



A Consultation Draft of the Motor Vehicle Dealers Act, 2001

Proposed by the
Ministry of Consumer and Business Services

This Consultation Draft is intended to facilitate constructive dialogue concerning its contents.

Note that it will only become law if the Legislative Assembly passes the legislation.

December 2001

Privacy

The Ministry of Consumer and Business Services has been directed to consult on the Consultation Draft of the Motor Vehicle Dealers Act, 2001. Any personal information you provide is subject to the Freedom of Information and Protection of Privacy Act. The information will be used to assist us in conducting and evaluating the results of the consultation, which may involve disclosing comments to other participants, institutions and interested persons during and after consultation. Your name will not be disclosed without your consent.

If you have any questions about the collection, use or disclosure of this information, please contact:

The Freedom of Information and Privacy Coordinator
Ministry of Consumer and Business Services
(416) 326-8470

A Consultation Draft of the Motor Vehicle Dealers Act, 2001

DEFINITIONS

Definitions

1. (1) In this Act,

“administrative authority” has the same meaning as in the *Safety and Consumer Statutes Administration Act, 1996*; (“organisme d’application”)

“employ” means to employ, appoint, authorize or otherwise arrange to have another person act on one’s behalf, including as an independent contractor; (“employer”)

“Minister” means the Minister of Consumer and Business Services or such other member of the Executive Council to whom the administration of this Act may be assigned under the *Executive Council Act*; (“ministre”)

“motor vehicle” means an automobile, truck or other vehicle propelled or driven otherwise than by muscular power, including a motorcycle, but not including a motorized snow vehicle or a farm tractor or other self-propelled machinery primarily intended for farming or construction purposes; (“véhicule automobile”)

“motor vehicle dealer” means person who carries on the business of trading in motor vehicles, whether for the person’s own account or the account of any other person, or who holds himself, herself or itself out as carrying on the business of trading in motor vehicles; (“commerçant de véhicules automobiles”)

“officer” includes the chair and vice-chair of the board of directors, the president and vice-president, the secretary and assistant secretary, the treasurer and assistant treasurer and the general manager and the assistant general manager of the corporation or a partner or general manager and assistant general manager of a partnership, any other individual designated as an officer by by-law or resolution or any other individual who performs functions for the

corporation normally performed by an individual occupying such office;
 (“dirigeant”)

“prescribed” means prescribed by regulations made under this Act; (“prescrit”)

“registrant” means a motor vehicle dealer or salesperson that is registered under this Act; (“la personne enregistrée”)

“salesperson” means an individual who is employed by a motor vehicle dealer to trade in motor vehicles on behalf of the motor vehicle dealer; (“vendeur”)

“trade” includes buying, selling, leasing or exchanging an interest in motor vehicles or negotiating or inducing or attempting to induce the buying, selling, leasing or exchanging of interest in a motor vehicle; (“mener des opérations”)

“Tribunal” means the Licence Appeal Tribunal established under the *Licence Appeal Tribunal Act, 1999* or such other tribunal as may be prescribed.
 (“Tribunal”)

Associated shareholders

(2) For purposes of this Act, one shareholder is associated with another shareholder in any of the following circumstances:

1. One shareholder is a company of which the other shareholder is an officer or director.
2. One shareholder is a partnership of which the other shareholder is a partner.
3. One shareholder is a company that is controlled directly or indirectly by the other shareholder.
4. Both shareholders are companies and one shareholder is controlled directly or indirectly by the same person that controls directly or indirectly the other shareholder.
5. Both shareholders are members of a voting trust where the trust relates to shares of a corporation.
6. Both shareholders are associated within the meaning of paragraphs 1 to 5 with another person.

OFFICERS

Director

2. (1) A director shall be appointed for the purposes of this Act and a maximum of two deputy directors may be appointed,

- (a) by the board of the administrative authority designated under the *Safety and Consumer Statutes Administration Act, 1996*; or
- (b) by the Minister if no administrative authority is so designated.

Director cannot be registrar

(2) A person appointed as the registrar or a deputy registrar under subsection 3 (1) shall not be appointed as the director or a deputy director under subsection (1).

Deputy director, duties

(3) A deputy director shall perform such duties as are assigned by the director and shall act as director in his or her absence.

Deputy director

(4) Where more than one deputy director has been appointed, only one deputy director may act as the director under subsection (3) at any one time

Registrar

3. (1) Subject to subsection (2), a registrar shall be appointed and a maximum of two deputy registrars may be appointed,

- (a) by the board of the administrative authority designated under the *Safety and Consumer Statutes Administration Act, 1996*; or
- (b) by the deputy minister to the Minister if no administrative authority is so designated.

Registrar cannot be director

(2) A person appointed as the director or deputy director under subsection 2 (1) shall not be appointed as the registrar or a deputy registrar under subsection (1).

Powers and duties

(3) The registrar shall exercise the powers and perform the duties imposed on him or her under this Act under the supervision of the director and a deputy registrar shall perform such duties as are assigned by the registrar and shall act as the registrar in the registrar's absence.

Deputy registrar

(4) Where more than one deputy registrar has been appointed, only one deputy registrar may act as the registrar under subsection (3) at any one time.

PROHIBITIONS RE: PRACTICE

Prohibition

4. (1) No person shall,

- (a) carry on business as a motor vehicle dealer unless the person is registered as a motor vehicle dealer under this Act; or
- (b) act as a salesperson unless he or she is registered as a salesperson.

Unregistered persons

(2) No person other than a person who is registered as a motor vehicle dealer or as a salesperson shall directly or indirectly hold himself, herself or itself out as being a motor vehicle dealer or salesperson, as the case may be.

Name and place of business

(3) A motor vehicle dealer shall not,

- (a) carry on business in a name other than the name in which the motor vehicle dealer is registered; or
- (b) invite the public to deal in a place other than the place that is authorized in the registration of the motor vehicle dealer.

Supply to unregistered person

(4) No motor vehicle dealer shall supply motor vehicles to another motor vehicle dealer for the purpose of trading in motor vehicles unless the other motor vehicle dealer is registered.

Salespersons

(5) No salesperson shall trade in motor vehicles on behalf of a motor vehicle dealer other than a motor vehicle dealer that is identified by the salesperson in his or her registration.

Exemption

5. (1) Despite section 4, individuals who on their own account trade in their own motor vehicles that were purchased for their own personal or family use are not required to register.

Conditions for exemption

(2) The Minister may prescribe regulations governing the exemption from registration under subsection (1).

Onus

(3) If an individual sells more than the prescribed number of motor vehicles in the prescribed period of time, that individual shall bear the onus of proof that he or she is trading in motor vehicles that were purchased for their own personal or family use.

REGISTRATION

Registration

6. (1) An applicant is entitled to registration or renewal of registration by the registrar unless the applicant is carrying on activities that are, or will be if the applicant is registered, in contravention of this Act or the regulations or unless,

- (a) having regard to the applicant's financial position or the financial position of an interested person in respect of the applicant, the applicant cannot reasonably be expected to be financially responsible in the conduct of business;
- (b) the past conduct of the applicant or of an interested person in respect of the applicant affords reasonable grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty;
- (c) the applicant or an employee or agent of the applicant makes a false statement or provides a false statement in an application for registration or for renewal of registration; or
- (d) the applicant is a corporation and,
 - (i) having regard to its financial position or the financial position of an interested person, the applicant cannot reasonably be expected to be financially responsible in the conduct of its business,

- (ii) having regard to the financial position of its officers or directors or to the financial position of an interested person in respect of its officers or directors, the applicant cannot reasonably be expected to be financially responsible in the conduct of its business,
- (iii) the past conduct of its officers or directors or of an interested person in respect of its officers or directors, affords reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty, or
- (iv) an officer or director of the corporation makes a false statement or provides a false statement in an application for registration or for renewal of registration.

Conditions

(2) A registration is subject to such conditions as are consented to by the applicant or registrant, as are applied by the registrar, as are ordered by the Tribunal or as are prescribed.

Interested person

(3) For the purposes of this section, a person shall be deemed to be an interested person in respect of another person if, in the opinion of the registrar,

- (a) the person has or may have a beneficial interest in the other person's business;
- (b) the person exercises or may exercise control either directly or indirectly over the other person's business; or
- (c) the person has provided or may have provided financing either directly or indirectly to the other person's business.

Registration of motor vehicle dealers

7. When a motor vehicle dealer that is a corporation registers and on each renewal of its registration it shall disclose to the registrar the identity of any shareholders or any associated shareholders that hold 10 per cent or more of the equity shares issued and outstanding at the time of the registration or the renewal of registration, as the case may be.

Refusal to register or renew, suspension, etc.

8. (1) Subject to section 9, the registrar may refuse to register an applicant or may suspend or revoke a registration or refuse to renew a registration if, in his or

her opinion, the applicant or registrant is not eligible for registration under section 6 or the registrant is in breach of a condition of the registration.

Conditions

- (2) Subject to section 9, the registrar may,
 - (a) approve the registration or renewal of a registration on such conditions as he or she considers appropriate; and
 - (b) at any time apply to a registration such conditions as he or she considers appropriate.

Notice re: refusal, suspension, etc.

9. (1) The registrar shall notify an applicant or registrant in writing if he or she proposes to,

- (a) refuse to grant or renew a registration;
- (b) suspend or revoke a registration; or
- (c) apply conditions to a registration or renewal and the conditions have not been consented to by the applicant or registrant.

Content of notice

(2) The notice of proposal shall set out the reasons for the proposed action and shall state that the applicant or registrant is entitled to a hearing by the Tribunal if the applicant or registrant mails or delivers, within 15 days after service of the notice, a written request for a hearing to the registrar and to the Tribunal.

Service

(3) The notice of proposal shall be served on the applicant or registrant in accordance with section 30.

Where no request for hearing

(4) If an applicant or registrant does not request a hearing in accordance with subsection (2), the registrar may carry out the proposal.

Hearing

(5) If a hearing is requested, the Tribunal shall hold the hearing and may by order direct the registrar to carry out the registrar's proposal or substitute its opinion for that of the registrar and may attach conditions to its order or to a registration.

Parties

(6) The registrar, the applicant or registrant and such other persons as the Tribunal may specify are parties to the proceedings under this section.

Voluntary cancellation

(7) The registrar may cancel a registration upon the request in writing of the registrant and this section does not apply to the cancellation.

Continuation pending renewal

(8) If, within the time prescribed or, if no time is prescribed, before the expiry of the registrant's registration, the registrant has applied for renewal of a registration and paid the required fee, the registration shall be deemed to continue,

- (a) until the renewal is granted; or
- (b) if the registrant is served notice that the registrar proposes to refuse to grant the renewal, until the time for requesting a hearing has expired or, if a hearing is requested, until the Tribunal makes its order.

Immediate effect

(9) Even if a registrant appeals an order of the Tribunal under section 11 of the *Licence Appeal Tribunal Act, 1999*, the order takes effect immediately but the Tribunal may grant a stay until the disposition of the appeal.

Immediate suspension

10. (1) If the registrar proposes to suspend or revoke a registration under section 9 and if the registrar considers it in the public interest to do so, the registrar may by order temporarily suspend the registration.

Timing

(2) The order under subsection (1) takes effect immediately and, if a hearing is requested under section 9, the order expires 15 days after the written request for a hearing is received by the Tribunal but if a hearing is commenced within the 15-day period, the Tribunal may extend the time of expiration until the hearing is concluded.

Service requirements for hearing request

11. (1) A request for a hearing under sections 9 and 10 is sufficiently served if delivered personally or is sent by registered mail or by such other manner as may be prescribed to the registrar and to the Tribunal.

Same

(2) If service is made by registered mail, it shall be deemed to be made on the third day after the day of mailing.

Other methods

(3) Despite this section, the Tribunal may order any other method of service.

Further application

12. A person whose registration is refused, revoked or refused renewal may reapply for registration only if,

- (a) the time prescribed to reapply has passed since the refusal, revocation or refusal to renew; and
- (b) new or other evidence is available or it is clear that material circumstances have changed.

Notice of transfer of shares

13. (1) In addition to disclosure under section 7, every motor vehicle dealer that is a corporation shall notify the registrar in writing within 30 days after the issue or the entry of the transfer of any shares of its capital stock where such issue or transfer results in any one shareholder or any associated shareholders,

- (a) acquiring or accumulating 10 per cent or more of the total number of all issued and outstanding equity shares of such stock; or
- (b) increasing such holding, if the shareholder or associated shareholders already own 10 per cent or more of the total number of all issued and outstanding equity shares of such stock.

Same

(2) Despite subsection (1), where a registrant that is a corporation becomes aware of a transfer that otherwise falls into subsection (1) after the transfer has taken place, it shall notify the registrar in writing within 30 days after such knowledge came to the attention of its officers or directors.

Calculation of total number of equity shares

(3) In calculating the total number of equity shares of the corporation beneficially owned or controlled for the purpose of this section, the total number shall be calculated as the total of all the shares actually owned or controlled, but each share that carries the right to more than one vote shall be calculated as the number of shares equalling the total number of votes it carries.

COMPLAINTS, INSPECTION AND DISCIPLINE

Complaints

14. (1) If the registrar receives a complaint about a registrant and requests in writing that information be provided by the registrant in relation to the complaint, the registrant shall promptly provide the relevant information.

Request

(2) The request shall indicate the nature of the complaint.

Procedures

(3) In handling complaints, the registrar may, in accordance with the information received, do any of the following, as appropriate:

1. Give the registrant a written warning that if the registrant continues with the activity that lead to the complaint, action may be taken against the registrant.
2. Refer the matter, in whole or in part, to the discipline committee.
3. Take an action under section 8, subject to section 9.
4. Subject to section 9, take such other action as he or she considers appropriate.

Inspection

15. (1) The registrar or any person designated in writing by him or her may at any reasonable time enter upon and inspect the business premises of a registrant, other than any part of the premises used as a dwelling, for the purpose of,

- (a) ensuring that this Act and the regulations are being complied with; or
- (b) dealing with a complaint under section 14.

Powers on inspection

(2) The person carrying out an inspection,

- (a) is entitled to free access to all money, valuables, documents and records of the person being inspected that are relevant to the inspection;

- (b) may use any data storage, processing or retrieval device or system used in carrying on business in the place in order to produce a document or record in readable form; and
- (c) may, upon giving a receipt for them, remove any documents or records in order to make copies but shall promptly return them to the person being inspected.

Identification

(3) A person conducting an inspection shall produce, on request, evidence of his or her authority.

Assistance to be given

(4) An inspector may, in the course of an inspection, require a person to produce a document or record and to provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce a document or record in readable form and the person shall produce the document or record or provide the assistance.

Obstruction prohibited

(5) No person shall obstruct an inspector conducting an inspection or withhold from him or her or conceal or destroy any money, valuables, documents or records relevant to the inspection.

Admissibility of copies

(6) A copy of a document or record certified by an inspector as being a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value.

Inspection re: unregistered persons

(7) If the registrar has reasonable grounds to believe that any person is acting as a motor vehicle dealer or salesperson while unregistered, an inspector appointed by the registrar may at any reasonable time enter the person's business premises, excluding any portion used as a dwelling, to conduct an inspection to determine whether or not the person is in contravention of section 4.

Inspection powers, etc.

(8) Subsections 17 (2), (3) and (5) to (14) apply with necessary modifications to the inspector and to an inspection under subsection (7) in the same way they apply to an investigator and an investigation under that section except that the results of the inspection shall be reported to the registrar.

Discipline proceedings

16. (1) A discipline committee may be established to hear and determine, in accordance with the prescribed procedures, issues concerning whether registrants have failed to comply with the code of ethics established by the Minister.

Appeals committee

(2) If a discipline committee is established, an appeals committee shall be established to consider, in accordance with the prescribed procedures, appeals from the discipline committee.

Composition

(3) The composition and manner of appointment of the members of the discipline committee and appeals committee shall be as prescribed.

Result of a determination

(4) If the discipline committee makes a determination under subsection (1) that a registrant has contravened the code of ethics, it may by order,

- (a) require the registrant to take further educational courses or where the registrant is a motor vehicle dealer, to provide educational courses;
- (b) despite subsection 12 (1) of the *Safety and Consumer Statutes Administration Act, 1996*, impose such fine as the committee considers appropriate, to a maximum of \$25,000, or such lesser amount as is prescribed, to be paid by the registrant to the designated administrative authority or to the Minister of Finance if no administrative authority has been designated;
- (c) suspend or postpone the imposition of a penalty for such period and upon such terms as the committee designates; and
- (d) fix and impose costs to be paid by the registrant to the designated administrative authority or to the Minister of Finance if no administrative authority has been designated.

Appeal

(5) A party to the discipline proceeding may appeal the decision of the discipline committee to the appeals committee.

Payment of fine

(6) If a fine is imposed under subsection (4), the registrant shall pay the fine within the period specified by the discipline committee or, where there has been an appeal, by the appeals committee, and where no period has been specified, within 60 days after the fine has been imposed.

Public access

(7) Decisions of the discipline committee and the appeals committee shall be made available to the public in such manner as may be prescribed.

Investigation by director

17. (1) The director may appoint one or more investigators to conduct an investigation if the director believes on reasonable grounds, on the basis of a statement made under oath, that any person has,

- (a) contravened this Act or the regulations; or
- (b) committed an offence under the *Criminal Code* (Canada) or under the law of any jurisdiction that is relevant to the person's fitness for registration under this Act.

Role of investigator

(2) The investigator shall determine whether a contravention of this Act or the regulations has occurred or the commission of an offence has occurred and shall report the result of the investigation to the director.

Powers

(3) For purposes relevant to the investigation, the investigator may inquire into and examine the affairs of the person in respect of whom the investigation is being made, including examining the money, valuables, documents, records and other things and may,

- (a) upon producing his or her appointment, enter at any reasonable time the business premises of the person, excluding any part of the premises used as a dwelling, and examine money, valuables, documents, records and other things relevant to the investigation;
- (b) use any data storage, processing or retrieval device or system used in carrying on business in order to produce a document or record in readable form;
- (c) inquire into negotiations, transactions, loans and borrowings made by or on behalf of or in relation to the person and into property or things acquired or disposed of by the person or anyone acting on the person's behalf that are relevant to the investigation.

Same

(4) For the purposes of this section, the investigator has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the investigation as if it were an inquiry under that Act.

Obstruction

(5) No person shall obstruct an investigator carrying out an investigation under this section or withhold from him or her or conceal or destroy any money, valuables, documents, records or other things relevant to the investigation.

Assistance

(6) An investigator may, in the course of an investigation, require a person to produce a document or record and to provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce a document or record in readable form and the person shall produce the document or record or provide the assistance.

Search warrant

(7) Upon application made without notice by the investigator, a justice of the peace may issue a warrant authorizing the investigator named in the warrant to enter premises specified in the warrant and to exercise any of the powers specified in subsection (3), if the justice of the peace is satisfied on information under oath that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any money, valuables, documents, records or other things relating to the subject-matter of the investigation.

Attempted entry not necessary

(8) The warrant may be issued whether or not an entry has been made under clause (3) (a).

Time of execution

(9) An entry under a warrant issued under subsection (7) shall be made between 6 a.m. and 9 p.m., unless the warrant specifies otherwise.

Expiry of warrant

(10) A warrant issued under this section shall name a date of expiry, which shall be no later than 30 days after the warrant is issued but a justice of the peace may extend the date of expiry for an additional period of no more than 30 days, upon application without notice by the investigator named in the warrant.

Use of force

(11) The investigator named in the warrant may call upon police officers for assistance in executing the warrant and, when police officers are present to

provide assistance, the investigator may use whatever force is necessary to execute the warrant.

Removal of things

(12) An investigator carrying out an investigation may, upon giving a receipt for it, remove for review and copying a document, record or other thing relevant to the investigation, including removing any data storage disk or other retrieval device in order to produce a document or record in readable form, but the investigator shall return the item within a reasonable time.

Admissibility

(13) A copy of a document or record certified by an investigator as being a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value.

Experts

(14) The director may appoint an expert,

- (a) to examine valuables, documents, records or other things obtained under this section; or
- (b) to provide assistance in producing a document or record in readable form from any data storage, processing or retrieval device or system.

Appointment of receiver and manager

18. (1) The director may apply to the Superior Court of Justice for the appointment of a receiver and manager to take possession and control of the business of a registrant if the director,

- (a) has ordered or is about to order an investigation under section 17;
- (b) has made or is about to make an order under section 19;
- (c) has reasonable grounds to believe that a registrant has failed or is about to fail to provide a contracted and paid for motor vehicle to a client;
- (d) is advised that the registrar has proposed to suspend or revoke a registration under section 9 or to temporarily suspend a registration under section 10; or
- (e) is advised that an investigation under section 5.1 of the *Ministry of Consumer and Business Services Act* has been ordered.

Order to appoint

(2) The court may make an order for the appointment of a receiver and manager, where it is satisfied that it is the public interest to have a receiver and manager take control of the business of a registrant.

Notice

(3) The court may make an order under subsection (2) without notice, or where it considers that notice should be given, upon such notice as the court stipulates.

Appointment not longer than 60 days

(4) The order of the court shall provide for the term of the receiver and manager but the term shall not be longer than 60 days.

60-day extensions

(5) Despite subsection (4), the director may, without notice, apply to the court to extend the receiver and manager's term for further terms of not more than 60 days each.

Duties of receiver and manager

(6) The receiver and manager shall,

- (a) take possession and control of the assets of the registrant's business;
- (b) conduct the business of the registrant; and
- (c) take such steps that are, in the opinion of the receiver and manager, necessary for the rehabilitation of the business.

Powers of receiver and manager

(7) The receiver and manager,

- (a) has all the powers of the board of directors of the corporation if the registrant is a corporation or of a sole proprietor or all partners if the registrant is not a corporation; and
- (b) without limiting the generality of clause (a), may exclude the directors, officers, employees and agents of the business from the premises and property of the business.

Freeze order

19. (1) If the conditions in subsection (2) are met, the director may in writing,

- (a) order any person having on deposit or controlling any assets or trust funds of a registrant or former registrant to hold those funds or assets;
- (b) order a registrant or former registrant to refrain from withdrawing any asset or trust fund from a person having them on deposit or controlling them; or
- (c) order a registrant or former registrant to hold any asset or trust fund of a client or other persons in trust for the persons entitled to it.

Conditions

(2) The director may make an order under subsection (1) if he or she believes that it is advisable for the protection of the clients of a registrant or former registrant and,

- (a) an investigation of the registrant or former registrant has been undertaken under section 17; or
- (b) criminal proceedings or proceedings in relation to a contravention of any Act or regulation are about to be or have been instituted against the registrant or former registrant in connection with or arising out of the business in respect of which the registrant or former registrant brokerage is or was registered.

Limitation

(3) In the case of a bank or authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada), loan or trust corporation, or credit union, as defined in the *Credit Unions and Caisses Populaires Act, 1994*, the order under subsection (1) applies only to the offices and branches named in the order.

Release of assets

(4) The director may consent to the release of any particular asset or trust fund from the order or may wholly revoke the order.

Exception

(5) Subsection (1) does not apply if the registrant or former registrant files with the director, in such manner and amount as the director determines,

- (a) a personal bond accompanied by collateral security;
- (b) a bond of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance;

- (c) a bond of a guarantor accompanied by collateral security; or
- (d) any other form of security as may be prescribed.

Application to court

(6) An application may be made to the Superior Court of Justice for a determination in respect of the disposition of any asset or trust fund,

- (a) by a person in receipt of an order under subsection (1), if that person is in doubt as to whether the order applies to any asset or trust fund; or
- (b) by a person who claims an interest in any asset or trust fund subject to the order.

Notice

(7) If an order is made, the director may register in the appropriate land registry office a notice that an investigation under clause (2) (a) has been undertaken or proceedings under clause (2) (b) have been or are about to be instituted and that the investigation or proceedings may affect land belonging to the person referred to in the notice, and the notice has the same effect as the registration of a certificate of pending litigation, except that the director may in writing revoke or modify the notice.

Cancellation or discharge application

(8) A registrant or former registrant in respect of which an order has been made under subsection (1) or any person having an interest in land in respect of which a notice has been registered under subsection (7) may apply to the Tribunal for cancellation in whole or in part of the order or for discharge in whole or in part of the registration.

Disposition by Tribunal

(9) The Tribunal shall dispose of the application after a hearing and may, if it finds that an order or registration is not required in whole or in part for the protection of clients of the applicant or of other persons having an interest in the land or that the interests of other persons are unduly prejudiced thereby, cancel the order or discharge the registration in whole or in part.

Parties

(10) The applicant, the director and such other persons as the Tribunal may specify are parties to the proceedings before the Tribunal.

Court application

(11) If the director has made an order under subsection (1) or registered a notice under subsection (7), he or she may apply to the Superior Court of Justice which may give directions or make an order as to the disposition of assets, trust funds or land affected by the order or notice.

Notice not required

(12) An application by the director under this section may be made without notice to any other person.

CONDUCT

Duty of motor vehicle dealers

20. A motor vehicle dealer shall ensure that every salesperson that the motor vehicle dealer employs is carrying out his or her duties in compliance with this Act and the regulations.

Duty of salespersons

21. Where a salesperson believes that the motor vehicle dealer that employs him or her or any person who is employed by the same motor vehicle dealer that employs him or her is acting or has acted in contravention of this Act or the regulations, the salesperson shall promptly inform the motor vehicle dealer or the registrar.

Notice of changes to registrar

22. (1) Every motor vehicle dealer shall, within five days after the event, notify the registrar in writing of,

- (a) any change in address for service;
- (b) in the case of a corporation or partnership, any change in the officers or directors; or
- (c) the commencement or termination of the employment of a salesperson and the date of the commencement or termination.

Same

(2) Every salesperson shall, within five days after the event, notify the registrar in writing of,

- (a) any change in address for service; or

- (b) the commencement or termination of his or her employment by a motor vehicle dealer and the date of the commencement or termination.

Timing

(3) The registrar shall be deemed to have been notified on the day on which he or she is actually notified or, where the notification is by mail, on the day of mailing.

Financial statements

(4) Every motor vehicle dealer shall, when required by the registrar with the approval of the director, file a financial statement showing the matters specified by the registrar and signed by the motor vehicle dealer in the case of a sole proprietorship or by an officer of the motor vehicle dealer where the motor vehicle dealer is a partnership or corporation and certified by a person licensed under the *Public Accountancy Act*.

Confidential

(5) The information contained in a financial statement filed under subsection (4) is confidential and no person shall otherwise than in the ordinary course of the person's duties communicate any such information or allow access to the financial statement.

Trust account

23. Every motor vehicle dealer shall maintain, in accordance with the prescribed conditions, in Ontario an account designated as a trust account in a bank or authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada), loan or trust corporation, credit union, as defined in the *Credit Unions and Caisses Populaires Act, 1994* or Province of Ontario Savings Office in which shall be deposited all money that is required to be held in trust, as prescribed, and shall keep at all times the money and disburse it in accordance with the conditions as may be prescribed.

False information

24. No registrant shall falsify, assist in falsifying or induce or counsel another person to falsify or assist in falsifying any information or document relating to a trade in motor vehicles.

Furnishing false information

25. No registrant shall furnish, assist in furnishing or induce or counsel another person to furnish or assist in furnishing any false or deceptive information or documents relating to a trade in a motor vehicle.

False advertising

26. No registrant shall make false, misleading or deceptive statements in any advertisement, circular, pamphlet or material published by any means relating to trading in motor vehicles.

Order of registrar re: false advertising

27. (1) Where the registrar believes on reasonable grounds that a registrant is making a false, misleading or deceptive statement in any advertisement, circular, pamphlet or similar material, the registrar may,

- (a) order the cessation of the use of such material;
- (b) order the registrant to retract the statement or publish a correction of equal prominence to the original publication; or
- (c) order both a cessation described in clause (a) and a retraction or correction described in clause (b).

Procedures

(2) Section 9 applies with necessary modifications to an order under this section in the same manner as to a proposal by the registrar to refuse a registration.

Effect

(3) The order of the registrar shall take effect immediately, but the Tribunal may grant a stay until the registrar's order becomes final.

Pre-approval

(4) If the registrant does not appeal an order under this section or if the order or a variation of it is upheld by the Tribunal, the registrant shall, upon the request of the registrar, submit all statements in any advertisement, circular, pamphlet or similar material to the registrar for approval before publication for such period as may be prescribed.

Disclosure by motor vehicle dealers

28. (1) Motor vehicle dealers shall disclose in writing to customers such information as may be prescribed and shall make the disclosure at such time as may be prescribed.

Further disclosure

(2) If a customer requests more information from a motor vehicle dealer than that required under subsection (1), the motor vehicle dealer shall provide it to the customer in accordance with the prescribed procedures.

Remedies

(3) If a motor vehicle dealer fails to make a disclosure as required under subsection (1) or (2) or fails to do so in a timely way, in addition to any other remedies that may be available, the person to whom disclosure should have been made is entitled to such other remedies as may be prescribed.

Proof of registration

29. Where requested by a person involved in a trade or potential trade in a motor vehicle, a salesperson shall produce his or her proof of registration to the person.

Restraining orders

30. (1) Where it appears to the director that any person does not comply with this Act, the regulations or an order made under this Act, despite the imposition of any penalty in respect of such non-compliance and despite any other rights the director may have, he or she may apply to the Superior Court of Justice for an order directing that the person comply, and upon the application, the court may make such order or such other order as it thinks fit.

Appeal

(2) An appeal lies to the Divisional Court from an order made under subsection (1).

Offence

31. (1) A person is guilty of an offence who,

- (a) furnishes false information in any application under this Act or in any statement or return required under this Act;
- (b) fails to comply with any order, other than an order made under section 16, direction or other requirement under this Act; or
- (c) contravenes or fails to comply with any section of this Act or the regulations made under this Act.

Corporations

(2) An officer or director of a corporation is guilty of an offence who fails to take reasonable care to prevent the corporation from committing an offence mentioned in subsection (1).

Penalties

(3) An individual who is convicted of an offence under this Act is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than two

years less a day, or both, and a corporation that is convicted of an offence under this Act is liable to a fine of not more than \$250,000.

Minimum penalty

(4) The minimum fine upon conviction for an offence under subsection 4 (1) is \$2,500.

Limitation

(5) No proceeding under subsection (1) shall be commenced more than two years after the facts upon which the proceeding is based first came to the knowledge of the director.

Orders for compensation, restitution

32. (1) If a person is convicted of an offence under this Act, the court making the conviction may, in addition to any other penalty, order the person convicted to pay compensation or make restitution.

Where insurance has paid

(2) If an order is made in a person's favour under subsection (1) and that person has already received compensation or restitution from an insurer, the person ordered to pay the compensation or make restitution shall deliver the amount to the insurer.

Default in payment of fines

33. (1) If a fine payable as a result of a conviction of an offence under this Act is in default for at least 60 days, the director may disclose to a consumer reporting agency the name of the defaulter, the amount of the fine and the date the fine went into default.

Where payment made

(2) Within 10 days after the director has notice that the fine has been paid in full, the director shall inform the consumer reporting agency of the payment.

Liens and charges

34. (1) If a fine payable as a result of a conviction for an offence under this Act is in default for at least 60 days, the director may by order create a lien against the property of the person who is liable to pay the fine.

Liens on personal property

(2) If the lien created by the director under subsection (1) relates to personal property,

- (a) the *Personal Property Security Act*, except Part V, applies with necessary modifications to the lien, despite clause 4 (1) (a) of that Act;
- (b) the lien shall be deemed to be a security interest that has attached for the purposes of the *Personal Property Security Act*; and
- (c) the director may perfect the security interest referred to in clause (b) for the purposes of the *Personal Property Security Act* by the registration of a financing statement under that Act.

Liens and charges on real property

(3) If the lien created by the director under subsection (1) relates to real property, the director may register the lien against the property of the person liable to pay the fine in the proper land registry office and on registration, the obligation under the lien becomes a charge on the property.

Initiation of sale proceedings prohibited

(4) The director shall not initiate sale proceedings in respect of any real property against which he or she has registered a lien under subsection (3).

Discharge of lien

(5) Within 10 days after the director has knowledge of the payment in full of the fine, the director shall,

- (a) discharge the registration of any financing statement registered under clause (2) (c); and
- (b) register a discharge of a charge created on registration of a lien under subsection (3).

GENERAL

Matters confidential

35. (1) Every person exercising any power or carrying out any duties related to the administration of this Act and regulations shall preserve secrecy with respect to all matters that come to his, her or its knowledge in the course of exercising those powers or carrying out those duties and shall not communicate any such matters to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations, including any proceedings under this Act;

- (b) to a ministry, department or agency of a government engaged in the administration of legislation similar to this Act;
- (c) to a law enforcement agency;
- (d) to his or her counsel; or
- (e) with the consent of the person to whom the information relates.

Testimony

(2) No person to whom subsection (1) applies shall be required to give testimony in any civil proceeding with regard to information obtained in the course of his or her duties under this Act except in a proceeding under this Act.

Service

36. (1) Any notice or order required to be given or served under this Act is sufficiently given or served if delivered personally or sent by registered mail.

Deemed service

(2) Where service is made by registered mail, the service shall be deemed to be made on the third day after the day of mailing unless the person on whom service is being made establishes that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice or order until a later date.

Exception

(3) Despite subsections (1) and (2), the Tribunal may order any other method of service in respect of any matter before it.

Fees

37. (1) The Minister may by order establish fees that are payable under this Act in respect of registration, renewal of registration, late filings and other administrative matters.

Exception

(2) Subsection (1) does not apply if an administrative authority has been designated under the *Safety and Consumer Statutes Administration Act, 1996* in respect of the administration of this Act.

Certificate as evidence

38. For all purposes in any proceeding, a statement purporting to be certified by the director is, without proof of the office or signature of the director, admissible in evidence as proof in the absence of evidence to the contrary, of the

facts stated therein in relation to,

- (a) the registration or non-registration of any person;
- (b) the filing or non-filing of any document or material required or permitted to be filed with the registrar;
- (c) the time when the facts upon which the proceedings are based first came to the knowledge of the director; or
- (d) any other matter pertaining to registration or non-registration of persons or to filing or non-filing of information.

List of registered persons

39. The registrar shall, in the prescribed form and manner and with the prescribed contents, prepare, publish and circulate a list of all persons registered under this Act.

Compensation Fund

40. (1) The Motor Vehicle Dealers Compensation Fund established under the *Motor Vehicle Dealers Act* is continued.

Same

(2) The compensation fund shall be supported by such levies and payments imposed on registrants as may be prescribed and the fund shall be held in trust on such conditions as may be prescribed.

Payments by motor vehicle dealers

(3) In the circumstances as prescribed, a motor vehicle dealer shall be required to reimburse the compensation fund for money paid out to customers as a result of claims against the motor vehicle dealer.

Use of fund

(4) The fund shall be used for the payment of claims and may be used to promote programs to educate consumers and for such other purposes as may be prescribed.

Repayment to compensation fund

(5) The registrar may make such arrangements with registrants as may be prescribed for the payment of money owed to the compensation fund and may impose such penalties and interest, as may be prescribed for the failure to pay money owed to the fund or the failure to do so in a timely fashion.

Publishing decisions

(6) Decisions in respect to claims to the compensation fund may be available to the public in such manner as may be prescribed, but in no case shall the publication of such decisions disclose the identity of an individual making a claim without the individual's prior approval.

Refusal to renew registration

(7) If a registrant is in default of such levies or payments to the compensation fund as have been prescribed or has failed to reimburse the fund in the prescribed circumstances and has failed to make arrangements for payment under subsection (5) or has failed to comply with those arrangements, subject to section 9, the registrar may refuse to renew the registrant's registration.

Transition

41. (1) Despite the repeal of the *Motor Vehicle Dealers Act*, any person who was registered as a motor vehicle dealer or salesperson under that Act immediately before this Act is proclaimed into force shall be deemed to be registered as a motor vehicle dealer or salesperson, as the case may be, under this Act until the person is required to renew his, her or its registration under this Act.

Minister's regulations

42. (1) The Minister may make regulations,

- (a) establishing a code of ethics for the purposes of subsection 16 (1);
- (b) governing the jurisdiction and procedures of any committee established under this Act;
- (c) prescribing conditions governing exemption from registration for the purposes of subsection 5 (2);
- (d) respecting any matters that may be delegated by the Lieutenant Governor in Council under section 43.

Delegation

(2) Despite subsection 3 (4) of the *Safety and Consumer Statutes Administration Act, 1996*, the Minister may, in writing, delegate to the board of the designated administrative authority the power to make some or all of the regulations under this section, subject to the approval of the Minister.

Approval

(3) The Minister may approve or refuse to approve the regulations but approval shall not be given unless, in his or her opinion, they have been made in

accordance with the consultation process and criteria set out in the administrative agreement described in subsection 4 (1) of the *Safety and Consumer Statutes Administration Act, 1996*.

Revocation, transition

(4) The Minister may, in writing, revoke the delegation under this section but the revocation does not result in the revocation of the regulations, which remain valid and may be amended or revoked by the Minister.

Conflicts

(5) If there is a conflict between a regulation made under this section and a regulation made by the Lieutenant Governor in Council under section 43, the latter prevails.

General or particular

(6) A regulation under this section may be general or particular in its application and may treat different classes of registrants or trades differently.

Lieutenant Governor in Council regulations

43. (1) The Lieutenant Governor in Council may make regulations,

1. exempting any person or class of persons or class of trades from any provision of this Act or the regulations and attaching conditions to such exemptions;
2. respecting applications for registration or renewal of registration and prescribing conditions of registration;
3. governing the composition and manner of appointment of the members of the discipline committee and appeals committee;
4. prescribing classes and subclasses of registrant and respecting conditions that are applicable to such classes or subclasses;
5. prescribing educational requirements for registration and renewal of registration and designating any entity as the authority to develop educational requirements;
6. governing the documents, records and trust accounts that must be kept by motor vehicle dealers, including the manner and location in which they are kept;

7. prescribing procedures and other matters related to complaints under section 14;
8. respecting inspections under section 15 and investigations under section 17;
9. respecting the manner in which and the frequency with which decisions of the discipline committee and appeals committee are made available to the public;
10. prescribing procedures for hearings held by the Tribunal and providing for the responsibility for the payment of witness fees and expenses at proceedings before the Tribunal and prescribing the amounts of such fees and expenses;
11. varying the manner in which a notice under subsection 19 (7) or a lien under subsection 34 (3) is registered as a result of technological or electronic changes in the filing of documents in the land registry office;
12. prescribing information that must be provided to the registrar and requiring that specified information be verified by affidavit;
13. prescribing the information that motor vehicle dealers must disclose to a customer concerning a trade in a motor vehicle and the time when the disclosure must be made and setting out the circumstances when the dealer must make further disclosure at the request of a person involved in a trade in motor vehicles;
14. prohibiting specified alterations of motor vehicles or any part of a motor vehicle and requiring disclosure of certain alterations or types of alterations;
15. governing contracts for the sale, purchase, lease or exchange of an interest in motor vehicles;
16. governing remedies for failure to meet prescribed conditions of contracts for the sale, purchase, lease or exchange of an interest in a motor vehicle and governing remedies available to a customer if a motor vehicle dealer fails to disclose prescribed information or fails to disclose it in a timely fashion;

17. governing the maintenance and administration of the compensation fund and the conditions for holding the fund in trust;
18. providing for the payment of levies and other payments into the compensation fund by registrants and prescribing the amounts of the payments and the conditions concerning when levies and payments shall be made by registrants;
19. providing for payment out of the compensation fund of claims and procedures to be followed in respect to them, including in such extraordinary circumstances as may be prescribed, the waiving of any claim period;
20. permitting payments out of the compensation fund, in the prescribed circumstances, in order to promote programs to educate consumers;
21. prescribing the circumstances under which a motor vehicle dealer is required to reimburse the compensation fund for the payment of claims to customers of the motor vehicle dealer;
22. providing for the borrowing of money to supplement the compensation fund;
23. governing the procedures to be followed in cases of over-capitalization or winding-down of the compensation fund;
24. prescribing the form and manner and the content of the list of registrants that the registrar prepares and governing its circulation;
25. requiring that any information required under this Act be in a form approved by the director, the registrar or the Minister, as specified in the regulation;
26. regulating advertising and representations or promises intended to induce the purchase, sale or exchange of motor vehicles;
27. delegating any matter that may be the subject of a regulation under this section to the Minister;
28. prescribing any matter or thing that this Act refers to as being prescribed.

General or particular

(2) A regulation under this section may be general or particular in its application and may treat different classes and subclasses of registrants or trades differently.

REPEAL AND AMENDMENTS TO OTHER STATUTES

44. The *Motor Vehicle Dealers Act*, as amended, is repealed.

45. Section 11 of the *Licence Appeal Tribunal Act, 1999* is amended by striking out “*Motor Vehicle Dealers Act*” and substituting “*Motor Vehicle Dealers Act, 2001*”.

46. The Schedule to the *Safety and Consumer Statutes Administration Act, 1996*, as amended by the Statutes of Ontario, 1998, chapter 15, Schedule E, section 46, 1999, chapter 12, Schedule F, sections 40, 41 and 2000, chapter 16, section 46, is further amended by striking out “*Motor Vehicle Dealers Act*” and substituting “*Motor Vehicle Dealers Act, 2001*”.

Commencement

47. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

48. The short title of this Act is the *Motor Vehicle Dealers Act, 2001*.