I have authority under the *Act* and *Regulations* to demand forfeiture of the financial security according to the terms of the bond filed by MacNeil Motors. The fact that notice of cancellation has been provided in this case is of no consequence as we remain within the 27-month window set out in the bond, and the obligations of under the bond therefore remain in full force and effect.

Did MacNeil Motors Contravene the Act or Regulations?

46. In my view, MacNeil Motors committed unfair practices contrary to the *Act* and contravened the vehicle contract requirements in the *Regulations* with respect to the its dealings with the Consumers.

47. The unfair practices provisions are found in Part II, Division 2 of the *Act*.

48. Section 6 of the *Act* broadly sets out various things that can constitute an unfair practice committed by a supplier. The provision reads:

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;

49. Subsections 8(1) and (2) prohibit suppliers and any employee, agent, salesperson, or representative of the supplier from committing unfair practices. Subsection 8(4) states that the general impression given by the unfair practice is to be considered when deciding whether an unfair practice has occurred. In addition, subsection 8(5) states that when deciding if a person

committed an unfair practice, the decision maker must consider the reasonableness of the person's actions.

50. Section 9 makes it abundantly clear an unfair practice can occur at any time either 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.

51. The unfair practices arise from MacNeil Motors's failure to pay out pre-existing loans on vehicles sold or traded occurred after contracts were signed by the Consumers.

52. The vehicle contract requirements contravened by MacNeil Motors are found in section 5-25 of the *Regulations*. Subsection 5-25(2) requires a contract include details of a trade-in and any outstanding security.

5-25...

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

j) details of trade-in or exchange, if any, including the amount of any outstanding security relating to the trade-in or exchange.

53. Subsection 5-25(7) required MacNeil Motors provide a copy of the contract immediately after it was signed.

5-25...

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

(b) the purchaser or lease receives a copy of the contract immediately after signing it.

54. I will now explain how MacNeil Motors contravened the *Act* and *Regulations* with respect to each of the Consumers.

Consumer 1

55. 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 that MacNeil Motors did not pay out the lien on a vehicle he traded in.

56. Consumer 1 purchased a 2018 Chevrolet Equinox ("Equinox") on or about June 20, 2019, from MacNeil Motors and financed the purchase through Carfinco Inc. ("Carfinco"). He purchased the Equinox as a personal use family vehicle. He traded in his 2016 Hyundai Santa Fe Sport ("Santa Fe") when he purchased the Equinox. He bought the Santa Fe from Village Auto Sales in 2016 and financed it through Credit Max Financial and Leasing Inc. ("Credit Maxx"). At the time of the Equinox purchase, Consumer 1 still owed money on the Santa Fe.

57. Within two weeks of the transaction, Consumer 1 discovered the Santa Fe's semi-monthly payments were still coming out of his account. He contacted Credit Maxx who told him MacNeil Motors had not paid out the Santa Fe lien.

58. Consumer 1 contacted MacNeil Motors to ask why the Santa Fe's payments continued to be withdrawn from his account. MacNeil Motors told him that it had not yet received funds from the new lender, Carfinco, to pay out the lien.

59. Consumer 1 followed up with Carfinco who confirmed that it did in fact send the funds to MacNeil Motors for the Equinox purchase.

60. Consumer 1 said when he spoke to MacNeil Motors, he was reimbursed his bi-monthly payment for the Santa Fe loan from Credit Maxx up until December 3, 2019, when the payments stopped.

61. The Equinox bill of sale (the "BOS") did not describe the trade-in or lien disclosure. It's blank in this regard. However, two line items on the Equinox BOS show a trade-in as part of the transaction: "trade-in amount of \$31,000" and a "payout lien on trade-in amount of \$33,000".

62. The information provided in addition to Consumer 1's complaint shows he owned a Santa Fe

and traded it in on the purchase of the Equinox. Consumer 1 provided a copy of a bill of sale showing he bought a 2016 Santa Fe Sport VIN 5XYZUDLXXXXXX (Santa Fe) from Village Auto Sales on May 22, 2018. A Credit Maxx letter addressed to Consumer 1 shows that Credit Maxx had a lien against the Santa Fe with a payout balance of \$31,427.19 due as of December 6, 2019.

63. In addition, Carfinco, the company that financed the Equinox, confirmed in a letter to Consumer 1 dated October 21, 2019 that it had paid out funds to MacNeil Motors because the "... Dealership had agreed to a lien payout of \$33,000 to Credit Max Financing and Leasing Inc." The Carfinco conditional sales contract signed by Consumer 1 references a trade-in allowance of \$33,000. I am satisfied on the basis of this information that Credit Maxx had a lien on the Santa Fe.

64. A search of the SGI Vehicle and Driver database shows that MacNeil Motors sold a Santa Fe Sport with the same vehicle identification number ("VIN") listed above to another customer in August of 2019, shortly after Consumer 1 purchased the Equinox. CPD obtained a copy of a MacNeil Motors's bill of sale contract showing that this sale took place in August of 2019.

65. In the course of CPD's investigation into MacNeil Motors's activities, a CPD investigator contacted MacNeil Motors about several complaints that were received. MacNeil Motors acknowledged it was required to pay out the liens and indicated that it already made some payments made to Consumer 1. In addition, MacNeil Motors indicated it would arrange to pay out the outstanding liens. Consumer 1 says MacNeil Motors reimbursed him for payments on the Santa Fe loan up to December 3, 2019.

66. In my view, Consumer 1 traded in the Santa Fe when he purchased the Equinox. This is substantiated by the information and evidence noted above, including Consumer 1's prior ownership of the Santa Fe; MacNeil Motor's sale of the Santa Fe to another consumer; MacNeil Motors's acknowledgment of the lien; MacNeil Motor's payments to Consumer 1 and MacNeil Motors's assurances to CPD that it would pay out the liens.

67. In addition, it has been substantiated that MacNeil Motors did not pay out the lien on the Santa Fe despite receiving funds from Carfinco to do exactly this. The Credit Maxx letter addressed to Consumer 1 sets out a payout of \$31,427.19 owing as of December 6, 2019 to remove the lien against the Santa Fe. Carfinco confirmed in its October 21, 2019 letter, that it paid funds to MacNeil Motors

on July 4, 2019. MacNeil Motors's payments to Consumer 1 and acknowledgement of the outstanding lien in its written responses confirm the lien was not paid.

68. In its response to the Proposed Notice of Forfeiture dated March 26, 2021, MacNeil Motors indicated that it is still in contact with Consumer 1 and is making payments every 2 weeks, with the last payment being made on March 26, 2021. MacNeil Motors claims that the outstanding balance is approximately \$25,000. On May 6, 2021, CPD received further correspondence from Dealer Representative 1 on behalf of Jeff MacNeil, Brenon MacNeil, and MacNeil Motors. In this correspondence, the writer indicates that Jeff and Brenon MacNeil are in contact with Consumer 1 twice a month and are making payments regularly. The writer further stated that the balance owing on the 2016 Santa Fe as of the end of April 2021 was \$25,256, and that they (Jeff and Brenon MacNeil) are making payments of \$380.10 on the 15th and the 30th of every month.

69. In summary, I find Consumer 1 traded in the Santa Fe to purchase the Equinox, and MacNeil Motors did not pay out the lien against the Santa Fe despite receiving funds to do so. While MacNeil Motors claims it continues to make Consumer 1's monthly payments on the Santa Fe, it remains a fact that the Santa Fe lien was to be paid out as a part of the transaction, MacNeil Motors received the funds to pay out the lien as a part of the transaction, but ultimately did not pay out the lien as required.

Contraventions of the Act and Regulations

70. In my view, MacNeil Motors contravened section 8 of the *Act* and the vehicle contract requirements in the *Regulations* in its dealings with Consumer 1.

71. MacNeil Motors, as a supplier, committed unfair practices under section 6 of the *Act* when it failed to pay out the loan and remove the lien against the Santa Fe. Consumer 1 complained to CPD because he believed the Santa Fe lien would be paid out when he bought the Equinox. It is evident from his complaint that he believed he would no longer be responsible for a loan on the trade-in, a vehicle he no longer owned. The line items on the Equinox BOS and the Carfinco Conditional Sales Contract referring to lien payout on the trade-in corroborate his stated belief. A review of the relevant Disclosure Materials show Consumer 1's belief was a reasonable one.

72. MacNeil Motors reimbursed Consumer 1 for the payments on the Santa Fe loan because it

failed to pay out the lien as required. While MacNeil Motors may have made payments, I do not believe its conduct overall was reasonable. It should have paid out the lien when it received the funds from Carfinco for this express purpose.

73. In the end, I find that MacNeil Motors's promise that it would pay out the lien on the Santa Fe and its corresponding failure to do so was both misleading and a false claim. It was an unfair practice contrary to subsection 8(1) of the *Act*.

74. It is also my view that MacNeil Motors contravened the vehicle contract requirements in subsection 5-25(2)(j). As noted above, MacNeil Motors left the trade in description and lien disclosure field in the Equinox BOS blank. It did not include details describing the trade-in or outstanding lien as required. As such, I find MacNeil Motors contravened subsection 5-25(2)(j) of the *Regulations*.

75. In light of the above, I am satisfied that MacNeil Motors has contravened the *Act* and *Regulations* with respect to its dealings with Consumer 1.

Consumer 2

76. Consumer 2 filed a complaint with CPD describing his concern that he was misled because MacNeil Motors did not pay out a pre-existing Royal Bank of Canada ("RBC") loan on a vehicle he refinanced.

77. Consumer 2 indicates he purchased a 2016 Kia Sedona ("Sedona") from MacNeil Motors in 2017. MacNeil Motors arranged the loan for the Sedona through RBC. He purchased the Sedona as a personal use family vehicle.

78. Consumer 2 was approached by MacNeil Motors in July 2019 and was asked to refinance the loan to get a better interest rate. He agreed and attended MacNeil Motors to sign paperwork. He was told the second lender was the Canadian Imperial Bank of Commerce ("CIBC") and that MacNeil Motors would get the funds from CIBC to pay out the existing RBC loan. MacNeil Motors's representative indicated that MacNeil Motors would arrange the payout for the RBC loan and that he would receive the paperwork the next week. However, he never received the paperwork he signed

from MacNeil Motors.

79. In August 2019, Consumer 2 noticed that both lenders were taking payments on the loans out of his account. He contacted MacNeil Motors to ask them to pay out RBC and MacNeil Motors indicated they would. By October 2019, the RBC loan was still not paid and both lenders had continued to withdraw payments. Consumer 2 checked with RBC and confirmed the prior lien was not paid out.

80. After a period of silence, MacNeil Motors eventually contacted Consumer 2 and continued to promise to pay the RBC loan. Consumer 2 provided copies of e-transfer confirmations showing that MacNeil Motors did reimburse him for a number of the RBC payments that were withdrawn from his account.

81. In addition to Consumer 2's statement, the Disclosure Materials show he purchased the Sedona from MacNeil Motors and financed the purchase through RBC. The MacNeil Motors bill of sale shows he bought a Sedona from MacNeil Motors on August 26, 2017. A Fixed-Rate Conditional Sales contract shows Consumer 2 received financing from RBC to purchase the Sedona for \$42,732.75 on August 26, 2017. The bi-weekly payments stated in this document are \$211.70. The contract amount matches the withdrawals from Consumer 2's account

82. The second BOS dated July 25, 2019, indicates that the same Sedona (same VIN as the earlier BOS) was sold by MacNeil Motors to Consumer 2, for the purchase price of \$28,995.00. Consumer 2 is unclear how MacNeil Motors purports to have sold him a vehicle he already owned. He says MacNeil Motors misled him when they said they would refinance the vehicle and payout the RBC lien from the CIBC loan proceeds.

83. The second BOS has no indication that any prior loan on the vehicle existed. The BOS has no reference to trade-in and no "payout lien on trade-in". A Conditional Sales Contract on CIBC letterhead shows Consumer 2 received financing from CIBC to purchase the Sedona from MacNeil Motors for \$30,081.25 on July 25, 2019. This contract makes no mention of a trade-in. The bi-weekly payments stated in this document are \$193.97. The contract amount matches the withdrawals from Consumer 2's account.

84. Consumer 2 provided banking records evidencing the RBC loan for the Sedona's initial

purchase. The records show that this loan was not paid out as of November 2019. A PPSA search revealed that RBC and CIBC both registered liens against the Sedona. Consumer 2 also provided banking records for August - December 2019 showing continuous bi-weekly withdrawals of \$193.97 (which he says are for the CIBC loan) and \$211.70 (which he says are for the RBC loan).

85. CPD contacted MacNeil Motors about Consumer 2's complaint. MacNeil Motors represented it had addressed specific consumer complaints, including Consumer 2's, and indicated it would arrange to pay out the outstanding lien. MacNeil Motors did reimburse Consumer 2 for some payments for the RBC loan up to December 5, 2019, as shown through the e-transfers.

86. Consumer 2 confirmed he receives payments of \$193.77 every 2 weeks from MacNeil Motors. MacNeil Motors in its response to CPD dated March 26, 2021 indicated that they are in contact with Consumer 2 and are making payments every 2 weeks, with the last payment being made on March 26, 2021. MacNeil claims that the outstanding balance is approximately \$25,000.

87. On May 6, 2021, CPD received further correspondence from Dealer Representative 1, on behalf of Jeff MacNeil, Brenon MacNeil and MacNeil Motors. In this correspondence, the writer indicated that Jeff and Brenon MacNeil are in contact with Consumer 2 and make payments of \$193.77 every 2 weeks. The writer further stated that the balance as of the end of April 2021 was \$24,210 owing on the 2016 Sedona.

88. After considering all of the information and evidence noted above I find there are two liens registered against the Sedona and the RBC loan has not been paid out. Consumer 2's concern about MacNeil Motors's failure to pay out the RBC lien is substantiated by the CIBC conditional sales agreement, Consumer 2's banking records, the PPSA search, and the fact that MacNeil Motors made payment to reimburse Consumer 2 for RBC loan payments. Further, MacNeil Motors acknowledged the outstanding lien in its written responses, which confirms the RBC lien has not been paid.

89. I also find that MacNeil Motors used the second BOS to obtain the second loan from CIBC, and then did not pay out the RBC loan as promised.

Contraventions of the Act and Regulations

90. As outlined below, MacNeil Motors committed unfair practices, contravened the provisions of the *Act* and contravened the vehicle contract requirements in the *Regulations* in its dealings with Consumer 2.

91. MacNeil Motors, as a supplier, committed unfair practices under section 6 of the *Act* when it failed to pay out the loan and remove the RBC lien against the Sedona. Consumer 2 complained to CPD because he was misled and believed MacNeil Motors's promise that the RBC loan would be paid out. Based on MacNeil Motors's representations, Consumer 2 believed he would no longer be responsible for payments on the RBC loan when he refinanced, yet he was made responsible for payments on two loans on the same vehicle because MacNeil failed to pay out the RBC lien.

92. MacNeil Motors acknowledges it did not pay out the loan and it claims it reimbursed Consumer 2 for payments on the loan up to March 26, 2021. While MacNeil Motors may have made payments, I do not believe its conduct overall was reasonable. It should have paid out the lien when it received the funds from CIBC for this express purpose.

93. I find that MacNeil Motors's promise that it would to pay out the lien and its failure to do so was both misleading and a false claim and was an unfair practice contrary to subsection 8(1) of the *Act*.

94. MacNeil Motors also contravened the vehicle contract requirements in subsection 5-25(2)(j) of the *Regulations*.

95. The disclosure MacNeil Motors left the trade in the description and lien disclosure field in the second BOS blank. The line items for the trade-in allowance and the payout of lien on trade-in were also blank. It did not include details describing the trade-in or exchange and the amount of any outstanding security as required. As such, I find MacNeil Motors contravened the vehicle contract requirements in subsection 5-25(2)(j) of the *Regulations*.

96. MacNeil Motors contravened the requirement to provide a copy of the contract in clause 5-25(7)(b) of the *Regulations*. MacNeil Motors did not provide Consumer 2 with a copy of the contract immediately after signing it. Consumer 2 indicated he got a copy through an enforcement agency.

Accordingly, I find MacNeil Motors contravened subsection 5-25(7)(b) of the *Regulations*.

97. Based on the Disclosure materials and evidence and information discussed above, I am satisfied that MacNeil Motors has contravened the *Act* and *Regulations* with respect to its dealings with Consumer 2.

Consumer 3

98. Consumer 3 filed a claim with CPD describing her concern she was paying two loans, not one, on a vehicle she bought from MacNeil Motors.

99. Consumer 3 indicates she purchased a 2013 Jeep Wrangler (“Jeep”) on April 29, 2017, from MacNeil Motors and also stated MacNeil Motors arranged the loan for the purchase through RBC. She began making bi-weekly payments of \$288.88 in May 2017. She purchased the Jeep for personal use.

100. Consumer 3 states that in July 2019, she contacted MacNeil Motors about having her loan co-signer removed off the loan. She attended MacNeil Motors in August 2019 and signed a new contract in just her name. She was told that MacNeil Motors had switched banks for the financing from RBC to CIBC and that MacNeil Motors had new documents for her to sign, but that this would not affect her loan at all.

101. On August 30, 2019, the new payment to CIBC came out of her account in the amount of \$256.38. On September 4, 2019, her RBC payment then also came out.

102. She attempted to contact MacNeil Motors but got no response. In September, two payments came out of her account. She eventually got a hold of MacNeil Motors and it indicated it would reimburse her for the double payments.

103. The double payments continue to come out of Consumer 3's accounts and MacNeil Motors did provide some reimbursements through e-transfers in October and November 2019. She received assurances from MacNeil Motors that it would pay off the original RBC loan.

104. Consumer 3 also spoke with CIBC. The bank representatives advised it had paid the money for the Jeep to MacNeil Motors.

105. Consumer 3 did not believe she had taken out a second loan. She thought she had just removed the co-signor from her loan.

106. Consumer 3 provided additional information showing she had purchased the Jeep and financed it through RBC. The MacNeil Motors BOS reflects that Consumer 3 purchased a 2013 Jeep Wrangler from MacNeil Motors on April 29, 2017. The RBC Fixed Rate Conditional Sales Contract indicates Consumer 3 received financing from RBC for the purchase of a 2013 Jeep Wrangler in the amount of \$44,836.45 on April 29, 2017.

107. Consumer 3 also provided a second MacNeil Motors BOS, dated August 8, 2019, which indicates that the same Jeep (same VIN as the earlier BOS) was sold by MacNeil Motors to Consumer 3, for the purchase price of \$26,995.00. It was unclear to Consumer 3 how MacNeil Motors could have sold her a vehicle that she already owned. Consumer 3 believed she had been charged twice for the Jeep.

108. The second BOS has no trade-in listed in the 'trade-in description and lien disclosure' field; however, there was a "trade-in" and a "payout lien on trade-in" in the amount of \$26,000.00 listed.

109. There is also a Conditional Sales Contract on CIBC letterhead indicating that Consumer 3 received financing from CIBC to purchase the Jeep from MacNeil Motors in the amount of \$28,279.60 on August 8, 2019. The CIBC contract provides for a trade-in allowance of \$26,000. The bi-weekly payments stated in this document are \$256.38. This amount matches the withdrawals from Consumer 3's account records.

110. Consumer 3 provided a copy of her PPSA search dated October 29, 2019, showing two liens registered against the Jeep, one by CIBC and one by RBC.

111. In addition to her statement, Consumer 3 also provided confirmation from her bank, showing e-transfers received from MacNeil Motors on October 2, 2019, and November 28, 2019.

The e- transfers show that MacNeil Motors provided some reimbursement for the RBC loan payments.

112. MacNeil Motors in its response to the CPD dated March 26, 2021 indicated that it is in contact with Consumer 3 and continues to make payments every 2 weeks, with the last payment being made on March 26, 2021. MacNeil Motors claims that the outstanding balance is approximately \$15,800.

113. On May 6, 2021, CPD received further correspondence from Dealer Representative 1, on behalf of Jeff MacNeil, Brenon MacNeil and MacNeil Motors. In this correspondence the writer indicated that they are in contact with Consumer 3 and make payments of \$28.88 every 2 weeks (I believe this is a typographical error as the payment amount is \$256.38). The writer further stated that the balance as of the end of April 2021 was \$15,626 owing on the Jeep.

114. Consumer 3's concern about paying for two loans on the Jeep is, in my view, substantiated by Consumer 3's complaint, the bills of sale, the RBC and CIBC Conditional Sales Agreements, the PPSA search result, MacNeil Motors's reimbursement of loan payments, and MacNeil Motors's acknowledgement of the outstanding RBC loan.

115. In summary, I find MacNeil Motors took the Jeep in on trade, arranged for refinancing with CIBC, provided the second BOS to CIBC, received funds from CIBC which was supposed to be used to pay out the RBC loan, and then did not pay out the RBC loan.

Contraventions of the Act and Regulations

116. In my view, MacNeil Motors contravened the *Act* and *Regulations* in its dealings with Consumer 3. I will now address each contravention in turn.

117. MacNeil Motors, as a supplier, committed unfair practices under section 6 of the *Act* when it failed to pay out the loan and remove the RBC lien against the Jeep. Consumer 3 complained to CPD because she was misled and believed MacNeil Motors' that the transaction did not affect her loan at all. Consumer 3 did not agree to buy a vehicle she already owned, with two loan payments for the same vehicle. She wanted to remove the co-signer from her loan. She thought she was

charged twice for the Jeep. MacNeil Motors's promise to pay out the RBC lien is evident in the second BOS line item "payout on trade-in" and recorded as a trade in allowance in the CIBC Conditional Sales Contract.

118. MacNeil Motors acknowledged it did not payout the lien as required and it reimbursed Consumer 3 for some of the RBC loan payments. While MacNeil Motors may have made payments, I do not believe its conduct overall was reasonable. It should have paid out the lien when it received the funds to do so.

119. I find MacNeil Motors promise to pay out the RBC lien and its failure to do so was both misleading and a false claim. In the end, it was an unfair practice contrary to subsection 8(1) of the Act.

120. MacNeil Motors also contravened the vehicle contract requirements in subsection 5-25(2)(j) of the *Regulations*. MacNeil Motors left the trade in the description and lien disclosure field in the second BOS blank. It did not include details describing the trade-in or exchange as required. Accordingly, I find it contravened subsection 5-25(2)(j) of the *Regulations*.

121. I am satisfied that MacNeil Motors has contravened the *Act* and *Regulations* as described above with respect to its dealings with Consumer 3.

Consumer 4 / Consumer 5

122. Consumer 4 and Consumer 5 provided written complaints to CPD describing their concerns that MacNeil Motors did not pay out a National Bank loan on a vehicle traded in to purchase another vehicle.

123. Consumer 4 written statement indicates that on August 28, 2017, she signed onto a loan with her sister, Consumer 5, to purchase a 2017 Hyundai Accent ("Accent") from Car Max Canada Superstore for \$29,292.47. This purchase was financed through the National Bank.

124. A Conditional Sales Contract on National Bank letterhead dated August 28, 2017, indicates that the Consumer 4 and Consumer 5 received financing from National Bank to purchase the Accent from

Canada Car Shop Ltd. for \$29,253.22. Consumer 4 is listed as the buyer and Consumer 5 is listed as the co-buyer on this contract.

125. Consumer 5 states that on August 7, 2019, she traded the Accent for a 2017 Nissan Rogue ("Rogue") which was purchased through MacNeil Motors. Consumer 5 purchased the Rogue for personal use. This purchase was financed through Eden Park Inc. ("Eden Park"). At the time of the Rogue purchase, Consumer 5 still owed money on the Accent.

126. A BOS for the purchase of a Rogue from MacNeil Motors dated August 7, 2019, indicates a value of \$17,000.00 for a trade-in. The BOS listed the trade-in as a 2017 Hyundai Accent, and there was a \$22,000.00 charge for "payout lien on trade-in".

127. The Eden Park Consumer Financing contract shows a trade in allowance of \$17,000 and a lien payout on trade in of \$22,000.

128. A September 4, 2019 letter from National Bank indicated no payment had been made on Personal Loan #020585274378 since July 29, 2019. Through the letter, National Bank demanded payment of the loan.

129. Consumer 4 did not make any more payments to National Bank and National Bank continued to pursue Consumer 4 and Consumer 5 for payment. Eventually, the loan was sent to collections. Consumer 4 and Consumer 5 followed up with MacNeil Motors on several occasions and were told that MacNeil Motors would send the cheque to payout the loan.

130. According to Consumer 4, MacNeil Motors has not made any payments to National Bank. As of December 16, 2019, the National Bank loan balance was \$22,659.00.

131. A letter dated January 22, 2020, from Total Credit Recovery (B.C.) Limited addressed to Consumer 4 indicates that Total Credit Recovery Limited has been retained by Banque Nationale #1571- 3 to handle all communication and affairs relating to the repayment of this outstanding debt. The letter indicates a balance owing of \$22,668.10.

132. Consumer 5 provided information she states is from her credit report which shows that there

is an amount past due of \$22,659. The credit report shows the status of the loan as collections and the highest reported balance was \$29,292. The credit report also shows that the loan open date was September 8, 2017.

133. A search of the SGI Vehicle and Driver database shows Consumer 5 registered a 2017 Hyundai Accent (same VIN # as above) from September 2017 - August 2019. The SGI Vehicle and Driver database subsequently shows the Accent being registered by another consumer commencing on September 4, 2019.

134. A BOS dated September 3, 2019, shows the other consumer purchased a 2017 Hyundai Accent with the same VIN # from MacNeil Motors.

135. MacNeil Motors in its response to the CPD dated March 26, 2021 indicated that the Accent is in collections and that they have been reaching out to Kingston Data, the collection agency, to obtain a payout. They indicated they are also trying to confirm with the bank whether or not this lien was paid out in order for MacNeil Motors to resell it.

136. On May 6, 2021, CPD received further correspondence from Dealer Representative 1, on behalf of Jeff MacNeil, Brenon MacNeil and MacNeil Motors. In this correspondence the writer indicated that the file is in collections and that they have made no payments. The writer further stated that the balance as of the end of April 2021 was \$24,439 owing on the 2017 Hyundai Accent.

137. I am satisfied Consumer 5 and Consumer 4 traded in the Accent to purchase the Rogue. Consumer 5 and Consumer 4 provided information to substantiate their concerns including the Car Max BOS recording Consumer 5's purchase of the Accent and the Rogue BOS showing a 2017 Hyundai Accent as taken in trade. CPD also obtained a BOS showing MacNeil Motors subsequent sale of a Hyundai Accent with the same VIN as the Accent to another consumer dated a few weeks after the purchase of the Rogue.

138. In my view, the Disclosure Materials establish that MacNeil Motors did not pay out the National Bank lien on the Accent despite arranging financing through Eden Park. In addition, MacNeil Motors did not pay out the lien despite representing to Consumer 5 and Consumer 4 that it would send the cheque to do exactly this. In the end, National Bank has now demanded payment of the

Accent loan from Consumer 5 and Consumer 4 and commenced collections against them.

139. In summary, I find MacNeil Motors took the Accent as a trade-in on the purchase of the Rogue and then failed to pay out the National Bank loan associated with the Accent, resulting in serious negative consequences to Consumer 5 and Consumer 4.

Contraventions of the Act and Regulations

140. In my view, MacNeil Motors committed unfair practices and contravened section 8 of the *Act* and the vehicle contract requirements in the *Regulations* in its dealings with Consumer 4 and Consumer 5.

141. MacNeil Motors committed unfair practices under section 6 of the *Act* when it failed to pay out the loan and remove the National Bank lien against the Accent. Consumer 4 and Consumer 5 filed complaints because Consumer 5 purchased the Rogue believing the Accent's National Bank lien would be paid out by MacNeil Motors. Consumer 5 did not purchase the Rogue expecting she or her sister would be paying a loan on a vehicle Consumer 5 no longer owned. The trade-in description and line items listed on the Rogue BOS indicate the Accent was traded and the lien on the trade-in was to be paid. The Eden Park Consumer Sales Contract shows similar entries for a trade and lien payout in amounts identical to those shown in the BOS. The BOS and Eden Park entries corroborate Consumer 5 and Consumer 4's belief. In addition, MacNeil Motors acknowledged in its written response to CPD dated March 26, 2021 that it has been reaching out to Kingston Data, the collection agency hired by National Bank, to determine the loan payout, and also reached to National Bank to confirm the status of the lien.

142. While MacNeil Motors acknowledges the outstanding lien and may have taken some very preliminary steps towards paying out the lien, I don't believe its conduct overall has been reasonable. MacNeil Motors should have paid out the lien when it received the funds from Eden Park.

143. I find MacNeil Motors's promise that it would pay out the National Bank lien and its corresponding failure to do so was both misleading and a false claim. Ultimately, it was an unfair practice contrary to subsection 8(1) of the *Act*.

144. It is also my view that MacNeil Motors contravened the vehicle contract requirements in subsection 5-25(2)(j) of the *Regulations*. MacNeil Motors left out the trade-in VIN in the description field on the Rogue BOS. It failed to include an important detail describing the trade-in as required. I therefore find MacNeil Motors contravened subsection 5-25(2)(j) of the *Regulations*.

145. In summary, I am satisfied that MacNeil Motors has contravened the *Act* and *Regulations* with respect to its dealings with Consumer 5 and Consumer 4.

Consumer 6

146. Consumer 6 filed a written complaint and claim with CPD describing his concern that MacNeil Motors did not pay out a pre-existing loan on the vehicle he refinanced.

147. Consumer 6 indicates that he purchased a vehicle for personal use from MacNeil Motors on June 11, 2018. He says he purchased it for the sum of \$26,623.35. The loan was through Scotia Bank ("Scotia"). He had bi-weekly payments of \$253.82. MacNeil Motors advised Consumer 6 that he would be eligible to refinance the purchase if he made his payments on time for 6-8 months. His original interest rate was 14.99%.

148. Consumer 6 returned to MacNeil Motors in April 2019 and was advised he was approved the same day. He was told to ask Scotia to send MacNeil Motors a buyout request. This was done on May 7, 2019. He was told he was approved through CIBC and was provided his new payment amounts.

149. Consumer 6 said he noticed double withdrawals from his account in late May 2019. MacNeil Motors advised him not to worry as the transfer took time to complete and that he would receive credit back for any double payments. Consumer 6 stated that the double payments continued, and he continued to follow up with MacNeil Motors. He says that to the best of his knowledge, MacNeil Motors did credit him back for each payment from May to his statement's date.

150. Consumer 6 also raised issues with the new loan contract. He states that he did not get a chance to review the documents and list charges (document fee, pro package, PST, and GST). He says

the listed charges should not be included.

151. The BOS received by CPD reflects that Consumer 6 did purchase a 2015 Volkswagen Tiguan (the "Tiguan") from MacNeil Motors on June 11, 2018, for \$22,995.00.

152. A Scotia "Dealer Advantage Credit Agreement" indicates that Consumer 6 received financing from Scotia to purchase the Tiguan for \$26,623.35 on June 11, 2018.

153. There is a second BOS dated May 8, 2019, which indicates that the same Tiguan (same VIN as the earlier BOS) was sold by MacNeil Motors to Consumer 6, for the purchase price of \$26,000.00. The second BOS does list a Tiguan as being traded in on this deal, though it does not list the VIN. A charge of \$25,500.00 was listed for "payout lien on trade-in".

154. A Conditional Sales Contract on CIBC letterhead indicates that Consumer 6 received financing from CIBC to purchase the Tiguan from MacNeil Motors for \$30,025.15 on May 8, 2019. The contract shows a trade-in allowance and lien on trade-in for \$25,500.00.

155. Consumer 6 provided a statement from Scotia Dealer Advantage showing the account to January 9, 2020. At that date, a balance of \$22,831.72 was owing.

156. In my view, Consumer 6's complaint that a preexisting Scotia loan was not paid out as outlined in his statement is substantiated by the second BOS, the CIBC Conditional Sales Contract showing a payout of lien and Scotia Dealer Advantage statement showing a balance owing on the Scotia loan.

157. In summary, I find MacNeil Motors provided the second BOS to CIBC, arranged the second loan from CIBC, but then did not pay out the Scotia Dealer Advantage loan as of the date of Consumer 6's complaint January 9, 2020.

158. MacNeil Motors in its response dated March 26, 2021 indicated MacNeil Motors had paid this one out.

159. On May 6, 2021, CPD received further correspondence from Dealer Representative 1, on

behalf of Jeff MacNeil, Brenon MacNeil and MacNeil Motors. In this correspondence the writer indicated there is a 0 balance and the loan is paid out. However, MacNeil Motors provided no documentation confirming the loan was paid. MacNeil Motors indicated previously in its communications with CPD as outlined in the Disclosure Materials that consumers' claims were or would be paid off and were not. Accordingly, I am not prepared to find that the loan has been paid without further information from Consumer 6 or Scotia.

Contraventions of the Act and Regulations

160. As I will explain, MacNeil Motors contravened the *Act* and *Regulations* in its dealings with Consumer 6.

161. In my view, MacNeil Motors committed unfair practices under section 6 of the *Act* when it failed to pay out the loan and remove the Scotia lien against the Tiguan. Consumer 6 complained to CPD because he was misled and believed MacNeil Motors's claim the Scotia Dealer Advantage loan would be paid out as part of the agreement. Consumer 6 did not agree to be responsible for payments on two loans on the same vehicle. The second BOS and the CIBC Conditional Sales Contract entries referring to payout of lien corroborate the Consumer 6's belief. MacNeil Motors reimbursed Consumer 6 for some payments on the Scotia loan, which became necessary because MacNeil Motors failed to pay out the loan as required.

162. While MacNeil Motors may have made payments, and now claims to have paid out the loan as originally promised, I do not believe its conduct overall was reasonable. It should have paid out the lien when it received the funds as promised.

163. I find MacNeil Motors's promise it would pay out the Scotia lien on the Tiguan and its failure to do so was misleading and a false claim and an unfair practice contrary to subsection 8(1) of the *Act*.

164. MacNeil Motors contravened the vehicle contract requirements in subsection 5-25(2)(j) of the *Regulations*. MacNeil Motors left out the trade-in VIN in the description field on the Tiguan BOS. It did not include an important detail describing the trade-in as required. As such, I find MacNeil Motors contravened subsection 5-25(2)(j) of the *Regulations*.

165. In light of the above, I am satisfied that MacNeil Motors has contravened the *Act* and *Regulations* with respect to its dealings with Consumer 6.

Consumer 7

166. Consumer 7 filed a complaint and a request for compensation with CPD. He described his concern that MacNeil Motors did not pay out the lien on a vehicle he traded in.

167. Consumer 7 purchased a 2015 Chevrolet Silverado 1500 ("Silverado") on or about March 8, 2019 from MacNeil Motors and financed the purchase through Scotiabank ("Scotia"). Consumer 7 purchased the vehicle for personal use. He traded in his 2011 Dodge Durango ("Durango") when he purchased the Silverado. He bought the Durango from Insta Auto Solutions in 2017 and financed it through iA Auto Finance ("iA"). At the time of the Silverado purchase, Consumer 7 still owed money on the Durango.

168. Shortly after Consumer 7 discovered the Durango's bi-weekly payments were still coming out of his account. He contacted MacNeil Motors and spoke with Dealer Representative 2, who was the sales manager/finance person, to get reimbursed for his double payments and to get the loan on the Durango paid off and lien removed. Dealer Representative 2 indicated he would get a hold of his accountant to reimburse the payments.

169. According to Consumer 7, Dealer Representative 3, who was an employee of MacNeil Motors, started sending e-transfers to reimburse him for the Durango loan from iA up until July 2019, when the payments stopped.

170. In October 2019, after not having not received any payments from MacNeil Motors and not having any contact with MacNeil MacNeil Motors for some time, Consumer 7 put a stop payment on the Durango loan on October 18, 2019.

171. Consumer 7 indicated that between October 31, 2019, and June 30, 2020, a number of text messages were exchanged with Jeff MacNeil. Within these text messages, Mr. MacNeil discusses the outstanding lien, making payments to Consumer 7 to cover off his payments and promises to pay out

the lien.

172. The BOS received reflects that Consumer 7 did purchase a 2015 Chevrolet Silverado 1500 from MacNeil Motors on March 8, 2019, for \$37,380.00.

173. A Scotia Dealer Advantage Credit Agreement ("Scotia Agreement") indicates that Consumer 7 received financing from Scotia to purchase the 2015 Chevrolet Silverado 1500 for \$42,835.70 on March 8, 2019. The Credit Agreement signed by Consumer 7 references a trade in allowance on a 2011 Dodge Durango of \$23,000 and a Lien to trade in to "iA" in the amount of \$23,000.

174. The Silverado BOS provided by Consumer 7 describes the trade-in as a 2011 Dodge Durango and lists line items about a trade: "trade-in amount of \$23,000" and a "payout lien on trade-in amount of \$23,000". The BOS does not include a VIN for the Durango.

175. A BOS shows that Consumer 7 had previously purchased a 2011 Dodge Durango VIN 1D46E2GG3BC698955 from Insta Auto Solutions on January 11, 2017. A letter addressed to Consumer 7 from iA provides a payout statement with respect to the loan for 2011 Dodge Durango (with the same VIN). The letter indicates regular payments of \$280.00 are automatically withdrawn, and a payout balance of \$22,675.55 was due as of July 6, 2020.

176. In addition to his statement, Consumer 7 also provided bank records, showing the e-transfers received from Dealer Representative 3 of MacNeil Motors in the amount of \$280.00 on March 25, 2019, April 4, 2019, May 2, 2019, May 15, 2019, May 29, 2019, June 14, 2019, June 28, 2019, July 25, 2019, August 9, 2019, August 23, 2019, September 5, 2019, September 19, 2019, and October 4, 2019. The e-transfers show that MacNeil Motors provided reimbursement for the iA loan payment over this period of time.

177. A Saskatchewan Personal Property Registry search dated February 3, 2021, shows two liens registered against the Durango, one by iA and one by Source One Financial Corp.

178. MacNeil Motors acknowledged in its response to CPD dated March 26, 2021 that the file is in internal collections and that they are waiting to hear back on payout details.

179. On May 6, 2021, CPD received further correspondence from Dealer Representative 1, on

behalf of Jeff MacNeil, Brenon MacNeil and MacNeil Motors. In this correspondence the writer indicated that the file is in collections and that they have made no payments. The writer further stated that they are in contact with the loaning agency, iA, to talk about settling, but full payment is required. The balance owing on the Durango as of the end of April 2021 was \$23,105.

180. In my view the information and evidence above shows Consumer 7 traded in the Durango on the purchase of the Silverado. This evidence and information included; Consumer 7's complaint, his prior ownership of the 2011 Durango, the Silverado BOS entries showing a 2011 Durango as a trade-in, the Scotia Agreement entries showing a trade in of a 2011 Durango in the same amount as the Silverado BOS, and MacNeil Motors's payments to Consumer 7.

181. The Silverado Credit Agreement signed by Consumer 7 references a trade in allowance on a 2011 Dodge Durango of \$23,000 and a Lien to trade in to "iA" in the amount of \$23,000. The personal property registry search shows the iA lien is still registered against the Durango. MacNeil Motors reimbursed Mr. Abbot for some payments on loan and acknowledged the outstanding balance on the Durango loan. I find MacNeil Motors arranged new financing to purchase the Silverado, but then did not pay out a lien on the Durango as required.

Contraventions of the Act and Regulations

182. The information and evidence above shows MacNeil Motors contravened section 8 of the *Act* and section 5-25 of the *Regulations* in its dealings with Consumer 7.

183. MacNeil Motors, as a supplier, committed in unfair practices when it failed to pay out the loan and remove the iA Auto Finance lien against the Durango. Consumer 7 believed the Durango lien would be paid out when he bought the Silverado. The line items on the Silverado BOS and the Scotia Agreement referring to lien payout on the trade-in of a 2011 Durango corroborate his belief. MacNeil Motors did not pay out the lien on the Durango and made payments on the loan through its representative.

184. I do not believe MacNeil Motors's conduct overall was reasonable even if it may have made payments. It should have paid out the lien when it received the funds from Scotia.

185. I find that Motors's promise it would pay out the lien on the Durango as part of the transaction and corresponding failure to do so was both misleading and was a false claim. It was an unfair practice contrary to subsection 8(1) of the *Act*.

186. It is also my view that MacNeil Motors contravened the vehicle contract requirements in subsection 5-25(2)(j) of the *Regulations*. MacNeil Motors did not include the VIN of the Durango in the Silverado BOS. MacNeil Motors left out an important detail describing the trade-in as required. As such, I find MacNeil Motors contravened the vehicle contract requirements in subsection 5-25(2)(j) of the *Regulations*.

187. For the reasons outlined above, I am satisfied that MacNeil Motors has contravened the *Act* and *Regulations* with respect to its dealings with Consumer 7.

Consumer 8/Consumer 9

188. Consumer 8 and Consumer 9 filed a complaint and a request for compensation with CPD. They described their concerns that MacNeil Motors did not pay out the lien on the vehicle that they traded in. The consumers also raised concerns that the premiums for an insurance product sold to them were not forwarded to the insurer, and therefore the insurance was not properly placed.

189. Consumer 9 purchased a 2017 Nissan Rogue ("Rogue") on July 20, 2019 from MacNeil Motors and financed it through CIBC. A 2013 Hyundai Santa Fe ("Santa Fe") was traded in when she purchased the Rogue. The Santa Fe was purchased by her daughter, Consumer 8, from Hyundai of Regina on January 10, 2017 (Same VIN number) and was financed through TD Auto Finance Inc. ("TD"). The Rogue was purchased and used for personal use. At the time of the Rogue purchase, money was still owed on the Santa Fe.

190. In Consumer 9's statement she indicates that Consumer 8 was having a hard time finding a vehicle after her Santa Fe was totaled off in an accident because there was a balance still owing on the loan after the SGI payout had been applied. Consumer 8 had found a dealer, MacNeil Motors, who could assist her, but she needed a co-signor. Consumer 9 had first understood that she was going to be a co-signor on this loan. She further states that she was later told that the loan would solely be in her name and that if Consumer 8 made her payments for a year, the paperwork could be transferred

over.

191. At the time of this purchase, the salesperson indicated that there was extra insurance in case Consumer 8 was in a situation wherein the Rogue was totaled and SGI did not cover the entire amount. The salesperson proceeded to show a certificate from Assureway Corporation ("Assureway"). The Rogue BOS shows a charge for \$2,500 for warranty and a second charge for \$2,500 for a Pro Pkgs.

192. An Assureway certificate issued to Consumer 9 indicates the Dealership name, MacNeil Motors, and Membership Application Number: AEQM-000460. Additionally, Consumer 9's provided a copy of the Assureway application for membership provided to her from MacNeil Motors. This document describes the applicant as Consumer 9, Dealership Information as MacNeil Motors, Martensville, SK and the vehicle as a 2017 Nissan Rogue (same VIN). The application also refers to Lender and Loan information described as CIBC; amount of finance or loan \$40,509.60; the effective date of membership was July 20, 2019; and membership fee of \$2,500.

193. In Consumer 9's statement, she states that Consumer 8 was in an accident with the Rogue and it was also totaled off. SGI provided her with \$12,000 to pay for the totaled Rogue. Consumer 9 says that she took this money along with the Assureway Certificate to CIBC to pay out the vehicle.

194. CIBC told her that she needed to deal with Assureway herself. When she contacted Assureway, they advised that MacNeil did not pay the premium, so she did not have any insurance. Consumer 9 states that the balance owing to CIBC after the SGI payout is \$23,652.88.

195. Consumer 9 provided an email that she received dated April 29, 2020, from XXXXXX which stated that "There is no coverage under XXX-XXXXX due to non-payment of membership fees. Please contact the original selling dealer and lending institution for more information."

196. Consumer 9 received a letter dated August 13, 2020 from CIBC which states that her personal loan is seriously delinquent, and as of August 13, 2020, she owes \$23,652.88.

197. Consumer 8 received a letter from TD dated December 30, 2019 which indicated that there is a balance owing on her account for the Santa in the amount of \$8,437.93. TD goes on to say that because of the continuing default in payments, TD is demanding full payment of the outstanding loan amount.

198. Consumer 8 contacted the salesperson who was the MacNeil Motors representative who sold the Rogue to Consumer 9 and expressed concerns over the loan not being paid out on the Santa Fe which was traded in on the Rogue.

199. Based on their text exchange, MacNeil Motors had been transferring funds to make the payment on the loan for the Santa Fe.

200. The Rogue BOS did include a 2013 Hyundai Santa Fe; however, the serial number was left blank. Two line items on the Rogue BOS show a trade-in as part of the transaction: "trade-in amount of \$18,000" and a "payout lien on trade-in amount of \$26,000".

201. A search of the SGI Vehicle and Driver database provided a copy of a BOS showing Consumer 8 bought the Santa Fe from Hyundai of Regina in 2017 and financed it through TD. A TD letter addressed to Consumer 8 shows that they are financier of the loan and a demand for payment because there was a default on December 30, 2019.

202. A Saskatchewan Personal Property Registry search dated February 3, 2021 shows a lien registered against the Santa Fe by TD.

203. MacNeil Motors in its response to CPD dated March 26, 2021 indicated that they are in contact with Consumer 8. In that correspondence MacNeil claims that the outstanding balance is approximately \$15,800.

204. On May 7, 2021, CPD received further correspondence from Dealer Representative 1, on behalf of Jeff MacNeil, Brenon MacNeil and MacNeil Motors. In this correspondence the writer indicated that the file is in collections. The balance as of the end of April 2021 was \$23,652 owing on the Rogue and \$8,961 owing on the Santa Fe.

205. Based on the above I am satisfied that Consumer 8 traded in the Santa Fe in on in the purchase of the Rogue.

206. I am also satisfied MacNeil Motors did not pay out the loan on the Santa Fe. The following information and evidence supports my conclusion: the TD auto-finance demand for payment of the

Santa Fe loan, The Saskatchewan Personal Property Registry search showing a lien registered against the Santa Fe by TD, MacNeil Motors reimbursement of TD loan payments and acknowledgement of the balance outstanding.

207. In summary, I find the Santa Fe was the trade-in vehicle in the transaction to purchase the Rogue, and MacNeil Motors did not pay out the TD lien on the Santa Fe as required.

208. I find MacNeil Motors did not pay the premiums for the insurance coverage with Assureway. The evidence about that supports my finding includes: Consumer 9's complaint; Assureway certificate issued to Consumer 9; the Rogue BOS shows a charge for \$2,500 for warranty; and the email from Assureway.

Contraventions of the Act and Regulations

209. In my view, MacNeil Motors contravened the *Act* and *Regulations* in its dealings with Consumer 9 and Consumer 8.

210. In my view, MacNeil Motors committed unfair practices under section 6 of the *Act* when it failed to pay out the loan and remove the TD lien against the Santa Fe and failed to forward funds to Assureway for the insurance coverage.

211. Ms. Consumer 9 and Consumer 8 complained to CPD because they believed the Santa Fe lien would be paid out when Consumer 9 bought the Rogue. They thought Consumer 8 would no longer be responsible for a loan on the trade-in she no longer owned. Their belief is corroborated by the line items on the Rogue BOS referring to lien payout on trade-in and MacNeil Motors acknowledgement in its response to CPD dated March 26, 2021 that the loan is in collection and that they are making attempts to get details on a payout. MacNeil Motors did not pay out the lien on the Santa Fe.

212. While MacNeil Motors may have made payments, I do not believe its conduct in the circumstances was reasonable overall. It should have paid out the lien when it received the funds for this purpose.

213. I find that. MacNeil Motors's promise that it would pay out the lien as part of the transaction

and corresponding failure to do so was both misleading and a false claim. Ultimately, it was an unfair practice contrary to subsection 8(1) of the *Act*.

214. MacNeil Motors also committed unfair practices under section 6 of the *Act* when it failed to place the insurance as promised. Ms. Consumer 9 was led to believe by MacNeil Motors that purchasing the extra insurance would help pay for the vehicle in the event there was an accident and if SGI did not cover the entire amount. MacNeil Motors included a line item in the amount of \$2500 on the Rogue BOS, presented an Assureway certificate to Consumer 9, and yet MacNeil Motors did not forward the insurance premiums to the insurer. Its conduct overall was not reasonable. It should have paid the premium once it received the funds to finance the purchase of the Rogue.

215. I find that MacNeil Motors's promise it would place insurance as part of the transaction and its corresponding failure to do so was misleading and a false claim. It committed an unfair practice contrary to subsection 8(1) of the *Act*.

216. It is also my view that MacNeil Motors contravened the vehicle contract requirements in subsection 5-25(2)(j) of the *Regulations*. MacNeil Motors left out the Santa Fe VIN in the trade in description and lien disclosure field in the Rogue BOS. MacNeil Motors left out an important detail respecting the trade-in as required. As such I find it contravened vehicle contract requirements in subsection 5-25(2)(j) of the *Regulations*.

217. In conclusion, I am satisfied that MacNeil Motors has contravened the *Act* and *Regulations* with respect to its dealings with Consumer 9 and Consumer 8.

Decision

218. For the reasons above, I am satisfied MacNeil Motors has contravened the *Act* and the *Regulations* with respect to its dealings with the Consumers. In being so satisfied, I have the authority pursuant to 5-1(2)(d) to demand that MacNeil Motors forfeit its financial security provided in the form of a bond, and I am exercising that authority by demanding that the bond be forfeited.

Appeal Information

219. 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.

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

DATED at Regina, Saskatchewan, this 21st day of July 2021.



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