

THE DEALER STANDARD

OMVIC.on.ca

2019 | ISSUE #2

IN THIS ISSUE

- Finance Company Sued by Compensation Fund
- Non-disclosure Leads to Revocation of Scarborough Dealer
- Mystery Shopping Results Disappoint
- The Discipline Files:
 - No Bill of Sale Results in \$1,000 Fine
 - Dealer Fined \$4,800 for All-In Price Advertising Non-compliance
- Need Help with Advertising?
- When the Risk Is Not Worth the Reward
- Trust Accounts

OMVIC'S PRIORITIES

- CONSUMER PROTECTION
- DEALER PROFESSIONALISM
- CUSTOMER SERVICE

THE DEALER STANDARD

is published by the

Ontario Motor Vehicle Industry Council

65 Overlea Blvd., Ste. 300

Toronto, ON M4H 1P1

T: 416-226-4500

Toll Free: 1-800-943-6002

Chief Executive Officer: John Carmichael

Writers: Terry O'Keefe, Farah Mohammed,
Daphne Boxill and Scott Long

Despite Charges, Sale of Odometer-Tampered Vehicles Continued

A Markham area man was charged after allegedly trying to sell a car with a rolled-back odometer to an undercover shopper from OMVIC. Disturbingly, the charges came just weeks after 34 charges were laid against the man for the same alleged activity.

Arif Adnan Syed, 36, of Markham, is charged with curbsiding in violation of the [Motor Vehicle Dealers Act](#) and with committing an unfair business practice (making a false, misleading or deceptive representation) in contravention of the [Consumer Protection Act](#).

The latest charges were the result of an investigation launched after a call to OMVIC by a concerned consumer who had responded to a Kijiji ad for a vehicle. The "private seller" who had posted the ad allegedly showed the consumer a number of vehicles he had stored behind a Scarborough apartment complex.

OMVIC then deployed an undercover shopper who responded to a Kijiji ad allegedly posted by the same seller for a 2010 Camry with an odometer reading of 155,000 km. The Camry had been sold earlier in 2019 with approximately 217,000 kms on the odometer. When the undercover shopper met the seller at 1110 Birchmount Road in Scarborough, the seller was identified as Arif Syed.

Syed allegedly told the undercover investigator he had four more vehicles for sale parked behind a Carabob Court apartment building. Investigators confirmed that four cars, all without licence plates, were present.

"OMVIC is warning the dealer community not to buy vehicles from, or sell vehicles to, Arif Adnan Syed," states Steven Byrd, OMVIC's Director of Investigations. "We believe this individual's actions pose a threat of consumer harm. As previous charges have not deterred his alleged sale of odometer-tampered vehicles, we have released Syed's picture in hopes of warning dealers and the car-buying public."



Description

Arif Syed is described as male, 36 years of age, 5'6", with short black hair, a brown complexion and stocky build.

Finance Company Sued by Compensation Fund

In 2015, the Motor Vehicle Dealers Compensation Fund issued a Statement of Claim alleging a finance company wrongfully repossessed a vehicle that a consumer had purchased from a registered dealer.

The selling dealer floor planned its inventory with the finance company. After the vehicle was sold to the consumer, the dealer defaulted on its floor plan loan and the finance company repossessed the vehicle, even though there was no enforceable lien registered to the car.

Ultimately the dealer filed for bankruptcy so the consumer made a claim to the Compensation Fund. The claim was approved and the consumer was reimbursed the purchase price of the car.

The Compensation Fund, in subrogation, then sued the financial company in Superior Court, claiming the finance company should not have repossessed the consumer's car. The finance company settled and paid the Fund the entire amount that had been paid to the consumer. In reaching the settlement, the Fund and OMVIC agreed not to disclose the name of the financial company nor the amount that was paid.



**Motor Vehicle
Dealers
Compensation Fund**

Non-disclosure Leads to Revocation of Scarborough Dealer

In March 2019, the Licence Appeal Tribunal (LAT) ordered OMVIC to carry out its Proposal to Revoke the Registrations of **Car & Care Auto Inc.** and its sole officer, **Muhammad Saleem**.

The decision came after a five-day hearing at which evidence from consumers and OMVIC inspectors

demonstrated that Saleem, on behalf of Car & Care Auto Inc., failed to disclose on contracts:

- Accident histories
- Manufacturer warranty cancellations
- Total loss declarations
- Estimated and actual costs of repairs

In one instance, a consumer testified that he purchased a 2009 Honda Civic from Saleem and specifically asked if it had been in an accident. Saleem advised the consumer that the vehicle only required minor touch-ups. A year later, the consumer began noticing cracks on the roof of his car and so he took it to a mechanic. He learned the car had been involved in a collision with a repair estimate exceeding \$7,900. Nowhere on the Bill of Sale did it mention that the vehicle had been in an accident or that it had roof damage.

In rendering the decision, LAT member Asad Ali Moten found that, "Mr. Saleem cannot be relied upon to consistently and meticulously follow the rules of his licensure in each and every interaction with a consumer, and, where a deal goes awry and OMVIC becomes involved, to deal with the regulator or with customers in an honest and forthcoming manner."



Stock Image
Remember, collision or incident damage greater than \$3,000 must be disclosed on contracts.

MYSTERY SHOPPING RESULTS DISAPPOINT

In April, OMVIC commissioned an independent third-party mystery shopping investigation to identify areas of concern and track compliance. The undercover shoppers visited 25 dealers in the London and Windsor areas. The results were very disappointing:

- Seven of 21 dealers attempted to add fees ranging from \$100 to \$2,000 to advertised prices (four dealers did not have the advertised vehicle in stock).
- Seven dealers did not disclose previous accident histories, including a \$23,817 claim that had resulted in the vehicle being branded Salvaged/Rebuilt, which was also not disclosed.
- One dealer presented a vehicle with a possible rolled back odometer claiming the CARFAX report showing previous U.S. registration and higher mileage "was wrong."
- Two dealers did not disclose (in their advertising or in person) vehicles that were previous daily rentals.
- Of the four dealers who advertised vehicles not in stock (previously sold), only one dealer removed the ad for the sold vehicle within a reasonable time.
- Two franchise dealers advertised CPO (certified pre-owned) vehicles, indicating they had undergone a rigorous inspection to verify they were examples of high quality, accident-free, used vehicles. CARFAX reports revealed the first vehicle had accident records totalling over \$16,000, including structural damage; the second vehicle had a \$15,473 accident claim.

"These results are shockingly bad," stated OMVIC CEO and Interim Registrar, John Carmichael. "Considering the time the regulations have been in place, and the educational resources OMVIC has made available, there is simply no reason for this to be occurring."



Reminders

All-In Price advertising: If a dealer advertises a price for a vehicle, that price MUST include ALL charges and fees the dealer intends to collect from the purchaser, except licensing and HST.

Advertising vehicles not in stock: If a dealer advertises a price for a vehicle that is not in stock, the ad must clearly and prominently indicate the vehicle is not in stock (e.g., "Factory order required" or "Dealer locate required"). If an advertised vehicle is sold, the ad should be removed as soon as possible to prevent accusations of bait and switch.

Disclosure: Dealers are required to disclose clearly and in writing on Bills of Sale information about the past use, history and condition of a vehicle including:

- Previous use as a daily rental unless subsequently owned by someone other than a dealer. Failure to make this disclosure triggers a customer's right to rescission. **Note:** This disclosure is also required in advertisements.
- Collision or incident damage greater than \$3,000 (and the total cost of repair if known).
- Structural damage and repairs.
- If the vehicle is branded Salvage or Rebuilt. Failure to make this disclosure triggers a customer's right to rescission.
- The true distance a vehicle has travelled (or the appropriate disclosure statement if that is not known). Failure to make this disclosure triggers a customer's right to rescission.
- If a vehicle has been registered in another jurisdiction (e.g., province or state).

False, misleading or deceptive representations:

The *Consumer Protection Act* provides consumers with a one-year rescission period should the dealer make a false, misleading or deceptive representation. Penalties for committing an unfair business practice can be significant, including a maximum jail term of two years less one day.

For more information about required disclosures in advertising or on contracts, dealers should visit OMVIC's [website](#), use the newly created **Help for Dealers educational resources** or contact their local Inspector.

THE DISCIPLINE FILES



No Bill of Sale Results in \$1,000 Fine

A Toronto dealer was fined \$1,000 for breaching the Code of Ethics (CoE). **Olagbaiye Victor**, o/a **Mobile Detailing**, a wholesaler, operated outside his wholesale class and sold a vehicle to a consumer for \$7,345 without a Bill of Sale. The Toronto dealer entered into an Agreed Statement of Facts acknowledging that, in addition to not issuing a Bill of Sale, he:

- Sold the vehicle at a location different from the location approved by the Registrar.
- Refused to take the vehicle back and refund the consumer's money when undisclosed mechanical issues were discovered.

Olagbaiye was ordered to pay the fine no later than October 18, 2019.

Dealer Fined \$4,800 for All-In Price Advertising Non-compliance

A Cornwall Dealer was fined \$4,800 for breaching the CoE. In an Agreed Statement of Facts, **Stephen Fitzgerald Motors Ltd.**, and the person in charge, **Stephen Fitzgerald**, acknowledged overcharging four consumers and selling them vehicles at prices higher than those advertised.

In addition to the \$4,800 fine, Fitzgerald was ordered to successfully complete the Automotive Certification Course and offer it to all current and future sales staff.

Note: The dealership has since refunded the difference to the consumers who were charged above the advertised price.

Need Help with Advertising?

OMVIC CAN HELP!

Have an advertising question? Want an advertisement reviewed before it is published? Contact OMVIC's Marketing Standards Team at: marketing_standards@omvic.on.ca for assistance. It's a free service to all dealers and can help ensure compliance. Please allow 48 hours for advertisement reviews.



When the Risk Is Not Worth the Reward

In a recent edition of the *Ontario Dealer Magazine*, UCDA Director of Member Services, Bob Pierce, penned an excellent story about the potential business pitfalls of a dealer using its finance portal to provide financing for another dealer's customers. Bob's scenario sets out the following:

- Dealer A has access to a finance portal.
- Dealer B sold a car to a consumer but has no access to a finance portal to get his customer financed.
- Dealer B contacts Dealer A, who agrees to arrange financing for the customer.
- To make this happen, Dealer B sells the car to Dealer A who then sends Dealer B finance documents and a new Bill of Sale (BoS) (in Dealer A's name) to have the customer sign.
- Dealer B is happy with the sale of the car (via Dealer A).
- Dealer A gets a finance reserve and the finance manager gets a commission.

As Bob explained, it seems like a win-win, until it isn't:

- Shortly after delivery, the deal goes bad: there are problems with the car, the customer misses loan payments and the car is repossessed.
- In conversations between the lender and the customer, the lender learns how the car was actually purchased and financed.

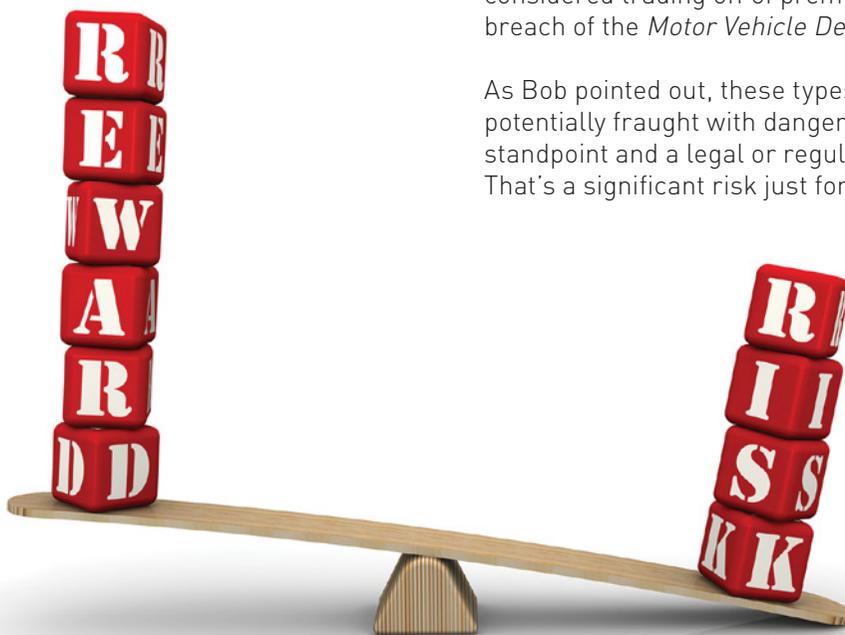
The article then went on to explain the potential business impacts on Dealer A when the finance company learns how the deal was done, including requiring Dealer A to compensate the finance company for losses incurred and the possible cancellation of access to the finance portal.

These are serious repercussions and there may be others on the regulatory front. For example, dealers are required to make full disclosure about a vehicle's past use, history and condition in writing on a BoS.

If you are the dealer principal for a store engaging in transactions like Dealer A above, do you have confidence that full and accurate disclosure is being made on the sale of a vehicle you have never had in your possession, let alone seen? Remember, the BoS is in YOUR dealership's name. Do you have full confidence that the information provided to you about the customer (in order to obtain financing) was accurate and that all aspects of the financing agreement were explained to the customer when the information was provided by an individual who does not work for you? OMVIC is aware of one situation similar to this in which the vehicle turned out to be stolen! The police took possession of the car, Dealer B disappeared and Dealer A was left responsible for making the consumer whole.

And of course, allowing your customer – because they are now YOUR customer – to sign your BoS and finance documents at Dealer B's office is likely to be considered trading off of premises, which is another breach of the *Motor Vehicle Dealers Act*.

As Bob pointed out, these types of transactions are potentially fraught with danger, from both a business standpoint and a legal or regulatory standpoint. That's a significant risk just for a finance reserve fee.



Trust Accounts

OMVIC received the question, “Do I require a trust account?” from a dealer applicant.

The Answer

The *Motor Vehicle Dealers Act* requires a dealer to deposit in a trust account:

- Any deposit greater than \$10,000
- ALL funds received in a consignment sale

If the dealer does not engage in consignment transactions or take deposits greater than \$10,000, a trust account is not required.

Requirements When Establishing a Trust Account

A trust account must be set up at a financial institution in accordance with the *Bank Act* (Canada) and the *Credit Unions and Caisses Populaires Act*. Trust accounts must be named “*Motor Vehicle Dealers Act, 2002 Trust Account*” and include the dealer’s registered name. **Note:** If there is not enough room for both, the words “Trust Account” and the dealer’s registered name will suffice.

Monies held in trust must be kept separate from the dealer’s general funds and can never be used as collateral.

Maintaining a Trust Account

Dealers must maintain a detailed record of the account’s transactions that includes:

- The amount of each transaction (deposit and withdrawals)
- The name of the person associated with each transaction

- The reason for the transaction
- A corresponding reference number that identifies the associated Bill of Sale
- The method (e-transfer, credit card, cash, etc.) and time of the payment

Reconciliations

The trust account must be reconciled monthly unless there is a zero balance or there has been no activity since the last reconciliation. **Note:** If the reconciliation identifies a shortfall in the account, dealers must immediately deposit sufficient funds to eliminate the shortfall.

Signing Authority

Dealers have an obligation to ensure that a person in charge of the daily operations who is the proprietor, partner, officer or director (depending on the business model) has signing authority for the account and signs the necessary reconciliations.

Freeze Order

In extreme circumstances and in the public interest, OMVIC may issue a freeze order that would freeze assets or trust funds without notice to the dealer. This may occur if a search warrant has been issued or a criminal proceeding has started. The freeze order is intended to protect customers.

TRUST ACCOUNT

General Dealers (only) must set up a trust bank account for any individual deposit over \$10,000 and for any monies received for a consignment transaction when the consignor is an individual who purchased the vehicle for personal or family use.