

Re: In the Matter of an Appeal by 1554299 Alberta Ltd. (o/a Kingsway Toyota) from the Decision of the Director of Fair Trading (as delegated to the Alberta Motor Vehicle Industry Council, "AMVIC") to issue an Administrative Penalty to 1554299 Alberta Ltd. (o/a Kingsway Toyota)

December 24, 2015

Appeal Board: Paul Alpern

Representing the Applicant, 1554299 Alberta Ltd. (o/a Kingsway Toyota): Alex Kotkas (Fasken Martineau DuMoulin LLP)

Representing the Respondent, Alberta Motor Vehicle Industry Council ("AMVIC") and the Director of Fair Trading: Vivian Stevenson, legal counsel (Duncan Craig LLP)

Appeal Heard: October 1, 2015 and November 13, 2015

Location: Service Alberta Boardroom, Commerce Place, 10155 - 102 Street, Edmonton, Alberta

An Appeal Board constituted pursuant to section 179 of the *Fair Trading Act*, R.S.A. 2000, c. F-2, the *Appeal Board Regulation* thereunder (Alberta Regulation 195/199) and the Administrative Penalties (Fair Trading Act) Regulation (Alberta Regulation 135/2013) met to hear an Appeal by 1554299 Alberta Ltd. (o/a Kingsway Toyota) from the July 23, 2014 Decision of the Director of Fair Trading (as delegated to the Alberta Motor Vehicle Industry Council - "AMVIC") to issue an Administrative Penalty to 1554299 Alberta Ltd. (o/a Kingsway Toyota)

THE ISSUES

1. Did Kingsway Toyota engage in unfair practices contrary to the Fair Trading Act and/or the Automotive Business Regulation?
2. In the circumstances, is it appropriate for this Appeal Board to vary or quash the decision that is being appealed?

RELEVANT LEGISLATION

FAIR TRADING ACT

Unfair practices

6(1) *In this section, "material fact" means any information that would reasonably be expected to affect the decision of a consumer to enter into a consumer transaction.*

(1.1) *It is an offence for a supplier to engage in an unfair practice.*

(2) *It is an unfair practice for a supplier, in a consumer transaction or a proposed consumer transaction,*

(a) *to exert undue pressure or influence on the consumer to enter into the consumer transaction;*

- (b) *to take advantage of the consumer as a result of the consumer's inability to understand the character, nature, language or effect of the consumer transaction or any matter related to the transaction*
 - (c) *to use exaggeration, innuendo or ambiguity as to a material fact with respect to the consumer transaction;*
 - (d) *to charge a price for goods or services that grossly exceeds the price at which similar goods or services are readily available without informing the consumer of the difference in price and the reason for the difference;*
- (3) *It is an unfair practice for a supplier*
- (a) *to enter into a consumer transaction if the supplier knows or ought to know that the consumer is unable to receive any reasonable benefit from the goods or services;*
 - (b) *to enter into a consumer transaction if the supplier knows or ought to know that there is no reasonable probability that the consumer is able to pay the full price for the goods or services;*
 - (c) *to include in a consumer transaction terms or conditions that are harsh, oppressive or excessively one-sided;*
 - (d) *to make a representation that a consumer transaction involves or does not involve rights, remedies or obligations that is different from the fact.*

...

Notice of administrative penalty

158.1

- (1) *If the Director is of the opinion that a person*
- (a) *has contravened a provision of this Act or the regulations, or*
 - (b) *has failed to comply with a term or condition of a licence issued under this Act or the regulations,*
- the Director may, by notice in writing given to the person, require the person to pay to the Crown an administrative penalty in the amount set out in the notice.*
- (2) *Where a contravention or a failure to comply continues for more than one day, the amount set out in the notice of administrative penalty under subsection (1) may include a daily amount for each day or part of a day on which the contravention or non-compliance occurs or continues.*
- (3) *The amount of an administrative penalty, including any daily amounts referred to in subsection (2), must not exceed \$100 000.*
- (4) *Subject to subsection (5), a notice of administrative penalty shall not be given more than 3 years after the day on which the contravention or non-compliance occurred.*

- (5) *Where the contravention or non-compliance occurred in the course of a consumer transaction or an attempt to enter into a consumer transaction, a notice of administrative penalty may be given within 3 years after the day on which the consumer first knew or ought to have known of the contravention or non-compliance but not more than 8 years after the day on which the contravention or non-compliance occurred.*

Right to make representations

158.2 *Before imposing an administrative penalty in an amount of \$500 or more, the Director shall*

- (a) *advise the person, in writing, of the Director's intent to impose the administrative penalty and the reasons for it, and*
- (b) *provide the person with an opportunity to make representations to the Director.*

...

179(1) *A person*

- (a) *who has been refused a licence or renewal of a licence,*
- (b) *whose licence is made subject to terms and conditions,*
- (c) *whose licence has been cancelled or suspended under section 127, or*
- (d) *to whom an order under section 129 or 157 is directed, or*
- (e) *to whom a notice of administrative penalty is given under section 158.1(1)*

may appeal the decision or order by serving the Minister with a notice of appeal within 30 days after being notified in writing of the decision or order.

- (2) *The Minister must, within 30 days after being served with a notice of appeal under subsection (1) and payment of the fee for the appeal as established by the regulations, refer the appeal to an appeal board appointed in accordance with the regulations or to an appeal board designated under subsection (4).*
- (3) *The Minister may appoint an individual as the chair of the appeal board who serves as the chair whether or not an appeal is being considered by the appeal board.*
- (4) *The Minister may designate a board or commission established by or under an Act of the Legislature to be an appeal board for the appeals specified in the designation.*
- (5) *The Minister may set the time within which an appeal board is to hear an appeal and render a decision and may extend that time.*
- (6) *An appeal board that hears an appeal pursuant to this section may confirm, vary or quash the decision or order that is being appealed.*
- (7) *The Minister may set the rates of remuneration for and provide for the payment of reasonable living and travelling expenses to the members of an appeal board.*
- (8) *An appeal under this section is a new trial of the issues that resulted in the decision or order being appealed.*

180(1) *Subject to subsection (2), an appeal under section 179 does not affect the status or enforceability of the decision or order being appealed.*

- (2) *A person who is appealing a decision or order under section 179(1)(b), (c) or (d) may apply to the chair of the appeal board to stay the decision or order being appealed until the appeal board renders its decision on the appeal.*
- (3) *On application under subsection (2) and after allowing the Director to make representations, the chair may, if the chair considers it appropriate, order a stay of the decision or order being appealed until the appeal board renders its decision on the appeal.*

Automotive Business Regulation
General codes of conduct

12 Every business operator must comply with section 6 of the Act and in addition must

- (a) not make any representations, statements or claims that are not true or are likely to mislead a consumer,
- (b) use only timely, accurate, verifiable and truthful comparisons that can be supported with established and reliable data,
- (c) not abuse the trust of a consumer or exploit any fear or lack of experience or knowledge of a consumer,
- (d) not use undue, excessive or unreasonable pressure on a consumer to complete a transaction,
- (e) not make any verbal representations regarding contracts, rights or obligations that are not contained in written contracts,
- (f) not make any representation that savings, price benefits or advantages exist if they do not exist or if there is no evidence to substantiate the representation,
- (g) not use threatening, intimidating, abusive or coercive language in discussions with a consumer,
- (h) not charge a price for goods or services that is more than 10%, to a maximum of \$100, higher than the estimate given for those goods or services unless
 - (i) the consumer has expressly consented to the higher price before the goods or services are supplied, or
 - (ii) if the consumer requires additional goods or services, the consumer and the supplier agree to amend the estimate in a consumer agreement,
- (i) not make any representation to a consumer that the business has the ability to install equipment or to perform a particular repair or service unless the business has the equipment, tools and expertise necessary to complete the installation, repair or service,
- (j) not subcontract repair work without the knowledge and prior consent of the consumer,
- (k) when rebuilding or restoring a vehicle, do so in such a manner that it conforms to or exceeds the original manufacturer's established standards or specifications and allowable tolerances for the particular model and year unless the consumer has consented in writing to a specific different standard before the rebuilding or restoration is done,
- (l) not substitute used, rebuilt, salvaged or straightened parts for new replacement parts without the consumer's knowledge and prior consent,
- (m) provide the consumer in writing with information regarding the parts installed, including whether they are original equipment manufacturer's parts or from another source, and whether they are new, used or reconditioned,
- (n) offer to return all parts removed from the vehicle in the course of work or repairs to the consumer, and return them unless advised by the consumer that the consumer does not require the parts to be returned, and
- (o) comply with any legislation that may apply to the selling, leasing, consigning, repairing, installing, recycling or dismantling of vehicles.

BACKGROUND AND EVIDENCE

1. On January 17, 2013, [REDACTED] bought a new, 2013 fully loaded Toyota Corolla from Kingsway Toyota (the Applicant) for \$23,042.04 (the "First Purchase").

2. [REDACTED] returned to Kingsway Toyota in late September, 2013, complaining that paint was coming off the driver-side door ground effect/rocker panel, a problem a service department employee attributed to [REDACTED] stepping on the ground effect flare while getting in and out of the vehicle.
3. After a series of discussions with Kingsway Toyota staff, [REDACTED] traded in the First Purchase and bought a new 2013 base model Toyota Corolla on September 30, 2013 for \$32,348.30 (the "Second Purchase").
4. Following the Second Purchase and subsequent to discussions with members of her family, [REDACTED] returned to Kingsway Toyota seeking to unwind the Second Purchase and get her original Corolla back.
5. [REDACTED] was told that wasn't possible since her original Corolla had been sold.
6. Kingsway Toyota made a number of suggestions and accommodations to [REDACTED], including writing her a cheque for \$2,000, but [REDACTED] remained dissatisfied with the Second Purchase, including the price of the vehicle and the fact that it was a base model (unlike the First Purchase) without power windows, power locks, sunroof or heated seats.
7. After media coverage of the issue [REDACTED] had contacted [REDACTED] Kingsway Toyota did unwind the second purchase and allowed [REDACTED] to repurchase her original Corolla back for \$23,786.91, a sum inclusive of the \$2,000 refund paid to [REDACTED] (the Third Purchase").
8. Subsequent to the airing of the [REDACTED] story, AMVIC initiated an investigation into the conduct of Kingsway Toyota in this matter.
9. AMVIC determined that Kingsway Toyota engaged in unfair practices contrary to sections 6(2) and 6(3) of the Fair Trading Act and breached the general codes of conduct provisions in sections 12(a), (c) and (d) of the Automotive Business Regulation.
10. AMVIC issued an administrative penalty of \$5,000 to Kingsway Toyota.
11. Kingsway Toyota disputes:
 - a. that it miscondacted itself;
 - b. that it breached the Fair Trading Act or Automotive Business Regulation;
 - c. that any administrative penalty is warranted.

AMVIC'S EVIDENCE

Ms. Stevenson on behalf of AMVIC called two witnesses: [REDACTED] and [REDACTED].

[REDACTED]'s evidence included:

12. She was born in [REDACTED].
13. She moved to [REDACTED].
14. In September, [REDACTED], she moved to [REDACTED].
15. She confirmed that English is the official language in [REDACTED] and English is her first language.
16. She is a [REDACTED].
17. She has worked in [REDACTED].
18. She is a high school graduate.
19. She is currently driving a 2013 silver Toyota Corolla (the "Silver Corolla") which she has had since January 2013.
20. The vehicle was a new floor model when she bought it.
21. She has purchased and owned several vehicles in the past, including a 1998 Cadillac and a 2001 Nissan, both purchased in Canada.

22. The 2013 Toyota Corolla she's currently driving has heated seats, a sunroof and power windows.
23. She financed the vehicle through [REDACTED] at a rate of 4.99%.
24. Payments were \$370.98 per month.
25. She had disability coverage on the Corolla. That coverage is important to her.
26. There were no problems with the vehicle at first then she noticed that paint was chipping under the driver's side door. That chipping started about six months after purchase.
27. She took the Corolla to the service department at Kingsway Toyota to have the paint issue looked at.
28. She was told that the reason the paint was chipping was because she was stepping on the flare while getting in and out of the car.
29. She told the service technician that she had to step there because she couldn't open the door all the way.
30. The service technician said that issue wasn't covered by warranty and suggested [REDACTED] speak to someone in the sales department to try to have her concerns addressed.
31. [REDACTED] spoke to a sales representative with the dealer and explained the problem.
32. The sales representative didn't look at [REDACTED]'s car but went to a computer and started looking at new cars.
33. [REDACTED] and the sales representative talked about new vehicle colors. [REDACTED] was interested in red at first, but when it was determined that no red Corolla was available, they started looking at a black 2013 Toyota Corolla (the "Black Corolla").
34. [REDACTED] stated she was under the impression at that time that Kingsway Toyota would just switch out the Silver Corolla she was having door/paint issues with for the new Black Corolla.
35. She spent almost all day at the dealership going through paperwork.
36. She states she did not understand at the time that she was buying a new car.
37. Over the course of the day, she spoke to a number of people at Kingsway.
38. She was told that she was approved for 0% financing.
39. [REDACTED] states she asked the sales representative what this is going to cost and was told "don't worry".
40. She signed a number of papers, including a Bill of Sale.
41. She says she hadn't read the Bill of Sale when she signed it. She was tired, was being "drilled" with questions about "pro-packs", about extended warranties, about anti-theft and other things she knew nothing about.
42. The only thing she said she wanted was disability coverage.
43. She says she hadn't seen the new car at the time of signing the Bill of Sale.
44. She reviewed the paper-work after signing and got concerned. She called her son-in-law that night. He told her to unwind the deal.
45. She says that when she bought the Silver Corolla, the sales representative was very good. He asked her what she wanted, including heated seats, sunroof, etc..
46. This time, she and the sales representative didn't talk about anything like that. She was just told where to sign.
47. She went back to Kingsway Toyota the next day (October 1) looking to undo the deal.
48. The sales representative said there was no way the deal could be unwound because [REDACTED]'s name was already approved for financing and was on the deal.
49. [REDACTED] said that's when she got scared. She states she hadn't even seen the new Black Corolla at that point.
50. [REDACTED] states that at no point prior to signing the Bill of Sale for the Black Corolla did the sales representative discuss the trade-in value on the Silver Corolla.
51. [REDACTED] says that she signed the Bill of Sale before looking at the price.
52. She was in something she didn't know how to get out of.

53. She later talked to the Better Business Bureau. They told her to try to negotiate out of the deal.
54. The dealer wasn't prepared to unwind the deal, but a representative of the dealer ("Chris") did propose to give her \$2,000 back. Chris asked: "Would that satisfy you?". [REDACTED] said "fine".
55. Later that day, the new Black Corolla was available. [REDACTED] received the keys, but no one from the dealer went through the vehicle with her as [REDACTED] was late for and rushing to work.
56. On her way to work, [REDACTED] stopped by the bank, tried to open the window and discovered that the windows were manual.
57. She brought the Black Corolla back to Chris at the dealer the next day and threw the keys at him.
58. She told Chris that she couldn't have a manual car, that she often had to [REDACTED] in her vehicle and it was a safety risk to have manual windows and manual locks. She needed to be able to control the windows and locks from the driver's seat.
59. Chris said there was nothing he could do, that it was her car now.
60. [REDACTED] says she asked: "Why would you give me a car with none of the options I have now?"
61. [REDACTED] states that the dealer took advantage of her.
62. [REDACTED] went back to Chris at the dealer and asked: "how much to take the car back?". Chris said \$29,000.
63. [REDACTED] was going to take the dealer to court but a friend said to go to the media, so she did.
64. [REDACTED] learned that Kingsway Toyota still had her Silver Corolla. That surprised her as she was told that they had sold it.
65. [REDACTED] went to talk to the General Manager of Kingsway Toyota, Daniel Priestner.
66. She got her Silver Corolla back and everything was in order.
67. She bought back the Silver Corolla and signed a new Bill of Sale on November 1, 2013.
68. Her new payment was \$382.96 per month compared to her original payment of \$370.98. The new payment included the \$2,000 refund she had been paid on the Black Corolla.
69. When asked why she didn't ask to see the Black Corolla or take it for a test drive before buying it, [REDACTED] stated that she didn't know she had to the right to. She didn't ask to see it and wasn't offered.
70. She feels she was taken advantage of, that:
 - a. She should have been told that the car had no power windows or power locks
 - b. The dealer lied to her when they said they had sold her Silver Corolla
 - c. The media told her that her Silver Corolla was on another lot
 - d. The Dealer knew the options she had on her Silver Corolla and should have sold her a car with similar options.

On Cross examination by counsel for Kingsway Toyota, [REDACTED] acknowledged the following:

71. She works in [REDACTED] as a [REDACTED].
72. She completed [REDACTED] training in the [REDACTED].
73. She's going to [REDACTED] in Canada.
74. She has lived in [REDACTED] since [REDACTED].
75. She has a good job and steady work.
76. She's bought and sold several vehicles in the past, including:
 - a. A Chrysler
 - b. A Ford Escort
 - c. A Toyota Camry
 - d. A Toyota Corolla
 - e. A Cadillac

f. A Nissan

77. Four of these vehicles she financed through a dealer.
78. She had experience as a buyer, financier and seller of cars.
79. At first, when she was talking to the dealer about the concerns she had with the Silver Corolla and the dealer's effort to look for a new car for her, she thought she was getting an exchange. She didn't know she was buying a new car.
80. Later, she was happy about the 0% financing, but she says she didn't appreciate the additional cost of the Black Corolla.
81. She came to the dealer with concerns about paint chipping and the door not opening properly on her Silver Corolla. The service technician referred her to the sales department where she somehow ended up looking at new cars with a sales representative, Victoria Lui.
82. Ms. Lui spent no time addressing [REDACTED]'s concerns with the Silver Corolla. She just started showing her new cars.
83. She spent a lot of time just waiting around the dealership that day.
84. She saw a few cars on Victoria's computer and ended up with the Black Corolla.
85. [REDACTED] doesn't recall asking specifically for a "base model", but does recall saying that she didn't want/need a sunroof.
86. [REDACTED] didn't specify that she wanted/needed power windows/locks, but assumed any new car the dealer would show her would have them, especially since her Silver Corolla had them and the dealer ought to have known that.
87. [REDACTED] says she thinks the dealer should have disclosed that the Black Corolla had manual windows and manual locks.
88. [REDACTED] confirms that she signed the Bill of Sale for the Black Corolla in three places.
89. She says she didn't read the documents before she signed them.
90. She says she was tired, stressed and upset and simply wanted to get out of the dealership.
91. She states she was lied to and taken advantage of because she was a lady.
92. All they needed to do was give her the Silver Corolla back.
93. She acknowledges that she accepted Kingsway Toyota's \$2,000 cheque, but she was still upset. She thought Kingsway Toyota was also going to address the deficiencies with the Black Corolla (no power windows or door locks). That's why she went to the media.
94. She says she spent the \$2,000 paying bills.
95. Ultimately, she got the Silver Corolla back and the \$2,000 she received was built into the re-financing on the Silver Corolla.
96. She remains a service customer with Kingsway Toyota.

On further examination by Ms. Stevenson, [REDACTED] confirmed:

97. She hadn't yet seen the Black Corolla when she accepted the \$2,000 refund from Kingsway Toyota.

[REDACTED]'s evidence included:

98. He is the Team Lead, AMVIC Investigations for Red Deer North (including Edmonton).
99. This is his [REDACTED] year in the role.
100. In October, 2013, he was asked to attend a meeting with Laura L [REDACTED], AMVIC Manager of Communications and LuAnne S [REDACTED] with AMVIC.
101. The meeting was to consider what action, if any, should be taken in response to a [REDACTED] news story with the headline: "[REDACTED]".

The story alleged [REDACTED] traded her 2013 fully loaded Toyota Corolla for a 2013 base model and paid thousands of dollars more.

102. The allegations contained within the [REDACTED] news story were investigated in the public interest by AMVIC, with AMVIC being the complainant.
103. [REDACTED] had not filed a complaint with AMVIC. AMVIC undertook this investigation on its own initiative in the "public interest".
104. After the meeting, he did some background checks, reviewed the [REDACTED] news story and set up a meeting with [REDACTED].
105. He summarized the [REDACTED] news story in his notes as follows:
 - a. [REDACTED]'s lack of experience in buying a car ended up "costing her thousands of dollars", at least until she made a call to [REDACTED].
 - b. [REDACTED] is originally from [REDACTED].
 - c. [REDACTED] bought a 2013 fully loaded Corolla – with power windows, power door locks, sunroof and heated seats – from Kingsway Toyota in January, 2013 for just over \$23,000.
 - d. [REDACTED] returned the car to the dealer in September, complaining that the paint was coming off the driver-side door sill – a problem a service department employee attributed to her stepping on it when getting in and out.
 - e. [REDACTED] struggled to get in and out because the door didn't open far enough.
 - f. Instead of fixing the door, the service department referred her to the showroom.
 - g. After spending several hours looking at cars on the computer with salespeople, it dawned on her that she was negotiating to buy a new car.
 - h. "The other sales guy came and told me 'Congratulations, we got your car approved for [REDACTED] down and [REDACTED] interest,' or something like that, and I was happy."
 - i. [REDACTED] admitted that she was completely naïve about how about sales worked.
 - j. [REDACTED] stated "This is my first time".
 - k. In the end, [REDACTED] traded in her fully-loaded Corolla for a base model of the same year and a lot more money.
 - l. [REDACTED] stated that she was never told the final price until she was asked to sign the papers.
 - m. [REDACTED] stated "So I kept signing, and... when I stopped signing I read it through and said 'This is \$32,000!' and he said, 'Oh, but you get free this, free that, free the other. Everything is covered for seven years.'"
 - n. [REDACTED] agreed to pay \$32,348.37, including almost \$2,000 in options and extra fees she says she didn't ask for or understand, for an economy car she hadn't yet seen.
 - o. The extras included a \$399 administration fee, \$298 for tire and rime insurance, \$298 for the anti-theft package and \$1,000 for "Pro Pack".
 - p. [REDACTED] asked about the anti-theft package and was told it was mandatory in Edmonton.
 - q. That night, when [REDACTED] told her son-in-law what she'd done, he was furious and told her to cancel the deal.
 - r. [REDACTED] went back to Kingsway Toyota the following morning and said her family was angry she had paid so much, but was told the deal was final.
 - s. The dealership wrote her a cheque for \$2,000 and [REDACTED] said she was happy again, until she got her new car home and realized how different it was from what she traded in.
 - t. The new Corolla had no sunroof or heated seats and, because of her [REDACTED], [REDACTED] the manual roll-up windows.
 - u. [REDACTED] stated her job [REDACTED] requires her to be able to [REDACTED]. On one of her first trips, she says, a [REDACTED] while she was driving.

- v. Kingsway Toyota offered to install power windows, at her expense, or sell her a 2014 model, once one was available, she said.
 - w. Every solution the dealer proposed would have cost her more money and that's why she called [REDACTED].
 - x. Daniel Priestner, Kingsway's General Sales Manager, defended the transaction, saying [REDACTED] was fully aware of what she was buying and the price.
 - y. [REDACTED] was refunded the \$2,000 as soon as the company became aware she was unhappy with the optional products and fees according to Priestner.
 - z. His staff are instructed to be sure buyers know what they're being offered is optional, he said.
 - aa. It was after [REDACTED] requested an on-camera interview that Kingsway Toyota returned [REDACTED]'s original car to her with the door fixed, but on the condition she not speak with [REDACTED] or any other media about her experience again.
 - bb. Priestner denies [REDACTED] was exploited.
 - cc. "Kingsway Toyota has gone out of our way to ensure the client wasn't taken advantage of" he said.
 - dd. [REDACTED] had a great deal of buyer's remorse after the purchase and I'm happy to say we've rectified that by giving her back her old car, which was the right thing to do" Priestner said.
106. There are three Bills of Sale ("BOS") that relate to this investigation:
- a. The first BOS is dated January 17, 2013. This is when [REDACTED] originally purchased her 2013 fully loaded Corolla (\$23,042.04).
 - b. The second BOS is dated September 30, 2013. This is when [REDACTED] purchased the base model 2013 Corolla (\$32,348.30).
 - c. The third BOS is the transfer of the original 2013 fully loaded Corolla back to [REDACTED] (\$23,788.91).
107. He first met with [REDACTED] on November 13, 2013 and had a couple of follow-up meetings thereafter.
108. He also met with Cal Knowton, Senior Investigator with Service Alberta, to get copies of the various Bills of Sale associated with [REDACTED]'s recent transactions at Kingsway Toyota.
109. He also met with Daniel Priestner and Art Angielski from Kingsway Toyota. By that time, Kingsway Toyota had already given [REDACTED] her Silver Corolla back.
110. [REDACTED] got her Silver Corolla back on November 1, 2013.
111. Daniel Priestner was very respectful and cooperative throughout [REDACTED] dealings with him on this matter.
112. Mr. Priestner advised [REDACTED] as follows:
- a. As far as he was aware, [REDACTED] was happy.
 - b. [REDACTED] signed all the paperwork as required and in his opinion she was fully aware of what she was signing.
 - c. The salesperson no longer is employed at the dealership, but noted it was because the car business was not right for her and leaving the business had nothing to do with this transaction.
 - d. [REDACTED] was going to save over \$4,000 in financing charges over the term of the deal as a result of the 0% interest rate as arranged by Kingsway Toyota.
 - e. When [REDACTED] complained to the dealership, he approved the \$2,000 refund as good will to [REDACTED].
 - f. When the entire deal was unwound and [REDACTED] got her Silver Corolla back, [REDACTED] could not repay the \$2,000 so it was added on to a new finance contract.
 - g. [REDACTED] was credited with \$883.90, a refund on the disability insurance [REDACTED] purchase on the Silver Corolla in January 2013.

- h. [REDACTED] was also credited with a GST refund in the amount of \$1076.19 in respect to the transfer back to her of her Silver Corolla.
- 113. He interviewed Victoria Lui over the phone on November 20, 2013. Ms. Lui was the former salesperson at Kingsway Toyota who dealt with [REDACTED] and sold her the Black Corolla.
- 114. Ms. Lui's evidence was:
 - a. She no longer works at Kingsway Toyota.
 - b. She left the car industry on her own accord.
 - c. [REDACTED] asked for a base model.
 - d. [REDACTED] never mentioned electric locks or electric windows.
 - e. Lui stated she was unsure if anyone at the dealership took [REDACTED] for a test drive or not.
 - f. Lui stated in her opinion [REDACTED] knew what she was signing.
 - g. Lui stated that [REDACTED] was very happy with the deal.
 - h. Lui stated that product advisors at the dealership do not have any pricing and in fact are not allowed to do pricing.
 - i. The Sales Manager does all the pricing.

On cross examination by Mr. Kotkas, [REDACTED] confirmed the following:

- 115. The [REDACTED] news story prompted the AMVIC investigation. AMVIC wanted to determine whether the allegations in the news story were true.
- 116. [REDACTED]'s purchase transaction took place over a couple of days.
- 117. [REDACTED] was not necessarily a naïve car buyer contrary to what was reported in the news story.
- 118. He concluded there were no chargeable Fair Trading Act violations.
- 119. The dealership was absolutely polite and cooperative during the investigation. In fact, he was impressed with the dealership's approach.
- 120. At the end of the day, [REDACTED] was \$103.19 ahead having gone through this process.
- 121. Mr. Priestner did everything a prudent dealer would do in dealing with a complaint like this.
- 122. He has no idea if Kingsway Toyota has been subject to Fair Trading Act penalties in the past.

KINGSWAY TOYOTA'S EVIDENCE

Mr. Kotkas on behalf of Kingsway Toyota called two witnesses: Chris Clarke and Daniel Priestner.

Mr. Clarke's evidence included:

- 123. He is currently the Sales Manager at Kingsway Toyota.
- 124. In the fall of 2013, he was the Finance Director at Kingsway Toyota.
- 125. He dealt with WK on or about October 1, 2013, the day after she purchased a 2013 Black Corolla.
- 126. [REDACTED] was concerned about Christmas being around the corner and family members were not impressed with her purchase.
- 127. They had a lengthy discussion.
- 128. Mr. Clarke asked [REDACTED] "if she had some additional money to help with Christmas, would that make her happy?"
- 129. Mr. Clarke went to his boss and agreed to provide a cheque to [REDACTED] in the sum of \$2,000.
- 130. They did so for customer service reasons, certainly not for profit/business reasons.
- 131. [REDACTED] was happy with the arrangement.

132. Nothing else was going to change. ■ was aware that she was obliged to continue with the purchase of the Black Corolla.
133. He thought everything had been resolved at that point.
134. Later, he heard from his boss that ■ had concerns about the Black Corolla not having heated seats.
135. Kingsway Toyota agreed to install heated seats at no cost to ■.
136. ■ also had concerns about the vehicle not having power windows.
137. Kingsway Toyota agreed to install after market power windows or upgrade ■ to a different model, at her cost.
138. ■ did not agree to the above because of the added expense.
139. Later, Kingsway agreed to install power windows at no cost or upgrade the Black Corolla to an LE package (a red Corolla) at no cost.
140. ■ said she would think about it and let Kingsway Toyota know.
141. ■'s Silver Corolla had been traded in on the Black Corolla.
142. Kingsway paid out the lien on the Silver Corolla and brought it into the dealership's inventory.
143. The Silver Corolla had "sold pending" status to another customer, meaning it was sold but not yet delivered perhaps because financing needed to be arranged, because work needed to be done on the vehicle or for other reasons.
144. Eventually, there was a directive to unwind everything with ■. Kingsway cancelled the sold pending status on the Silver Corolla. The other customer was agreeable to that.
145. The optional "Pro-Pack" package includes undercoat, fabric/leather protection, rust proofing and paint protection.
146. Anti-theft coverage is optional.
147. Tire/rim coverage is optional.
148. Extended warranty is optional.
149. Disability protection is optional.
150. He has no idea whether ■ negotiated from the posted price on the Black Corolla.
151. He characterized Victoria Lui as soft spoken and meek. Not an aggressive or successful car person.

On cross-examination from Ms. Stevenson, Mr. Clarke confirmed that:

152. ■ took delivery of the Black Corolla only after picking up the \$2,000 good will refund cheque.
153. Daniel Priestner later asked him to unwind everything.
154. He doesn't know whether the problem ■ was having with the door and door sill paint of her Silver Corolla were normal wear and tear or some defect.
155. 99% of their salespeople are not present when the customer signs the Bill of Sale (as opposed to the Offer to Purchase).
156. The finance people would have gone over the optional items with the customer.
157. The "documentation fee" is not optional.

Mr. Kotkas called Daniel Priestner as a witness. Mr. Priestner's evidence included:

158. He is General Manager at Kingsway Toyota.
159. In the fall of 2013, he was General Sales Manager at Kingsway Toyota at which time he met ■.
160. ■ had been dealing with one of Kingsway Toyota's sales representatives, Victoria Lui.
161. When asked to describe Ms. Lui, Mr. Priestner characterized her as ■.

162. [REDACTED] was unhappy with the paint color of her Silver Corolla. When asked to address how the dealership addresses that type of situation, Mr. Priestner responded: "we'll sell the customer whatever type of vehicle they want".
163. If a customer asked for a base model vehicle, we'd sell them a vehicle with minimal features.
164. The Silver Corolla had 4.99% financing. The Black Corolla had 0% financing.
165. He had spoken with [REDACTED] directly and had no concerns with her ability to communicate in English or her ability to understand the transaction.
166. He is not aware of Kingsway Toyota having had any prior convictions under the Fair Trading Act.
167. [REDACTED] continues to service her vehicle at Kingsway Toyota.
168. When [REDACTED] bought the Black Corolla, there was a \$20,500 lien payout on her Silver Corolla.
169. They had calculated a \$15,000 trade-in allowance on the Silver Toyota, but bumped the trade-in value to \$20,500 and increased the price of the Black Corolla by the same amount. They did that because they can't have a negative balance on a Bill of Sale for a trade-in allowance. The trade in allowance on the Silver Corolla was, in effect, set to the remaining loan balance. That's a very common practice in the car sales industry.

KINGSWAY TOYOTA'S ARGUMENTS

In summarizing Kingsway Toyota's position, Mr. Kotkas stated:

170. This AMVIC investigation was instigated by a [REDACTED] news story.
171. The [REDACTED] news story was later determined to be wildly inaccurate, full of half-truths.
172. The theme of the story was that Kingsway Toyota had taken advantage of [REDACTED].
173. The fact is that [REDACTED] has lived in [REDACTED] years, [REDACTED] years in [REDACTED] and [REDACTED] in [REDACTED].
174. [REDACTED] is neither uneducated nor inexperienced in car buying/financing.
175. She has [REDACTED] and works in [REDACTED].
176. She has vast experience in buying and selling cars, including from dealerships.
177. She has experience in arranging financing on vehicles.
178. Her experience with the Black Corolla was certainly not her first time buying and selling cars, despite what the [REDACTED] news story reported.
179. The evidence shows there was no time pressure on [REDACTED] in this transaction.
180. The transaction occurred over a number of days.
181. [REDACTED] was in the dealership for a full day and negotiated the purchase of the Black Corolla.
182. She signed the Bill of Sale the next day.
183. This is the antithesis of any pressure by the dealership.
184. English is [REDACTED]'s first language.
185. [REDACTED] made numerous selections over the course of buying the Black Corolla: color, interest rate, disability insurance.
186. It's a mischaracterization to suggest that [REDACTED] simply signed the papers put in front of her.
187. [REDACTED] asked for a base model vehicle and that's what she was given. She never asked about specific options on the vehicle.
188. The [REDACTED] news story made an incorrect reference to anti-theft coverage being mandatory.
189. [REDACTED] states that she has no recollection of the specific words used by the dealership in describing the optional nature of various coverages and concedes that they may have indicated anti-theft coverage was "very important".
190. [REDACTED] acknowledged that she specifically requested disability coverage.

191. ■ told the dealership she was unhappy with the Silver Corolla.
192. She also told the dealership she was interested in the 0% financing then being offered.
193. That's why she was directed to the sales department to consider a new vehicle.
194. The entire complexion of this transaction is nothing like what was reported by ■.
195. This was a case of buyer's remorse in advance of the Christmas season.
196. ■ returned to the dealership and negotiated again, and received a \$2,000 refund.
197. There were further negotiations resulting in an offer of free installation of heated seats.
198. There were even further negotiations leading to an offer of installation of power windows or upgrading to an LE model.
199. As ■ was still unhappy, the transaction was unwound and ■'s original Silver Corolla was returned to her.
200. ■'s conclusions should bear significant weight. He remains at AMVIC as their team lead, investigations.
201. He concluded that there were no Fair Trading Act Violations by Kingsway Toyota. Accordingly, there's no basis for any penalty at all.
202. The facts are:
 - a. ■ is educated.
 - b. English is her first language.
 - c. She is experienced in the purchase and sale and financing of cars.
 - d. She chose herself to go the sales department because she was interested in a different color of car and in the 0% financing.
 - e. She negotiated and chose a base model black Corolla.
 - f. She negotiated various coverages.
 - g. She signed various documents.
 - h. There was no misleading of anyone here.
 - i. The dealership did nothing wrong.
 - j. They were simply servicing a customer.
 - k. After ■ expressed buyer's remorse, the dealership did everything possible to retain the sale and a happy customer.
 - l. The AMVIC investigation concluded there were no Fair Trading Act violations.
 - m. ■ remains a happy Kingsway Toyota customer.
 - n. The appeal ought to be allowed with costs.

AMVIC'S ARGUMENTS

In summarizing AMVIC's position, Ms. Stevenson stated:

203. This is not a question about whether or not ■ got the story right. The question is how ■ was treated by Kingsway Toyota.
204. We didn't hear from anyone from the service or sales departments at the dealership who had direct contact with ■ at the relevant time.
205. ■ had purchased a vehicle from Kingsway Toyota in January 2013. It was well-equipped with power locks, power windows and heated seats. Purchase price was \$21,300 before optional coverages.
206. At the end of September, 2013, ■ returned to Kingsway Toyota expressing concerns about paint coming off of the door area. She went to the service department to deal with the paint, not to buy a new car.
207. During the discussion with the service department representative, there was some talk about the color of the car.
208. There was also discussion about the door not closing properly.

209. The service department representative suggested ■ go to the sales department, indicating "they might be able to help".
210. ■ was directed to Victoria Lui.
211. ■ and Ms. Lui started talking about vehicles and vehicle colors.
212. At that point, ■ thought the dealership was going to simply replace her Silver Corolla with a new car.
213. She didn't appreciate the cost impacts.
214. She dealt with a number of people over the course of the better part of the day.
215. She was told everything would be fine, everything would be covered.
216. She was waiting and waiting and then was presented with papers and told where to sign.
217. She felt rushed at that moment having been waiting for so long.
218. She later revisited the documents and got concerned with the price.
219. She talked with her son and went back to the dealership who told her they couldn't undo the deal.
220. The dealership did refund her \$2,000.
221. Only after all this did she see and take delivery of the Black Corolla.
222. There was no inspection, no walk-around, and no explanation of anything except for how the key-fob worked.
223. On her way home, she stopped at an ATM and noticed there were no power windows.
224. It's clear from ■'s evidence that she had no knowledge of what a "base model" car includes.
225. ■ assumed the Black Corolla would have had the same options as the Silver Corolla Kingsway Toyota had sold to her earlier in the year.
226. She returned to the dealership and was told the deal couldn't be undone.
227. Frustrated, she went to the media. Then the deal was undone.
228. The Director was satisfied that there was a breach of the Fair Trading Act.
229. There's a different burden of proof respecting a Fair Trading Act breach leading to a charge vs. a Fair Trading Act breach leading to an administrative penalty.
230. Kingsway Toyota breached section 6(2)(a) of the Fair Trading Act by exerting undue influence on ■. There were no discussions of options on the Black Corolla and no opportunity to see the vehicle before signing the papers.
231. Kingsway Toyota also breached section 6(3)(a) of the Fair Trading Act given that there was no reasonable benefit arising from this transaction to ■. The Black Corolla had less features and was more expensive.
232. Kingsway Toyota should have unwound the deal without being pressured to by the media story.
233. ■ is not particularly sophisticated in car purchase transactions.
234. She was told by Kingsway Toyota that her Silver Corolla had been sold and she believed them.
235. Kingsway Toyota also breach sections 12(a)(c) and (d) of the Automotive Business Regulation.
236. Section 158.1 of the Fair Trading Act requires that there must be a breach of the Act to ground a penalty.
237. In the Director's view, there were breaches.

ANALYSIS AND CONCLUSIONS

Having considered the evidence and submission of the parties, I conclude as follows:

238. ■ did not intend to purchase a new car when she entered Kingsway Toyota in late September, 2013.
239. She was at the dealership to address a problem with her ability to enter and exit her 2013 Silver Corolla (which she had purchased new from Kingsway Toyota in January of that year) which necessitated her stepping on the ground effect rocker panel causing paint there to scrape off/chip.
240. A service department representative at Kingsway Toyota told ■ that the door/paint issue wasn't covered by warranty and suggested ■ speak to someone in the sales department to try to have her concerns addressed.
241. ■ did speak with a sales representative at Kingsway Toyota. The sales representative wasn't in a position to fix the problem with ■'s Silver Corolla, but was keen on having ■ look at new cars.
242. In fact, ■ spent most of the day at the dealership with the sales representative looking at new vehicles online.
243. Kingsway Toyota was offering 0% financing and \$0 down, both of which were appealing to ■.
244. There was no discussion between ■ and the dealership about any preferred or required options on the vehicle.
245. I'm satisfied that ■ agreed to purchase a base model 2013 Toyota Corolla, black in color.
246. I'm also satisfied that ■ assumed that the Black Corolla would have similar options to her Silver Corolla.
247. The Black Corolla was not on site, so ■ was asked to return to the dealership the next day.
248. That night, ■ discussed the purchase with family members who were concerned about the cost of the deal and encouraged ■ to unwind it.
249. ■ returned to Kingsway Toyota the next day (October 1, 2013) and asked to unwind the transaction. She was told she couldn't, that the paperwork had been submitted, the financing approved and the Black Corolla was now hers.
250. After lengthy discussions with ■, Kingsway Toyota offered ■ a \$ ■ refund by way of cheque as a gesture of good will to keep ■ as a happy customer and to preserved the transaction. ■ accepted the cheque.
251. At this point in time, ■ had still not seen the actual vehicle she had bought.
252. Later in the day, the new Black Corolla was available for delivery. ■ returned to dealership, but needed to go to work so was feeling somewhat rushed and didn't have time to go through a typical pre-delivery inspection/orientation of the car.
253. ■ discovered very shortly after taking possession of the Black Corolla, much to her surprise, that the car had manual door locks and manual windows.
254. I accept ■'s evidence that she needed to be able to control the windows and locks from the driver's seat as she often ■ in her vehicle as ■. Not having the ability to remotely lock passenger window and door access created a safety risk ■.
255. ■ again returned to the dealership looking to unwind the transaction and to have her Silver Corolla returned to her. She was told that wasn't possible without her incurring significant cost and, in any event, her Silver Corolla had already been sold.

256. The dealership did propose to install after-market power windows and locks or upgrade her to another model, but there's some inconsistent evidence about whether that would be at [REDACTED]'s or the dealer's expense. In any event, those options were never pursued.
257. [REDACTED] went to the Better Business Bureau who urged her to negotiate with Kingsway Toyota before taking formal steps.
258. [REDACTED] also went to the media and [REDACTED] broadcasted a story suggesting that Kingsway Toyota had taken advantage of a buyer's naiveté.
259. After the [REDACTED] broadcast, Kingsway Toyota reached out to [REDACTED] and did offer to, in effect, unwind the entire transaction, giving [REDACTED] her Silver Corolla back (with the door and paint issues fixed at the Dealer's expense) and placing new financing (including the \$2,000 good will payment made to [REDACTED]) which would closely match [REDACTED]'s original financing terms. That arrangement was satisfactory to [REDACTED]. At the end of this series of events, [REDACTED] was not financially disadvantaged.
260. Also after the [REDACTED] broadcast, AMVIC, on its own initiative and in the public interest, chose to investigate the conduct of Kingsway Toyota in this matter.
261. After finishing his thorough investigation, the lead AMVIC investigator in this matter concluded that there appears to be no Criminal Code or Fair Trading Act violations by Kingsway Toyota in this matter.
262. Notwithstanding their investigator's conclusions, AMVIC chose to levy an administrative penalty of \$5,000 on Kingsway Toyota pursuant to s. 158.1 of the Fair Trading Act on the basis that Kingsway Toyota breached ss. 6(2) and 6(3) of the Fair Trading Act and ss. 12(a), (c) and (d) of the Automotive Business Regulation.
263. I do not find that Kingsway Toyota breached s. 6(2)(a) of the Fair Trading Act nor s. 12(d) of the Automotive Business Regulation by exerting undue pressure or influence on [REDACTED] to purchase a new car. [REDACTED] presents herself as a well-spoken, strong-willed individual entirely capable of advocating on her own behalf. While there may have been some confusion at the start of her discussions with Kingsway Toyota's sales department about whether she was going to have to pay extra for a new car or Kingsway Toyota was going to make a straight exchange to address the issues [REDACTED] was having with her Silver Corolla, I am satisfied that before [REDACTED] signed a bill of sale, she knew that she was trading in her existing car and buying a new one and that there would be additional cost to her. Nobody at Kingsway Toyota exerted undue pressure or compelled [REDACTED] to enter into or conclude that transaction. There was no time pressure to conclude the transaction. [REDACTED] spent several hours in the dealership over two days before taking possession of the Black Corolla. By her own admission, [REDACTED] was in a hurry to get to work at the time of delivery of the Black Corolla and chose not to make time to participate in a typical pre-delivery inspection/orientation of the car, but that was [REDACTED]'s choice, not the dealer's.
264. I do not find that Kingsway Toyota breached s. 12(a) of the Automotive Business Regulation by making representations, statements or claims that are not true or likely to mislead. There are at least two issues here:
- a. Was the representation by Kingsway Toyota that [REDACTED]'s Silver Corolla had been sold true? If the vehicle had not been sold, that would undermine Kingsway Toyota's statement to [REDACTED] that they couldn't return [REDACTED]'s car to her. The only evidence before me is that the Silver Corolla had a "sold pending" status to another customer. While we know now that Kingsway Toyota was able to unwind the "sold pending" transaction and return [REDACTED]'s Silver Corolla to her, I'm satisfied on the basis of the evidence before me that when Kingsway Toyota told [REDACTED] that her Silver Corolla had been sold, that statement was true.
 - b. Did Kingsway Toyota tell [REDACTED] that anti-theft coverage or other optional items were "mandatory"? Based on the evidence before me, it's likely that Kingsway Toyota

- encouraged [REDACTED] to purchase anti-theft and other optional coverages, but I cannot conclude that [REDACTED] was told such coverage was mandatory.
265. I do not find that Kingsway Toyota breached s. 12(c) of the Automotive Business Regulation by abusing [REDACTED]'s trust or exploiting any fear or lack of experience on [REDACTED]'s part. [REDACTED] is not an inexperienced car consumer. She had bought and/or sold several vehicles over the past few decades and financed some of them. [REDACTED] met with several people at Kingsway Toyota and had numerous opportunities to ask questions, seek clarification, request an inspection and/or a test drive of the Black Corolla before concluding the deal, and/or terminate the discussions leaving with her existing car. She chose to proceed with the transaction and had opportunities to:
- read the Bill of Sale before signing it;
 - receive a pre-delivery inspection of the Black Corolla, which she rejected because she was in a hurry.
266. I do not find that Kingsway Toyota breached s. 6(3)(a) of the Fair Trading Act by entering into this transaction knowing that [REDACTED] wouldn't receive any reasonable benefit from the transaction, nor should Kingsway Toyota necessarily have known that. While the purchase would cost [REDACTED] more money, she would be receiving:
- a new car with low miles in the color of her choosing and without the paint chip/scratch issues her existing car had;
 - an extended warranty;
 - prepaid servicing;
 - 0% financing (vs. the 4.99% financing she had on the Silver Corolla).
267. I do not find there was any intent to deceive or other mischief by Kingsway Toyota in facilitating this transaction. It's a fact that the Black Corolla didn't have the power windows, power locks, heated seats or sunroof that the Silver Corolla had, but I accept Kingsway Toyota's evidence that [REDACTED] had requested a base model and that was what Kingsway Toyota provided to her. While it would have been prudent for the sales representative to have discussed with [REDACTED] the various vehicle options and [REDACTED]'s wants and needs with respect to such options, the fact that that type of discussion did not occur does not, in my view and in the context of this particular circumstance, amount to a breach by Kingsway Toyota of the Fair Trading Act or the Automotive Business Regulation.
268. Kingsway Toyota responded to [REDACTED]'s escalating complaints by attempting to preserve the transaction and [REDACTED]'s good will by:
- first making a gratuitous cash refund to [REDACTED] of \$2,000, which she accepted (but only before taking delivery of the Black Corolla and identifying the subjective deficiencies with the car);
 - later offering to install power windows and locks or upgrading [REDACTED] to a Corolla model with the options [REDACTED] was looking for, albeit there's some dispute over whether that would have been at [REDACTED]'s or the dealer's expense.
- While the above option (b) not pursued, Kingsway Toyota acted reasonably in the circumstances.
269. While Kingsway Toyota could have found a way to unwind the transaction and return [REDACTED]'s Silver Corolla sooner than they eventually did, I do not find Kingsway Toyota's sale of or attempts to preserve the sale of the Black Corolla to [REDACTED] inappropriate or deserving of sanction.

DECISION

For the above reasons, the July 23, 2014 decision of the Director to issue an administrative penalty in the sum of \$5,000 to 1554299 Alberta Ltd. (o/a Kingsway Toyota) is quashed. With

the Appellant, Kingsway Toyota, being the successful party in this appeal, I direct AMVIC to pay costs to the Appellant in the sum of \$1,000.

ISSUED and DATED at the City of Edmonton in the Province of Alberta this 24th day of December, 2015 by the Appeal Board constituted to hear the above referenced matter pursuant to section 179 of the Fair Trading Act and the Appeal Board Regulation thereunder.

Paul Alpern