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Avoid Creepy Curbsiders – Campaign Snapshot

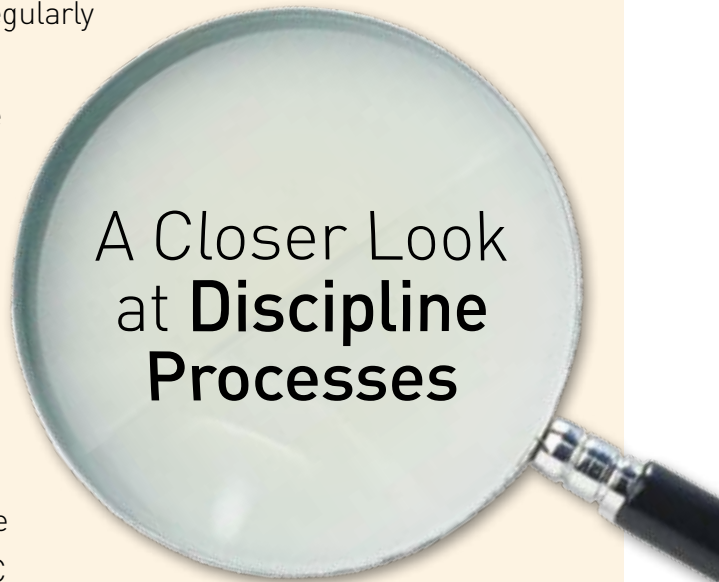
OMVIC's 2011 consumer awareness campaign is a success. Through advertising and public relations initiatives, Ontarians were exposed to OMVIC's campaign messages more than **167 million** times.



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The Dealer Standard regularly reports on dealers and salespersons who have found themselves facing a justice of the peace (think of them as judges in provincial offences courts), a Discipline Panel or the Licence Appeal Tribunal (LAT). After the fall 2011 edition, OMVIC received a request from a dealer asking for an article explaining the three different processes a registrant accused of misconduct might face. This issue takes a closer look at the processes that could lead to provincial offence charges, discipline hearings and proposals to revoke registration.



A Closer Look at Discipline Processes

[Read more inside >>](#)

Holiday Greetings

The staff of OMVIC wishes all salespersons and dealers a prosperous new year. We look forward to working with all stakeholders and remain committed to providing excellent service while meeting our mandate to maintain a fair and informed marketplace for Ontario's consumers and dealers.



Trade Associations Help Educate Consumers



When most of us need to make an important decision, we do our best to be informed – we do our research. Knowledge is power, right? But is a well-informed car buyer a blessing or a curse?

Some may feel that knowledgeable consumers can be difficult customers. With the advent of the Internet, consumers have more access to information, including invoice pricing. An AOL Autos story reported that “more car buyers are haggling over the price of their new car than at any point in recent history.” But while the availability of information may lead to more aggressive negotiating by customers, it “does not mean the process has become more hostile” (autos.aol.com). In fact, more and more it is understood that a knowledgeable customer is the route to a successful and positive transaction.

Transparency reduces stress. Customers who know what to expect from a dealer’s advertising and disclosures, who have realistic ideas about what a vehicle should cost and what their trade-in’s wholesale value might be, and who might even understand how their creditworthiness can affect an interest rate, may actually be the customers who are most forthright and who are genuinely seeking a fair deal for both themselves and the dealer.

Recently, the trade associations have made additions to their respective websites to provide consumers with information designed to make them better-informed customers.



Used Car Dealers Association (UCDA)
UCDA.ca

The UCDA has created a website entirely directed to consumers and provides:

- Buying tips and a buyer’s checklist
- Warnings about curbsiders
- Information about the Motor Vehicle Dealers Compensation Fund
- Information about the UCDA’s mediation service



Toronto Automobile Dealers Association (TADA)
TADA.ca

TADA has added the “Consumer Corner” to their home site, which provides information about the *Motor Vehicle Dealers Act* (MVDA), specifically what consumers can expect from dealers regarding advertising, vehicle history disclosure and rescission. It also explains the requirements for OMVIC registration and the benefits provided by the Compensation Fund.



ONTARIO AUTOMOBILE DEALER ASSOCIATION

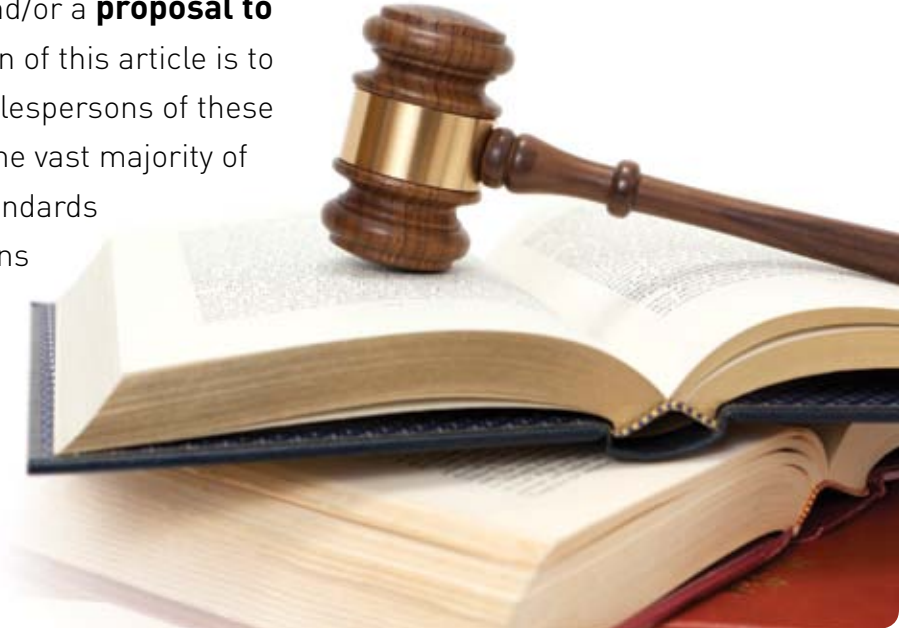
Ontario Automobile Dealer Association (OADA)
NewAutomobiles.ca

The OADA site provides information to help consumers understand leasing, offers a recall search tool and will soon include OMVIC’s Creepometer tool, designed to help consumers spot curbsiders.

Of course, all the sites promote the benefits provided by their respective members; however, OMVIC believes it is important to acknowledge and applaud the promotion of the MVDA and the commitment to helping educate consumers.

Knowledge is power, and knowledgeable consumers are good for business.

If dealers or salespersons are accused of misconduct or violation of the MVDA, they may face **provincial offence charges**, a **discipline hearing** and/or a **proposal to revoke registration**. The intention of this article is to educate and inform dealers and salespersons of these processes. We firmly believe that the vast majority of registrants act with the highest standards of integrity. The number of situations that result in any of the following actions is extremely small when compared to the huge volume of transactions conducted by dealers and salespersons.



Provincial Offence Charges

1 OMVIC enforces the MVDA and other consumer protection legislation on behalf of the Ministry of Consumer Services. As such, OMVIC's investigators are Provincial Offences Officers and are empowered to lay charges under the MVDA and other statutes. Should an investigator believe a dealer or salesperson has breached the MVDA, he or she can charge the individual and/or corporation. Once the accused has been served a summons, a trial will take place before a justice of the peace in provincial court. OMVIC prosecutors will represent the Crown; the accused normally appears with their own legal representation. The evidence and

defence are presented to the court and it is up to the justice of the peace to determine if the allegations have been proved and, if so, to determine the appropriate penalty. If convicted, the maximum penalties under the MVDA are as follows:

- For an individual – \$50,000 fine and/or two years less a day in provincial jail
- For a corporation – \$250,000 fine

Most often, penalties are towards the bottom of the scale, particularly for first offences.

Provincial Court Example:

Toronto Kia Dealer Fined for Breaching MVDA

Trento Kia pled guilty in provincial court to breaching the advertising regulations of the MVDA. The Toronto dealer was fined \$5,000 for publishing an advertisement that did not comply with the all-in pricing requirements of the MVDA. Her Worship, Justice of the Peace Lau, gave the dealer six months to pay the fine. The court recognized the fine was not substantial, but considered it suitable given the dealer's co-operation with the prosecution.

the Discipline Processes

Discipline Hearings

2

If a dealer or salesperson is accused of contravening the Code of Ethics regulations, OMVIC may issue a Notice of Complaint.

This is considered an administrative action.

Once the Notice of Complaint is received, the accused may respond and provide an explanation or defence. If the accused agrees that the Code of Ethics was breached, he or she may choose to negotiate a settlement with the assigned OMVIC legal staff. If there is no offer to settle, a discipline hearing will be called.

The discipline hearing will take place in front of three “panelists” who will rule on the outcome. If a dealer has been brought before the panel, at least one of the panelists will be a dealer; if a salesperson is the subject of the hearing, at least one of the panelists will be a salesperson and one of the panelists must be a person who is neither a dealer nor a salesperson. OMVIC staff will present evidence and the dealer or salesperson (registrant), usually accompanied by independent legal representation, will present their defence.

If the panel finds that the registrant did breach the Code of Ethics, these are the possible outcomes:

- The dealer or salesperson to take further educational courses
- The dealer to pay for educational courses for sales staff
- A fine up to a maximum of \$25,000
- The dealer or salesperson to pay the costs of the hearing
- Publication of the results



The ruling of the Discipline Panel may be appealed to the Appeals Committee. Once an appeal is received, the committee will convene another hearing before an appeals panel. Like the Discipline Panel, the Appeals Panel is composed of three industry and non-industry members. The Appeals Panel may overturn, affirm or modify the order of the Discipline Panel. The ruling of this panel is final.

Discipline Hearing Example: Toronto Dealer Fined \$8,750 for Failing to Disclose Required Information

Buchi Auto Sales has been fined \$8,750 for failing to disclose important and required information about the history and condition of vehicles sold to consumers. An OMVIC Discipline Panel found that **Julius Agunwa**, operating as **Buchi Auto Sales**,

breached the OMVIC Code of Ethics between June 2009 and May 2010 when he sold several vehicles to consumers without disclosing that the vehicles had been branded and/or the true distance the vehicles had been driven was unknown and/or the vehicles had been registered in another jurisdiction. The panel found Agunwa “failed to disclose significant material facts in the bills of sale” and also ordered the Toronto dealer to take the OMVIC Certification Course within 60 days. Agunwa was given nine months to pay the fine.

Proposals to Revoke (or Refuse) Registration

3

If a registrant’s alleged actions demonstrate he or she is no longer fit for registration, the Registrar may issue a *Proposal to Revoke* a dealer’s or salesperson’s registration.

The registrant has 15 days to file an appeal with an independent tribunal, the Licence Appeal Tribunal (LAT). If no appeal is filed, the proposal is automatically carried out.

It should be noted that this is an administrative action that can be taken at the same time charges are laid.

If an appeal is filed, LAT will hold a hearing. The hearing is presided over by a Chairperson who will decide the outcome and make any rulings. As in a court or discipline hearing, OMVIC staff will present their case and the registrant, again normally accompanied by legal representation, will put

forward their evidence explaining why they should not have their registration revoked. After consideration, the Chair will generally make one of three rulings:

- OMVIC should carry out the proposal and revoke registration
- OMVIC may not revoke registration
- OMVIC shall continue the registrant’s registration with terms and conditions attached to it

The Chair’s ruling may be appealed to Divisional Court.



LAT Example: Orangeville Mazda’s Unconscionable Deal

The alleged dealings of senior staff at the former Orangeville Mazda garnered much interest over the last 18 months, both with the public and within our industry. The following are the results of the recent LAT hearing for the individuals involved:

“The conduct... reflects poorly on their honesty and integrity and falls below the acceptable standards of the Act” and “this was an unconscionable deal” were two of the many findings LAT Chairperson Harinder Gahir made in handing down one-year registration suspensions to Mohammed Shaikh and Ken Trung, formerly of Orangeville Mazda.

OMVIC issued proposals to revoke the registrations of Shaikh and Trung, as well as those of Surjeet (Sunny) Baines (dealer principal), and that of the dealership itself. Initially, all parties appealed the proposals; however, Baines and Orangeville Mazda abandoned their appeals and their registrations were revoked. Shaikh and Trung, however, requested a LAT hearing to appeal revocation of their registrations.

The tribunal heard evidence from three consumers; however, the most substantive complaint related to a specific consumer transaction. This consumer told the tribunal she had visited the dealership to purchase tires. While waiting, she spoke to a salesperson who eventually introduced her to sales manager Mohammed Shaikh. The consumer alleged Shaikh pressured her into buying a new car, a Mazda 6, at a price higher than market price and that Trung pressured her to buy extras at a price

higher than market price. Evidence presented showed this to be the case.

The sales contract listed the base price of the Mazda 6 at \$46,291; however, the Manufacturers Suggested Retail Price of the vehicle was actually \$36,695.

Further evidence showed that the car sold to this consumer was actually used. The consumer was also charged \$3,927 for Rust, Paint, Fabric Protection and Undercoat, a package the tribunal believed was readily available for \$1,200. The consumer testified “that due to her medical conditions, she was quite confused and unable to make good decisions. She could not afford this car as she was living on a disability pension of \$850 and spousal support of \$1,000 per month.”

The tribunal found Shaikh and Trung “sold the car and extras at a grossly higher than market price... that the transaction was excessively one sided in favour of the dealership, a result of undue pressure” and that the consumer “was not reasonably able to protect her interests because of her disability, ignorance of the market and her inability to understand the transaction.”

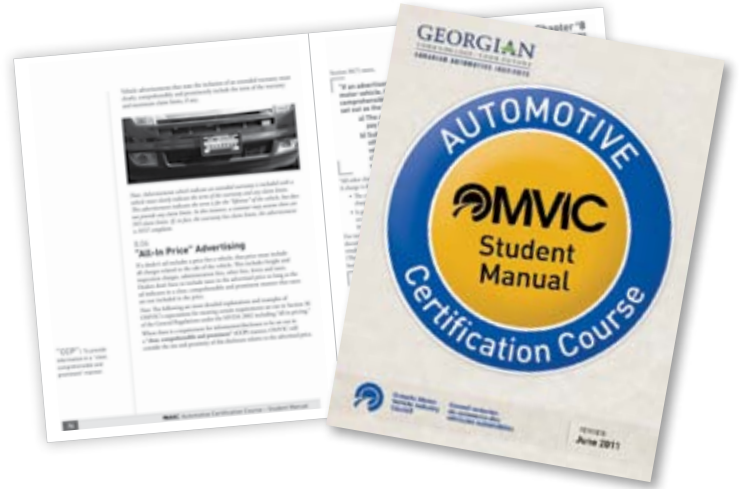
The tribunal was further “troubled” by the fact Shaikh and Trung “knowingly and collaboratively exploited a person under disability and failed to accept responsibility of their conduct. They attempted to pass the responsibility on to the dealer by saying that the dealer had put the prices in the system. The evidence is clear that the Applicants [Shaikh and Trung] were instrumental in overcharging the consumer.”

Tribunal Chair Gahir then ordered Mohammed Shaikh’s and Ken Trung’s registrations suspended for one year and that they successfully complete the OMVIC Certification Course.

Vast Majority of Vehicle Deals Go Smoothly

In 2011, Ontario-registered dealers sold nearly 1.4 million vehicles. The vast majority of these transactions resulted in happy and satisfied consumers. However, as in any industry or community, things weren't perfect, but fortunately the conduct leading to one of the scenarios mentioned in this issue happens very infrequently.

OMVIC's focus is and always has been on education. Understanding the regulations can go a long way to preventing registrants from facing charges or a hearing. The OMVIC Certification Course, offered through Georgian College, was completely redesigned to ensure that students have the knowledge they need to make the right decisions. OMVIC highly recommends that all dealers and salespeople who have not taken the new course do so. More information can be found at www.georgianc.on.ca/cai/omvic/



If you have a suggestion for a Dealer Standard story, please email Terry O'Keefe at terry.okeefe@omvic.on.ca



What's New at OMVIC

OMVIC's newly developed seminar on advertising requirements is now available. If a dealership or group of dealers is interested in having the seminar presented, email OMVIC's Communications and Education Manager, Terry O'Keefe, at terry.okeefe@omvic.on.ca.



The new year will also see the development of a similar seminar for disclosure requirements. As well, all of OMVIC's field staff are well versed in the rules and are only too pleased to answer any questions. Feel free to contact your regional inspector if you need assistance.



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