

RESPONSE TO MINISTRY OF
CONSUMER AND BUSINESS SERVICES
ON RELEASE OF DRAFT REGULATIONS – MVDA 2002

Dear Minister Watson:

The OMVIC Board and staff are appreciative of the opportunity to review and comment on the Ministry's draft regulations under the MVDA 2002. Ministry staff is to be complimented for their hard work and commitment to the creation of sound public policy

In reviewing the regulations, we have attempted to represent the interests of a marketplace regulator with a mandate to promote a fair, safe and informed marketplace. And we have attempted to ensure that consumers have adequate protection, without new rules being overly burdensome to legitimate law-abiding businesses.

We believe that OMVIC is a microcosm of the sector's key stakeholders:

- Our Board includes 9 representatives from the dealer population including urban and rural, independent and franchise, large and small. They come from many different communities across the province: Thunder Bay, Sudbury, Peterboro, Tilbury, Coburg, Ottawa, Chesterville and Toronto. They are all members of either the OADA, TADA or the UCDA. One member is a past Chairperson of the OADA.
- Our three consumer representatives include a senior member of the Ministry's staff and representatives of the two principal consumer advocacy groups with expertise in the dealer sector.
- Our staff includes not only veterans of the consumer ministry and the policing community, but also includes several people hired from the industry we regulate. About a third of our staff work from home offices spread across the province and have day-to-day contact with their local dealers. Staff handles over 100,000 inquiries from consumers and registrants each year - so we understand the issues very well from the perspective of consumers and the business.
- Dealers registered under the Motor Vehicle Dealers Act are also our "members" – all 8,825 of them!
- We believe that we have a proven track record and a reputation as an efficient, active and fair marketplace regulator. Our customer service surveys of dealers and salespersons consistently show high levels of satisfaction with our staff in terms of courtesy, efficiency and knowledge.

Because of the diversity within the Board's membership, one of the things we have come to understand is that there are very few proposals on which the industry is unanimous - from mandatory certification courses, to the introduction of bonding for new applicants, to disclosure requirements on bills of sale. We are confident however in asserting that the majority of dealers are upstanding members of their community. They are anxious to ensure that their regulator has the tools necessary to banish those who tarnish their reputation.

While OMVIC does not purport to represent the interests of any particular group – industry stakeholders or consumer advocates – to the degree to which we are aware of them, we have attempted to balance those interests in order to assist the ministry in finding consensus. In the end, however, where the interests of the industry clash with those of consumers, we leave it to the Ministry to find the proper balance.

Our comments, suggestions and discussion are provided throughout the text of the draft regulations, attached.

Sincerely yours,

Gary Mackie
President and Chairman of the Board

Carl Compton
Executive Director and Registrar

PART I DEFINITIONS AND EXEMPTIONS

Definitions

1. In this Regulation,

“Council” means the administrative authority; (“...”)

“extended warranty” means an agreement whereby another person agrees to provide coverage of the costs associated with the repair or replacement of components of a motor vehicle, including the labour necessary to repair or replace those components, that is in addition to a warranty supplied by the manufacturer of the motor vehicle or a warranty supplied or implied by the operation of law; (“...”)

“registration” means registration under the Act and “registered” has a corresponding meaning; (“...”, “...”)

~~***Delete → “service plan” means an agreement whereby the motor vehicle dealer, or the motor vehicle dealer acting on behalf of a third party, provides certain or all goods and services required to maintain a motor vehicle as required by the manufacturer of the vehicle in respect of maintaining the coverage of a warranty supplied by the manufacturer. (“...”)***~~

“service plan” as defined may not exist or if it exists, is too narrow a definition.

Our suggestion: A Service Plan is where a Dealer provides directly, or the Dealer acting as an agent of a third party, provides certain or all services on the vehicle for free or at reduced rates over a set period of time and/or provides service at the time of purchase. (i.e. rust proofing)

Exemptions from Act

2. In addition to section 5 of the Act, the classes of persons described in each of the following paragraphs are exempt from the Act in connection with carrying on the activities described in the paragraph:

1. A person who buys one or more motor vehicles for the purpose of wrecking or dismantling them and not for the purpose of reselling them.

Although OMVIC originally concurred with keeping the exemption for wreckers found in the current regulations, we are now of the opinion that the Ministry should consider requiring wreckers (often called recyclers in today’s world) to be registered under the Act since these businesses routinely sell vehicles but attempt to escape the requirements of the MVDA and other consumer protection legislation by selling them “as is”. Having them registered also permits OMVIC to conduct inspections which may assist in stemming the trade in VIN plates to car theft rings.

As an alternative to registering recyclers, MTO’s cooperation in not registering vehicles sold by unregistered recyclers might also solve this problem.

2. A person who trades in a motor vehicle in the course of performing the person’s duties under the order of a court.

3. An assignee, a custodian, a liquidator, a receiver, a trustee or another person, if the assignee, custodian, liquidator, receiver, trustee or other person trades in a motor

vehicle in the course of performing the person's duties under the *Bankruptcy and Insolvency Act* (Canada), the *Business Corporations Act*, the *Companies' Creditors Arrangement Act* (Canada), the *Courts of Justice Act* or the *Winding-Up and Restructuring Act* (Canada).

4. An executor or a trustee who trades in a motor vehicle in the course of performing the person's duties.
5. A barrister and solicitor who trades in a motor vehicle in the course of acting in his or her professional capacity.
6. A corporation that trades in a motor vehicle that is used or to be used by an individual who is a director, a shareholder, a member or an employee of the corporation primarily for the use of the corporation in carrying on business or for the personal use of the individual or a member of the individual's family.

We don't understand the difference between this and the exemption at 9. Pending clarification, we believe that the inclusion of "shareholders" and "members" makes this exemption too broad.

7. A person who trades in one or more power-assisted bicycles equipped with both a pedaling device and an auxiliary motor.
8. A person who trades in one or more vehicles that are propelled or driven otherwise than by muscular power if the vehicle is subject to the *Off-Road Vehicles Act*.
9. A person who buys, leases as lessee or otherwise acquires an interest in a motor vehicle if,
 - i. the vehicle is for use in a business activity that requires the use of a motor vehicle,
 - ii. the person is not in the business of trading in or repairing motor vehicles,
 - iii. the person, upon the request of the registrar, has filed with the registrar a declaration stating that the person will hold the motor vehicle in the person's name for at least 120 days, and
 - iv. the person holds the motor vehicle in the person's name for at least 120 days.

We understand this to mean "business-use" vehicles

10. A person who leases a motor vehicle as lessor to a member of the public if,
 - i. the lease does not give the lessee the right to acquire title to the vehicle at the end of the term of the lease,
 - ii. the lease is for a term of no more than 120 consecutive days,
 - iii. the lessor has filed with the registrar a declaration stating that the lessor will not trade in the vehicle ~~Delete → with members of the public~~ after the vehicle is no longer going to be leased to a member of the public, and
 - iv. the lessor does not trade in the vehicle ~~Delete → with members of the public~~ after the vehicle is no longer leased to a member of the public.

We understand this to mean a rental company branch office, i.e. the rental companies would still be required to be registered (as at present), but a branch office which does not hold an interest in the vehicles being rented, would not.

11. A receiver and manager appointed under section 21 of the Act that acts under that section.
12. A person who disposes of a stock of motor vehicles on behalf of their owner by means of an auction open to the public at the owner's place of business, if the person

has been retained on a temporary basis solely for that purpose and does not acquire title to any of the vehicles.

Is there a way to tighten up this exemption to ensure that it applies solely to estate sales and does not become a means of avoiding registration under the Act?

13. A registered charity within the meaning of subsection 248 (1) of the *Income Tax Act* (Canada) that acts as such.

There are a number of examples, albeit isolated at the moment, of charities aggressively marketing motor vehicles in local marketplaces. Should this prove to be a successful fund-raising strategy, it has the potential to expand rapidly, posing a significant competitive threat to registrants without the consumer protection benefits of dealing with a registrant. While the Board does not want to unduly fetter bona fide charities from fund raising opportunities, there is a concern that this could expand the way charitable gaming expanded in Ontario in the 60s and 70s. Now would be the time to put in place appropriate controls on this activity. OMVIC suggests that this not be an exemption but rather be subject to a special permit issued by the Registrar. This would allow monitoring of the events and adjustment of the criteria for issuing the permit if and as required in the future.

14. A person who,
- i. after a creditor has taken possession of a debtor's motor vehicle upon the debtor's default, takes possession of the vehicle from the creditor and ~~trades Delete~~ ~~→sells-it Delete~~ ~~→on-a-consignment-basis~~ through a registered motor vehicle dealer, and
 - ii. is not otherwise in the business of trading in or repairing motor vehicles.

15. A not-for-profit corporation ***appropriately incorporated in Ontario or Canada*** that assists a person in making a decision regarding a trade in a motor vehicle if,

- i. before providing the assistance, the corporation discloses to the person the amounts that the corporation charges or receives from any person in connection with providing the assistance,
- ii. the corporation does not handle the person's payment for the trade in the vehicle,
- iii. no ~~Delete~~ ~~→member-add~~ ~~→officer, director or employee~~ of the corporation is a registrant,
- iv. no officer or director of the corporation is a registrant, an insurer or a person in the business of repairing motor vehicles,
- v. the corporation files annually with the registrar,
 - A. a statement outlining the consideration, if any, that it has received from the registrants and listing its ~~Delete~~ ~~→members add~~ ~~→employees~~, directors and officers,
 - B. an affidavit attesting to the information contained in the statement mentioned in sub-subparagraph A.

vi. The corporation provides free access to its books and records to any representative of the Registrar for the purpose of verifying their compliance with this Section

As a general statement, OMVIC is still of the opinion that Consumer advocacy groups should be registered.

16. ***The Fund or a person authorized by the Fund to act on its behalf.***

17. A person that retains title to a motor vehicle during a lease if,

- i. the person has filed with the registrar a declaration that, once the lease expires, the person will not trade the vehicle except through a motor vehicle dealer, and
- ii. the person does not otherwise trade in the vehicle with members of the public, other than to provide lease financing through a motor vehicle dealer registered as a general dealer or a lessor.

Preconditions for registration

3. Subject to section 12 of the Act, a person whose application for registration or renewal of registration as a motor vehicle dealer or as a salesperson has been refused or whose registration has been revoked shall not make a further application for registration until after the second anniversary of the day on which the original application was refused or the registration was revoked, as the case requires.

The two year clock should start over again if the person is discovered acting in a capacity which requires registration. We saw this in the previous draft but see that it has been deleted here. We think the wording was something like:

“...the second anniversary of,

- a) the day on which the original application was refused or the registration was revoked, or*
 - b) the last day on which the salesperson or dealer engaged in any activities which required registration,*
- whichever is later.”*

Applications for registration

4. An application for registration or renewal of registration as a motor vehicle dealer or as a salesperson shall,

- (a) be on a form that the registrar approves and that is completed in full;

This should include requests for further information.

- (b) state the classes of registration, if applicable, for which the applicant is applying; and
- (c) be accompanied by payment to the Council of the fee set by the Council under clause 12 (1) (b) of the *Safety and Consumer Statutes Administration Act, 1996*.

Requirements for registration as a motor vehicle dealer

5. (1) The registrar shall not grant ~~Delete →an application for~~ registration or renewal of registration as a motor vehicle dealer if, This language (“shall not grant an application for registration...”) appears in several places. We believe it’s clearer to say “shall not grant registration...”

- (a) the application does not include payment of the fee described in clause 4 (c);
- (b) the applicant owes money to the Fund or the Council, unless the applicant has made arrangements satisfactory to the registrar to pay the money;
- (c) the registrant owes money to the Crown under the *Retail Sales Tax Act* for which it has not made arrangements with the Ministry of Finance to pay;
- (d) must have approved premises for the conduct of business.*

(2) The registrar shall not grant ~~Delete →an application for~~ registration or renewal of registration as a motor vehicle dealer, other than registration as a manufacturer or outside Ontario dealer, unless, at the time of the application, the following persons have

successfully completed the course ~~Delete~~ ~~→on automotive sales~~ designated by the registrar:

The phrase “course on automotive sales” appears in more than one place. We would like “on automotive sales” replaced with “on automotive law and ethics” to make it clear that the content of the course is law and ethics, not how-to sell cars. This may seem like a small point but has been a point of contention in the past.

1. The applicant or a person in charge of the day to day operations of the applicant, if the applicant is an individual.
2. The officers of the applicant, if the applicant is a corporation.
3. The partners of the applicant, if the applicant is a partnership.

The issue of forcing “grandfathered” registrants to take the course, whether dealers or salespersons, is extremely contentious. Some strongly support such a recommendation while others are vehemently opposed.

We would suggest that the regulation require all grandfathered registrants, including officers, partners and persons in charge of day-to-day operations, to complete the course within three renewals of the date of implementation of the regulations. Exempt from this requirement would be any registrant (including officers, partners, persons in charge) registered for 25 years or more within the three renewal periods. This generous period of time allows off-shore companies to restructure to ensure that all officers are either resident in Ontario or otherwise certified and allows current registrants for whom English is a second language, to prepare for the course through ESL training. The exemption also permits the industry’s true “grandfathers” to avoid taking the course (unless otherwise required due to conduct issues by the registrar, tribunal or discipline). In the interim, all new applicants for registration (including officers, partners, persons in charge) should be required to take the course (currently required by OMVIC) as well as all registrants returning to registration following six months or more of being unregistered.

OMVIC is also proposing that any salesperson changing employers should also be required as part of the transfer process, to take the course within 60 days of transfer or be subject to cancellation.

These comments also apply at 6(2).

- (3) If a person who has not been registered at any time during the previous 12 months, applies for registration as a motor vehicle dealer, the registrar shall not grant the application unless the person provides security payable to the Council in the amount of,
 - (a) \$100,000, if the person is applying for registration as a general dealer;
 - (b) \$25,000, if the person is applying for registration as a wholesaler or lessor; or
 - (c) \$50,000, if the person is applying for registration as a broker.

This is another issue upon which stakeholder opinion is divided. OMVIC’s original suggestion was that the registrar be authorized to employ the bonding requirement on a discretionary basis. The current draft regulation requires a bond to be posted for all new registrants. There are some who suggest that this will create an unnecessary barrier to registration thus exacerbating curbsiding. On the other hand, others suggest that if such

a bond is an impassable barrier for certain applicants, then these applicants should not be registered in any case, especially since the cost of providing an unsecured (see procedures under Bailiffs Act) is not prohibitive.

Some suggest that bonding is unnecessary given the existence of the Compensation Fund but this overlooks the fact that the Fund provides no protection for commercial creditors or commercial purchasers. For instance if a vehicle is purchased for a sole proprietor home-based business, that purchaser is ineligible to make a claim to the Fund, but would be able to seek payment through the bond. Similarly, often the victim is another dealer who has permitted another dealer to take a vehicle or vehicles on some sort of credit arrangement. This dealer-victim may have recourse to the bond. As well, the Fund's Board of Trustees argues that the Fund itself should be able to ensure that high-risk registrants do not use the fund as a safety net.

OMVIC suggests that if a bonding requirement is maintained for all new registrants, the amount be the same for all applicants, that the period of time that the bond is held by the registrar be reduced to one renewal period unless the registrar has concerns, and that unsecured bonds be permitted. The registrar's decision to hold the bond beyond the two year period could be subject to appeal to LAT.

(4) The security shall be,

(a) a bond of an insurer licensed under the *Insurance Act* to write surety and fidelity instruments;

(b) a bond of a guarantor accompanied by collateral security; or

(c) an irrevocable letter of credit.

(5) If the registration of a registrant who provided security under subsection (3) has been renewed more than four times and the registrar has no concerns about the registrant's compliance with the Act or this Regulation, the registrar shall return the security to the registrant within a reasonable period of time.

(6) If the registration of a registrant who provided security under subsection (3) has been renewed more than four times and the registrar has concerns about the registrant's compliance with the Act or this Regulation, the registrar shall not return the security to the registrant until satisfied that the concerns have been resolved.

Requirements for registration as a salesperson

6. (1) The registrar shall not grant ~~an application for~~ registration as a salesperson unless,

(a) the person is at least 18 years of age; and

(b) subject to subsection (2), at the time of the application, the applicant is enrolled in the course ~~on automotive sales~~ designated by the registrar or has successfully completed the course.

(2) Subject to subsection 6 (2) of the Act, the following persons are exempt from the requirement set out in clause (1) (b):

1. A person who was registered as a salesperson under the *Motor Vehicle Dealers Act*, if the person was required to take a course to be registered under that Act and not more than 24 months have passed since the person's registration has expired for any reason.

2. A person who was registered as a salesperson under the *Motor Vehicle Dealers Act*, if the person was not required to take a course to be registered under that Act and not more than six months have passed since the person's registration has expired for any reason.

Certificate of registration

7. (1) Upon granting or renewing a registration as a motor vehicle dealer or as a salesperson, the registrar shall issue a certificate of registration to the registrant showing,
 - (a) the classes of registration, if applicable, for which the application is granted or renewed;
 - (b) an expiry date for the registration; and
 - (c) the motor vehicle dealer to whom the registrant is registered, if the registrant is a salesperson.
- (2) If the registrar issues a certificate of registration to a motor vehicle dealer under subsection (1), the registrar shall, in addition, issue a certificate of registration to the dealer for each salesperson who is registered to the dealer.

See comment on salesperson possession of certificate

Expiry of registration

8. (1) Subject to this section, a registration as a motor vehicle dealer or as a salesperson expires on the date shown on the certificate of registration unless the registrant makes an application for renewal of registration to the registrar at least 30 days before the expiry date.
- (2) A registration as a motor vehicle dealer or as a salesperson expires if, within 90 days after the registrar grants an application for registration or renewal of registration,
 - (a) the registrar determines that the information provided in the registrant's application is not accurate; or
 - (b) the registrant does not successfully complete the course described in clause 6 (1) (b) if that clause applies to the registrant.
- (3) The registration of a salesperson expires if,
 - (a) a motor vehicle dealer who employs the salesperson or retains the salesperson to act as a salesperson has ceased to be registered as a motor vehicle dealer or has ceased to employ or so authorize the registrant;
 - (b) within 60 days of the occurrence of the event described in clause (a), the salesperson has become employed by a motor vehicle dealer not listed in the registration or retained to act as a salesperson by such a dealer; and
 - (c) within 60 days of the occurrence of the event described in clause (a), the registrant does not notify the registrar of the events described in clauses (a) and (b) on a form that the registrar approves and does not pay the fee to the Council that the Council sets for that purpose under clause 12 (1) (b) of the *Safety and Consumer Statutes Administration Act, 1996*.

This is a way too convoluted way of saying that your registration expires if you're unemployed for more than 60 days.

Classes of registrants

9. (1) The following classes of motor vehicle dealers are established for the purpose of registration:

1. General dealer.
2. Manufacturer.
3. Wholesaler.
4. Auctioning dealer.

We believe this should be called wholesale auction since that is the term understood in the industry.

5. Broker.
6. Lessor.
7. Exporter.

Although originally OMVIC suggested that a specific class for Exporter was required, now that we have had an opportunity to review all of the proposed classes, it does not appear to be required as a stand-alone class.

8. Outside Ontario dealer.

Consumer advocacy groups should be a separate class of registration

(2) A motor vehicle dealer may be registered as more than one of the classes of manufacturer, wholesaler, auctioning dealer, broker, lessor and exporter.

We believe that there should be a general restriction permitting the registrar to refuse registration if such registration creates a conflict of interest.

3) Delete → A motor vehicle dealer registered as a general dealer or outside Ontario dealer shall not be registered as any other class of motor vehicle dealer.

Unnecessary to restrict this through regulation. There may be situations where a general dealer chooses to register a separate branch as a lessor.

Authorized activities

10. (1) A motor vehicle dealer registered as a general dealer is authorized to do anything that any other class of registered motor vehicle dealer, *Delete → except an outside Ontario dealer,* is authorized to do.

(2) A motor vehicle dealer registered as a manufacturer is not authorized to act as a motor vehicle dealer, other than to promote the trading in motor vehicles in Ontario by motor vehicle dealers registered as general dealers.

This restricts the application of the MVDA to advertising provisions, establishing a single set of rules for both dealers and the manufacturers who spend by far the largest portion of the advertising dollar.

(3) A motor vehicle dealer registered as a wholesaler is not authorized to act as a motor vehicle dealer, other than to trade in motor vehicles with other registered motor vehicle dealers.

(4) A motor vehicle dealer registered as an auctioning dealer is not authorized to act as a motor vehicle dealer, other than to run an auction solely to facilitate the purchase of motor vehicles by other registered motor vehicle dealers.

Auctioning dealer must NOT have a property interest in the vehicles being sold. NOTE: This section permits wholesale auctions to sell ANYONE'S vehicles, including public and banks and fleets etc which is an expansion of their current business. This may not be immediately apparent to all stakeholders.

(5) A motor vehicle dealer registered as a broker is not authorized to act as a motor vehicle dealer, other than to act on behalf of a person to facilitate a trade in a motor vehicle involving the person as a party, where the broker has no property interest in the trade and where the broker does not take or handle the funds used to pay for the trade **and where one party to the trade is a registered dealer.**

OMVIC suggests that brokers should not be permitted to “broker” consumer to consumer deals. These kinds of deals should be handled through a consignment agreement which means that brokers would not be able to handle the deal since these require the consignee-dealer to take the vehicle into its inventory.

Someplace within the regulations, there should be requirements for the broker’s fee to be disclosed in advertising and on bills of sale. OMVIC also suggests that mandatory content for the broker’s agreement should be set out in regulation.

(6) A motor vehicle dealer registered as a lessor is not authorized to act as a motor vehicle dealer, other than to,

(a) lease a motor vehicle to a lessee ~~for a consecutive period of 120 days or more, where the lessee or a person authorized by the lessee is entitled to purchase the vehicle at the end of the term of the lease;~~ or

(b) sell the motor vehicle to the lessee or a person authorized by the lessee **or another registered dealer**, but not to any other person, if the lessee or a person authorized by the lessee exercises the right in the lease to purchase the vehicle at the end of the term of the lease.

There is some concern that (b) compels all lessors to permit lessees to give their purchase rights to an authorized party. If this is correct (i.e. the wording is directing the rights of the lessee in all cases), then OMVIC believes that “person authorized” should be limited to an employee of the lessee or to a family member of the lessee. Without such limitation, a market may be created for the purchase of such rights effectively turning corporate lessees into curbsiders.

ADD →(c) sell the motor vehicle to another registered dealer

It should also be noted that lessors are currently captured by the existing MVDA. At one point in time, upwards of 40% of vehicle transactions were leases. Many thousands of vehicles come off lease each year and are returned to consumers in the used car marketplace, usually through wholesale auctions. Lessors, as registrants, have responsibility for making proper disclosure concerning the vehicles they release into the marketplace.

(7) A motor vehicle dealer registered as an exporter is not authorized to act as a motor vehicle dealer, other than to export motor vehicles outside of Ontario to facilitate trading in them outside of Ontario. **This class is not required.**

(8) A motor vehicle dealer registered as an outside Ontario dealer,

(a) is a motor vehicle dealer who carries on business outside Ontario in compliance with the laws, if any, of the jurisdiction in which the place of business is located; and

(b) is not authorized to act as a motor vehicle dealer, other than to purchase motor vehicles from a motor vehicle dealer registered as a general dealer, a wholesaler or an auctioning dealer.

OMVIC suggests that the outside Ontario dealer should be compelled to register its purchases in its name in MTO's vehicle registration system in order to track vehicles which have left the province. Once registered as a vehicle in another jurisdiction, it makes it more difficult to continue the registration history in Ontario for that vehicle using a cloned stolen vehicle.

(9) A registered motor vehicle dealer who operates as a sole proprietorship is authorized to act as a salesperson on the dealer's own behalf.

Information on registrants

11. (1) The registrar shall make available to the public, by electronic or other means, the following information respecting registrants:

1. The names of persons registered as motor vehicle dealers, the class or classes of their registration, the status of their registration, including the conditions that apply to their registration under subsection 8 (2) of the Act, their address, telephone number *and website or email address Delete → other ways, if any, of contacting them.*

There is some concern that "and the other ways, if any, of contacting them" is too broad and obliges OMVIC to seek out and report on such alternate ways as cell phones, fax and alternate mailing addresses.

2. The names of persons registered as salespersons, the motor vehicle dealer to whom each salesperson is registered and the status of each salesperson's registration *including the conditions that apply under ss8(2) of the Act.*

3. The names of persons whose registration has been revoked *or refused for a minimum of Delete → within the previous* two years.

4. The name of any *person Delete → registrant* against whom a charge for an offence has been laid *by the council* and the results of the charge *for a minimum of two years.*

Changing this to "person" permits OMVIC to publish the names of unregistered entities.

5. The name of any registrant against whom the registrar has made an order under subsection 29 (1) of the Act and the contents of the order *for a minimum of two years.*

6. The name of any registrant in respect of whom the discipline committee has made a determination under section 17 of the Act or the appeals committee has made an order under that section and the contents of the determination and the order *for a minimum of two years.*

Delete → (2) If the registrar becomes aware of information respecting a registrant or a person who is carrying on activities that require registration and is of the opinion that the information could assist in protecting the public if the public knew of it, the registrar shall disclose the information to the public by whatever means are reasonable.

OMVIC believes that this is too broad and has the potential to attract significant liability for either publishing information prematurely or not soon enough.

3) If the Tribunal takes an action respecting an applicant for registration or a registrant as a result of the person's requesting a hearing under the Act, the registrar shall make a notice of the action available to the public by electronic or other means.

OMVIC believes that publication should take place as soon as an applicant or registrant has filed an appeal of the Registrar's proposal

(4) In making any information or notice available to the public under this section, the registrar shall ensure that the information or notice, as the case may be, does not include the name of an individual, except if the individual is an applicant for registration, a registrant or a person who is required to be registered or if the name of the individual is otherwise available to the public.

Should add ability to publish name of officers.

(5) The information that this section requires the registrar to disclose shall not be disclosed in bulk to any person except as required by law, or to a law enforcement authority.

Conditions for registered motor vehicle dealers

12. The requirements and restrictions set out in sections 13 to 20 and 25 to 34 for registered motor vehicle dealers are conditions of their registration for the purpose of subsection 6 (2) of the Act.

Notice of subsequent financing

13. (1) If a registered motor vehicle dealer, other than an outside Ontario dealer, receives financing after registration, either directly or indirectly for the dealer's business, from any person who did not provide such financing before registration, the dealer shall, within 10 days of receiving the financing after registration, provide the registrar with written notice of it.

Should just be non-traditional sources of financing. OMVIC does not require 13(1) notice for financing from financial institutions.

(2) The notice shall be on a form that the registrar approves and shall include a statement of the identities of the guarantors for the financing, if any.

Business premises

14. (1) A registered motor vehicle dealer, other than an outside Ontario dealer,

(a) shall operate from a premises located in Ontario ~~and shall not trade in motor vehicles from a premises located outside Ontario;~~

Ontario dealers routinely purchase vehicles from outside Ontario.

(b) shall maintain an office for the conduct of business at each premises from which the dealer operates; and

(c) shall not operate from any premises that is not authorized by the dealer's registration.

OMVIC currently issues off-site sales permits for short-term sales events conducted jointly by groups of dealers, e.g. the Toronto International Auto Show. There should be an authority provided in the regulations for the registrar to permit these kinds of events.

(2) The office shall be of sufficient size to permit the secure storage of records that the Act and this Regulation require the motor vehicle dealer to maintain. ***(Except if authorized to operate from a dwelling?)***

3) The office shall be a business premises that is separate from a dwelling, except in the case of a registration of a wholesaler, broker or lessor, who may operate from a dwelling. *The proposal to allow certain classes of dealers to operate from a dwelling has met with considerable opposition from some stakeholder groups who believe that this will permit unfair competition from dealers who are permitted to operate without the same overhead requirements.*

Wholesalers, however, do not compete with retail dealers so much as complement retail activities. Wholesalers are usually on the road and rarely at their business premises. They only maintain business premises primarily to satisfy the current requirements under the MVDA. The only group to benefit from the premises requirements when applied to wholesalers is landlords. If wholesalers are permitted to reduce their overhead, wholesale prices of vehicles may potentially be reduced thus actually benefiting retailers and consumers.

OMVIC supports permitting wholesalers to operate from a dwelling as long as they are required to maintain their books and records at a third party location approved by the registrar and as long as there are penalties available for operating outside the restriction of the class. To assist in enforcing the dealer to dealer restriction inherent in this class, OMVIC would like to see a restriction within the MTO vehicle registration system so that a wholesale dealer may only transfer vehicles between dealer RINs (registration identification number).

Lessors at one point or another must deal with vehicle inventory coming off-lease – sometimes large fleets of vehicles – they should not be permitted to operate from a dwelling.

Brokers must deal with clients, often consumers, and therefore should not be permitted to operate from a dwelling.

(4) A registered motor vehicle dealer, other than a manufacturer or outside Ontario dealer, shall comply with all municipal by-law requirements that apply to each premises from which the dealer operates.

Either here or under the section on storage of records, it should be noted that a dealer authorized to operate from a dwelling MUST store its books and records at a location authorized by the registrar. We also recommend inserting a provision which states that the Registrar may require the records of any dealer to be stored at a location other than the business premises. This becomes useful when the records are never available when OMVIC require access to the books or if the premises are in a dwelling.

Trade Supervision: OMVIC staff had requested that the regulations include provision for something that we called “trade supervision”. At the moment, OMVIC currently trade freezes a dealer who is not operating at its premises. The trade freeze is a by-product of the inter-relationship between the registration systems maintained by OMVIC, MTO’s vehicle registration system and Ministry of Finance’s vendor permit system. If OMVIC notes on its dealer registration system that a dealer is no longer operating at the address information shared by the three systems, the dealer is prevented from transferring vehicles on MTO’s system. The next time the dealer attempts to transfer a vehicle at an issuing office, the dealer is advised to contact OMVIC. Normally, the dealer contacts OMVIC while the dealer is still in the issuing office.

OMVIC staff request updated business premise information and then permit the dealer to transfer vehicles (an “override” number is provided to the dealer) pending receipt of municipal approval for the new dealer’s premises. The trade freeze is used very rarely in other circumstances to supervise a dealer’s transactions. The dealer is not prevented from conducting business, but each transaction may be monitored by OMVIC. This has proven to be an effective public protection tool e.g. when OMVIC has received information that a dealer has been charged with selling stolen vehicles. OMVIC staff would like to see this “trade supervision” tool enshrined in the regulations in certain named circumstances, e.g. dealer has left its approved premises, a dealer is operating outside the restrictions of its class.

15. (1) A registered motor vehicle dealer, other than a manufacturer or an outside Ontario dealer, shall post, at each premises from which the dealer operates, the dealer’s certificate of registration or a copy of it in a prominent manner so that the public is likely to see it.
- (2) A registered motor vehicle dealer, other than a manufacturer, a wholesaler or an outside Ontario dealer, *shall* post, at each premises from which the dealer operates, a permanent sign that is clearly visible to the public and that identifies the dealer’s registered name.

Business name

16. A registered motor vehicle dealer, other than an outside Ontario dealer, shall not conduct trades in motor vehicles in a name other than the dealer’s registered TRADE name or display a name other than that name on the sign mentioned in subsection 15 (2).

Assistance in trading

17. (1) A motor vehicle dealer registered as a manufacturer ~~Delete → or a lessor~~ shall not conduct a trade in a motor vehicle except if the trade is made with another registered motor vehicle dealer and is made through a salesperson registered to the dealer.
- (2) A registered motor vehicle dealer, other than an auctioning dealer, ~~Delete → an outside Ontario dealer or a dealer who operates as a sole proprietorship~~, shall not conduct a trade in a motor vehicle except through a salesperson registered to the dealer.
- Sole proprietors must use registered salespersons just like other dealers. However, we allow the individual sole proprietor to not carry a separate registration as a salesperson.*
- (3) A registered motor vehicle dealer, ~~Delete → other than a manufacturer, an auctioning dealer,~~ an outside Ontario dealer or ~~Delete → a dealer who operates as a sole proprietorship~~, shall not pay any commission or compensation of any kind to any person in connection with the referral, sale or trade in a motor vehicle unless that person *would otherwise require registration. Delete → is, at the time, an employee of the dealer or registered as a salesperson to the dealer or as another motor vehicle dealer.*

In spite of our suggested wording changes to the above subsection, there is a larger issue with the subsection: So-called “bird-dogs” are common-place in the industry and rarely cause any regulatory concerns. The wording here makes it impossible to ignore this wide-spread industry practice, thus causing unnecessary concerns from the dealer-community. It may be best to delete the section in its entirety. In the alternative, replace

the subsection with a requirement to disclose in a dealer's records all fees paid to all parties regarding each trade in a motor vehicle. This would allow OMVIC to track abuse of bird-dogs.

Auctioning dealers

18. In running an auction, a motor vehicle dealer registered as an auctioning dealer shall not,

- (a) permit a person who is not the registrar, *or a person authorized by the registrar*, or a salesperson registered to a registered motor vehicle dealer to have access to the floor or bidding area of the auction; or
- (b) permit a trade in a motor vehicle to a person who is not a *registered salesperson acting on behalf of the dealer to whom they are registered or dealers who have provided their written permission. Delete: registered motor vehicle dealer or a salesperson registered to a registered motor vehicle dealer.*

Brokers

19. In acting on behalf of a person to facilitate a trade described in subsection 10 (5), a motor vehicle dealer *acting Delete → registered* as a broker shall not receive compensation from more than one party to the trade and shall disclose to the person which party to the trade is to pay the compensation.

And the amount of the compensation. The fee should also be disclosed in advertising and on bill of sale where trade involves a broker.

Conditions for registered salespersons

20. For the purpose of subsection 6 (2) of the Act, every registration as a salesperson is subject to the following conditions:

1. The salesperson is, or will be, employed or retained to act as a salesperson by a registered motor vehicle dealer, *Delete → other than a manufacturer, an auctioning dealer or an outside Ontario dealer.*
2. The salesperson is employed or retained to act as a salesperson by no more than one registered motor vehicle dealer, unless all the dealers *involved have* given their express written consent *which must be filed in the prescribed form with the Registrar.*

Certificate of registration 21. (1) A certificate of registration is the property of the Council and, on ceasing to be registered, the registrant shall return it to the Council.

(2) No person shall copy *except to comply with the ss(3)*, alter, modify or falsify a certificate of registration.

(3) Every motor vehicle dealer shall keep, at the office from which the dealer operates, the certificates of registration of the dealer and *copies of the certificates of registration of the salespersons* who are registered to the dealer and shall produce the certificates for inspection on the request of any member of the public, the registrar, an agent of the registrar or an inspector or investigator under the Act, another Act or an Act of Canada.

(4) A registered *motor* vehicle dealer or salesperson shall carry *Delete → a copy of* the certificate of registration while engaged in activities requiring registration.

The order of who keeps the copy and who keeps the original should be reversed: the dealer should hold a copy and the salesperson should hold the original.

(5) When the registration of a registrant expires or the registrant ceases to be entitled to carry on the activities of a registrant, the registrant shall return the certificate of registration to the registrar by registered mail within two business days.

Delete → (6) When the suspension of the registration of a registrant expires and the registrant again becomes entitled to carry on the activities of a registrant, the registrar shall return the certificate of registration to the registrant by registered mail within two business days.

For both ss (5) and (6), two business days is unreasonable. Subsection (6) is unnecessary and impractical, particularly since the certificates are printed by a third party on a periodic basis.

OMVIC would like to see a specific requirement for a dealer to post its certificate of registration.

Notice of changes to registration

22. (1) Every registrant shall, within five days after the occurrence of the event, notify the registrar ***in writing*** of,

(a) any change to the information that the registrant supplied for the purpose of obtaining registration;

(b) any charge or finding of ***guilt under the laws of any jurisdiction;*** (~~*Delete → that relates to the person's fitness for registration under the Act of the registrant under the Criminal Code (Canada) or an Act of Canada or a province that levies a tax;*~~)

(c) any charge ***or finding of guilt*** of the registrant for an offence under an Act or a province of Canada, other than an offence commenced under Part I of the *Provincial Offences Act* or similar provisions of an Act of another ***jurisdiction***
~~*Delete → province;*~~

(d) the commencement of a proceeding in which the registrant is a party under the *Bankruptcy and Insolvency Act* (Canada), the *Business Corporations Act*, the *Canada Business Corporations Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada), the *Courts of Justice Act* or the *Winding-Up and Restructuring Act* (Canada);

(e) a statement of claim that is served on the registrant and that relates to the registrant's activities under the Act; and

(f) a judgment or order made by a court ***of competent jurisdiction made under the laws of any jurisdiction*** ~~*Delete → that relates to the person's fitness for registration under the Act*~~ ~~*Delete → in Canada against the registrant.*~~

(2) A notice that subsection (1) or subsection 24 (1) or (2) of the Act requires a person to provide to the registrar shall be in a form that the registrar approves and shall be accompanied by payment to the Council of the fee that the Council sets for that purpose under clause 12 (1) (b) of the *Safety and Consumer Statutes Administration Act, 1996*.

Prohibited alterations to motor vehicles

23. (1) No registrant shall affix, or cause to be affixed, a vehicle identification number to a motor vehicle that is not accurate in respect of the vehicle.

(2) No registrant shall use a vehicle identification number in respect of a motor vehicle if the number does not relate to the vehicle.

(3) Subject to subsection (4), no registrant shall alter, adjust or exchange the odometer of any motor vehicle in the possession or control of the registrant or person so that the odometer disguises the total distance ~~Delete~~ ~~→travelled~~ *traveled* by the vehicle, or shall permit such alteration, adjustment or exchange.

(4) A person mentioned in subsection (3) may exchange or repair the odometer of a motor vehicle if,

(a) the odometer is defective and the exchange or repair is reasonably necessary for making repairs to the odometer or any part of the vehicle related to the odometer.

OMVIC believes there should be a requirement to notify MTO of the exchange and that such exchange be recorded in the garage register of the dealer IF the vehicle is included in the dealer's inventory.

(b) the person records in the reconditioning record of the vehicle the reading, according to the distance scale established by the odometer, that was on the odometer before the exchange or repair;

(c) the person ensures that the reading on the odometer after the exchange or repair *accurately reflects the known distance traveled* is identical to the reading on the odometer before the exchange or repair *where such setting is technically feasible*;

(d) *in the event that it is not technically feasible to adjust the new odometer to reflect the true distance traveled*, the person affixes a label provided by the registrar to the door pillar *in the case of a car or truck, and to a structural member in a visible location in the case of a motorcycle* ~~Delete~~ ~~→~~ ~~of the vehicle~~ indicating the date of exchange or repair and the name and registration number of the person.

We assume that the registrar will have the authority to collect a fee for the label.

(5) No ~~person~~ ~~Delete~~ ~~→registrant~~ shall remove or alter any certification label or number that any law of Canada or a province or territory, any by-law of a municipality or any law of a jurisdiction outside Canada requires be on the motor vehicle.

Trading in motor vehicles

24. (1) A motor vehicle dealer who acquires possession of a motor vehicle from a person for the purpose of trading in it shall,

(a) make all reasonable inquiries of the person and of other persons to determine,

(i) that the person has good and sufficient title to the motor vehicle,

(ii) what the prior use of the motor vehicle has been, including whether it has been used for a commercial use, the purposes of law enforcement or the delivery of emergency services, and

(iii) all material facts involving the condition of the motor vehicle; and

(b) accurately record the results *in writing* of the inquiries described in clause (a) and *shall make these records available to any salesperson acting on behalf of the dealer in respect of a trade involving the motor vehicle.*

The Board believes that it is preferable to specifically list the commercial uses which are material to a vehicle's value or a buyer's decision to purchase. The board agrees that the following are applicable: driving school, taxi, courier, plow, towing vehicle, rental, school bus, limo, delivery and service vehicles.

(2) Before a person acquires an interest in a motor vehicle from a motor vehicle dealer who trades in the motor vehicle, the dealer shall disclose in writing to the person,

(a) the results of the inquiries described in clause (1) (a) with respect to the motor vehicle;

This is another example of a form which should be authored or approved by OMVIC.

(b) any conflict of interest that the dealer has involving the trade, other than the price of the trade; and

(c) whether the dealer will receive any compensation from another person for the trade.

We're unable to determine what compensation and who the other persons might be and therefore request examples.

Advertising

25. ~~Delete →(1) This section does not apply to a motor vehicle dealer registered as a wholesaler, an auctioning dealer, an exporter or an outside Ontario dealer.~~

(2) A registered motor vehicle dealer who places an advertisement intended to induce a trade in motor vehicles or who benefits, or may benefit, from the placement of such an advertisement shall ensure that the advertisement includes, in a clear, comprehensible and prominent manner,

(a) the dealer's registration number, registered name and publicly listed telephone number; and

(b) a copy of the trade-mark, or official mark, of the Council and a statement of the Council's web site address ~~Delete →and telephone number~~, except if the advertisement is a classified advertisement in a newspaper, magazine, or similar publication or is displayed on a billboard, bus board or is made through any other medium with a similar time or space limitation.

(a) and (b) should not apply to classified ads. Dealer classifieds should be required to use the word "Dealer" or at most "OMVIC Dealer"

The official mark should be in a font of sufficient size and prominence to be evident to the reader. Although some stakeholders have objected to this requirement, it was to have been adopted as part of OMVIC's Standards of Business Practice so OMVIC supports this requirement. We are of the view that its impact on costs is insignificant to non-existent and that the objections are philosophical rather than practical. The benefits of having OMVIC's existence so widely publicized in such a cost-efficient manner outweigh the objections raised to date.

(3) No registered motor vehicle dealer shall place an advertisement respecting a trade in a motor vehicle that does not accurately reflect the prior use or condition of the vehicle.

There have been concerns raised regarding the ability to provide such disclosure in classified ads.

(4) No registered motor vehicle dealer shall place an advertisement respecting a trade in a motor vehicle that is described as a ~~Delete~~ ~~→company car, executive car, demonstrator~~ demo or a similar designation, unless the dealer acquired the vehicle as a new motor vehicle and used it in the course of the dealer's normal operation ... *and the distance traveled doesn't exceed 20,000 kms.*

OMVIC believes that the term company car and executive car are meaningless so they should be removed. Demonstrator car should be replaced with the widely known term, "demo", and the definition should include a maximum of 20,000 kilometers (already for the most part an industry standard). Neither freight, fuel and air tax, nor pre-delivery costs should be collected by the dealer from the buyer in the case of a demo sale.

(5) No registered motor vehicle dealer shall place an advertisement respecting a trade in a motor vehicle that indicates,

(a) the price of the vehicle unless the vehicle is available from the dealer at that price during the time to which the advertisement applies; *or if limited quantities, the quantity available in a specific, defined market area;*

OMVIC also suggests that the dealer stock number or the last six digits of the VIN should be disclosed in ads where there is only one available. Where there is more than one vehicle available, the number of vehicles available should be disclosed. If not in stock, it should be disclosed that the vehicle is available as a factory order or through dealer trade.

(b) a previous price for the vehicle.

OMVIC assumes that this means that, in addition to a previous price, that the manufacturers' suggested retail price (MSRP) cannot be displayed. OMVIC believes that MSRP, as long as it is not used to specifically promise a savings, is a useful benchmark for consumers in rating the respective prices of vehicles and should be allowed to be displayed together with the dealer's price. Accompanying the MSRP should be a description of the options package associated with the MSRP.

Interestingly, while it is prohibited to show the MSRP in an ad together with a discount or suggestion of savings, both the MSRP and "discount" are required to be set out in the bill of sale.

(6) If an advertisement indicates the price at which a motor vehicle will be traded, it shall, in addition to any other information that may be provided,

(a) set out the total amount the customer will be required to pay for the vehicle, including all fees, levies, service charges, surcharges, taxes and other charges; or

(b) set out the total amount as described in clause (a), except for retail sales tax and federal goods and services tax, and also contain a statement that those taxes are not included in the total amount.

OMVIC notes that this does not specify that the all-in price must be the most prominent representation of the price of the vehicle but we assume that this is a drafting oversight - or we are misinterpreting the section.

This is a proposal which inspires heated discussion since the dealer community itself is divided on this topic: some are in favour of such a change to advertising while others are vehemently opposed to it.

Generally for all-in pricing there are five significant components: vehicle price / manufacturer's suggested retail price (MSRP), freight, pre-delivery costs, dealer administration fees and pass-through government surcharges (air conditioning tax and fuel surcharges).

Vehicle price / MSRP is self-explanatory and should be for the vehicle advertised including options as equipped. This is the large font price used in an ad.

Freight for a particular vehicle is common across the province regardless of where the dealer is located and therefore can be added to the MSRP in province-wide advertising. There are some who suggest that while the advertised MSRP for a particular vehicle may appear not to have increased on a year-over-year basis, the freight charge may have increased substantially thus disguising that the overall cost of the vehicle has increased. OMVIC believes that the freight component of a vehicle's price should be added to the MSRP in advertising.

Dealer administration fees are set by dealers, not by manufacturers and can range from \$0 to several hundred dollars. Dealers who charge admin fees justify these fees in different ways but typically say that these fees cover overhead costs or the costs of general services provided to clients. These dealers also point out that there are other business sectors that also charge admin fees, e.g. banks. On the other hand, dealers who do not charge admin fees claim that they are at a competitive disadvantage since the dealer who charges a substantial admin fee is able to advertise at a lower price because they tack on the admin fee toward the end of the negotiation with a customer. The logistical problem with adding the admin fee to the all-in price however is that many advertisements are mounted on a country, province or regional basis and therefore cannot include the admin fee since this varies from dealer to dealer within this wide geographical area. OMVIC believes that since it is impossible to add this fee to the all-in price in these cases, then there should be a prominent statement elsewhere in the ad to the effect that "Dealers may charge an administration fee which may vary substantially from dealer to dealer. Please call dealer for details." Where the specific dollar value is known however (e.g. individual dealer advertising), it should be clearly and boldly disclosed.

Air and fuel taxes are common across the province for each particular model of vehicle therefore OMVIC believes that this should be included in the all-in price.

Pre-delivery expenses are the service costs incurred at the dealership when a new vehicle has been delivered from the factory to prepare the vehicle for delivery to an end buyer. Domestic manufacturers compensate their dealers for this work so there is no additional charge to the consumer for pre-delivery work when buying a domestic vehicle. Import manufacturers on the other hand do not compensate their dealers for this work, so import dealers pass this cost on to the consumer. As a compromise, OMVIC is prepared to recommend that this amount not be included in the all-in price as long as it is clearly and boldly disclosed elsewhere in the ad.

There is a regional problem that still needs to be addressed if all-in pricing is adopted. Dealers along Ontario's borders, particularly in the Ottawa area, are concerned that they will be at a competitive disadvantage when advertising against Hull area dealers in the same urban newspapers since the Ontario dealer advertised prices may appear to the uninformed reader to be substantially higher than in Quebec. OMVIC suggests that the Ministry seek the cooperation of Quebec officials in adopting and enforcing a uniform code regarding pricing. OMVIC request that ministry staff explore the possibility of requiring through the MVDA that the advertising medium assume responsibility for ensuring that all dealer advertising in Ontario comply with rules set out in the MVDA.

(7) The period that the registrar specifies under subsection 29 (4) of the Act shall not exceed two years and shall be calculated from,

- (a) the time at which the Tribunal made its order, if the registrant requested a hearing by the Tribunal under that subsection; or
- (b) the expiry of the time during which the registrant was entitled to request a hearing by the Tribunal under that subsection, if the registrant did not request that hearing.

Disclosure of information concerning a trade

26. Delete →Sections 27 to 33 do not apply to a motor vehicle dealer registered as a wholesaler, an auctioning dealer, an exporter or an outside Ontario dealer.

OMVIC believes that disclosure requirements should apply to all dealer classes although those requirements may vary somewhat depending upon the restrictions of the class. Specific disclosure requirements could be spelled out by setting out detailed requirements for each type of agreement: retail new, retail used, leasing, consignment, wholesale, and trades through an auctioning dealer and broker.

The draft regulations create a new document: a "proposed" agreement of sale/lease. OMVIC recognizes that the proposed agreement creates a number of serious concerns for the industry, not the least of which is that it appears to create a form of cooling off period, i.e. post-negotiation but pre-delivery cooling off period. In the absence of a stated position from the ministry on this point, OMVIC chooses not to comment on the idea of creating a cooling off period. OMVIC believes that if that is the purpose of the section, then industry stakeholders, consumer advocates and OMVIC should be engaged directly in this discussion by clearly setting out the ministry's position on establishing this kind of cooling off period and exploring an appropriate means of doing so.

That said, the notion of a "proposed agreement" as set out below creates a number of logistical problems which defy solution. For instance, a number of items required to be included on the proposed agreement may not be known until closer to the date of vehicle delivery (clauses c, h, m, p, q, r to name a few) since these details may change between the date of negotiation and the date of delivery - particularly when a vehicle is not immediately available or is subject to conditions which may not be met until a later date. Since the accuracy of the proposed agreement appears to have a bearing on the legality

of the contract as well as provide the consumer with significant remedies, there is justifiable concern about how this proposed agreement would work in practice.

OMVIC suggests that references to the proposed agreement for sale / lease be removed and in its place specific details of mandatory content for agreements for each type of trade (retail new, retail used, lease, consignment, wholesale, auctioning dealer trade, broker) be set out in regulation. The framework for this kind of approach is already in the draft regulations by recognizing the need for specific agreements for retail new, retail used, consignment and lease agreements.

Disclosure of information concerning a trade

27. ~~Delete~~ → (1) ~~Subject to subsection (3) (incorrect reference?), before entering into an agreement with a purchaser for the sale of a new motor vehicle, a motor vehicle dealer shall ensure that the purchaser receives a copy of a proposed agreement of sale that includes, in a clear, comprehensible and prominent manner,~~

Retail bills of sale for a new vehicle must include the following:

(a) the name and address of the *customer* ~~Delete~~ → ~~purchaser~~; *We believe that purchaser should be replaced with customer where it appears*

Add Drivers Licence where appropriate

~~Delete and replace with new section for wholesale bills of sale → (b) if the purchaser is another motor vehicle dealer, the purchaser's registered name and registration number;~~

(c) the name of the insurance company and the policy number for the purchaser's insurance coverage on the vehicle;

(d) the registered name, address and registration number of the dealer;

(e) the name and the registration number of the salesperson who is acting on behalf of the dealer respecting the sale ~~Delete~~ → ~~if the dealer is required to act through a registered salesperson when selling;~~

It has been suggested that the identity of a broker, if any, should also be disclosed on the bill of sale.

(f) the date of the proposed sale;

Presumably, this means the date of the proposed agreement and the proposed date of delivery

(g) the make, model and year of the vehicle;

(h) the manufacturer's serial number for the vehicle;

Add dealer's stock number.

Add section for distance traveled (even new vehicles have something on the odometer!)

(i) the body type of the vehicle;

Add colour

(j) the manufacturer's suggested retail price for the vehicle, excluding the price described in clause (k);

- (k) an itemized list of the manufacturer's suggested retail price of all extra equipment and options, that under the agreement, will be sold to the purchaser in connection with the vehicle or installed on the vehicle at the time of the sale;
- (l) the total manufacturer's suggested retail price for the vehicle, being the total of the price described in clauses (j) and (k);
- (m) an itemized list of the price that the purchaser is required to pay for freight, pre-delivery inspection, **and all other** charges, howsoever arising, that the purchaser is required to pay to conclude the transaction;

- (n) the discount or rebate, if any, that the purchaser will receive;
- (o) the proposed total sale price;
- (p) the down payment or deposit, if any, that the purchaser will be required to pay;

Add section for trade-in allowance and lien pay-out.

- (q) the balance that the purchaser will be required to pay on concluding the agreement;
- (r) if the purchaser will obtain credit for making a payment under the agreement, the information that a lender is required to give to a borrower, before giving the credit, in an initial disclosure statement under the *Consumer Protection Act, 2002*;
- (s) an itemized list of the cost of all other charges that the purchaser will be required to pay in connection with the vehicle at the time of delivery but not under the agreement, such as taxes, insurance **what insurance?** and licence fees;
- (t) the statement set out in subsection (2) in 12 point bold font on the first page of the agreement, except for the heading which shall be in 14 point bold font;
- (u) the statement set out in subsection (3); and

OMVIC believes that the statements set out in (t) and (u) may be best provided on a separate form to be signed by the customer and considered to be part of the agreement. This allows the form to be bilingual from the outset. The face of the retail agreement can be modified to include a statement "I have reviewed and signed Form X which constitutes part of this agreement."

- (v) a statement by the ~~dealer~~ **purchaser** of all particular facts respecting the vehicle that the purchaser considers important with respect to the purchase.
This clause has a counterpart at 30(1)11. we believe it's better to have the person making the disclosure make the statement rather than the person requiring the disclosure. In other words, for (v) above, if it's important to the purchaser that only non-smokers have driven the car, then the DEALER should make the statement. At 30(1)11, if it's important to the dealer accepting a vehicle in trade from a consumer that the consumer's trade was not submerged in a flood, then the PURCHASER should make the statement.

(2) The statement mentioned in clause (1) (t) is as follows and shall be in English or French, according to the preference that the purchaser expresses to the dealer (***May be impractical to await preference of purchaser. If separate sheet, easier to simply make it bilingual from the outset.***)

Important Information Respecting the Trade in a Motor Vehicle

Under provincial law there is no cooling off period related to the trade in a motor vehicle.

A safety standards certificate from an approved standards body is not a warranty in respect of the motor vehicle or its safety characteristics.

Delete → ~~The Sale of Goods Act provides implied warranties as to the fitness and merchantable quality of a motor vehicle. No person is required by law to purchase a warranty from any other person in order to secure the implied warranties provided by the Sale of Goods Act.~~

Delete → ~~The conduct of motor vehicle dealers is governed by the Motor Vehicle Dealers Act, 2002, its regulation, as well as the Consumer Protection Act, 2002. The latter Act provides important rights in relation to promises made respecting motor vehicle sales, and rules respecting how a consumer agreement is to be interpreted. You may have other additional rights at law.~~

These middle two points are not consumer-friendly and clutter up the statement making it less likely that a consumer will read it at all! This is information which can be brought to their attention by OMVIC if required.

Persons who wish to know more about their rights *when buying or leasing a motor vehicle* are encouraged to contact the Ontario Motor Vehicle Industry Council on the Internet at www.omvic.on.ca ~~or by telephone at 416-226-4500 or 1-800-943-6002.~~

(3) The statement mentioned in clause (1) (u) is as follows and shall be in English or French, according to the preference that the purchaser expresses to the dealer

Canadian Motor Vehicle Arbitration Plan

The Canadian Motor Vehicle Arbitration Plan is available to purchasers of new motor vehicles to resolve disputes between the purchaser and the vehicle manufacturer respecting alleged manufacturer's defects or the implementation of the manufacturer's warranty. The Canadian Motor Vehicle Arbitration Plan involves submitting disputes to a neutral third party and is voluntary.

Not all manufacturers participate in the CAMVAP program. We suggest that dealers of non-participating manufacturer(s) add this statement: "(This manufacturer) does not participate in this program."

Delete → ~~(4) If the purchaser mentioned in subsection (1) is another motor vehicle dealer, the selling motor vehicle dealer shall ensure that the purchaser receives a copy of a separate under that subsection for each motor vehicle that the purchaser will purchase~~

(5) If a motor vehicle dealer and a purchaser enter into an agreement for the sale of a new motor vehicle to the purchaser, the dealer shall ensure that,

Although OMVIC staff believe that sequentially numbered agreements would be of considerable assistance during inspections and for complaint handling, in ensuring that only a single copy of the agreement exists for each trade, we have also come to understand the burden this places on dealers. Accordingly, we suggest that the reference to sequentially numbered agreements be deleted. (a) the agreement **Delete → ~~is on a sequentially numbered bill of sale~~** that contains all matters set out in clauses (1) (a) to (v);

(b) Delete → ~~the agreement contains a statement the parties have complied with this section;~~

- (c) the agreement is signed by ~~Delete~~ → ~~the parties~~ **ADD** → *a person who can bind the dealer (normally this will be a sales manager or other senior person in the dealership);*
- (d) the agreement is signed by the salesperson of the dealer, ~~Delete~~ → ~~if the dealer is required to act through a registered salesperson when selling~~; and
- (e) The agreement is signed by the purchaser**
- (e) the purchaser receives a copy of the agreement signed by the parties.

Sales of used motor vehicles *similar comments as shown in above section*

28. ~~Delete~~ → ~~(1) Subject to subsection (2), before entering into an agreement with a purchaser for the sale of a used motor vehicle, a motor vehicle dealer shall ensure that the purchaser receives a copy of a proposed agreement that includes, in a clear, comprehensible and prominent manner,~~

Retail bills of sale for a used vehicle must include the following:

- (a) all matters set out in clauses 27 (1) (a) to (v); except **j, k, l, m** and *similar treatment of t and u.*
- (b) the odometer reading of the vehicle at the time of the proposed agreement and, if different from that reading, the actual distance ~~traveled~~ ~~Delete~~ → **travelled** by the vehicle at that time;
- (c) an itemized list of all repairs, if any, that the dealer will make under the agreement **and their cost to the customer if any;**

The cost of the repairs may not be known to the dealer at the time the agreement is being written-up and further, will only be germane if the customer will be responsible for them.

- (d) a complete copy of all service records for the vehicle that are in the possession or under the control of the dealer at the time of the proposed agreement and that show the repairs or replacements made by the dealer, including, if applicable, the replacement or repair of an odometer;

OMVIC assumes that the records in (d) relate solely to items completed by the selling dealer and do not include records relating to previous owners or manufacturers' warranty records etc. which may include personal info, e.g. names, addresses, cell/home/work phone numbers, credit card details, etc.

- (e) an itemized list of items or rights for which there is no extra charge to the purchaser beyond the price of the motor vehicle;
- (f) ***Isn't this potentially in conflict with the Sale of Goods Act?*** → a statement that there is no warranty or guarantee with respect to the sale of the motor vehicle, if that is the case, ~~Delete~~ → ~~together with the statement set out in subsection (2)~~; and
- (g) a statement as to whether or not the vehicle ***was registered*** ~~Delete~~ → ***originates from*** outside of Ontario ***if known to the dealer, and if so, in which jurisdictions.***

OMVIC suggests that MTO endeavour to capture and report on out-of-province ownership whenever possible.

(2) ~~Delete → The statement mentioned in clause (1) (f) is as follows and shall be in English or French, according to the preference that the purchaser expresses to the dealer.~~ ADD → If a vehicle is sold “as is” the agreement shall have the following statement on the face of the agreement initialed by the customer:

Vehicle sold “as is”

The motor vehicle sold under this agreement is being sold “as-is”. It is not represented as being in road worthy condition, mechanically sound or maintained at any guaranteed level of quality. The vehicle may not be fit for use as a means of transportation and may require substantial repairs. ***This vehicle cannot be registered to be driven on the road in its present condition.***

~~Delete → (3) If the purchaser mentioned in subsection (1) is another motor vehicle dealer, the selling motor vehicle dealer shall ensure that the purchaser receives a copy of a separate proposed agreement under that subsection for each motor vehicle that the purchaser will purchase.~~

(4) If a motor vehicle dealer and a purchaser enter into an agreement for the sale of a used motor vehicle to the purchaser, the dealer shall ensure that,

(a) the agreement ~~Delete → is on a sequentially numbered bill of sale that~~ contains all matters required by clauses (1) (a) to (g);

~~(b) Delete: the agreement contains a statement that the parties have complied with this section;~~

(c) the agreement is signed by ~~Delete → the parties~~ ADD → a person who can bind the dealer (normally this will be a sales manager or other senior person in the dealership);

(d) the agreement is signed by the salesperson of the dealer, ~~Delete → if the dealer is required to act through a registered salesperson when selling;~~ and

~~(e) The agreement is signed by the purchaser~~

(e) the purchaser receives a copy of the agreement signed by the parties.

Arranging financing of motor vehicles

29. (1) If a motor vehicle dealer enters into an agreement with a purchaser for the sale of a motor vehicle and if the dealer arranges for the financing of the balance shown on the sales order of the motor vehicle, the dealer shall complete the negotiable instrument, conditional sales agreement, chattel mortgage, or other security instrument involved in the financing before delivering the motor vehicle to the purchaser.

(2) The terms of financing shall not vary from the particulars shown on the sales order ***“Sales order” is a new term.***

In some cases, the financial institution may adjust the interest rate after the paperwork has been submitted. CPA permits renegotiation of the contract in this case.

(3) The motor vehicle dealer shall attach a statement from the organization providing the financing to the front of the ***define: instrument*** involved in the financing that discloses whether the motor vehicle dealer and the salespersons registered to the dealer will receive a commission, fee, or any other incentive from the organization for arranging the financing.

OMVIC believes that rather than have a section which compels the financial institution to comply with this section of the MVDA, a general statement concerning the relationship between the dealer and financial institution including the fact that compensation may be paid to the dealer by the financial institution, must be included on all bills of sale.

Trade-in of a used motor vehicle

30. (1) If a motor vehicle dealer enters into an agreement with a purchaser for the sale of a motor vehicle and if the agreement provides that as part of the sale the dealer will purchase a used motor vehicle from the purchaser as a trade-in, the dealer shall ensure that the agreement shows the following in a clear, comprehensible and prominent manner with respect to the vehicle being traded-in, in addition to the requirements of sections 27 and 28 with respect to the motor vehicle that the purchaser is purchasing:

Mandatory content regarding a vehicle being traded-in:

1. The name and address of the ~~Delete~~ **→last** registered owner.
2. If the ~~delete~~ **→last**-registered owner is an individual, the driver's licence number of the individual. *(Add name, address and drivers license of person trading in the car if other than the registered owner).*
3. ~~delete~~ **→The date of purchase of the vehicle. Date of trade-in?**
4. The make and model year of the vehicle.
5. The manufacturer's serial number for the vehicle.
6. The body type of the vehicle.
7. The purchase price *or trade in allowance* of the vehicle to be paid by the dealer.
8. A statement obtained from the ~~Delete~~ **→last**-registered owner as to whether the vehicle has previously been used for a commercial use, the purposes of law enforcement or the delivery of emergency services or used as a rental vehicle.

The Board believes that it is preferable to specifically list the commercial uses which are material to a vehicle's value. The board agrees that the following are applicable: driving school, taxi, courier, plow, towing vehicle, rental, school bus, limo, delivery and service vehicles.

9. The recorded odometer reading at the time of the trade-in and, if different from that reading, the distance ~~traveled Delete~~ **→travelled**-at that time.

***Delete* ~~→10. The condition of the vehicle.~~**

11. A statement by the *customer or person trading in the vehicle* ~~Delete~~ **→dealer**-of the facts respecting the vehicle that the dealer considers important with respect to the trade-in.

12. ~~Delete~~ **→The statements by the last registered owner and all previous registered owners of the vehicle of the facts that they considered important with respect to the vehicle at the time they acquired ownership of it.**

This wouldn't be possible since these statements will have been lost through the years as vehicles changed hands. 13. Statement of accident history and cost of repair.

(2) The matters that an agreement for the trade-in of a used motor vehicle are required to show under subsection (1) shall be shown separately for each motor vehicle that is traded in.

Consignment sales

As a general principle, we believe that the disclosure should be equivalent to that required for a dealer trade. 31(1) No motor vehicle dealer shall sell a ~~Delete~~ ~~used~~ motor vehicle ~~Delete~~ ~~to~~ ~~ADD~~ ~~to~~ for a person on a consignment basis unless,

- (a) the dealer enters into a written agreement with the owner of the motor vehicle that discloses, in a clear, comprehensible and prominent manner,
 - (i) the total amount that the dealer will charge the owner on the sale of the motor vehicle,
 - (ii) ~~Delete~~ ~~an estimate~~ a *minimum* price of the motor vehicle,
In many cases, the dealer may be handling the sale on behalf of a party who has left the country. There should be a means by which the consignor can provide consent for a lower price. This does not mean that the price will necessarily be lower, but at least allow for the possibility that a consignor may adjust the price without a new consignment agreement being required.
 - (iii) the party that is responsible for paying any taxes or charges that arise as a result of the sale,
 - (iv) a copy of the used vehicle information package described in section 11.1 of the *Highway Traffic Act*,
 - (v) the term of the agreement and how the parties can extend it,
 - (vi) the conditions respecting the early termination of the agreement, including the fees payable for early termination, and
 - (vii) an itemized list of all charges, howsoever described, that the dealer will charge for the consignment sale;
 - (viii) *a condition that the dealer provide the consignor with the name and address of the final purchaser and the sale price of the motor vehicle after it is sold.*
- (b) on entering into the consignment agreement described in clause (a), the dealer enters all required information with respect to the motor vehicle in the dealer's garage register;
- (c) the dealer obtains the written consent of the owner of the motor vehicle to disclose to a prospective purchaser the identity of the person who owns the vehicle at the time the dealer enters into the consignment agreement;
All three parties – consignor, consignee, and purchaser - should have access to the info of all parties in order to ensure transparency.
- (d) the dealer offers the motor vehicle for sale in a separate area of its lot and indicates that it is a vehicle for sale by consignment;
May not be a separate area available for the smaller dealers. Instead, require that the vehicle be marked as a consignment sale vehicle.
- (e) before selling the motor vehicle to the purchaser, the dealer acquires title to the vehicle; and
- (f) the dealer complies with section 28.

(2) For the purposes of this Regulation, a sale of a used motor vehicle by a motor vehicle dealer to a person on a consignment basis constitutes a trade in the vehicle between the dealer and the person who acquires the vehicle through consignment.

Sale of extended warranties

32. (1) No motor vehicle dealer shall ~~offer~~ ~~Delete~~ → ~~sell~~ an extended *third party* warranty unless the warranty is insured by a third party licensed for the purposes of Ontario law to sell insurance.

OMVIC recommends that the APA / Industry Canada study be reviewed before finalizing the regulation regarding uninsured third party warranties.

(2) If a motor vehicle dealer offers to sell an extended warranty, the dealer shall provide a copy of the proposed agreement for the warranty to the purchaser before selling the warranty and the motor vehicle to which the warranty is to apply.

(3) The agreement for the extended warranty shall disclose on the face of the warranty application and in a clear, comprehensible and prominent manner,

(a) the name of the purchaser of the warranty;

(b) the name and address of the warranty holder, if the person is not the purchaser;

(c) the name and registration number of the motor vehicle dealer;

(d) the name and registration number of the salesperson who is acting on behalf of the dealer respecting the sale ~~Delete~~ → ~~if the dealer is required to act through a registered salesperson when selling~~;

(e) the name of the supplier of the warranty, if the supplier of the warranty is not the motor vehicle dealer or a person associated with the dealer for the purposes of the Act;

(f) the make, model, and manufacturer's serial number of the motor vehicle to be covered by the warranty;

(g) an itemized list of the components of the motor vehicle covered by the warranty and a specific description for each item listed that indicates how the warranty extends the manufacturer's warranty *if applicable*;

(h) the term of the warranty;

(i) the maximum claim limits under the warranty;

(j) the gross liability of the supplier of the warranty under the warranty;

(k) the amount of the deductible, if any, for claims under the warranty;

(l) an itemized list of all fees or costs that the warranty holder is required to pay at the time of purchase and during the term of the warranty;

(m) the maintenance obligations of the warranty holder under both the warranty and the manufacturer's warranty *if applicable*; and

(n) whether or not the warranty is transferable to another owner of the motor vehicle to which the warranty relates *and the fee for transfer if any*.

(4) On selling an extended warranty, a motor vehicle dealer shall ensure that,

(a) the agreement for the warranty complies with subsection (3);

(b) the purchaser and the dealer sign the agreement for the warranty;

(c) the purchaser initials the matters listed in clauses (3) (f) to (m); and

(d) the agreement for the warranty is signed by the salesperson of the dealer, ~~Delete~~ → ~~if the dealer is required to act through a registered salesperson when selling~~.

5) A motor vehicle dealer who sells an extended warranty shall, within five days after selling the warranty, provide the supplier of the warranty with all necessary documents detailing the sale and payment of all fees and costs received from the warranty holder at the time of the sale.

Perhaps this section should allow for the option that the warranty company has established its own period for the submission of warranty monies and applications.

(6) A motor vehicle dealer who sells an extended warranty for a used motor vehicle shall ensure that the documents mentioned in subsection (5) accurately describe the **condition** of the motor vehicle, the distance it has ~~traveled Delete~~ → ~~travelled~~ and the price that the purchaser paid for the motor vehicle and the warranty.

OMVIC strongly recommends that dealers be obliged to sell only warranties for which they are deemed by the warranty supplier to be an agent (specific for the purposes of the sale of the warranty). This ensures that if the dealer fails to submit the warranty monies, the consumer is still protected since the dealer is deemed to have been an agent of the warranty company. This requires the warranty companies to do a certain amount of due diligence before distributing warranty applications to dealers. It is our understanding that this provision exists in some other jurisdictions (Saskatchewan?)

Sale of service plans See comments in definition section. We believe that this section should be rewritten in the context of our proposed definition.

33. (1) No motor vehicle dealer shall sell a service plan unless the service plan is insured by a third party licensed for the purposes of Ontario law to sell insurance.

(2) If a motor vehicle dealer offers to sell a service plan, the dealer shall provide a copy of the agreement to the purchaser before selling the plan and the motor vehicle to which the service plan is to apply.

(3) The agreement for the service plan shall disclose, in a clear, comprehensible and prominent manner,

(a) the name of the purchaser;

(b) the name and registration number of the motor vehicle dealer;

(c) the name and registration number of the salesperson who is acting on behalf of the dealer respecting the sale if the dealer is required to act through a registered salesperson when selling;

(d) the name of the supplier of the service plan, if the supplier of the service plan is not the motor vehicle dealer or a person associated with the dealer for the purposes of the Act;

(e) the make, model and manufacturer's serial number of the motor vehicle to be covered by the service plan;

(f) an itemized list of the goods and services provided under the service plan and a specific description for each item listed that indicates whether the manufacturer's warranty requires the goods or services and, if so, the schedule of times by which the manufacturer's warranty requires them;

(g) the term of the service plan;

(h) the amount of the deductible, if any, for goods and services provided under the service plan;

(i) an itemized list of all fees or costs that the purchaser is required to pay at the time of purchase and during the term of the service plan;

(j) the maintenance obligations of the purchaser under the manufacturer's warranty;

(k) the locations at which the motor vehicle is to be serviced under the service plan; and

- (l) whether or not the service plan is transferable to another owner of the motor vehicle to which the service plan relates.
- (4) On selling a service plan, a motor vehicle dealer shall ensure that,
 - (a) the agreement for the service plan complies with subsection (3);
 - (b) the purchaser and the dealer sign the agreement for the service plan;
 - (c) the purchaser initials the matters listed in clauses (3) (e) to (j); and
 - (d) the agreement for the service plan is signed by the salesperson of the dealer, if the dealer is required to act through a registered salesperson when selling.
- (5) A motor vehicle dealer who sells a service plan shall, within five days after selling the service plan, provide the supplier of the service plan with all necessary documents detailing the sale and payment of all fees and costs received from the warranty holder at the time of the sale.

Leases

Similar comments to those found at section 27 regarding purpose of a “proposed” agreement.

34. Delete → (1) Before entering into a lease with a lessee for the lease of a new or used motor vehicle, a motor vehicle dealer registered as a general dealer or a lessor shall ensure that the lessee receives a copy of a proposed lease that includes, in a clear, comprehensible and prominent manner,

Lease agreements must have the following mandatory content:

- (a) a statement that the agreement is a lease;
- (b) the name and address of the lessee;

Add drivers licence number

Add the name of the insurance company and the policy number for the lessee’s insurance coverage on the vehicle;

- (c) the registered name and registration number of the motor vehicle dealer;
- (d) the registration number and the name of the salesperson who is acting on behalf of the dealer respecting the lease **Delete → if the dealer is required to act through a registered salesperson when leasing;**

- (e) the make and model year of the vehicle;
- (f) the manufacturer’s serial number for the vehicle;

Add dealer’s stock number

Add distance traveled (used vehicles are also leased)

- (g) the body type of the vehicle;

Add colour

- (h) the total **price Delete → value** of the vehicle, including all options **and all other costs** for which the lessor is required to pay under the lease;
- (i) an itemized list of the items included in the total **price Delete → value** of the vehicle described in clause (h);
- (j) the total amount of the security **or other** deposit, if any, that the lessee is required to pay under the lease, including any advance for an expense that the lessee incurs in connection with the lease before or at the beginning of the term of the lease term,

even if the expense is not payable until after the beginning of the term of the lease;

Add section for trade-in allowance and lien pay-out

- (k) if the lessee is trading in a used motor vehicle that the dealer is purchasing as part of the lease, the matters listed in subsection 30 (1) with respect to the vehicle being traded-in, where the matters are shown separately for each vehicle being traded-in;
 - (l) the start date of the lease and;
 - (i) if the term is definite, the end date of the lease and the term of the lease expressed in months, or
 - (ii) if the term of the lease is indefinite, a statement to that effect;
 - (m) the total periodic payment that the lessee is required to pay under the lease ***inclusive of taxes*** and the day on which the payment is due;
 - (n) an itemized list of all other charges that the lessee is required to pay and all other obligations that the lessee is required to fulfill under the lease or upon termination of the lease;
 - (o) whether the vehicle is subject to a service plan and, if so, a copy of the agreement for the service plan;
 - (p) the penalties under the lease for driving the vehicle beyond the distance provided in the lease or for any other default or breach under the contract;
 - (q) the standards used to determine what constitutes excessive wear for each major component of the vehicle and the way in which the standards are used to determine the penalties under the lease for excessive wear on the vehicle or for driving the vehicle beyond the distance provided in the lease;
- OMVIC suggests that the lessee be provided an opportunity to rectify wear and tear items rather than be compelled to accept the pricing of repairs of the lessor's repair facility. This may require the lessor to assess wear and tear prior to expiry of the lease and to promptly provide that assessment to the lessee. If the lessee chooses to effect the repairs at a facility other than that of the dealer, those repairs must meet acceptable standards.***
- (r) if the lease permits the ~~Delete~~ **→ lessor-lessee!!** to purchase the vehicle before the end of the term of the lease, a statement to that effect, the cost of purchasing the vehicle and a statement as to how the cost of that purchase is determined, which shall include all fees payable by the lessor for the purchase;
 - (s) if the lease permits the ~~Delete~~ **→ lessor lessee!!** to purchase the vehicle at the end of the term of the lease term, a statement of that option, a statement of how the lessor can exercise the option and a statement of the cost of purchasing the vehicle, which shall include all fees payable by the lessor for the purchase;
 - (t) the circumstances, if any, in which the lessee may terminate the lease before the end of the term of the lease;
 - (u) if the ~~lease is terminated Delete~~ **→ lessee seeks to terminate the lease** before the end of the term of the lease, the amount of the payments required ~~Delete~~ **→ to do** or the manner of determining the amount of those payments;
 - (v) the following in relation to the lease for the vehicle, as applicable and as defined in Part VIII of Ontario Regulation **insert filing number of a new regulation to be filed (reg2003.0552)** made under the *Consumer Protection Act, 2002*:

- (i) the annual percentage rate,
 - (ii) the capitalized amount,
 - (iii) the estimated residual value,
 - (iv) the implicit finance charge, and
 - (v) the total lease cost; and
 - (w) a statement of the maximum liability of the lessee at the end of the term of the lease.
- 2) If a motor vehicle dealer and a lessee enter into a lease of a new or used motor vehicle, the dealer shall ensure that,
- (a) the agreement contains all matters set out in clauses (1) (a) to (w);
 - (b) the agreement is signed by the parties;
 - (c) the agreement is signed by the salesperson of the dealer and the dealer, ~~Delete~~ **→if the dealer is required to act through a registered salesperson when leasing**; and
 - (d) the lessee receives a copy of the agreement.

Remedies for non-disclosure

35 (1) If a registered motor vehicle dealer enters into an agreement with a person with respect to a trade in a motor vehicle and the agreement does not include the information described in clause 27 (1) (r) or 34 (1) (v), the person is not liable under the agreement for any amount mentioned in the information that was required to have been included in the agreement.

(2) If a registered motor vehicle dealer enters into an agreement with a person with respect to a trade in a motor vehicle and does not comply with a requirement set out in sections 27 to 34 with respect to the trade, other than if the agreement does not include the information described in clause 27 (1) (r) or 34 (1) (v), the person is entitled to rescind the agreement by giving a notice in writing to the dealer within 90 days of learning of the failure of the dealer to comply with the requirement.

(3) If the person rescinds the agreement, the person shall return to the motor vehicle dealer the motor vehicle, if any, purchased under the agreement and the dealer shall return to the person all money paid on the person's account under the agreement.

For both 35(1) and (2), OMVIC believes that rescission rights should recognize the possibility of clerical errors and not provide a windfall to a purchaser as a result of an oversight. In the case of 35(2), OMVIC believes that rescission rights should be limited to material fact situations and suggests that failure to disclose the following items, if not disclosed, should result in the purchaser having the right to rescind the contract: odometer tampering, write-offs, major damage, stolen, revinned, liens against vehicle, submerged, fire, non-disclosed commercial use. This right should be subject to the same limitations that exist under the current CPA. Regarding 35(3), OMVIC also believes that a dealer, who is not responsible through deliberation or willful blindness for non-disclosure of material fact, should be entitled to negotiate a usage fee for the vehicle.

Evidence respecting trades

36. In a proceeding involving an issue respecting a trade in a motor vehicle, oral evidence respecting the trade is admissible despite the existence of a written agreement and despite

the fact that the evidence pertains to a representation in respect of a term, condition or undertaking that is or is not provided for in the agreement.

We are curious as to the intent and application of the above section.

Records

37(1) Every motor vehicle dealer shall maintain a record of,

- (a) a motor vehicle that comes into the dealer's possession for the purpose of a trade in the vehicle, where the record shall include the vehicle identification number of the vehicle; and
- (b) a motor vehicle on which the dealer causes a repair, reconditioning, or any other work to be done, where the record shall include full and accurate particulars of the repair, reconditioning or other work and the name of the person doing the work.

(2) Every motor vehicle dealer shall maintain,

Delete → (a) a record that contains the supporting documents required to obtain a permit and a number plate under section 7 of the Highway Traffic Act, and any replacements of the permit or number plate, for a motor vehicle described in clause (1) (a);

Although OMVIC staff requested this section and felt confident that it would be supported by OADA/TADA given recent presentations to the Minister of Transportation about tightening up the process for the issuance of replacement permits, we now understand that this would be difficult to comply with given that MTO forms are not completed in duplicate, i.e. there is no dealer copy that can be maintained to satisfy this clause.

- (b) a record of any safety standards certificate issued under the regulations made under the *Highway Traffic Act by or on behalf of a* motor vehicle described in clause (1) (a) while in the dealer's possession;
 - (c) a record of any inspection carried out under the regulations made under the *Highway Traffic Act* on a motor vehicle described in clause (1) (a) or (b) while in the dealer's possession *or control* and the results of the inspection;
 - (d) a record of every *trade Delete → sale* by the dealer of a motor vehicle, including every *trade Delete → sale-in* which the dealer arranges for the financing of the CUSTOMER? purchaser and every sale made on a consignment basis;
 - (e) a record of every trade-in under which the dealer purchases a motor vehicle as part of a *trade Delete → sale* by the dealer of another motor vehicle;
 - (f) a record of every sale by the dealer of an extended warranty or a service plan for a motor vehicle;
 - (g) a record of every lease of a motor vehicle to a lessee by the dealer; and
 - (h) *example required →* a record of every record that the dealer is required to provide to a person under this Regulation. *..and how does this work with subsection 5?*
- (3) Every motor vehicle dealer shall maintain records respecting the dealer's operations which shall include:
- (a) all records respecting employees of the dealer, including how they are paid, how much they are paid, proof of payment, dates of employment, positions held and taxes withheld as required by law;

- (b) all records related to persons who are associated with the dealer for the purposes of the Act;
- (c) all records related to the financing of the operations, including any security interests granted by the dealer and loan applications, loan agreements and credit arrangements made by the dealer;
- (d) all records involving insuring the operations;
- (e) a garage register for the dealer and all branding documents and other documents required by the *Highway Traffic Act* for the motor vehicles in the possession of the dealer;
- (f) ~~Delete → a ledger of all trades in motor vehicles by the dealer that includes~~ the method of payment and copies of any financial instruments accepted by the dealer *in relation to a trade*; and
- (g) all records of accounts that the dealer is required to maintain under section 38 relating to the operations.

(4) Every motor vehicle dealer shall maintain the records required by subsections (1), (2) and (3) for a period of seven years from the later of,

OMVIC suggests that while the dealer may be required to maintain these records for 7 years, the requirement for storage at the business premises or location approved by registrar should be limited to two years.

(a) the time at which the record was created; or

(b) the time at which the record was used for the purpose of a trade in a motor vehicle, if it was used for that purpose.

(5) Every motor vehicle dealer shall maintain a master record that lists the matters required to be recorded under subsections (1), (2) and (3).

What is master record and how does this work with 2(h) above?

(6) If a record that subsection (1), (2) or (3) requires a motor vehicle dealer to maintain becomes unavailable as a result of loss through inadvertence, the dealer shall,

(a) document the loss in the master record;

(b) use its best efforts to promptly reconstruct the record that has been lost; and

(c) advise the registrar in writing within five days of the loss and provide the registrar with supporting documentation.

(7) A motor vehicle dealer shall store all records required by this section at the business premises authorized by the dealer's registration ***or at the location approved by the registrar.***

Records for most recent 2 years on premises or approved location, balance may be kept in storage.

Records of dealers operating from a dwelling must be stored at a site approved by the registrar and the registrar should have the right to require a dealer to store records at an approved location in situations where the dealer's records are consistently unavailable for inspection.

Bank accounts

38. (1) A motor vehicle dealer shall maintain in Ontario all accounts relating to the dealer's operations that are not a trust account under section 25 of the Act.

(2) Each account relating to the motor vehicle dealer's operations that is not a trust account under section 25 of the Act shall be in the legal name of the dealer, shall indicate, if applicable, the trade name of the dealer and shall be in a bank listed in Schedule I or II to the *Bank Act* (Canada), a loan or trust corporation or a credit union as defined in the *Credit Unions and Caisses Populaires Act, 1994*.

(3) Subject to subsection 39 (4), a motor vehicle dealer and the salespersons registered to the dealer who receive funds as payment for a trade in a motor vehicle shall promptly deposit the funds into an account that complies with subsection (2).

(4) A motor vehicle dealer shall ensure that the banking records for all accounts relating to the dealer's operations that are not a trust account under section 25 of the Act are kept up to date.

(5) A motor vehicle dealer shall notify the registrar of the names of all persons who have the authority to sign financial documents on behalf of the dealer or to bind the dealer with respect to financial obligations.

Add requirement to inform registrar of account details (location, acct no., etc). This is particularly important given the ability to freeze a registrant's account(s).

Dealer should file with the bank and the registrar a letter approving release of info by bank to registrar for both operating and trust accounts

Trust account

39. (1) A motor vehicle dealer registered as a manufacturer, an auctioning dealer or an outside Ontario dealer is exempt from section 25 of the Act.

(2) The trust account that section 25 of the Act requires a motor vehicle dealer to maintain,
(a) shall be designated and named as a trust account for the purposes of the Act; and
(b) shall be a pooled account for the purpose of all trading in motor vehicles of the dealer, unless the dealer obtains the registrar's prior written consent.

(3) A motor vehicle dealer shall file with the registrar,

(a) within five days of making an agreement with a financial institution to establish a trust account, a copy of the agreement; and

(b) within five days of making changes to the agreement with a financial institution that establishes a trust account, a copy of the changes to the agreement.

(4) A motor vehicle dealer shall ensure that all of the following money is deposited into the dealer's trust account within five banking days after the dealer or a salesperson registered to the dealer receives it and that the money is held in trust for the time specified in the applicable paragraph:

1. ***Monies Delete → Money received*** as a deposit from a person toward the purchase of a motor vehicle shall be held in trust until the purchase is concluded.

OMVIC Board suggests that there should be a threshold of \$5000 for this requirement, i.e. deposits less than \$5000 would not have to be deposited into a trust account.

2. Money received from a person with respect to the sale of a motor vehicle on a consignment basis shall be held in trust until the sale is concluded.

3. Money received from the purchaser of an extended warranty that is supplied by the dealer or a person associated with the dealer for the purposes of the Act shall be held in trust until the term of the warranty starts and the dealer shall withdraw it from trust only on

an annualized basis by dividing the total cost of the warranty, including all applicable taxes, by the years of coverage under the warranty.

OMVIC suggests that this section be deleted. It can be dealt with in the third party warranty section and handled pursuant to the recommendations of the Industry Canada report.

4. Money received from the purchaser of an extended warranty that is supplied by a person other than the dealer or a person associated with the dealer for the purposes of the Act shall be held in trust until the time that the supplier of the warranty requires the money. ***It has been suggested that the annual business costs of compliance with this section are far greater than the potential costs to the Comp Fund. In view of this observation, it is suggested that this section be deleted.***

5. Money received from the purchaser of a service plan shall be held in trust until the time that the supplier of the service plan requires the money. ***SEE ABOVE.***

6. Money received as a security deposit from a lessee under a lease of a motor vehicle shall be held in trust for the time that the lease requires the lessor to hold it in trust ***These are small amounts of money and normally are held as an advance payment of the final monthly payment, thus posing no risk to lessees. OMVIC agrees with the suggestion that this section be deleted since the business costs of compliance are greater than the risks posed to consumers.***

(5) Interest earned on money held in the trust account of a motor vehicle dealer accrues to the dealer.

(6) No motor vehicle dealer or person acting on behalf of the dealer shall withdraw any money held in the dealer's trust account except,

(a) to make a refund to the person who paid the money to the dealer ***Delete → or a person acting on behalf of the dealer;*** or

(b) to make a payment to the person legally entitled to the money after the money is no longer required to be held in trust.

(c) To withdraw the interest stipulated in subsection (5)

(7) A motor vehicle dealer shall maintain a record, ***satisfactory to the registrar Delete → in a form that the registrar provides,*** of,

(a) all money that the dealer or a salesperson registered to the dealer receives and that the dealer is required to hold in trust, including the person from whom the payment was received, the amount of the payment, the method of payment and the time at which it was received; and ***the purpose of the payment***

(b) all money withdrawn from the dealer's trust account, including the person to whom the money was paid and the amount, the method, ***the purpose of the payment*** and the time of the payment.

(8) A motor vehicle dealer shall prepare a monthly bank reconciliation for the dealer's trust account within 30 days of the date of the bank statement for the account for the immediately preceding month.

(9) The monthly bank reconciliation shall identify the money held in trust for each person and reconcile the monthly trust liability to the balance in the trust account as of the date of the reconciliation.

(10) The motor vehicle dealer shall review the monthly bank reconciliation and acknowledge it by signing and dating it.

Regarding (8), (9) and (10), in order to accommodate the small business owner who may submit business records only on a periodic basis to an accountant or bookkeeper, it is suggested that the reconciliation could be done within ten days of a request of the Registrar.

(11) If there is a deficiency in the trust account, the motor vehicle dealer shall notify the registrar immediately and shall not make a payment from the dealer's own funds to remedy the imbalance, unless the registrar specifically requests the dealer to do so.

(12) No motor vehicle dealer or person acting on behalf of the dealer shall post the dealer's trust account as collateral.

(13) A motor vehicle dealer shall retain, for a period of seven years since their creation, the records, including the monthly bank reconciliations, that this section requires the dealer to maintain, unless another law requires the dealer to retain them for a longer period of time.

OMVIC suggests that while the dealer may be required to maintain these records for 7 years, the requirement for storage at the business premises or location approved by registrar should be limited to two years.

Definitions

40. In this Part,

“approved securities” means investments in which a trust corporation may invest under the *Loan and Trust Corporations Act*; (“valeurs mobilières autorisées”)

“Board” means the board of trustees appointed under section 41; (“conseil d’administration”)

“claim” means a claim for pecuniary loss by a consumer arising out of a trade with a participant with respect to a motor vehicle; (“demande d’indemnité”)

“claimant” means an applicant for compensation from the Fund for payment of a claim; (“auteur de la demande”)

“consumer” means a consumer as defined in section 1 of the *Consumer Protection Act, 2002*; (“...”)

“participant” means a motor vehicle dealer registered under the Act or a predecessor of the Act who ***was registered at the time of the claimant’s trade; Delete → who, by virtue of the class of the registration, is entitled to sell motor vehicles to consumers in Ontario at the time of doing so;*** (“...”)

The present wording would disentitle a consumer who purchased a vehicle from a wholesale restricted dealer who was acting outside of his class. We do not want to penalize the consumer for that. This is particularly important given that there's anything in our advertising standards that requires the selling dealer to disclose their class of registration to a potential customer, only the OMVIC logo.

“Trustee” means the Trustee appointed under subsection 51 (1) and includes a successor to the Trustee appointed under subsection 53 (3) that accepts the appointment. (“fiduciaire”)

Composition of Board

41. (1) The Board shall consist of nine members.

(2) If there is an administrative authority, the Minister shall appoint three of the Board members and the Council shall appoint the rest.

- (3) If there is no administrative authority, the Minister shall appoint all of the Board members.
- (4) The person or body appointing the Board members shall ensure that, as close as possible,
- (a) half of the members are representatives of consumer organizations or interests; and
 - (b) half of the members are representatives of registrants and are registrants.

Management of Fund

- 42.** (1) The Board shall manage the affairs of the Fund and shall retain the Trustee to act on the Board's behalf with respect to the Trustee's duties under this Part.
- (2) The Board shall ensure that the Fund is managed in a fiscally responsible manner and in accordance with an investment policy that requires the Board, in respect of investment decisions, to act in a reasonably prudent manner.
- (3) The investment policy may provide that the Fund may be invested in approved securities consistent with the policy.
- (4) The Board shall ensure that the Fund is located in Ontario.

Quorum

- 43.** (1) Subject to subsection (2), a majority of the Board constitutes a quorum.
- (2) A member of the Board is disqualified from participating and shall not participate in any deliberation or decision of the Board with respect to any claim against a participant if,
- (a) the member is the participant or an officer or director of the participant;
 - (b) the member has a financial interest in the participant;
 - (c) the member is an interested person in respect of the participant for the purposes of section 6 of the Act; or
 - (d) the member has a conflict of interest.

Conduct of business

- 44.** (1) The Board shall designate one of its members as Chair and another as Vice-Chair.
- (2) The Board may pass by-laws with respect to the conduct of its business.
- (3) The Board shall record its meetings by minutes.

Payments to members

- 45.** (1) A member of the Board is entitled to compensation for so acting in an amount determined by the Council if there is an administrative authority or by the Minister if there is no administrative authority.
- (2) All members of the Board are entitled to be reimbursed for reasonable expenses for attending meetings of the Board.

Assistance

- 46.** (1) The Board may employ or retain the services of the persons that it reasonably requires to assist in the efficient consideration and resolution of claims *and for the communication to consumers of the existence of the Fund and for the management of the Fund in accordance with section 42.*
- (2) If the Board employs persons or retains their services under subsection (1), all fees, costs and expenses that they incur in their work under that subsection shall be paid by the

Trustee and shall be deducted first from the income of the Fund and, if there is any deficiency, from the capital of the Fund.

Does this permit OMVIC to manage and maintain an operational account on behalf of the Fund as it currently does?

The Board may employ or retain the services of the persons, including counsel, accountants, appraisers or other experts or advisers, that it reasonably requires for the purpose of discharging its duties under this Part.

Reports

47. (1) When required by any of the following persons or bodies, the Board shall provide to the person or body making the requirement the information, books, records or documents respecting the affairs of the Fund that the person or body specifies:

1. If there is an administrative authority, the board of the authority or the registrar.

2. If there is no administrative authority, the Minister or the registrar.

(2) The board of the administrative authority, or the Minister if there is no administrative authority may, if the board or the Minister, as the case may be, considers it advisable, direct that the affairs of the Fund be audited.

(3) The Board shall assist the auditor in performing the audit and shall provide all books, records and other information that are required in connection with it.

(4) The Board shall publish by electronic means and make available to the public the following information respecting the Fund: information respecting the number of claims received on or after this subsection comes into force, the number of those claims that were accepted, the amount of those accepted claims, the amount paid out of the Fund in respect of those accepted claims and the number of claims denied on or after this subsection comes into force.

5) The Board shall provide the information required under subsection (4) respecting each claim in the form of a summary of the claim that includes the name of the registrant, the amount claimed, the amount paid and the criteria under which the payment was made.

(6) The information required under subsection (4) shall not include the personal information of any individual who is a claimant.

Payments from participants

48. (1) ~~*Every applicant for registration as a motor vehicle dealer*~~ ~~*Delete*~~ → ~~*Upon obtaining registration, every registered motor vehicle dealer*~~ shall pay into the Fund the fee in the amount that the Council determines under clause 12 (1) (b) of the *Safety and Consumer Statutes Administration Act, 1996* for the purpose of subsection 42 (3) of the Act.

(2) In addition to the payment mentioned in subsection (1), if at any time the book value of the Fund is less or is anticipated to be less than \$3,000,000 by reason of a proposed payment by the Fund to one or more claimants, the Board may, by notice, require each participant to pay into the Fund the additional amount that the Trustee determines is necessary to bring the level of the Fund up to at least \$3,000,000.

(3) Each participant shall pay the additional amount within 21 days of being served with the notice.

(4) If a participant defaults in making a required payment to the Fund, except if the default is due to the bankruptcy or compulsory winding-up of the participant, the Board shall serve a notice in writing of the default on the participant.

(5) The participant shall make the required payment within 21 days of being served with the notice under subsection (4).

(6) If the participant is in default under subsection (4) for more than 21 days after being served with the notice, the participant is liable for,

(a) a penalty of 10 per cent of the amount in default; and

(b) interest on the amount in default calculated at the postjudgment interest rate in accordance with the *Courts of Justice Act*.

Termination of participation in the Fund

49. (1) If the registrar revokes the registration of a motor vehicle dealer under section 9 of the Act or cancels it at the request in writing of the dealer, the dealer ceases to be a participant on the day that the registration terminates.

(2) A motor vehicle dealer who ceases to be a participant in the Fund shall file with the Board and the registrar the financial statements and other evidence that each of them requires to establish that,

(a) the affairs of the dealer are settled;

(b) there are no outstanding claims for compensation from the Fund arising out of a trade with the dealer with respect to a motor vehicle; and

(c) the dealer has made arrangements satisfactory to the Board and the registrar to meet and discharge all liabilities and obligations of the dealer that could give rise to a claim for compensation from the Fund arising out of a trade with the dealer with respect to a motor vehicle.

Fund held in trust

50. (1) The Fund shall consist of all money paid into the Fund from participants or others under this Part, all income on money in the Fund and all property, rights and benefits occurring from the investment of the money.

Does this allow OMVIC to maintain the operational account on behalf of the Fund as currently happens?

(2) The Board shall hold the Fund in trust for the benefit of those holders of claims that the Board approves under this Part.

(3) No credit of a payment or amount to the Fund with respect to a participant gives the participant any right to that payment or amount or any part of it.

Appointment and functions

51. (1) With the approval of the director, the Board shall appoint a trust corporation as defined in section 1 of the *Loan and Trust Corporations Act* as the Trustee.

(2) The Trustee shall,

(a) receive amounts payable to the Fund by participants as directed by the Board; and

(b) seek and comply with the direction of the Board respecting the management of the Fund.

(3) ***This should be the board of trustees or can there be a separate investment manager?*** →The Trustee shall manage the Fund in accordance with (*instructions received*

from the board of trustees??) section 42, the investment policy described in that section and the agreement between the Board and the Trustee.

4) The Trustee shall not be required to give any bond or other security for the performance of its duties and, except if the diminution or loss results from its own fraud, negligence or willful misconduct, shall not be responsible for,

(a) any diminution in the funds, securities or property of whatever character constituting part of the Fund; or

(b) any loss of whatsoever character resulting from,

(i) the making of any investments,

(ii) the retention in good faith for any length of time of securities or other property of whatsoever character that the Trustee purchases or acquires, even if the securities or property are not income producing, or

(iii) any mistake in judgment made in good faith.

(5) The Trustee may act upon any written resolution, certificate, statement, instrument, opinion, report, notice, request, consent, letter or other document that it believes on reasonable grounds to be genuine and to have been signed, sent or delivered by or on behalf of the proper parties.

(6) The Trustee shall ensure that its books and records clearly identify all property of the Fund that it holds, regardless of the form of the holding, including approved securities.

(7) The Trustee shall retain its books and records for seven years or whatever additional period of time as is required by another law.

(8) The Trustee shall provide the Board with,

(a) all information, records and documents in its possession with respect to its management of the Fund that the Board may reasonably request; and

(b) certified financial statements with respect to its management of the Fund that the Board requires.

(9) The Trustee may employ or retain the services of the persons, including counsel, accountants, appraisers or other experts or advisers, that it reasonably requires for the purpose of discharging its duties under this Part.

(10) If the Trustee employs a person under subsection (9), the Trustee assumes all responsibility for any act or omission of the person.

Payments out of Fund

52. (1) The Trustee's fee for performing its duties under this Part shall be in the amount that the director, the Board and the Trustee mutually agree on, or if they do not agree, the amount that the director determines.

(2) In addition to the fee mentioned in subsection (1), the Trustee is entitled to be reimbursed for all reasonable expenses that it reasonably incurs in performing its duties under this Part if the Board approves the amount of the reimbursement.

(3) All fees and expenses payable to the Trustee and all other amounts of money that the Board is directed to pay out of the Fund shall be deducted first from the income of the Fund and in the event of any deficiency in the income of the Fund from the capital of the Fund.

(4) No payment shall be made out of the Fund to satisfy or settle any claim or judgment or other court order resulting from the conduct of the Trustee.

Resignation and removal

53. (1) The Trustee may resign as Trustee by giving 90 days notice in writing to the Board and to the director.

(2) The Board or the director may require the removal of the Trustee on giving 90 days notice in writing to the Trustee.

(3) Upon the resignation or removal of the Trustee or if the Trustee is at any time unable to act, the Board, with the approval of the director, shall appoint a trust corporation as defined in section 1 under the *Loan and Trust Corporations Act* as a successor to the Trustee.

(4) Upon accepting the appointment, the successor shall, subject to subsection (5), have vested in it without further act or formality, all the rights and powers given under this Part to the Trustee ceasing to act.

(5) Upon the written request of the Board, the Trustee ceasing to act shall execute and deliver an instrument in writing transferring to the successor all the rights, powers and Fund assets held by the Trustee ceasing to act and shall do all other acts or things necessary or desirable for the vesting of the Fund assets in the successor.

(6) The Trustee ceasing to act shall render to the director and to the Board an account of its management of the Fund during the shorter of,

(a) the time period during which it managed the Fund; and

(b) the time period since the end of the time period covered by the certified financial statements that it provided to the Board most recently under clause 51 (8) (b).

Right to claim

54. (1) The Fund stands in the place of a participant with respect to a claim of a consumer against the participant if,

(a) the trade out of which the claim arose occurred on or after July 1, 1986 and while the participant was registered; and

(b) after demand by the consumer ***made to the participant's last known address,*** the participant has refused to pay the claim or is unable to do so ***or fails to respond to the consumer's demand.***

(2) A consumer, whether resident in Ontario or not, may make a claim for compensation from the Fund if the consumer gives written notice of the claim in accordance with subsection (4) within two years of the participant's refusal or failure to pay, even if the motor vehicle dealer with respect to whom the claim is being made ceased to be a participant after the refusal or failure to pay, and if the claim meets the requirements set out in one of the following paragraphs:

1. The participant was subject to a proposal by the registrar under section 9 of the Act to refuse to renew the participant's registration or to suspend or revoke the registration. The participant did not request a hearing before the Tribunal or both of the following conditions are met: the participant requested a hearing before the Tribunal and the Tribunal substantially upheld the proposal.

2. ***May be unnecessary if sub 5 drafted properly*** → The participant has been convicted of an offence in connection with the trade out of which the claim arose. The consumer makes a claim that is supported by evidence of the conviction.

3. The consumer has purchased or leased a motor vehicle from a participant. The vehicle has been seized by a law enforcement authority **and will not be returned to the consumer.** ~~.Delete →that indicates that the vehicle has been stolen.~~
 4. The consumer has purchased or leased a motor vehicle from a participant. The vehicle has been **lawfully** seized by a creditor, other than a creditor of the consumer.
 5. **The participant has failed to disclose the material fact (Should this be changed to align with matters set out earlier, i.e. commercial use, odometer, salvage etc.?) including but not limited to a material fact contained in the consumer's statement made pursuant to s. 27 (1)(v) of the regulations The consumer has indicated a material fact relevant to the trade in a motor vehicle. If the consumer has indicated that the material fact should be present, the vehicle does not possess it. If the consumer has indicated that the material fact should not be present, the vehicle does possess it. The participant has refused to remedy the situation.**
 6. The consumer has made payment by way of deposit, down payment or otherwise to a participant for a motor vehicle in accordance with an agreement. The participant has not delivered to the consumer the vehicle or an alternative motor vehicle that is acceptable to the consumer within the time period required by the agreement. The consumer has made a demand for a refund of the payment, except if the consumer has received the vehicle required by the agreement and the demand for a refund is based on the cost, value or quality of the vehicle received. The participant has refused without legal justification to make the refund or is unable to make the refund by reason of bankruptcy or insolvency.
 7. The consumer has made payment to a participant for an extended warranty or service plan. The term of the warranty or plan has not expired. The claim is for a non-earned premium or for a repair under the warranty or plan.
 8. The consumer has recovered in any court in Ontario a judgment in respect of the claim. The judgment has become final by reason of the expiration of the time for appeal or of having been confirmed by the highest court to which an appeal may be taken. The consumer makes a claim, supported by the judgment and statement of claim, for payment of the unsatisfied portion of the judgment and costs as ordered.
 9. The participant has become a bankrupt or a winding-up order has been made or a receiver appointed in respect of the business of the participant under the *Bankruptcy and Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or the *Winding-Up and Restructuring Act* (Canada). The claim represents the consumer's actual pecuniary loss, less any amount that may have been paid on account of the claim by the Trustee, liquidator or receiver.
- (3) No consumer shall have any vested or absolute right to payment of a claim against the Fund, the Board, the Trustee or the Tribunal.
- (4) To make a claim for compensation from the Fund, a claimant shall give written notice of the claim to the registrar that,
- (a) contains full particulars of the claim and of any payment recovery in respect of it; and

(b) is supported by an affidavit in the form provided by the registrar and whatever other material that the Board requires with respect to the claim.

(5) On receiving a notice of claim for compensation from the Fund, the registrar shall forward it to the Board.

(6) If the Board is of the opinion that a claimant is unable to give written notice of a claim for compensation from the Fund within the two-year period mentioned in subsection (3), the Board may grant an extension of time for making the claim and the decision of the Board as to an extension is final and not subject to review.

Response of Board

55. (1) The Board shall determine the eligibility of a claim for compensation from the Fund and the amount of the compensation payable under this Part and shall direct the Trustee to pay the compensation.

(2) A claimant is not entitled to receive any compensation from the Fund until the claimant assigns to the Fund all judgments and other right of any kind that the claimant has against the participant or any other person in respect of the claim.

(3) As a condition precedent to paying compensation from the Fund for a claim or any part of it, the Board *or its designate* may require that the claimant,

(a) deliver and execute the documents that the Board in its discretion or upon the advice of its counsel considers necessary, including documents that are necessary for transferring to the Fund the interest of the claimant in the claim so as to subrogate the Fund to the position of the claimant against the participant;

(b) obtain a judgment in respect of the claim, issue an execution under it, cause levies to be made under it and examine the judgment debtors;

(c) exhaust any other legal remedies, in addition to those described in clause (a), available to the claimant in respect of the claim; or

(d) bring an action against all persons against whom the claimant might reasonably be considered as having a cause of action in respect of the claim.

(4) A claimant is not entitled to receive any compensation from the Fund if,

(a) the claimant has misrepresented the nature of the claim or has provided false or misleading evidence in support of the claim;

(b) the claim is based on substantially the same facts as a prior claim in respect of the trade out of which the present claim arose, whether or not the prior claim has been granted or denied;

(c) the consumer was complicit in illegal *or dishonest* conduct related to the trade out of which the claim arose ~~and the Board provides evidence to the claimant that the consumer had knowledge of the conduct;~~

(d) the consumer is an interested person in respect of the participant for the purposes of section 6 of the Act or is a person who is not in an arms-length relationship with the participant; or

(e) the consumer is a registered salesperson or was a registered salesperson at the time of the trade out of which the claim arose.

(5) For the purposes of clause (4) (d), a consumer is not in an arms-length relationship with another person if,

(a) the consumer is related by blood, marriage or adoption to the other person; and

- (b) the other person is a participant, an officer or director of a participant or a partner of a participant.
- (6) Despite section 54, no compensation shall be paid from the Fund for,
- (a) more than \$45,000, exclusive of costs, to a claimant in respect of the trade with a participant out of which the claim arose;
 - (b) any amount for interest, including interest on a judgment or on costs; or
 - (c) any amount for costs in excess of actual disbursements and fees as ordered, if there is a judgment in respect of the claim.
- (7) For the purposes of a payment of compensation from the Fund under subsection (6),
- (a) a partnership and its members shall be deemed to be one participant and are jointly and severally liable to the Fund for the payment; and
 - (b) a corporation and its officers and directors shall be deemed to be one participant and are jointly and severally liable to the Fund for the payment.
- (8) If a claimant recovers an amount from any other source in partial satisfaction of the claimant's total allowable claim against a participant, the maximum amount of compensation that the claimant is authorized to receive under clause (6) (a) is reduced by the amount so recovered.

This section is unclear but it needs to account for a situation where the consumer suffered a loss which is greater than the maximum amount payable by the Fund and s/he has recovered some funds but is still in the hole for more than the maximum amount claimable. If s/he lost \$60,000 and recovered \$10,000, then s/he should be able to claim the full \$45,000 and not have to reduce that amount by the \$10,000 s/he's collected.

Interim payment of compensation

- 56.** (1) Subject to subsection 55 (6), if it appears to the director or the Board that a consumer is entitled to claim compensation from the Fund and that an immediate payment is necessary to alleviate undue inconvenience to the consumer, the Board, with the concurrence of the director, may direct the Trustee to pay out of the Fund an amount sufficient to alleviate the immediate inconvenience.
- (2) Despite section 43, if a quorum of the Board is not available, any two members of the Board may exercise the power described in subsection (1) with the concurrence of the director or the director's designate in writing.
- (3) The exercise of the power described in subsection (1) is not subject to a hearing by the Tribunal and is final and

Hearing by Tribunal

- 57.** (1) If the Board determines that a claimant is not entitled under section 54 or 55 to make a claim or any part of it, it shall serve notice of its decision, together with written reasons, on the claimant.

Appeals to Tribunal should perhaps be limited to section 55(4) a through d.

- (2) The notice shall inform the claimant that the claimant is entitled to a hearing by the Tribunal if the claimant serves on the registrar and the Tribunal, within 15 days after the notice is served on the claimant, a notice in writing requiring a hearing.

(3) If the claimant does not require a hearing, the Tribunal shall not hold a hearing and the decision of the Board is final after the 15th day after the notice is served on the claimant under subsection (1).

(4) If the claimant requires a hearing, the Tribunal shall appoint a time for the hearing, hold the hearing and afford the claimant an opportunity to be heard.

(5) The claimant and the other persons that the Tribunal specifies are parties to the hearing.

(6) After the hearing, the Tribunal may,

(a) confirm the decision of the Board; or

(b) set aside the decision of the Board with respect to all or any part of a claim and direct the Trustee to pay the amount determined by the Tribunal out of the Fund *subject to 55(6)*.

Payment of compensation

58. (1) If the Board approves a claim for compensation from the Fund, the Trustee shall make the required payment out of the Fund to the persons entitled.

(2) When a payment is made out of the Fund under this Part, the Board is subrogated for the amount of the payment to the rights and remedies to which the person receiving the payment is entitled in respect of the claim for which the payment was made, including rights and remedies as a judgment creditor or execution creditor in respect of a judgment that has been assigned under subsection 55 (2) against the participant or any other person or in the event of the death, insolvency, bankruptcy or other disability of the participant or other person, against the personal representative or other person administering the estate of the participant or the other person.