

Dear Mr. Raine

We thought we would furnish the Senators with an update of the current situation regarding the wrongful conduct of Honda Australia (AUH) and our attempts to achieve fair and reasonable compensation for the unlawful termination of our Honda Dealer Agreement in Brighton.

AUH is a wholly owned subsidiary of Honda Motor Co Ltd (Honda Japan).

Since we last communicated, Astoria Brighton and two other Honda Dealers served a writ in the Supreme Court of Victoria against AUH seeking an order from the Court that AUH's action constituted a wrongful repudiation of a legally binding agreement. AUH had previously denied this and engaged in protracted correspondence through their lawyer to string us out hoping we would weaken and fold. Nothing could be further from our minds.

Just prior to the directions hearing before Justice Sloss, AUH finally conceded that it had repudiated the Honda Dealer Agreement. AUH even disputed having to pay our legal costs but eventually relented. As a result, we accepted the AUH's repudiation and ceased to be authorised Honda Dealer on 29 January 2021.

As you will note, AUH's actions are intended to delay and obstruct our claim for compensation. This modus operandi continues in light of other very recent events.

In our submission to the Senate Inquiry, we tabled our intention to seek pre-action discovery from AUH and Honda Japan to obtain documents relevant to the proposed proceeding.

We believe that AUH's change of business model from Dealers to Agents was known or ought to have been known when we signed our Honda Dealer Agreements in July 2018 for a five-year term.

If this is established, there would be serious consequences for AUH which includes engaging in misleading and deceptive conduct and unconscionable conduct under the Australian Consumer Law.

On numerous occasions, our lawyers requested all relevant documents from AUH and from Honda Japan. This has been refused.

As a result, we and the two other Honda Dealers commenced another proceeding in the Supreme Court of Victoria in December 2020 seeking discovery of all documents in the possession or control of AUH and Honda Japan relating to the change in business model prior to July 2018 including the strategic review of Honda's Australian operations and reducing the number of owners in Honda dealer network.

AUH have now indicated that they will appear before the Court. However, Honda Japan is employing delaying tactics as evidenced by the attached letter from its lawyers in Japan. It is notable that the lawyers for Honda Japan allege that our lawyers have contravened the Hague Service Convention and the Rules of Court. We are seeking advice about this but in our view, the inevitable delay and legal costs this has caused is not unintended.

There is little doubt that AUH and Honda Japan have coercively acted in a deceptive manner with the sole intent of intimidating us into submission. We are confident that the Supreme Court will eventually order AUH and Honda Japan to discover the relevant documents. We understand that courts take a dim view of dominant parties who exert their commercial strength to frustrate the processes of the law. Notably, the *Civil Procedure Act 2010* (Vic) sets some binding overarching obligations that apply, for example: to cooperate in the conduct of civil proceeding, to use reasonable endeavours to resolve a dispute, to minimise delay and to disclose existence of documents.

We have 120 loyal staff many of whom may be made redundant with absolutely no compensation offered from AUH.

In order to retain our staff, look after our loyal customers and mitigate our losses, we are continuing in business as an Independent Honda Service Specialist. Even this reasonable and necessary step has given rise to ongoing correspondence from AUH's lawyers. In particular, AUH have gone to great lengths to inform our customers by two emails and two SMS that we are no longer an authorised Honda Dealer and for our customers to finalise any business with us prior to the termination date of 29 January.

This set our phones ringing off the hook from our customers with total confusion. Many customers were led to believe that we have ceased business.

As you are aware, we are the innocent party.

It is AUH in conjunction with Honda Japan who have acted unlawfully and are causing us irreparable harm.

Once again, thank you very much for your past assistance.
On behalf of all our staff we appreciate it very much.

Please pass this to Senator Deborah O'Neill and other Senators and thank them on our behalf for their relentless determination to wipe out the abuse of the imbalance of power inflicted by multinational organisations.

Please feel free to contact us if you require further information.

Thank you

Kind regards

ASTORIA BRIGHTON

INDEPENDENT HONDA SERVICE SPECIALISTS

Mark Avis Director / General Manager
801 Nepean Hwy Brighton VIC 3186

By email only

19 February 2021

Mr. Evan Stents

HWL Ebsworth Lawyers
Level 26, 53 Collins Street
Melbourne, Victoria 3000, Australia

FAILURE OF PROPER SERVICE TO HONDA JAPAN - CASE: S ECI 2020 04769

Dear Mr. Stents:

1. We write on behalf of Honda Motor Co., Ltd. ("**Honda Japan**") as its counsel in Japan.
2. On 11 January 2021, Honda Japan received a package sent and delivered using Toll Group's international delivery service. According to the air waybill attached, the package was sent by HWL Ebsworth Lawyers ("**HWL**") as the consigner for the delivery service.
3. The package delivered to Honda Japan contained the following documents:
 - (a) a letter stating that you and Mr. Gasparini of HWL are serving certain documents described in (b) and (c) below on Honda Japan on behalf of Brighton Automotive Holdings Pty. Ltd., Newco Car Sales Pty. Ltd., and Tynan Motors Pty. Ltd. (the "**Applicants**") (the "**Letter**");
 - (b) an Originating Motion dated 23 December 2020 against Honda Japan relating to the Applicants' application for a preliminary discovery order from the Supreme Court of Victoria (Case: S ECI 2020 04769) (the "**Originating Motion**"); and
 - (c) an Affidavit of Evan Anthony Stents sworn 23 December 2020 and the exhibits to the affidavit (the "**Affidavit**").
4. We understand from the Letter that, HWL, on behalf of the Applicants, has attempted to serve the Originating Motion and the Affidavit (the "**Documents**") on Honda Japan by sending them using Toll Group's international delivery service.
5. However, we further understand that, pursuant to Order 80 of the Supreme Court (General Civil Procedure) Rules 2015 (Vic) (the "**2015 Rules**"), service of court documents outside

Australia to a country that is a signatory to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the “**Hague Service Convention**”) must follow the process dictated under the convention, and failure to comply with the process prescribed therein would render the service of court documents invalid. Japan is a signatory to the Hague Service Convention.

6. In addition, while Article 10 (a) of the Hague Service Convention provides for “the freedom to send judicial documents, by postal channels, directly to persons abroad”, the same article also provides that contracting states can object to the use of postal channels.¹ The Government of Japan has declared its objection against the use of postal channels.² As such, sending documents relating to court proceedings in Australia to Japan using postal channels fails to comply with the Hague Service Convention.
7. HWL, on behalf of the Applicants, has directly sent the Documents to Honda Japan using international delivery service. While you state in the Letter that “we enclose by way of service on Honda Motor Company Ltd [the Documents]”, the method you elected as service of court documents to Honda Japan is in contravention of the Hague Service Convention. We thus understand that you have failed to comply with the Order 80 of the 2015 Rules and that the Documents were not properly served against Honda Japan.
8. We therefore hereby put you and the Applicants on notice that Honda Japan has not been validly served the Documents as required under the Hague Service Convention and the 2015 Rules.
9. Since the Applicants have failed to validly serve the Documents, they should refrain from taking any action in the proceeding before the Supreme Court of Victoria against Honda Japan.
10. If the Applicants elect to do otherwise, Honda Japan requires HWL to inform the court that service of the Documents has not been validly effected on Honda Japan and provide a copy of this letter to the judge.

¹ Article 10
Provided the State of destination does not object, the present Convention shall not interfere with
-
a) the freedom to send judicial documents, by postal channels, directly to persons abroad,

² <https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=407&disp=resdn>

**NISHIMURA
& ASAHI**

11. A copy of this letter has been sent to the Commercial Court Registry of the Supreme Court of Victoria and to counsel for the other respondent to the application, namely, Honda Australia Pty. Ltd..

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Sincerely yours,

Nishimura & Asahi
Yutaro Kawabata

With copies to:

Commercial Court Registry
Supreme Court of Victoria
210 William Street
Melbourne, Victoria 3000, Australia

Counsel for Honda Australia Pty. Ltd.
Ms. Elyse Hilton
Mr. Leon Zwier
Arnold Block Leibler
Level 21, 333 Collins Street
Melbourne, Victoria 3000, Australia