

TIME TO CLEAN UP OUR ACT!

Dear fellow dealer:

For possibly the first time in the history of the *Motor Vehicle Dealers Act (MVDA)*, dealers are being invited to help rewrite the Act that regulates their activities.

Earlier this year the Consumer Ministry asked the OMVIC Board of Directors to submit proposals for updating the MVDA. This provided an unprecedented opportunity for dealers in Ontario to take an active role in cleaning up an Act that was written well before the arrival of such things as leasing, e-commerce, self management and rampant curbsiding.

The OMVIC Board - made up of nine new and used car dealers from all across Ontario, along with three consumer representatives - provided the Minister with a lengthy list of proposals designed to increase consumer confidence and dealer professionalism, create a level playing field for legitimate businesses, cut red tape and make it easier to prosecute curbsiders.

The Ministry is now seeking public input from dealers and consumer groups across Ontario on reform of the MVDA. A consultation paper has been produced and Ministry staff will be holding public consultation sessions throughout October and early November at major centres across Ontario.

Unfortunately, there have been a number of misconceptions regarding the intentions and details of some of the proposals. It is our

responsibility as dealers to take the time and make the effort to truly understand these changes and either support them or propose a different way of achieving the goal.

This special OMVIC BULLETIN is intended to help you understand some of the major proposals contained in the paper.

You can get a copy of the Ministry's 12-page consultation paper from their website (www.ccr.gov.on.ca). If you do not have access to the website and would like to receive a copy of the paper, contact the Ministry directly at (416) 326-8555 in Toronto, or 1-800-268-1142 outside of Toronto, from 8:30 a.m. to 4:30 p.m., Monday to Friday.

Written comments and submissions should be made to:

Ministry of Consumer & Commercial Relations

Consumer Protection Sector Consultations

250 Yonge Street, 35th Floor

Toronto, Ontario M5B 2N5

Fax: (416) 326-8885 or

email to cpa@ccr.gov.on.ca.

The Ministry's consultation process on legislative reform is our opportunity as dealers to ensure that the legislation that regulates our sector makes sense for today's market. Truly, this is the time to clean up our Act!

Sincerely yours,

Paul Burroughs,

*President, City Chev Olds, Hamilton, &
Chair, OMVIC Board of Directors*

HIGHLIGHTS

- Making it tougher to curbside
- Changing classes
- Reducing risk
- Keeping the bad guys out
- Cutting red tape
- Minister's rule making
- Taking immediate action!
- The same standards for everyone

Making It Tougher To Curbside

One study done by the UCDA found that 28 percent of the ads placed in a car sale publication were made by suspected curbsiders. One of the reforms suggests that the simple act of advertising or even displaying a certain number of vehicles for sale would be sufficient for investigators to lay curbsiding charges.

“It’s important to note that the proposal does not legitimize curbsiding a certain number of vehicles - you still can’t sell even one car that isn’t your personal use vehicle,” says Carl Compton, Executive Director of OMVIC. “What the proposal does is add new curbsiding offenses - advertising or displaying cars. This should make it tougher for curbsiders to operate, and much easier for us prosecute them.”

In many cases where OMVIC has laid charges against a curbsider, the curbsider tells the investigator that registered dealers regularly supply him with the cars he sells. Dealers who knowingly supply vehicles to curbsiders are ensuring that the curbsiding will remain a healthy, if illegal, activity. As well, these dealers are frustrating OMVIC’s efforts to get rid of curbsiders.

The consultation paper proposes to make it an offense under the Act to knowingly sell vehicles to curbsiders. This single initiative has the potential to be a key component in the fight against unregistered sellers. It’s understood that in those circumstances where the dealer has been unaware that the purchaser is a curbsider, no charges would be laid. Charges could only be laid where it is clear that the dealer knew unquestionably that the buyer was a curbsider. OMVIC will provide assistance to dealers in identifying curbsiders.

Changing Classes

At the moment, the MVDA sets out only two classes of registrants - dealers and salespersons. And the way they’re defined no longer reflects the way business is conducted today. This has resulted in many new types of businesses being able to avoid registration. This is not only unfair to registered dealers and salespersons, it also means that consumers who buy from these businesses don’t get the same kind of protection they get when they buy from a registrant.

The consultation paper suggests that the classes of registration should be moved from the Act to the regulations - which are easier to change than legislation - so that classes of registrants can be tailored to suit the times, without having to wait another 25 years for the opportunity to change the legislation.

Reducing Risk

A disproportionate number of consumer complaints and Compensation Fund claims are created by the activities of newly registered dealers. In order to provide greater protection for consumers and to minimize the number of claims on the Fund, the consultation paper suggests that a newly-registered dealer should be subject to tighter controls than currently registered dealers who have already proven themselves to be a low risk.

The kind of controls that might be used would be subject to further discussion at a later time but could include the requirement to deposit a short-term bond payable in favour of the Compensation Fund. The consultation paper is seeking input on what other kinds of measures might make sense for new dealers.

Keeping The Bad Guys Out

Since the beginning, OMVIC has been very active in going after the bad guys in the industry - the minority who give the majority such a black eye. Unfortunately, some of these guys just don’t know how to take a hint.

In all too many cases, they try to get back into the industry by having a “clean” relative or some other dupe apply in their place. In other cases, they don’t even bother to get a dupe to apply for them - they reapply for registration in their own name, forcing OMVIC to issue a proposal to refuse the registration. All of this wastes money - money that could otherwise be spent far more productively going after other bad guys or curbsiders.

The consultation paper proposes changes to the Act that would make it easier to deal with these cases - like the ability to refuse an application based on the record of the person who’s really behind an application.

Or the ability to refuse to even accept an application from someone who’s been revoked, for at least a two-year period.

Cutting Red Tape

Storage of books and records

Currently, dealers are required to store their books and records at their registered premises. For many smaller dealers, this is simply not practical. On the other end of the spectrum, some larger dealers who may have more than one registered location prefer to store the books and records for all of their dealerships at a central location. Recognizing these legitimate situations, the consultation paper proposes that the Act be altered to permit dealers the option of storing their books and records either at their registered location, or at an alternate location approved by the Registrar.

Restrictions On Salespersons

Because of the potential for a conflict of interest to arise, the Act restricts a salesperson from working for more than one dealer at a time. Although this basic restriction makes sense in most circumstances, there are also situations where this restriction could be, and should be, relaxed. The consultation paper proposes to allow greater flexibility so that in certain situations, a registered salesperson

may be permitted to provide services to more than one dealer at a time.

Such situations may include: where there is overlapping ownership of the dealerships; where each dealer provides written permission for the salesperson to work for them; where two or more dealers want to authorize a salesperson to purchase vehicles for them at a wholesale auction; where two or more dealers want to use the services of the same finance & insurance specialist; where two or more dealers create a centralized sales centre.

Minister’s Rule-Making

When dealers were given the responsibility of self management in January of 1997, it did not include the authority to make or change the current legislation and regulations. The consultation paper proposes that the Minister of Consumer & Commercial Relations be given the authority to make “rules”, such as Standards of Business Practices, to help regulate the dealer sector. The Minister would look to OMVIC for advice in exercising this rule-making power.

The OMVIC Board of Directors and its several committees gathers together the industry expertise of over two dozen registered dealers, as well as input from the industry’s trade associations. This expertise could be used to ensure that the Minister’s rules would reflect the realities of a constantly changing marketplace. This proposal is a logical extension of the self management that dealers currently enjoy.

Taking Immediate Action!

In some exceptional circumstances, there is an urgent need for the Registrar to take action when a dealer has violated the law or the public is at risk. Currently however, the process of taking action against such a dealer may take many months while we wait for a Licensing Appeals Tribunal hearing to be held and a decision issued. In the meantime, the

dealer is able to continue to operate, placing consumers and dealers at risk as well as continuing to harm the reputation of the majority of honest dealers.

The paper proposes that the Registrar, under certain limited circumstances, be empowered to immediately suspend a dealer's registration.

While the OMVIC Board is not entirely supportive of this proposal, OMVIC is suggesting that as an alternative, under certain circumstances, the Licensing Appeals Tribunal should be required to hold a hearing promptly in order to minimize risk to consumers and dealers.

The Same Standards For Everyone

For the most part, OMVIC's Marketing Standards apply only to dealers. Enforcement of the Standards where the advertiser is not registered under the Act is not possible. This creates unfairness for dealers who are forced to comply with the Standards while others are not.

Also, there is no provision under the Act to impose penalties when advertising offends the Standards.

The consultation paper proposes that OMVIC's Marketing Standards be extended to apply to any business that advertises vehicles, and that specific penalties be imposed when the Standards are not adhered to.

If you have any questions regarding the proposals, feel free to call OMVIC at 1-800-943-6002 or 416-226-4500 or email us at registrarmvda@omvic.on.ca.

Written comments and submissions on the proposal should be made to:
Ministry of Consumer & Commercial Relations, Consumer Protection Sector Consultations
250 Yonge Street, 35th Floor, Toronto, Ontario M5B 2N5
Fax: (416) 326-8885 or email to cpa@ccr.gov.on.ca.

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