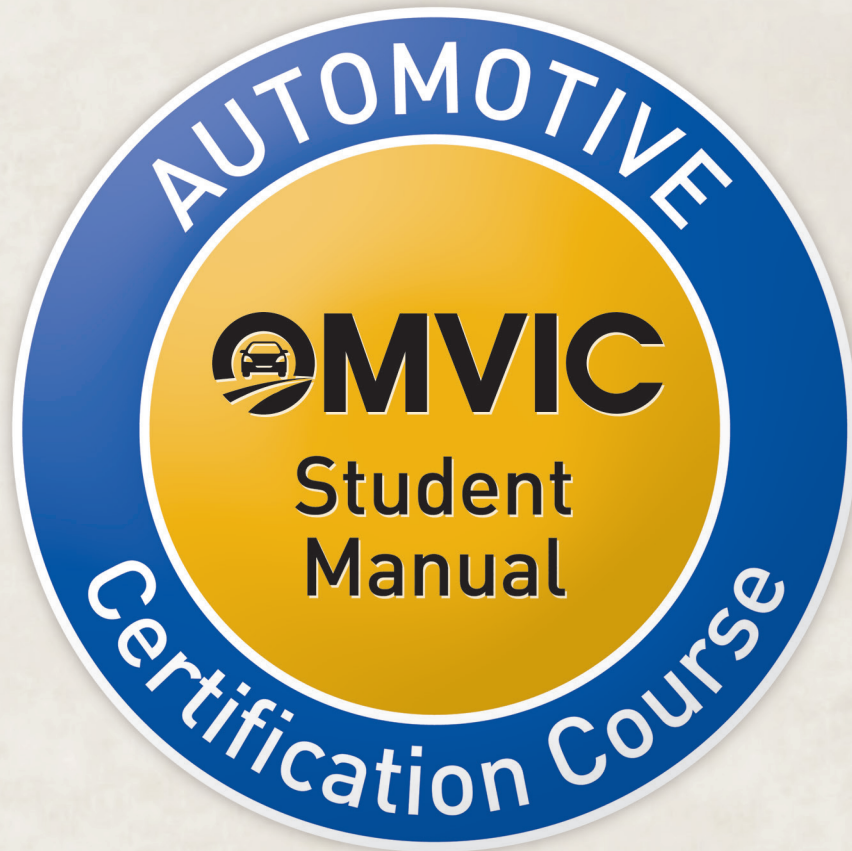


Students are not allowed to use or reference this PDF version of the student manual during the OMVIC Automotive Certification Test. Students are only permitted to use the hard copy of the student manual provided in the course material package.



REVISED
2020

Automotive Certification Course Student Manual

Laws, Regulations and Practices

Revised: 2020

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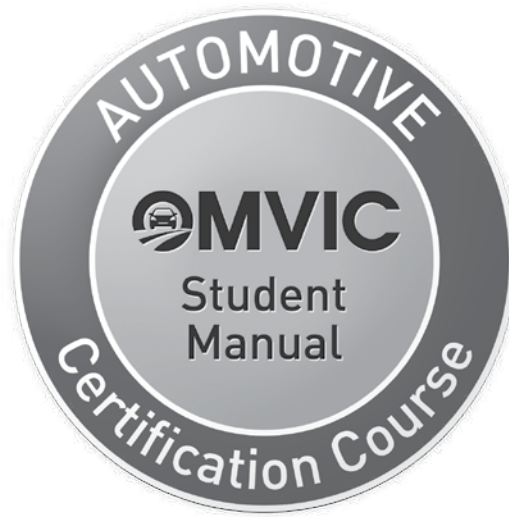
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DISCLAIMER:

This Student Manual is NOT legal advice. Do not rely solely on this course material.

For details about Ontario laws and regulations, see www.e-laws.gov.on.ca.

Consult a lawyer to assist with any questions regarding the *Motor Vehicle Dealers Act, 2002*,
the *Consumer Protection Act, 2002*, and all other laws.



Your *Automotive Certification Course Student Manual* explains key pieces of legislation governing the retail automotive industry, including the *Motor Vehicle Dealers Act*, the *Consumer Protection Act* and the *Sale of Goods Act*.

Students have twelve (12) weeks to study the content of the manual and to write the Automotive Certification Test.

Enrolment in this course does NOT automatically register you with the Ontario Motor Vehicle Industry Council (OMVIC). You MUST submit a separate application to OMVIC for registration as a dealer or salesperson.

Preface

About the Automotive Certification Test

Students must complete the Automotive Certification Test within 12 weeks of their course registration date with Georgian College. If a student does not write the test within that time, they will be assigned a grade of zero and enrolment in the course will automatically be cancelled. Should a student wish to write the Automotive Certification Test after the 12-week period, they must re-register with Georgian College and pay the full registration fees.

NOTE: A minimum grade of 60 per cent is required to pass the course.



Students must complete the Automotive Certification Test within 12 weeks of their course registration date.

OMVIC Registration is NOT included with Program

Enrolment in this course does NOT automatically register students with the Ontario Motor Vehicle Industry Council (OMVIC). Once enrolled in the course, students may submit their application to OMVIC for registration as a dealer or salesperson, however, OMVIC cannot grant registration to any applicant until the required preconditions have been met. This includes successfully completing the Automotive Certification Course. Each student must submit a separate application for registration as a dealer or salesperson.



Each student must submit a separate application for registration as a dealer or salesperson.

If an individual is concerned his or her application may not be approved by OMVIC, they may submit their application for registration with OMVIC without confirmation of enrolment.

Passing the Program – Important Benefit!

Individuals that successfully pass the Automotive Certification Course through Georgian College (Automotive Business School of Canada) *and* become registered with OMVIC are entitled to use the designation “**C.A.L.E. – Certified in Automotive Law and Ethics.**” Most dealers and salespeople work hard to serve and meet the needs of customers, and yet some consumers still don’t understand the benefits of buying from a registered dealer. Using the C.A.L.E. designation builds trust, strengthens credibility and demonstrates to consumers that dealers and salespeople are proven professionals who have met Georgian College and OMVIC training standards.

New Procedures for Marks, Certificates and Industry Pins

- If a student achieves the required minimum 60 per cent on the test, Georgian College will immediately advise OMVIC that the student has passed.
- Students will receive an email from Georgian College three business days after testing to confirm their test result. Note: passing the course does NOT mean the student is registered with OMVIC; students must still make a formal application for registration.
- Once a student is formally registered with OMVIC, Georgian College will courier the student a certificate (or similar) designating them as “Certified in Automotive Law and Ethics.” Students will also receive an OMVIC industry pin and a congratulatory letter that outlines further options for students to advance their automotive education. These certificates and pins will only be sent to students who become registered with OMVIC.

Testing Process

NEW: Students now may take the OMVIC test online or in-person.

Students have 12 weeks from the date of registration to complete the test.

1. In-person

- A list of in-person testing sites is included with this manual.
- Contact your preferred testing site to book an appointment, where necessary.

OR

2. Online

- An email invitation will be sent to your email address on file.
- Follow the test instructions on the online test portal.

For both options, students will have 90 minutes to complete the multiple-choice test and are only permitted to use the hard copy of the student manual during the test. Students will need one piece of valid government-issued photo identification. (i.e. passport, driver's licence, age of majority card, or permanent resident card) Results will be provided to students by email three business days after completing the test.

Students may only take the test once. Students must choose if they would like to take the test online or in-person. Please note that students only have one chance to take the test per course registration. If you choose to take the test in-person, you cannot complete the test online. If you choose to complete the test online, you cannot take the test in-person. Regardless of how the test is taken, the difficulty level of the tests is the same.

NOTE:
only this book is permitted while writing the OMVIC Automotive Certification Test.

No electronic devices (including online course resources) are permitted to be used during the test.

NOTE: The names used in examples throughout the course are fictional.

Background to the Automotive Certification Course

In 1999, a collaborative effort between OMVIC and Georgian College's Canadian Automotive Institute in Barrie, which has since been rebranded as Automotive Business School of Canada, resulted in the implementation of a mandatory Automotive Certification Course for new dealers and salespeople in Ontario. OMVIC's Automotive Certification Course was the first mandatory course for dealers and salespeople in Canada.

The course is divided into teaching chapters, each beginning with a list of learning objectives. At the end of each chapter are several questions intended to reinforce what has been read and provide participants with the opportunity to apply what has been learned. The answers to these questions are provided in Appendix 1.

The questions on the Automotive Certification Test are in multiple-choice format only. This manual, however, contains a variety of question formats to help students understand the content, such as activities, assignments, multiple-choice questions, true-false questions and fill-in-the-blank questions.

Chapter 1: Introduction to the Course	1
1.01 Definitions	1
1.02 Learning Objectives	1
1.03 What Do You Know?	2
1.04 Introduction	2
1.05 The MVDA	2
1.06 What's New in the MVDA?	3
1.07 OMVIC's Role and Responsibilities	4
1.08 The Transaction Fee Program	5
1.09 Dealer Advertising	6
1.10 Receiver and Manager Appointment	6
1.11 OMVIC's Obligation Regarding Confidentiality	6
1.12 Specific Information that OMVIC Must Make Publicly Available: Gen. Reg. 27	7
1.13 Summary	8
1.14 Test Yourself	9
 Chapter 2: Registration of Dealers and Salespeople	 11
2.01 Learning Objectives	11
2.02 What Do You Know?	12
2.03 Introduction	12
2.04 Registration and Requirements	13
2.05 Dealer Registration	13
2.06 Who Must Take the Automotive Certification Course?	14
2.07 Salesperson Registration	15
2.08 Steps to Ensure No Unregistered Salespersons	16
2.09 The Certificate of Registration	17
2.10 Refusal of Registration	17
2.11 "Interested and Associated Persons"	18
2.12 Licence Appeal Tribunal	19
2.13 Reapplying for Registration	19
2.14 Registration Exemptions	19
2.15 Registration Renewals (Online Services)	21
2.16 Classes of Dealers	23
2.17 Chart Summary of Classes of Dealers	26

2.18	What's in a Name?	28
2.19	Notification to OMVIC Regarding Changes	28
2.20	Summary	29
2.21	Test Yourself	30

Chapter 3: Dealer Premises and Records 31

3.01	Learning Objectives	31
3.02	What Do You Know?	32
3.03	Introduction	32
3.04	Dealer Premises	32
3.05	Dealer Records	33
3.06	Protecting the Privacy of Information	35
3.07	Trust Account	36
3.08	Freeze Order	37
3.09	Financial Management Best Practices/Guidelines	37
3.10	Summary	39
3.11	Test Yourself	40

Chapter 4: Contract Requirements (For Contracts with Customers – Not with Other Dealers) 41

4.01	Learning Objectives	41
4.02	What Do You Know?	42
4.03	Introduction	42
4.04	Contract for Sale of a New Vehicle	42
4.05	Contract for Sale of a Used Vehicle	46
4.06	Contract for Lease of a Vehicle	49
4.07	Additional Contract Requirements for Trade-Ins on Sales and Leases	51
4.08	Contracts for Sales on Consignment	53
4.09	Contract with Broker to Facilitate Purchase or Lease	54
4.10	Reflecting Negative Equity on Contracts	56
4.11	Financing Representations	57
4.12	Summary and Sample Contract	58
4.13	Test Yourself	60

Chapter 5: Retail Disclosure Requirements (With Customers – Not with Other Dealers)	61
5.01 Definition	61
5.02 Learning Objectives	61
5.03 What Do You Know?	62
5.04 Introduction	62
5.05 Clear, Comprehensible and Prominent	63
5.06 Required Disclosures	63
5.07 \$3,000 Damage Discussion	66
5.08 Best Practices to Assist with Disclosure	67
5.09 Summary	67
5.10 Test Yourself	68
 Chapter 6: Rescission – A Remedy for Breach of Disclosure by Dealer	 71
6.01 Definition	71
6.02 Learning Objectives	71
6.03 What Do You Know?	72
6.04 Introduction	72
6.05 Cancellation of the Contract	73
6.06 Important Cancellation Details	73
6.07 Summary	74
6.08 Test Yourself	75
 Chapter 7: Wholesale Disclosure in Contracts with another Registered Dealer	 77
7.01 Learning Objectives	77
7.02 What Do You Know?	78
7.03 Introduction	78
7.04 Contract for Sale or Lease of a Vehicle to another Registered Dealer	79
7.05 Summary	80
7.06 Test Yourself	81
 Chapter 8: Disclosure in Advertising	 83
8.01 Learning Objectives	83
8.02 What Do You Know?	84

8.03	Introduction	84
8.04	What is an Advertisement?	85
8.05	Disclosure in Dealer Advertising	85
8.06	“All-In Price” Advertising	86
8.07	Advertising “As Is” Vehicles	89
8.08	Advertising Unfit Vehicles	89
8.09	Advertising Cost of Credit	90
8.10	Lease Advertising	90
8.11	Advertising as Manufacturer’s Suggested Retail Price (MSRP)	91
8.12	The Code of Ethics and Standards of Business Practice on Advertising	93
8.13	Using Stock Photographs in Advertisements	98
8.14	Summary and Sample Ad	99
8.15	Test Yourself	100

Chapter 9: Extended Warranties and Service Plans 101

9.01	Learning Objectives	101
9.02	What Do You Know?	102
9.03	Introduction	102
9.04	Sale of an Extended Warranty (Section 47)	103
9.05	Sale of a Service Plan (Section 48)	105
9.06	Summary	107
9.07	Test Yourself	108

Chapter 10: Inspections and Investigations 109

10.01	Learning Objectives	109
10.02	What Do You Know?	110
10.03	Introduction	110
10.04	Inspections	110
10.05	Inspection Guide & Checklist	111
10.06	Investigations	112
10.07	Summary	112
10.08	Test Yourself	113

Chapter 11: Avoiding Curbsiders	115
11.01 Learning Objectives	115
11.02 What Do You Know?	116
11.03 Introduction	116
11.04 Steps to Avoid Selling to Curbsiders	117
11.05 Summary	117
11.06 Test Yourself	118
 Chapter 12: Motor Vehicle Dealers Compensation Fund	 119
12.01 Learning Objectives	119
12.02 What Do You Know?	120
12.03 Introduction	120
12.04 Who Pays into the Compensation Fund?	120
12.05 Valid Claims Against the Fund	121
12.06 Spreading the Word	122
12.07 Reimbursing the Fund	122
12.08 Summary	123
12.09 Test Yourself	124
 Chapter 13: Consumer Protection Act	 125
13.01 Learning Objectives	125
13.02 What Do You Know?	126
13.03 Introduction	126
13.04 Customers vs. Consumers	127
13.05 Penalties for Breaching the <i>Consumer Protection Act</i>	127
13.06 Remedy Available to the Consumer	127
13.07 Two-Thirds Exception on Repossession	128
13.08 Oral Evidence in Court	128
13.09 Credit Card Refunds	128
13.10 Ambiguity	129
13.11 Unfair Practices	129
13.12 “Material Fact”	131
13.13 “Honest Mistake”	131
13.14 Financing Agreements	132
13.15 Leasing Agreements	134

13.16	Disclosure Statement for a Lease (Section 74)	135
13.17	Maximum Liability under a Lease; “Residual Obligation Lease”	136
13.18	“Net Sale Proceeds”	138
13.19	Dealer Financing (Section 44)	138
13.20	Summary	138
13.21	Test Yourself	139

Chapter 14: Repairs **141**

14.01	Learning Objectives	141
14.02	What Do You Know?	142
14.03	Introduction	142
14.04	Repairs	143
14.05	Invoice for Repairs	144
14.06	Summary	146
14.07	Test Yourself	147

Chapter 15: Researching the Vehicle **149**

15.01	Learning Objectives	149
15.02	What Do You Know?	150
15.03	Introduction	150
15.04	Total Distance a Vehicle Has Been Driven	150
15.05	Researching “Distance Driven”	151
15.06	Liens	152
15.07	Summary	152
15.08	Test Yourself	153

Chapter 16: Sale of Goods Act **155**

16.01	Learning Objectives	155
16.02	What Do You Know?	156
16.03	Introduction	156
16.04	“As Is” Sales	157
16.05	Other Conditions of Sale	158
16.06	Deposit to be Returned if No Contract is Made	158
16.07	Customer’s Refusal to Complete the Sale	159

Table of Contents

16.08	Damages (Costs of Resale)	160
16.09	Summary	160
16.10	Test Yourself	161
 Chapter 17: Code of Ethics Regulations		163
17.01	Learning Objectives	163
17.02	What Do You Know?	164
17.03	Introduction	164
17.04	Code of Ethics Regulations	165
17.05	Discussion of the Code of Ethics Regulations	166
17.06	Disciplinary Procedure	167
17.07	Standard of Business Practice	168
17.08	Summary	183
17.09	Test Yourself	184
 Chapter 18: A Variety of Topics		185
18.01	Learning Objectives	185
18.02	What Do You Know?	186
18.03	Introduction	186
18.04	Canadian Motor Vehicle Arbitration Plan	187
18.05	Consignment Sales	189
18.06	Consignment Best Practices	191
18.07	Dealer Plates and Service Plates	194
18.08	Wholesale Auctions	195
18.09	Maintaining a Garage Register	196
18.10	Branding Vehicles	197
18.11	Safety Standards Certificate	199
18.12	Used Vehicle Information Package	199
18.13	Summary	200
18.14	Test Yourself	201

Appendix 1: Answers to Questions in Chapters 1 through 18	203
Chapter 1	203
Chapter 2	203
Chapter 3	204
Chapter 4	204
Chapter 5	205
Chapter 6	205
Chapter 7	206
Chapter 8	206
Chapter 9	206
Chapter 10	207
Chapter 11	207
Chapter 12	207
Chapter 13	207
Chapter 14	208
Chapter 15	209
Chapter 16	209
Chapter 17	210
Chapter 18	210
Appendix 2: Resource List	213
Appendix 3: Summary of Acts	217
Appendix 4: Glossary	219

Chapter 1

INTRODUCTION TO THE COURSE

- | | |
|--|---|
| 1.01 Definitions | 1.09 Dealer Advertising |
| 1.02 Learning Objectives | 1.10 Receiver and Manager Appointment |
| 1.03 What Do You Know? | 1.11 OMVIC's Obligation Regarding Confidentiality |
| 1.04 Introduction | 1.12 Specific Information that OMVIC Must Make Publicly Available |
| 1.05 The <i>Motor Vehicle Dealers Act</i> , (MVDA) | 1.13 Summary |
| 1.06 What's New in the MVDA? | 1.14 Test Yourself |
| 1.07 OMVIC's Role and Responsibilities | |
| 1.08 The Transaction Fee Program | |



1.02

Learning Objectives

After completing this chapter, you will have a greater understanding of the *Motor Vehicle Dealers Act*, including:

1. Penalties for breaches of the MVDA
2. Classes of dealers
3. The Code of Ethics
4. OMVIC's access to dealer records and vehicles
5. OMVIC's powers to investigate and search
6. Changes to the Compensation Fund
7. OMVIC's role
8. The OMVIC Transaction Fee Program and which vehicles/transactions it applies to
9. OMVIC's authority regarding dealer advertising
10. OMVIC's authority regarding the appointment of a receiver and manager
11. OMVIC's obligation regarding confidentiality
12. Specific information that OMVIC *must* make available to the public

1.01

Definitions

Licence Appeal Tribunal (LAT): An independent tribunal that hears appeals of the Registrar's proposal to refuse, suspend or revoke the registration of a dealer or a salesperson

Motor Vehicle Dealers Act, (MVDA): Legislation governing the retail automotive sector

Ontario Motor Vehicle Industry Council (OMVIC): Administers and enforces the MVDA

1.03

What Do You Know?

Try answering these questions to test your knowledge:

- 1.** What is the primary legislation governing Ontario's retail automotive sector?
- 2.** Which body or agency enforces the MVDA?
 - a) Ministry of Government and Consumer Services
 - b) Trillium Automobile Dealers Association (TADA)
 - c) OMVIC
 - d) Automotive Business School of Canada (ABSC)
- 3.** List three functions carried out by OMVIC.

Keep these questions in mind as you read through the following section.



1.04

Introduction



OMVIC is Ontario's regulator of motor vehicle sales, administering and enforcing the MVDA on behalf of the Ministry of Government and Consumer Services.

The *Motor Vehicle Dealers Act (MVDA)* was passed in the legislature in 2002. After years of consultation with dealers and dealer associations, manufacturers, leasing companies, auctions, financial institutions and consumers, the *Motor Vehicle Dealers Act* rules and regulations were released in 2008. They became law on January 1, 2010.

1.05

The MVDA

The MVDA is the primary source of authority and is general in nature. The Regulations set out the specific requirements of the MVDA.

THERE ARE TWO SETS OF REGULATIONS OF THE MVDA:

- 1. General Regulations (Ontario Regulation 333/08)**
- 2. Code of Ethics and Operation of Committees Regulations (Ontario Regulation 332/08)**

1.06

What's New in the MVDA?

1. With the implementation of the new MVDA in 2010, penalties for offences against the MVDA increased. Now, if a person “furnishes false information” or fails to comply with the MVDA or the General Regulations, this person can be fined and/or imprisoned. Similarly, if an officer or director of a corporation that is a dealer “fails to take reasonable care” to prevent the corporation from committing such an offence, that person can be fined and/or be imprisoned. The maximum penalty for an individual is:
 - a) A fine of \$50,000; and/or
 - b) Imprisonment for two years less a day.

The maximum fine for a corporation is \$250,000.

The *minimum* penalty for an individual acting as a salesperson or as a dealer without being registered is \$2,500.

2. Dealers and salespeople must abide by the Code of Ethics Regulations. If a dealer or salesperson violates the Code of Ethics Regulations, he or she can be brought before a Discipline Committee.
3. The MVDA specifies several classes of dealers:
 - General Dealer (subclass: new and used vehicles)
 - General Dealer (subclass: used vehicles)
 - Broker
 - Outside Ontario Dealer
 - Wholesaler
 - Exporter
 - Lease Finance Dealer
 - Fleet Lessor (subclass: commercial lessor)
 - Fleet Lessor (subclass: short-term lessor)
4. There are increased requirements for dealers and salespersons to notify OMVIC of significant changes to the information provided to OMVIC on registration or upon renewal of registration.
5. OMVIC is obliged to make available to the public significant information regarding dealers and salespeople (including charges laid and/or conviction of an offence).
6. As of 2010, the requirements for disclosure by dealers to customers (and in dealer-to-dealer transactions) increased *significantly*. Disclosure must be “clear and truthful,” and any representations (including advertising) must be “legal, decent, ethical and truthful.”

THE MOTOR VEHICLE DEALERS COMPENSATION FUND

OMVIC also administers the Motor Vehicle Dealers Compensation Fund on behalf of a Board of Trustees. The Fund provides compensation to a consumer (under specific circumstances) should the consumer suffer a loss as a result of a transaction with a registered dealer.

7. All customers (not just “consumers”) other than registered dealers are now entitled to cancel a contract within 90 days if there was not adequate disclosure of branding, of the vehicle’s make, model and model year, of previous use as a police vehicle, emergency services vehicle, limo or taxi, or in some cases as a daily rental, or of the distance driven (within certain margins of error).
8. 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.
9. The maximum Compensation Fund payout to a consumer for any one individual transaction is \$45,000, increased from the previous \$15,000.
10. OMVIC can appoint a “receiver and manager” to take control of a dealership and can issue a “freeze order” to seize the assets of a dealer or an alleged curbsider.
11. A dealer may be required to submit its advertising to the Registrar for pre-approval for up to two years.

1.07

OMVIC’s Role and Responsibilities

OMVIC administers and enforces the MVDA – a public protection statute – on behalf of the Ministry of Government and Consumer Services. OMVIC’s mandate is to maintain a fair and informed marketplace in Ontario by ensuring registration of dealers and salespeople, regularly inspecting dealers, maintaining a complaint line for consumers, and by conducting investigations, disciplinary hearings and prosecutions. OMVIC also strives to enhance industry professionalism and ensure fair, honest and open competition for all registered dealers.

OMVIC’s Board of Directors is composed of 12 individuals, as follows:

- Two directors who are members of the Used Car Dealers Association (UCDA)
- Two directors who are members of either the Trillium Automobile Dealers Association (TADA)
- Three directors who are members of both the UCDA and TADA
- One director who is an independent dealer who may or may not be a member of a trade association
- One director who is a franchise dealer who may or may not be a member of a trade association

- Three directors who are appointed by the Minister of Government and Consumer Services

The term of office for a board member is three years from the date of the Annual General Meeting at which the member is elected. Although not a requirement, board members are encouraged to complete the OMVIC Certification Course.

1.08

The Transaction Fee Program

With the implementation of the new MVDA in 2010, OMVIC's duties and responsibilities became greater than ever before. The cost to carry out this expanded role is also substantially greater. In response, OMVIC implemented a Transaction Fee Program. The fee has been structured in a way that allows dealers to pass on the transaction fee to retail customers, if they choose to.

Registered dealers are required to remit the fees to OMVIC – registered salespeople **do not** pay fees.

New car dealers are required to remit the transaction fee for leases on behalf of the lessors with whom manufacturers have arrangements (sometimes referred to as “captive lessors”). This applies regardless of whether the vehicle being leased by the dealer is new or used. New car dealers may choose to pass on the transaction fee to consumers through their retail bill of sale. Independent lessors are required to remit their transaction fee payments directly to OMVIC.



Under the Transaction Fee Program, dealers are required to remit **\$10 for each vehicle sold or leased** (including fleet and “as is” transactions). These funds will be remitted annually with the dealer's registration renewal fee.

The following transactions are exempt from the fee:

- Selling or leasing a vehicle directly to another registered dealer.
- Selling a vehicle to a bona fide lessee during or at the end of the lease term (note that the transaction fee is applicable at the inception of the lease). Also, if a lessee chooses to re-lease the same vehicle as a way of financing the lease buy-out, this second lease would not be subject to the transaction fee.

LICENCE APPEAL TRIBUNAL (LAT):

An independent tribunal that hears appeals of the Registrar's proposal to refuse, suspend or revoke the registration of a dealer or a salesperson.

1.09

Dealer Advertising

If a dealer makes a false, misleading or deceptive statement in any advertisement, circular, pamphlet or material published by any means, OMVIC may issue an order requiring the dealer to:

1. Stop immediately (cessation)
2. Retract the statement or publish a correction

These orders are subject to appeal to the LAT, but the order takes effect immediately, pending the outcome of an appeal.

As a result of an advertising order, a dealer may be required to submit all advertising to OMVIC for pre-approval for up to two years.

A dealer to whom an order has been issued will be listed on the OMVIC website as being subject to a false advertising order.

1.10

Receiver and Manager Appointment

In extreme situations, OMVIC may apply to the court to appoint a “receiver and manager” to take control of a dealership and its assets. This drastic action might be taken if there has been an investigation, if the dealership is about to fail, if OMVIC is proposing to revoke a registration or if a “freeze order” is about to be made.

OMVIC may issue a freeze order in very extreme circumstances which are in the “public interest.” This order may be issued without notice to the dealer and would freeze the dealer's assets or trust funds. This may occur if a search warrant has been issued or a criminal proceeding has been started and customers need protection.

1.11

OMVIC's Obligation Regarding Confidentiality

Section 36 of the MVDA requires OMVIC and its staff to “preserve secrecy” with respect to information gathered and to not communicate that information to anyone, except:

1. As required by the MVDA and Regulations
2. To a government ministry or agency that protects consumers
3. To a law enforcement agency

1.12

Specific Information that OMVIC Must Make Publicly Available: Gen. Reg. 27

OMVIC **must** make the following information available to the public:

1. A dealer's legal name (and the name under which registered if other than the legal name).
2. The class (or classes) of dealer registration.
3. The business address and telephone number.
4. The names of registered salespeople (and the dealer to which the salesperson is registered).
5. Any "condition" on the registration of a dealer or salesperson applied by LAT.
6. Any "proposal" by OMVIC to apply a "condition" to a dealer or salesperson's registration (indicating that the proposal has not yet been finalized).
7. The names of dealers and salespeople whose renewal of registration has been refused (or whose registration has been revoked).
8. Any "proposal" by OMVIC to refuse to renew the registration of a dealer or salesperson (indicating that the proposal has not yet been finalized).
9. The names of all dealers or salespeople whose registration has been suspended.
10. Any "proposal" by OMVIC to suspend the registration of a dealer or salesperson (indicating that the proposal has not yet been finalized).
11. Any "proposal" by OMVIC to revoke the registration of a dealer or salesperson (indicating that the proposal has not yet been finalized).
12. For every dealer or salesperson, formerly registered dealer or salesperson, person registered at any time under the MVDA, and director or officer of a dealership:
 - 12.1. Who is currently charged with an offence as a result of information laid by an employee of OMVIC
 - 12.2. The act that creates the offence
 - 12.3. A description of the charge
 - 12.4. The date on which the information was laid

13. For every dealer or salesperson, formerly registered dealer or salesperson, person registered at any time under the MVDA, and director or officer of a dealership who has been found guilty of an offence as a result of information laid by an employee of OMVIC:
 - 13.1. The act that creates the offence
 - 13.2. A description of the charge
 - 13.3. The date on which the information was laid
14. Any order under Section 29 of the MVDA regarding the dealer's advertising.
15. Any OMVIC Discipline Committee order against the dealer or salesperson as a consequence of failure to comply with the Code of Ethics Regulations (see Chapter 17) and the contents of that order. This isn't made public until any appeal has failed or the time for appeal is exhausted.
16. Any Appeals Committee order against the dealer or salesperson as a consequence of failure to comply with the Code of Ethics Regulations (see Chapter 17) and the contents of that order. This isn't made public until any appeal has failed or the time for appeal is exhausted.
17. If OMVIC becomes aware of information (other than confidential financial information) about a dealer or salesperson, a former registrant, a person registered at any time under the MVDA, a director or officer of a registrant, and if OMVIC is of the opinion that the information could assist in protecting the public if the public knew of it, OMVIC shall make the information available to the public by electronic or other means.



1.13

Summary

The MVDA was passed in the legislature in 2002. Its Regulations were released in 2008 and took effect on January 1, 2010.

OMVIC administers and enforces the MVDA on behalf of the Ministry of Government and Consumer Services.

OMVIC is also responsible for administering the Motor Vehicle Dealers Compensation Fund.

OMVIC can order a dealer to cease publishing false, misleading or deceptive statements in its advertisements or to retract or correct a statement, and has the power to pre-approve a dealer's advertising.

In extreme situations, OMVIC may apply to the court to appoint a "receiver and manager" to take control of a dealership.

While OMVIC must maintain confidentiality of some of the information it collects about a dealer, it must make certain information publicly available, including a dealer's name, address and telephone number.

1.14

Test Yourself



The first questions below are the same questions asked in “What Do You Know?” at the beginning of this chapter. Try answering these questions again and compare your results with your earlier answers.

Then, answer the additional questions.

1. What is the primary legislation governing Ontario’s retail automotive sector?
2. Which body or agency enforces the MVDA?
 - a) Ministry of Government and Consumer Services
 - b) TADA
 - c) OMVIC
 - d) Automotive Business School of Canada
3. List three functions carried out by OMVIC.
4. How many people compose OMVIC’s Board of Directors? Of these, how many represent the industry and how many represent consumers?
5. Briefly explain the “Transaction Fee Program.”
6. True or False: Under the Transaction Fee Program, dealers are required to remit \$10 (to OMVIC) for each retail vehicle sold or leased.
7. True or False: The transaction fee can be passed along to the customer.
8. What information is OMVIC required to make available to the public?
 - a) A dealer’s business name, address and phone number
 - b) A salesperson’s name
 - c) Any proposal to refuse to renew, suspend or revoke the registration of a dealer or salesperson
 - d) All of the above
9. Should OMVIC determine a dealer’s advertising to be false or misleading, what powers does OMVIC have to stop or correct it?
10. If an order is used to stop or correct false advertising, for how long may the dealer need to seek OMVIC’s pre-approval for future advertising?
11. List two possible situations which could result in OMVIC applying to a court to appoint a receiver and manager to assume temporary control of a dealership.

REMEMBER:

The questions on the Automotive Certification Test are in multiple-choice format only. This manual, however, contains a variety of question formats to help you understand the content, such as activities, assignments, multiple-choice questions, true-false questions and fill-in-the blank questions.

Refer to Appendix 1 for the correct answers. Review the relevant section of the chapter for any question you answered incorrectly.

Chapter 2

REGISTRATION OF DEALERS AND SALESPEOPLE

- | | |
|---|--|
| 2.01 Learning Objectives | 2.12 Licence Appeal Tribunal |
| 2.02 What Do You Know? | 2.13 Reapplying for Registration |
| 2.03 Introduction | 2.14 Registration Exemptions |
| 2.04 Registration and Requirements | 2.15 Registration Renewals (Online Services) |
| 2.05 Dealer Registration | 2.16 Classes of Dealers |
| 2.06 Who Must Take the Automotive Certification Course? | 2.17 Chart Summary of Classes of Dealers |
| 2.07 Salesperson Registration | 2.18 What's in a Name? |
| 2.08 Steps to Ensure No Unregistered Salespersons | 2.19 Notification to OMVIC Regarding Changes |
| 2.09 The Certificate of Registration | 2.20 Summary |
| 2.10 Refusal of Registration | 2.21 Test Yourself |
| 2.11 "Interested and Associated Persons" | |



2.01

Learning Objectives

After completing this chapter, you will understand:

1. OMVIC's registration process for dealers and salespeople
2. The reasons registration may be refused
3. Who OMVIC considers an "interested person"
4. OMVIC's reapplication process
5. The responsibilities to display and/or have available certificates of registration
6. Registration revocation or refusal and the role of the Licence Appeal Tribunal
7. The persons or organizations exempt from OMVIC registration
8. The classes of dealers (and definitions)
9. The responsibility to keep OMVIC informed of changes to registration information

2.02

What Do You Know?

Try answering these questions to test your knowledge:

- 1.** What is the minimum age requirement to become a dealer?
- 2.** List three requirements that must be met when applying to become a salesperson.
- 3.** True or False: All dealer and salesperson applicants undergo a Canada-wide criminal record search as part of the application screening process.

Keep these questions in mind as you read through the following section.



2.03

Introduction

In January 2014, there were 8,000 motor vehicle dealers and 25,000 salespeople registered with the Ontario Motor Vehicle Industry Council (OMVIC). This registration is mandatory for all dealers and salespeople in Ontario. Registration is valid for two years for salespeople and one year for dealers.

In order to become registered as a dealer or salesperson, each applicant is screened to ensure they meet the requirements of the *Motor Vehicle Dealers Act* (MVDA). OMVIC conducts a number of background checks on all applicants, and each applicant is required to provide Canada-wide criminal record search

results at the time of application. These checks help ensure everyone entering the industry will conduct themselves with honesty and integrity as well as in a financially responsible manner – all of which are requirements of the MVDA. Completion of the Automotive Certification Course is also a requirement for all new applicants.

The MVDA prohibits OMVIC from registering any dealer or salesperson who does not meet the prescribed requirements of the MVDA. If these “preconditions” are not met, OMVIC’s Registrar cannot process the application, and is not required to issue a proposal to refuse the application. If the Registrar wants to refuse an application for any other reason, the Registrar must give the applicant written notice of a refusal setting out the reasons for the refusal.

THE MINIMUM FINE for an unregistered dealer (curbsider) or for an unregistered salesperson is \$2,500.



Note: To keep registration valid, registrants must conduct business with financial responsibility, honesty and integrity, and in accordance with the law. Failure to do so may result in charges, administrative action or a proposal to revoke registration.

2.04

Registration and Requirements

Salespeople must be registered with OMVIC before they can enter into any form of discussion or negotiation with a potential buyer, seller or lessee of a vehicle, even if the salesperson is not signing the deal.

Registration is also required for business managers, finance and insurance managers, and persons who purchase vehicles at auction. Anyone who signs a motor vehicle sale or lease agreement on behalf of a dealer must be registered as a salesperson.

An officer or director of a corporate dealership or a partner in a registered partnership must be separately registered as a salesperson in order to sell or lease vehicles on behalf of the dealer.

Prior to 2010, a salesperson could only work for one dealer. Now, under the MVDA 2002, as long as each dealer provides OMVIC with written consent, a salesperson can be employed by more than one dealer.

If a salesperson leaves a dealer, OMVIC must be notified by the dealer and by the salesperson that employment has been terminated (the dealer must also provide OMVIC with the reason for termination). Similarly, if the salesperson moves to another dealer, OMVIC must be notified of the transfer.

To register, a salesperson must complete an “Individual Application” form. Forms are available from dealers and from OMVIC.

Note: OMVIC is required to ensure that individuals who become registered are likely to conduct business with honesty, integrity and in accordance with the law. Part of this process requires applicants to fully complete all forms and provide required information. If information is not provided, requires additional details (e.g. identifying the source of financing), or requires clarification, delays in registration can occur. It is therefore important that applicants answer all questions truthfully and provide as much detail as possible in their application.

2.05

Dealer Registration

A person can apply for registration (or renewal) as a dealer if:

- The required fee is paid
- The applicant is at least 18
- The applicant, interested persons and associated persons are not in default of retail sales tax

- The Motor Vehicle Dealers Compensation Fund has not paid out a claim for the applicant for which the Fund has not been reimbursed or a suitable repayment plan is in place
- The “person in charge of the day-to-day operations of the dealership” and other persons (an officer, director, partner or sole proprietor if different from the person in charge of day-to-day operations) have successfully completed the certification course or are exempt from having to take the course because he or she was the “person in charge” of a dealership on January 1, 2007 (refer to Section 2.06 below; note that Lease Finance Dealers and Fleet Lessors are exempted)
- The applicant has equivalent registration in another jurisdiction and will be registered as an Outside Ontario Dealer

Under the MVDA, there are no longer branch registrations. If the dealer trades from more than one location, he or she is registered as one dealer only, but the registration lists all of the authorized places of business.

2.06

Who Must Take the Automotive Certification Course?

(This section does not apply to Fleet Lessor subclasses or to the Lease Finance class.)

Under the MVDA, it is a condition of registration or renewal that each dealer appoint and identify to OMVIC at least one “person in charge” of the dealership. These persons must have taken the OMVIC Automotive Certification Course or have been in charge of a dealership for a minimum of two years since January 1, 2007. A person who has been in charge of day-to-day operations of a dealership since January 1, 2007, is not required by the MVDA to take the Automotive Certification Course, though it is highly recommended.

Consider these scenarios:

1. a) Is the dealership registered as a sole proprietorship? If so, the sole proprietor must have taken the Automotive Certification Course *or* have been a person in charge of a dealership since January 1, 2007.
AND
b) Is there another person in charge of the business on a day-to-day basis? If so, that person must have taken the Automotive Certification Course *or* have been a person in charge of a dealership since January 1, 2007.

2. a) Is the dealer registered as a partnership? If so, one of the partners must have taken the Automotive Certification Course *or* have been a person in charge of a dealership since January 1, 2007.
AND
 - b) Is there another person in charge of the business on a day-to-day basis? If so, that person must have taken the Automotive Certification Course *or* have been a person in charge of a dealership since January 1, 2007.
3. a) Is the dealer registered as a corporation? If so, at least one of the officers and directors must have taken the Automotive Certification Course *or* have been a person in charge of a dealership since January 1, 2007.
AND
 - b) Is there another person in charge of the business on a day-to-day basis? If so, that person must have taken the Automotive Certification Course *or* have been a person in charge of a dealership since January 1, 2007.



Note: If the dealer is renewing registration and the previously identified “person in charge” has left, a new designee must be appointed and identified as a condition of renewal.

2.07

Salesperson Registration

A person can apply for registration as a salesperson if:

- The required fee is paid
- The applicant has successfully completed the Automotive Certification Course
- The applicant is employed or retained to act as a salesperson by a registered dealer

A salesperson who has earlier completed the course but who has been out of the industry for two years may be required to complete the course again.

The following are the most common reasons OMVIC finds unregistered salespeople at dealers:

- The salesperson has told the sponsoring dealer that he or she is registered with OMVIC, when he or she is not.
- Applications are completed by the salesperson, but not sent in by the dealer.
- Responsibility for completing and submitting applications is delegated to the individual salesperson who fails to complete the process.
- The dealer or salesperson submits an application to OMVIC, but does not check to confirm that it has been approved before allowing the salesperson to work.

REGISTRATION EXPIRES

when a salesperson’s employment is ended. However, if the salesperson is hired by another registered dealer before the expiry date shown on the certificate of registration, the salesperson can submit a Salesperson Change Application to OMVIC. If this application is approved, the salesperson’s registration retains the same expiry date shown on the certificate.

The MVDA places the onus on both the dealer and the individual salesperson to ensure that the salesperson is properly registered. Accordingly, dealers are responsible for ensuring all their salespeople are properly registered with OMVIC.

2.08

Steps to Ensure No Unregistered Salespersons

Responsibility for ensuring all salespeople are properly registered should be delegated to a responsible individual by the dealer. The best choice would be a person who has supervisory authority over the sales staff and who is involved in the hiring process. This supervisory person should complete the Automotive Certification Course to ensure he/she has a good understanding of OMVIC's registration requirements. This individual's responsibilities should include:



Note: It is important for a dealer to be fully aware of a salesperson's history before deciding to sponsor the applicant for registration. Therefore, it is recommended someone other than the salesperson be responsible for mailing the salesperson's application to OMVIC. This helps prevent salespeople (who may have problems in their past, such as a criminal record) from altering the disclosures on their application or providing attachments which the sponsoring dealer has not seen.

1. Verifying with OMVIC that all salespeople are properly registered. This can be done by checking the website at www.omvic.on.ca.
2. Ensuring a "Salesperson Change Notice" form is completed and submitted to OMVIC (assuming the new salesperson is already registered).
3. Ensuring a "Salesperson Change Notice" form is completed and submitted to OMVIC whenever a salesperson leaves the dealer. This person should also ensure OMVIC is made aware of any conduct issues which would affect the salesperson's continued eligibility for registration.
4. Ensuring an "Individual Application" form is completed and submitted to OMVIC if the new salesperson has never been registered or a previous registration has lapsed.
5. Signing on behalf of the dealer all registration applications or change notices pertaining to salespeople. OMVIC will direct correspondence pertaining to pending applications to the attention of the individual who signed on behalf of the dealer.
6. Ensuring registration certificates are received and a copy is kept for the dealer's records.
7. Following up with OMVIC if a registration certificate is not received within a reasonable period of time.
8. Recording expiry dates of all salespeople to ensure renewal applications are received and submitted on time.
9. Ensuring no staff member acts in the capacity of a salesperson until confirmation of registration is received from OMVIC.

2.09

The Certificate of Registration

Dealer's Certificate:

At each place where the dealer is authorized to trade, the dealer must post the certificate of dealer registration so the public is likely to see it (this does not apply to an Outside Ontario Dealer, a Lease Finance Dealer and a Fleet Lessor, who must keep the dealer's certificate at the place of business and produce the certificate for inspection upon request by any person). While engaged in dealer activities, an individual dealer must carry his or her certificate and produce it for inspection at the request of *any* person.

Salesperson's Certificate:

At each place where the dealer is authorized to trade, the dealer must keep a copy of the certificate of each registered salesperson who trades from that place and produce that copy for inspection upon request by any person.

While engaged in dealer duties, the salesperson must carry his or her certificate and produce it for inspection at the request of *any* person.



Dealer's Certificate Example



Salesperson's Certificate Example

2.10


Refusal of Registration

A proposal to refuse registration of a dealer or salesperson may be issued if OMVIC's Registrar believes:

1. The applicant/registrant cannot reasonably be expected to be financially responsible in the conduct of business
2. The past conduct of the applicant/registrant affords reasonable grounds for belief that the applicant/registrant will not carry on business in accordance with the law and with integrity and honesty
3. The applicant/registrant (or an employee or agent of the applicant/registrant) makes a false statement (or provides a false statement) in an application for registration or for renewal of registration
4. The applicant/registrant has failed to comply with terms and conditions of registration

OMVIC can refuse, revoke or suspend registration of a corporation if:

1. The applicant cannot reasonably be expected to be financially responsible in the conduct of business:
 - a) Based on the corporation's financial position; and/or
 - b) Based on the financial position of its officers or directors.

 It is a strict condition of registration that no person alter or remove a vehicle identification number (VIN) label, or buy or sell a vehicle whose VIN is defaced or unrecognizable.

2. The past conduct of the corporation's 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
3. 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
4. The applicant/registrant has failed to comply with terms and conditions of registration

2.11

“Interested and Associated Persons”

OMVIC can also refuse, revoke or suspend registration to a dealer, salesperson or corporation if the financial responsibility or past conduct of an “interested person in respect of the applicant/registrant” gives reasonable grounds for it.

OMVIC would consider someone to be an “interested person” if, in OMVIC's opinion:

1. The person has or may have a beneficial interest in the business
2. The person exercises or may exercise control either directly or indirectly over the dealer/salesperson
3. The person has provided or may have provided financing either directly or indirectly to the business

An interested person would include an “associated person” as defined below.

One person is *associated* with another person in any of the following circumstances:

1. One person is a corporation of which the other person is an officer or director. Officer/director includes anyone who carries out duties normally performed by an officer/director.
2. One person is in a partnership of which the other person is a partner.
3. Both persons are partners of the same partnership.
4. One person is a corporation that is controlled directly or indirectly by the other person.
5. Both persons are corporations and one corporation is controlled directly or indirectly by the same person who controls directly or indirectly the other corporation.
6. Both persons are members of the same voting trust relating to shares of a corporation.
7. Both persons are associated within the meaning of paragraphs one to six (above) with the same person. Officer/director includes anyone who carries out duties normally performed by an officer/director.

2.12

Licence Appeal Tribunal

Revocation or refusal of registration is not automatic; a proposal must be issued by OMVIC to revoke, refuse, or refuse to renew a registration.

The person who receives a proposal to revoke or refuse registration has a right to appeal the decision to an independent quasi-judicial body called the Licence Appeal Tribunal (LAT) within 15 days of receiving the proposal.

Upon receiving an appeal, the LAT will hold a hearing, consider evidence and testimony, and issue a written decision. The LAT may either direct the Registrar to revoke the registration or set aside the proposal. Normally a decision is issued one to two months following the hearing.

In some cases, the LAT imposes conditions on a registration. For example, a salesperson might have to agree to not be an officer or the controlling mind of a dealer; a dealer might have to agree to comply with arrangements with the appropriate ministry.

Like the courts, the LAT is completely independent of OMVIC. If the person who receives the proposal does not appeal, the proposal is carried out.

2.13

Reapplying for Registration

MVDA Section 12 and General Regulation 15 specify that a dealer or salesperson whose registration is refused, revoked or refused renewal can reapply for registration if both of these conditions are met:

1. Two years have passed since the refusal, revocation, or refusal to renew.
2. New or other evidence is available or it is clear that material circumstances have changed.

2.14

Registration Exemptions

The following are exempted from registration (refer to MVDA General Regulation 2 for full details and more explanation):

1. *Wholesale auction*: Auction having no property interest in the vehicles being sold, where only registered dealers or persons exempt from registration can sell vehicles, and only registered dealers can buy vehicles.
2. *Wrecker*: Subject to vehicles being purchased for the purpose of wrecking or dismantling, and in compliance with the *Highway Traffic Act* by reporting “wreck” status to the Ministry of Transportation.

IF OMVIC'S REGISTRAR

considers it in the public interest, he or she may order a temporary suspension that takes effect immediately. The dealer/salesperson can make a written appeal to the Licence Appeal Tribunal (LAT). This temporary suspension expires 15 days after the LAT has received the written request for a hearing; if the LAT starts the hearing within that 15 days, it can extend the expiry date of the temporary suspension.

3. *Person selling a vehicle used for family or for a sole proprietorship business.*
4. *Selling a power-assisted bicycle equipped with both a pedal and auxiliary motor.*
5. *Registered charity:* Must be a charity within the meaning of subsection 248(1) of the *Income Tax Act* (Canada) and acts as such.
6. *Heavy truck dealer:* Dealer who trades in vehicles that have a gross weight of more than 21 tons when carrying the maximum permitted load of the vehicle (and its trailer, where applicable).
7. *Bus or commercial vehicle dealer:* Dealers who trade in buses or commercial vehicles (as defined in the *Highway Traffic Act*) provided they are not trading with customers who are individuals acting for personal or family use. Examples of “buses or commercial vehicles” include buses that can carry more than 10 passengers (hearses, ambulances, etc.).
8. *Person selling under a court order as a liquidator, a receiver, a trustee in bankruptcy or the executor (trustee) of an estate.*
9. *Lawyer.*
10. *Car rental agency:* Only renting vehicles which they do not own or sell. Vehicles can be rented for a period of no more than 120 consecutive days.
11. *Not-for-profit corporation that provides information to persons to assist with trade:* Assist a consumer in making decisions regarding a trade in a motor vehicle, subject to having no property interest in the vehicle; no conflict of interest with a registrant or insurer; disclosing what they receive from any person for providing the assistance; not handling any payments in connection with a trade; and providing annual filings to the Registrar.
12. *Company acquiring vehicles for business use:* Company that acquires vehicles for use in the company’s business or for the use of the staff, provided it is not also in the business of trading or repairing vehicles.
13. *Creditors and their agents:* Creditors who take lawful possession of a debtor’s motor vehicle and who sell the vehicle to or through a registered dealer, or a person who is in the business of taking lawful possession of a vehicle on behalf of a creditor and selling it to or through a registered dealer.
14. *Insurance company:* Trading vehicles in connection with an insurance claim, registering the vehicles in the name of the insurance company, and selling them to or through a registered dealer.
15. *Manufacturer or authorized distributor:* Subject to providing a declaration to the Registrar, and trading in vehicles only with dealers in the General Dealer “new and used vehicles” subclass.

2.15

Registration Renewals (Online Services)

In late 2013, OMVIC introduced an online renewal service for dealers and salespersons. Dealers and salespeople are now able to renew registration and pay all required fees, including transaction fees online. In order to use online services, each dealer or salesperson must create an online account. This can be started by clicking the “Registrant Login” button on the OMVIC website (www.omvic.on.ca).

Creating an Account

The following information is required to create an online account:

- Registration number
- First and last name (as it appears on OMVIC certificate, where applicable)
- Email address that matches email address on file with OMVIC
- Date of birth

Additional Requirement for the Creation of a Dealer Account

All dealerships must appoint a dealer administrator (DA) to manage their online account. Once an online account has been created, a dealer can designate him or herself as administrator or appoint another staff member as administrator.

Steps to create a dealer account and appoint a DA:

Step 1 – An authorized person at the dealership (e.g., an officer, director, partner, owner, person in charge or general manager) must create an online account.

Step 2 – The authorized person will immediately receive a confirmation email. This individual will need to follow the email instructions and activate their account within 48 hours.

Step 3 – Once the account is activated, the authorized person must log in to the dealer account and click on the Dealer Management tab to appoint him or herself or any other person as DA.

Step 4 – If the authorized person has appointed someone else as the DA, the DA will receive their own confirmation email. They will need to click on the relevant link provided to activate their account.

Appointing a Dealer Administrator

Only individuals in OMVIC’s records who occupy any of the following roles can appoint a DA:

- Person in charge
- Officer

- Director
- Owner
- Partner
- General manager

In order to appoint someone else as DA, the dealer will need the following information from the individual:

- First and last name (as it appears on his or her driver's licence)
- Date of birth
- Personal email address

Who Can Be Appointed as Dealer Administrator?

There are no restrictions on what role a designated DA can occupy (e.g., controller, office manager, payroll administrator); the administrator does not have to be a registrant.

If an individual has been appointed as DA, he or she will receive an email invitation from OMVIC that will allow the individual to create their own online account.

Dealer Administrator Features


The online services provide important tools and information that allow DAs to:


- Submit renewals
- Submit payment of renewal fees and transaction fees
- Review registration renewal requests submitted online by sales staff
- Subscribe to notifications for both dealer and salespeople, including application submitted, application approved, registration is about to lapse and registration has lapsed
- Review history of transactions and renewals

Even if a salesperson does not sign up for OMVIC's online services, a DA will still be able to monitor and receive notifications related to the salesperson's registration.

DAs are not authorized to:

- Submit renewal applications on behalf of a salesperson
- Act as a motor vehicle dealer or salesperson unless separately registered as such

 **Note:** Use of the online renewal services is not mandatory. OMVIC continues to accept renewals via the paper document method for those unable to renew online.

 **Note:** Online application questions are similar to the paper renewal application questions.

2.16

Classes of Dealers

The following classes and subclasses of motor vehicle dealers are established for the purpose of registration:

1. General dealer, consisting of the following subclasses
 - i. New and used motor vehicles
 - ii. Used motor vehicles
2. Broker
3. Wholesaler
4. Exporter
5. Outside Ontario dealer
6. Lease finance dealer
7. Fleet lessor, O. Reg. 333/08, s. 18(1), O. Reg. 377/09, s 2.

A motor vehicle dealer, other than a dealer registered as a general dealer, broker or outside Ontario dealer, may be registered in more than one class or subclass of motor vehicle dealer. O. Reg. 333/08, s. 18 (2).

Refer to MVDA General Regulation 18 for additional details.

Description of a “class”:

General Dealer (new and used subclass): A business that trades in both new and used vehicles. If the dealer is not a Trillium Automobile Dealers Association (TADA) member, the dealer will need to provide a copy of the sales and service agreement in order to be assigned to this class.

General Dealer (used subclass): A business that trades only in used vehicles. This class will generally apply to any dealer who is not a new car dealer and who does not fit into any of the other classes.

Broker: A business that facilitates (including advertising) the trade of a vehicle on behalf of a non-dealer, where the broker does not own the vehicle, take possession of the vehicle, or accept or handle the funds used to pay for the vehicle.

Outside Ontario Dealer: A dealer properly registered outside Ontario who purchases vehicles from exempt wholesale auctions for the purpose of exporting them to the jurisdiction in which the dealer is registered.

Wholesaler: Buys, sells or trades vehicles exclusively with other registered dealers. Wholesalers can do business with dealers who have an equivalent registration or licence in a jurisdiction outside Ontario.

Exporter: Acts (or advertises) only to buy vehicles for export outside Ontario.

Lease Finance Dealer: Reg.24.(1) A motor vehicle dealer registered as a Lease Finance Dealer shall not be associated, as described in subsection 1(2) of the MVDA, with a motor vehicle dealer registered as a General Dealer, unless the association is the result of the Lease Finance Dealer and the General Dealer both

being associated with the same person who is exempt from the MVDA and the regulations as a result of paragraph 21 of subsection 2(1). O.Reg.333/08, s.24(1).

Reg.24.(2) A motor vehicle dealer registered as a Lease Finance Dealer shall not act as a motor vehicle dealer, other than:

- a) to buy motor vehicles;
- b) to lease a motor vehicle to a lessee if:
 - i) the lease is made through a motor vehicle dealer registered as a General Dealer; and
 - ii) the lease is for a term of at least 120 consecutive days;
- c) to sell a previously leased motor vehicle:
 - i) directly to the lessee and individual who drove the vehicle during the term of the lease or, if the lessee is a partnership, a partner of the lessee;
 - ii) to any of the persons described in subclause (i) through a motor vehicle dealer registered as a general dealer;
 - iii) to a registered motor vehicle dealer; or
 - iv) at an auction where:
 - a) the person who arranges for and conducts the auction is exempt from the MVDA and the regulations as a result of paragraph 1 of subsection 2(1); and
 - b) the sale is made to a person who is located and registered (with status equivalent to a registered motor vehicle dealer) in another jurisdiction;
- d) to sell a motor vehicle that the Lease Finance Dealer has repossessed to or through a registered motor vehicle dealer or at an auction where:
 - i) the person who arranges for and conducts the auction is exempt from the MVDA and the Regulations as a result of paragraph 1 of subsection 2(1); and
 - ii) the sale is made to a person who is located and registered (with status equivalent to a registered motor vehicle dealer) in another jurisdiction;
- e) to trade in a motor vehicle with a motor vehicle dealer who is registered as a General Dealer or a person who is exempt from the MVDA and the regulations as a result of paragraph 21 of subsection 2(1);
- f) to trade in a motor vehicle with the purchaser if:
 - i) the vehicle is the subject of a conditional sales contract originally entered into between the purchaser and a General Dealer; and
 - ii) the General Dealer has assigned its interest under the contract to the Lease Finance Dealer; or
- g) to advertise with respect to the activities described in any of clauses (a) to (f). O.Reg.333/08, s.24(2).

Fleet Lessor – commercial lessor: Reg.25. A motor vehicle dealer registered as a Fleet Lessor in the subclass of commercial lessor shall not act as a motor vehicle

dealer, other than:

- a) to buy or lease motor vehicles as a lessee;
- b) to lease a motor vehicle to a lessee who is not a consumer within the meaning of the *Consumer Protection Act*;
- c) to sell a previously leased motor vehicle:
 - i) to the lessee;
 - ii) to an individual who drove the motor vehicle during the term of the lease;
 - iii) to an officer or director of the lessee, if the lessee is a corporation;
 - iv) to a partner of the lessee, if the lessee is a partnership;
 - v) to a registered motor vehicle dealer; or
 - vi) at an auction where:
 - a) the person who arranges for and conducts the auction is exempt from the MVDA and the regulations as a result of paragraph 1 of subsection 2(1); and
 - b) the sale is made to a person who, at the time of the sale, is located in another jurisdiction and registered in that jurisdiction as a person with equivalent status to a registered motor vehicle dealer; or
- d) to advertise with respect to the activities described in any of clauses (a) to (c). O.Reg.333/08, s.25.

Fleet Lessor – short-term lessor: Reg.26. A motor vehicle dealer registered as a Fleet Lessor in the subclass of short-term lessor shall not act as a motor vehicle dealer, other than:

- a) to buy motor vehicles or lease motor vehicles as a lessee;
- b) to lease a motor vehicle to a lessee who is not a consumer within the meaning of the *Consumer Protection Act*;
- c) to lease a motor vehicle to a consumer within the meaning of the *Consumer Protection Act* for a fixed term of less than four months, except if the lease renews automatically until one of the parties takes positive steps to terminate it;
- d) to sell a motor vehicle that the Fleet Lessor has leased under clause (b):
 - i) to a registered motor vehicle dealer; or
 - ii) at an auction where:
 - a) the person who arranges for and conducts the auction is exempt from the *Consumer Protection Act* and the regulations as a result of paragraph 1 of subsection 2(1); and
 - b) the sale is made to a person who, at the time of the sale, is located in another jurisdiction and registered in that jurisdiction as a person with equivalent status to a registered motor vehicle dealer; or
- e) to advertise with respect to the activities described in any of clauses (a) to (d). O.Reg.333/08, s.26.

2.17

Chart Summary of Classes of Dealers

Important Notice to Reader

This document is intended to summarize requirements in the MVDA where they differ between alternative classes for dealer registration. It is not meant to be authoritative. For greater clarity, please consult with your lawyer or the MVDA and its Regulations.

Act or Regulation (Reg.)	General	Broker	Wholesaler	Exporter	Outside Ontario	Lease Finance	Fleet
Registration of salespeople (Act 4.1.b, 4.3, 4.5)	Yes	Yes	Yes	Yes	No	Limited (Reg.3.2)	No
Notice of changes re: salespeople (Act 24.1.c, 24.2)	Yes	Yes	Yes	Yes	Yes	Limited (Reg.3.3)	No
Notice of shareholders & changes (Act 7, 13)	Yes	Yes	Yes	Yes	Yes	No	No
Receiver manager & freeze orders (Act 21, 22)	Yes	Yes	Yes	Yes	Yes	No	No
Notice of officer & director changes (Act 24.1.b)	Yes	Yes	Yes	Yes	Yes	No	No
Provide financial statements on request (Act 24.4)	Yes	Yes	Yes	Yes	Yes	Yes	No
“All in” advertising (Reg.36)	Yes	N/A	No	No	No	Yes	No
Certification for designated persons (Reg.11.3)	Yes	Yes	Yes	Yes	No	No	No
Address on registration certificate (Reg.16.1.4)	Yes	Yes	Yes	Yes	No	No	No
Posting of registration certificate (Reg.16.2, 29.1)	Yes	Yes	Yes	Yes	No	No	No
Registration in multiple classes (Reg.18.2)	No	No	Yes	Yes	No	No	Yes
List business location on registration (Reg.28.1)	Yes	Yes	Yes	Yes	Yes	No	No
Trade only from authorized premises, except advertising (Reg.28.4)	Yes	No	Yes	Yes	No	No	No
Trade from a dwelling (Reg.28.6)	No	Yes	Yes	No	Yes	Yes	Yes

Chapter 2

REGISTRATION OF DEALERS AND SALESPEOPLE

Act or Regulation (Reg.)	General	Broker	Wholesaler	Exporter	Outside Ontario	Lease Finance	Fleet
Maintain office at business location (Reg.28.7, 28.8)	Yes	Yes	Yes	Yes	No	No	No
Post a sign (Reg.30.1)	Yes	Yes	Yes	Yes	No	No	No
Invite public to trade at authorized location only (Act 4.2.b)	Yes	Yes	N/A	Yes	N/A	Limited (Reg.36.4)	N/A
Lease contracts (Reg.41)	Yes	N/A	N/A	N/A	N/A	Yes	No
Auction sales to public on consignment – ensure consignor is not curbsider, disclose consignment, ensure consignor discloses (Reg.46)	Yes	N/A	N/A	N/A	N/A	N/A	N/A
Records of motor vehicles (Reg.52)	Yes	Yes	Yes	Yes	Limited (Reg.52.3)	Yes	Yes
Records relating to trades (Reg.53)	Yes	Yes	Yes	Yes	Yes	Yes	Limited (Reg.53.2)
Records of business (Reg.54)	Yes	Yes	Yes	Yes	Yes	No	No
Keep records at non-dwelling approved by Registrar (Reg.56.2.a)	No	Yes, if trading from dwelling	Yes, if trading from dwelling	No	Yes	Yes	Yes
Keep records at non-dwelling business location or non-dwelling location approved by Registrar (Reg.56.2.b)	Yes	Yes, if not trading from dwelling	Yes, if not trading from dwelling	Yes	Yes	Yes	Yes
Trust account (Act 25, Reg.58)	Limited (Reg.58.2)	No	No	No	No	No	No
Bank account (Reg.59)	Yes	Yes	Yes	Yes	No	No	No
Notification of authorized persons (Reg.60)	Yes	Yes	Yes	Yes	Limited (exempt from 60.1.3)	Limited (exempt from 60.1.3)	Limited (exempt from 60.1.3)
Contribute to Compensation Fund (Reg.75, 76)	Yes (for each location)	Yes (for each location)	No	No	No	Yes (head office only)	No
Notice of potential Compensation Fund claims upon ceasing to be registered (Reg.78)	Yes	Yes	No	No	No	Yes	No

N/A means requirement is “not applicable” if the dealer is conducting business within the restrictions of their class.

ALTHOUGH this change will not be retroactive, OMVIC will continue to closely monitor the advertising practices of dealers who have names that may not accurately describe their business. Advertising produced by (or on behalf of) such a dealer will need to prominently indicate the true nature of their business.

2.18

What's in a Name?

Many dealers have raised legitimate concerns about the use of words in a dealer's name that may be misleading. For example, names that incorporate words such as "wholesale," "at cost," "liquidation" and "factory direct" may lead customers to believe that they will enjoy special pricing otherwise unavailable.

OMVIC now restricts the use of such words in names and will no longer register legal or trade names that fall into this category.

2.19

Notification to OMVIC Regarding Changes

Within five days following the event, the **dealer** must notify OMVIC, in writing, of:

1. Change of dealer address
2. Changes of officers or directors (if dealer is a corporation or partnership)
3. a) The date of commencement of employment of every salesperson
b) The termination of employment of a salesperson and the date and reason for termination

Within five days following the event, the **salesperson** must notify OMVIC, in writing, of:

1. Change of address
2. Commencement of employment with a dealer (and date of commencement)
3. Termination of employment with a dealer (and date of termination)

Within five days following the event, every dealer and salesperson must notify OMVIC, in writing, of:

1. Any change to the information that the registrant supplied to OMVIC for the purpose of obtaining registration
2. Any change in the consent that a dealer (or dealers) gave to a salesperson being employed or retained to act as a salesperson for more than one dealer

For example, if the registrant had informed OMVIC on the application for registration of a charge under a law and the registrant is subsequently convicted, the registrant must inform OMVIC of this conviction, in writing, within five days of the conviction. Do NOT wait until the next renewal application to inform OMVIC of the conviction.



Note: There are further requirements for dealers to notify OMVIC, in writing, within five days of any event in which required records become unavailable due to "force majeure" (a catastrophic event such as a theft, fire or flood). This is covered in detail in Chapter 3 – Dealer Premises and Records.



2.20

Summary

Registration is mandatory for dealers and salespeople in Ontario. Registration is valid for two years for salespeople and one year for dealers.

OMVIC conducts background checks to ensure people entering the industry will conduct their business with honesty and integrity and in a financially responsible manner. Completion of the Automotive Certification Course is a requirement for registration. OMVIC determines whether new applicants qualify for registration and whether existing registrants continue to be qualified for registration.

If the dealer trades from more than one place, he or she must list all of the authorized places of business on the registration. A salesperson must be registered to a dealer. The salesperson can be employed by more than one dealer as long as all the dealers that the salesperson is employed with sign a written consent. The minimum fine for an unregistered dealer (or curbsider) or an unregistered salesperson is \$2,500.

The dealer or salesperson who has been refused registration or a renewal of registration or who has had his or her registration revoked can reapply only if two years have passed since refusal or revocation, and if there is evidence that material circumstances have changed.

IF SOMEONE is refused registration, OMVIC must give the applicant written notice of this, including the reasons for the refusal. This decision can be appealed to the Licence Appeal Tribunal which may direct the Registrar to carry out the proposal, modify the proposal or set aside the proposal.

Test Yourself



The first questions below are the same questions asked in “What Do You Know?” at the beginning of this chapter. Try answering these questions again, and compare your results with your earlier answers.

Then answer the additional questions.

REMEMBER:

The questions on the Automotive Certification Test are in multiple-choice format only. This manual, however, contains a variety of question formats to help you understand the content, such as activities, assignments, multiple-choice questions, true-false questions and fill-in-the-blank questions.

Refer to Appendix 1 for the correct answers. Review the relevant section of the chapter for any question you answered incorrectly.

1. What is the minimum age requirement to become a dealer?
2. List three requirements that must be met when applying to become a salesperson.
3. True or False: All dealer and salesperson applicants undergo a Canada-wide criminal record search as part of the application screening process.
4. Which of the following must be registered with OMVIC (select all that apply):
 - a) Dealers
 - b) Salespersons
 - c) Business managers
 - d) Finance managers
 - e) Service managers
5. List two reasons why OMVIC might refuse the registration of a dealer or salesperson.
6. If a person has been refused registration, what is one condition that has to be met before the person can reapply?
7. Should OMVIC issue a proposal to refuse (or revoke) registration, to whom can the applicant appeal?
8. List four “classes” of dealers.
9. List three examples of individuals or businesses that are exempt from registration.
10. Name one “change of information” that a dealer must notify OMVIC about.
11. Please choose the most correct answer:
In a large dealership, if the dealer principal delegates responsibility for ensuring that salespersons are registered, this should be delegated to:
 - a) The bookkeeper
 - b) The salesperson
 - c) The sales manager
 - d) The payroll supervisor
12. OMVIC can refuse, revoke or suspend registration to a dealer, salesperson or corporation if the financial responsibility or past conduct of an “interested person in respect of the applicant/registrant” gives reasonable grounds for it. Who might OMVIC consider an “interested person”?
13. Where is the certificate of the dealer registration kept?
14. True or False: A salesperson must produce his or her registration certificate for inspection if a customer asks to see it.
15. In your own words describe:
 - a) Both classes of General Dealers
 - b) Three other classes

Chapter 3

DEALER PREMISES AND RECORDS

3.01 Learning Objectives	3.06 Protecting	3.09 Financial
3.02 What Do You Know?	the Privacy of	Management
3.03 Introduction	Information	Best Practices/
3.04 Dealer Premises	3.07 Trust Account	Guidelines
3.05 Dealer Records	3.08 Freeze Order	3.10 Summary
		3.11 Test Yourself



3.01

Learning Objectives

After completing this chapter, you will be able to identify:

1. General regulations regarding a dealer's place of business
2. Registration requirements regarding dealer premises
3. Specific records dealers must maintain
4. Trust account requirements
5. When OMVIC may issue a freeze order

EACH REGISTERED DEALER must have a business office and a sign that is clearly visible to the public identifying the dealer's registered name. The office must be large enough to ensure records are stored securely.

3.02

What Do You Know?

Try answering these questions to test your knowledge:

1. True or False: Dealers may sell vehicles from any location, so long as they have registered a head office with OMVIC.
2. List two requirements for a dealer's premises.
3. The MVDA specifies the records a dealer must maintain.
True or False: These records must be kept for at least six years.

Keep these questions in mind as you read through the following section.



3.03

Introduction

The *Motor Vehicle Dealers Act* (MVDA) sets out specific requirements for the dealer's place of business and stipulates dealers may only trade from the place authorized and listed on the registration (unless classified as a Broker, a Lease Finance Dealer, a Fleet Lessor or an Outside Ontario Dealer).

The MVDA also outlines which records a dealer must keep, how long they must be held, and even where they can be stored. The three general types of records covered by the legislation are:

- Records relating to vehicles
- Records relating to trades (buying and selling)
- Business records

3.04

Dealer Premises

The Ontario Motor Vehicle Industry Council (OMVIC) requires the dealer's legal name (and trade name if applicable) and its address be specified on the registration application. Dealers must operate under this name and at this address, and must not use another name or invite the public to another location.



Note: It is important that customers are able to find the dealer if problems or questions arise with their vehicles. Furthermore, OMVIC must be able to keep track of its registered dealers in order to regulate the industry.

The place authorized to trade must be separate from a dwelling (this does not apply to a Wholesaler, a Broker, an Outside Ontario Dealer, a Lease Finance Dealer or a Fleet Lessor). Retailers must have a lot (and an office) at their registered address that has been approved by a municipality for the display and sale of motor vehicles. A home, driveway or curbside cannot be used as a lot. All dealers must comply with all municipal bylaws and zoning requirements.

Multiple Dealer Premises

It is possible for multiple dealers to share a single location; however, the layout of the premises must allow customers to easily determine which dealer they are dealing with and which dealer owns a displayed vehicle. To address these concerns, to ensure the proper secure storage of documents and to help maintain an effective inspections process, the following premises criteria apply to all new applicants for General Dealer registration and to currently registered General Dealers who *move*.

These dealers' premises must:

- Provide a separate, permanent, fully secured and enclosed (walls to ceiling and lockable door) office space for each dealer. The office space must be sufficient in size for the secure storage of six years of books/records, provide an exclusive work area for the dealer to conduct business (including office furnishings – desk, chairs, file cabinets), and provide electricity, heat and access to a washroom/toilet.
- Be clearly separate from other businesses operating at the location.
Note: An exception may be granted if the dealership shares an office with a related business (e.g., a repair facility) that is operated by the same dealership.
- Provide a marked area for the display of vehicles (this area and/or individual parking spots must be clearly marked with the dealership's name), or display a sign on each vehicle clearly indicating the selling dealer's name.
- Be easily accessible and open to the public, or able to be reached at a clearly posted phone number, during normal business hours, or at times that are clearly posted for the public to see.

3.05

Dealer Records

General Regulations 52/57 specify strict record keeping requirements the dealer must maintain.

1. For every vehicle the dealer has for the purposes of a trade, the dealer must maintain records of:
 - a) Vehicle identification number (VIN)
 - b) Copy of any Safety Standards Certificate
 - c) Result of any inspection under the *Highway Traffic Act*
 - d) Particulars of any repair or reconditioning work done or authorized by the dealer, including the source of any parts, the cost of the work and the name of the repairer
 - e) If the odometer has been exchanged or repaired:
 - i) The reading both before and after the work
 - ii) Name of the person who did this work


REGISTRATION


is valid only for the name and location listed on the original application. OMVIC must be notified of any changes in name, location or ownership within five days of the change in order to maintain valid registration.



Note: An Outside Ontario Dealer does not need to record b, c and d.

- f) Compliance with subsection 11(2) of the *Highway Traffic Act* (that is, applying within six days for a new vehicle permit)
 - g) Compliance with subsection 60(1) of the *Highway Traffic Act* (that is, keeping the complete records on second-hand vehicles)
2. For each trade the dealer enters into, the dealer must maintain records of:
- a) Each sale to a buyer
 - b) Each lease to a lessee
 - c) Each consignment contract
 - d) Each sale to a customer that is the subject of a consignment contract, whether the dealer is the consignor or the consignee
 - e) If the dealer is a Broker, each agreement the dealer enters into with a customer
 - f) If a Broker has facilitated the trade, an indication of this
 - g) If the dealer is a General Dealer, each sale or lease facilitated through the dealer
 - h) Each purchase (including trade-ins) by the dealer
 - i) Sale of an extended warranty or a service plan, including where the dealer has facilitated the sale
 - j) The method and amount of payment to or by the dealer (including commissions). Payment records must include copies of cheques, receipts or any other evidence of payments. The dealer must also keep any correspondence, worksheet or other documentation that shows the breakdown of costs related to any sale or lease
3. “Records of business” to be maintained:
- a) Employee records, including the names of employees, positions held, dates of employment, how much each employee is paid and proof of payment
 - b) A list of “persons associated with the dealer” and the nature of their association (see Chapter 2.11)
 - c) Records of all dealership bank accounts and any financing of the business, including loan agreements, credit arrangements or any security interest granted by the dealer
4. Records must be maintained for six years.
5. If any of the above required records become unavailable due to “force majeure” (a catastrophic event, such as theft, fire or flood), the dealer must notify OMVIC in writing within five days, specifying what was lost and the reason for the loss. OMVIC will discuss with the dealer the immediate steps that should be taken by the dealer to reconstruct these records.

 **Note: A Fleet Lessor does not need to record f and j.**

 **Note: The above does not apply to a Lease Finance Dealer or a Fleet Lessor.**

6. The required records can be stored in any location from which the dealer is authorized to trade (except for a private dwelling). If space isn't available at the dealer's registered address for the records, they may choose another location, so long as they apply for and receive written authorization from OMVIC's Registrar. In order for a remote storage location to be approved, it must be accessible to OMVIC staff for inspection during normal business hours.

Documents Related to Dealer Premises

OMVIC requires all dealers (existing or new) to provide the following documentation related to their premises:

- A valid municipal permit allowing the sale/display of vehicles
- A premises lease with a minimum term of six months; the lease must permit the sale/inventory of vehicles and provide unrestricted access to the premises by the dealer
- Evidence of compliance with the *Compulsory Automobile Insurance Act*: i.e., a statement of insurance (garage auto policy OAP4) with a minimum third-party coverage of \$1,000,000

3.06

Protecting the Privacy of Information

Question: If a salesperson leaves a dealer to work at another, can he or she take a list of past customers and contact those customers to let them know they have moved?

Answer: No, and if they do, they may have breached privacy laws.

Client or lead information is *personal information* if it contains any two elements that may identify an individual such as name and date of birth, name and address, name and phone number (or email address), or if it is a single piece of information that would identify a specific individual such as a driver's licence, credit card number, health card, etc.

Personal information can be retained only with the **express permission** of the person and can only be used for the purposes for which the person has provided consent in writing. Therefore, client information belongs to the dealership, not an employee of the dealership, and ***it is the dealer who retains responsibility for the maintenance and protection of personal information (including the salesperson's copy of bills of sale) in compliance with privacy legislation.***

If a salesperson takes personal information, it could be argued the dealership has failed to meet its obligations.

To help address this, dealers might consider setting out in an employment contract clauses that make it clear that client and lead information is the property of the employer and the removal of the information will be treated as

"FORCE MAJEURE":

A catastrophic event (e.g., theft, fire, flood) outside the control of the parties and that could not be avoided by the exercise of due care

TRUST ACCOUNT

monies **must** be kept separate from the dealer's general funds and can never be used as collateral.

DETAILS of the dealer trust account must be filed with OMVIC (see General Regulation 58).

theft. This clause should be brought to the attention of each current and new hire and they should be asked to initial it.

As well, dealers should consider the following: have procedures in place to ensure their customers' personal information is kept under lock and key, preferably in a centralized location such as an office, which can also be locked. Personal information distributed to sales personnel should be marked DO NOT COPY and should be collected at the end of an employee's shift.

Finally, if a salesperson believes their situation is an exception to these rules, they should discuss it with their employer and seek independent legal advice before using anyone's personal information.

3.07

Trust Account

The purpose of maintaining a trust account is to ensure customers who leave large deposits (greater than \$10,000) or give the dealer vehicles to be sold on consignment have their monies protected until the deal is completed.

A General Dealer must have a trust account to hold any deposit of more than \$10,000 received from a vehicle purchaser.

All monies received by the dealer from a consignment sale must be deposited in a trust account when the consignor is an individual who purchased the vehicle for personal or family use.

The following information is provided as a guideline only and is not meant to be authoritative. The dealer is encouraged to review the relevant sections of the MVDA and its Regulations and to consult a lawyer if the dealer has any questions.

The trust account must be set up at a financial institution that is a bank, a loan or trust corporation, a credit union or an authorized foreign bank under Section 2 of the *Bank Act*.

The name on this account should contain the words "*Motor Vehicle Dealers Act, 2002, Trust Account*" and the registered name of the dealer. If there is not enough room for both, just use the words "Trust Account" and the dealer's registered name.

In the case of a consignment deal, the dealer must deposit all monies received from the buyer directly into the trust account. None of this money can be taken out, except to make a payment to the consignor in accordance with the written consignment agreement. Only after that may the dealer withdraw any excess (e.g., monies received from the buyer that were greater than what was owed the consignor).

It is essential that the trust account be reconciled monthly. OMVIC will provide detailed instructions for such reconciliation upon request.

3.08

Freeze Order

In very extreme circumstances, in the public interest, OMVIC may issue a “freeze order” without notice to the dealer that would freeze the dealer’s assets or trust funds. This may occur if a search warrant has been issued or a criminal proceeding has started and customers need protection. A freeze order may also be issued against an alleged curbsider (a non-registered salesperson or dealer).

3.09

Financial Management Best Practices/Guidelines

In order to qualify for or maintain registration as a motor vehicle dealer, dealers must conduct business in a financially responsible manner and the dealership must be financially stable.

Creating sound financial management allows dealers and managers to monitor and measure the performance of their dealership in order to ensure financial stability and to effectively and efficiently utilize resources. Dealers who regularly review financial reports, ensure internal audit controls are in place and actively review and evaluate trends are often able to ensure the success of their businesses.

The following guidelines are OMVIC’s recommendations to assist dealers in meeting this standard. These “best practices” should not be construed as a legal opinion or financial advice. Dealerships are encouraged to speak with qualified financial experts and/or consult with legal representatives if questions arise.

Bookkeeper

If the size or complexity of a dealership is such that the dealer is not able to dedicate the appropriate amount of time or expertise needed to collect, organize and compile financial data, it is wise to retain the services of an accredited bookkeeper or accountant. These professionals are able to assist dealers with the posting and recording of transactions, complete financial statements and monitor employees with the authority to spend company money.

General Ledger

Bookkeeping begins with establishing and maintaining a chart of accounts; this will organize all money entering and leaving the dealership. A journal should be created to record transactions as they occur. A general ledger records all the financial transactions concerning the dealership. For example, the dealership acquires a vehicle (an asset) using money from a floorplan lender.

THE GENERAL REGULATIONS

are very specific on about records a dealer must keep (vehicle, trade and business records), where they may be stored (at the registered premises or elsewhere with OMVIC approval) and for how long (six years).

The inventory would rise by the cost of the vehicle and the accounts payable (liability) would increase by the same amount.

The general ledger should be kept current by recording transactions daily. With an up-to-date general ledger, dealers are able to produce financial statements such as the bank reconciliations, income statements or balance sheets.

Depending on the size of the business and the complexity of financial transactions, dealers should consider using standard software (e.g., QuickBooks or Simply Accounting) to maintain the general ledger.

Bank Reconciliation

Dealers should regularly review bank statements, cancelled cheques and deposit slips and reconcile them with the cash balance in the general ledger account. Reconciliations should be done on a monthly basis. This monitoring is essential for maintaining a healthy cash flow and for helping the dealer identify any differences between the bank balance and the general ledger. It also allows for the opportunity to identify how money goes into (and comes out of) the dealership accounts in order to identify issues or concerns. This is particularly important for the dealer if there is a number of other individuals responsible for signing cheques, preparing bank deposits or complying with statutory filing obligations (e.g., harmonized sales tax, source withholdings).

Financial Reports: Balance Sheet and Income Statement

Bookkeepers and accountants should annually prepare financial statements such as balance sheets and income statements. These statements offer controllers of a business accurate information detailing the flow of expenses and revenue as well as an up-to-date accounting of assets and liabilities. These statements should be shared with managers who may be able to assist in explaining trends or anomalies. If the dealership has investors or shareholders, financial reports illustrating the health of the business may be required.

Accounts

The MVDA requires that dealers establish a bank account in the name of the dealership and have that account with a bank, loan or trust corporation or a credit union licensed in Ontario. All transactions involving a trade (e.g., sale, lease, purchase, consignment) in a motor vehicle must be processed through this account. The MVDA also requires dealers maintain payment records concerning payments to and from the dealership. Such records would include commission records, copies of cheques, receipts, invoices, bills of sale, etc. Anyone having signing authority on the bank account should review this documentation before authorizing the release of funds from the bank account.

Deals/Trades

There are commercially available products such as deal jackets/folders that allow dealers to record and organize information and documents related to each sale or lease. Maintaining all records outlined in Section 3.05 is required by the MVDA, and the aforementioned products may assist dealers in meeting these requirements.

Responsibility of the Dealer

A dealer may delegate responsibility for financial management to a comptroller, bookkeeper or employees of the dealership. However, the dealer is ultimately responsible for ensuring the business is run in a financially responsible manner and for monitoring the financial position of the dealership. Accordingly, dealers should have a process for monitoring the performance of individuals who assist with financial management. As a minimum, dealers should review and sign off on financial statements. To the extent possible, dealers should segregate duties. For example, the person who prepares monthly bank reconciliations shouldn't be the same individual who has signing authority on the bank account. Dealers should also consider conducting periodic audits, such as taking a physical inventory of vehicles, to ensure they reconcile with what is recorded in the general ledger.



3.10

Summary

The MVDA has specific requirements regarding a dealer's place of business.

General Dealers must have a trust account to hold any deposit of more than \$10,000 received from a buyer as well as to hold all monies gained from consignment sales.

Trust account monies must be kept separate from the dealer's general funds and can never be used as collateral. In very extreme circumstances, OMVIC may issue a freeze order without notice to the dealer to freeze the dealer's assets or trust funds.



TRUST ACCOUNT

reconciliations must be prepared within 30 days of receiving the trust monthly statements from the financial institution (unless there is a zero balance on the trust account or there has been no activity on the trust account since the last reconciliation).

Test Yourself

REMEMBER:

The questions on the Automotive Certification Test are in multiple-choice format only. This manual, however, contains a variety of question formats to help you understand the content, such as activities, assignments, multiple-choice questions, true-false questions and fill-in-the-blank questions.



The first questions below are the same questions asked in “What Do You Know?” at the beginning of this chapter. Try answering these questions again and compare your results with your earlier answers.

Then, answer the additional questions.

1. True or False: Dealers may sell vehicles from any location, so long as they have registered a head office with OMVIC.
2. List two requirements for a dealer's premises.
3. The MVDA specifies the records a dealer must maintain.
True or False: These records must be kept for at least six years.
4. List four examples of the information (related to vehicles sold or leased) that must be maintained in a dealer's records.
5. Which of the following records related to employees must be maintained:
 - a) Employee names c) Proof of payments
 - b) Employee salaries d) All of the above
6. Choose the most correct answer. If a dealer's records are destroyed or stolen, the dealer must notify:
 - a) The OMVIC inspector when he or she arrives for the next scheduled inspection
 - b) OMVIC, in writing, within five days
 - c) An OMVIC investigator within 30 days
 - d) The Ministry of Government and Consumer Services, in writing, within 10 days
7. What must a dealer do if they wish to store records somewhere other than the location from which they trade?
8. In order for a remote storage location to be approved by OMVIC, which condition must be met?
 - a) The location has a security system
 - b) The location is always accessible to OMVIC staff during normal business hours
 - c) The location is in the same municipality as the dealer's registered address
 - d) All of the above
9. True or False: Under the MVDA, all dealers are required to maintain a trust account.
10. Deposits over what amount must be kept in a trust account?
 - a) \$1,000 c) \$10,000
 - b) \$5,000 d) No amount of deposit needs to be placed in a trust account
11. True or False: Before issuing a freeze order (freezing the dealer's assets or trust funds), OMVIC must first notify the dealer.

Refer to Appendix 1 for the correct answers. Review the relevant section of the chapter for any question you answered incorrectly.

Chapter 4

CONTRACT REQUIREMENTS

(For Contracts with Customers – Not with Other Dealers)

- | | |
|---|---|
| 4.01 Learning Objectives | 4.08 Contracts for Sales on Consignment |
| 4.02 What Do You Know? | 4.09 Contract with Broker to Facilitate Purchase or Lease |
| 4.03 Introduction | 4.10 Reflecting Negative Equity on Contracts |
| 4.04 Contract for Sale of a New Vehicle | 4.11 Financing Representations |
| 4.05 Contract for Sale of a Used Vehicle | 4.12 Summary and Sample Contract |
| 4.06 Contract for Lease of a Vehicle | 4.13 Test Yourself |
| 4.07 Additional Contract Requirements for Trade-Ins on Sales and Leases | |



4.01

Learning Objectives

After completing this chapter, you will understand:

1. The information that must be included in retail contracts for the sale of a new vehicle
2. The information that must be included in retail contracts for the sale of a used vehicle
3. The information that must be included in contracts for a leased vehicle
4. Contract requirements for trade-ins on sales and leases
5. Contract requirements for consignment sales
6. Contract requirements where a dealer broker facilitates a purchase or lease

THE MOTOR VEHICLE DEALERS ACT

sets out specific details and information that **must** be included in every vehicle sale or lease contract with a customer, even stipulating the type and font size that must be used.

4.02

What Do You Know?

Try answering these questions to test your knowledge:

1. On a purchase contract, what **must** be printed in 14 pt. bold font next to the buyer's signature?
2. List four items that must be in a contract for the sale of a new vehicle.
3. If a dealer does not have a specific new vehicle in stock, but will locate the vehicle and bring it in, what must be disclosed to the purchaser regarding the mileage?

Keep these questions in mind as you read through the following section.



4.03

Introduction

The *Motor Vehicle Dealers Act* (MVDA) sets out specific details and information that must be included in every vehicle sale or lease contract with a customer. As well, the MVDA stipulates *advisory* or *educational* statements that must be included in contracts. These statements are designed to ensure customers fully understand their rights and obligations, to inform purchasers of the existence and role of the Ontario Motor Vehicle Industry Council (OMVIC), the Compensation Fund and the Canadian Motor Vehicle Arbitration Plan (CAMVAP), and to help eliminate the common misperception of a “cooling-off period.” The MVDA even stipulates the type and size of font that must be used in these statements.

All required disclosures, including the contract requirements discussed in this chapter, must be made in a “*clear, comprehensible and prominent manner*,” as per the MVDA General Regulations and the *Consumer Protection Act*. This chapter is primarily based on the requirements set out in the Regulations under the MVDA, Sections 38–46 and 49.

4.04

Contract for Sale of a New Vehicle

In a clear, comprehensible and prominent manner, a contract for the sale of a new vehicle must include the following:

1. Buyer's name and address
2. Dealer's registered name (and legal name if different from registered name), address and registration number

3. Salesperson's name and registration number
4. Date of sale and date of delivery
5. Vehicle identification number (VIN), if known
6. Make, model, model year and trim level of vehicle
7. Colour and body type of vehicle
8. If the contract is for a new specifically identified motor vehicle (e.g., VIN is known, in stock, etc.), the maximum distance that will be shown on the odometer at time of delivery
9. If the contract does not specifically identify a new vehicle (e.g., a vehicle which must be located, VIN unknown), the maximum distance that will be shown on the odometer at the time of delivery *or* a statement initialled by the buyer that there is no maximum
10. a) The manufacturer's suggested retail price (MSRP)
b) Itemized list of MSRPs of all extra equipment and options in the contract
c) Total MSRP [(a) plus (b)]
11. An itemized list of the charges the customer is required to pay (including freight, pre-delivery inspection, fees and levies)
12. If the dealer has agreed to provide items or inducements at no extra charge, an itemized list with "fair and accurate" descriptions and retail value of each (e.g., DVD players, warranties, service plans, etc.)
13. The total sale price, indicating the charges in 11 (above)
14. a) Down payment or deposit paid by buyer
b) Balance to be paid
15. Itemized list of all other charges the buyer will pay at time of delivery (e.g., taxes, licensing)
16. If the dealer helps a consumer obtain financing, a statement providing the consumer with the information required in the "Initial Disclosure Statement" (IDS) of Section 79 of the *Consumer Protection Act*.
The IDS provides the consumer with full disclosure of payment terms, including monthly payments, interest rate, term, total payments and other charges. Refer to Chapter 13.14 for more details.
17. If the dealer or salespeople will receive from any source other than the dealer any commission, remuneration or incentive for providing the application for financing, a statement to that effect that is initialled by the buyer (this includes a dealer reserve)
18. If there is a trade-in, the "Additional Contract Requirements for Trade-Ins" (see Section 4.07)

19. This “Sales Final” Statement on the same page as the buyer’s signature and adjacent to the signature:

SALES FINAL (in 14 pt. bold font)

Please review the entire contract, including all attached statements, before signing. This contract is final and binding once you have signed it unless the motor vehicle dealer has failed to comply with certain legal obligations.

20. This OMVIC/Compensation Fund “Important Information” Statement:

IMPORTANT INFORMATION RESPECTING MOTOR VEHICLE SALES (in 14 pt. bold font)

In case of any concerns with this sale, you should first contact your motor vehicle dealer. If concerns persist, you may contact the Ontario Motor Vehicle Industry Council as the administrative authority designated for administering the *Motor Vehicle Dealers Act*.

You may be eligible for compensation from the Motor Vehicle Dealers Compensation Fund if you suffer a financial loss from this trade and if your dealer is unable or unwilling to make good on the loss.

You may have additional rights at law.

Contact **OMVIC**™ at 1-800-943-6002 or www.omvic.on.ca.

21. One of these two CAMVAP Statements in large bold print:
a) If CAMVAP is available:

CANADIAN MOTOR VEHICLE ARBITRATION PLAN

The Canadian Motor Vehicle Arbitration Plan may be available to resolve disputes concerning alleged manufacturer’s defects or implementation of the manufacturer’s new motor vehicle warranty.

b) If CAMVAP is NOT available:

CANADIAN MOTOR VEHICLE ARBITRATION PLAN NOT AVAILABLE

The manufacturer of this vehicle is not a participant in the Canadian Motor Vehicle Arbitration Plan. Therefore, the program under that plan is not available to resolve disputes concerning alleged manufacturer's defects or implementation of the manufacturer's new motor vehicle warranty.

22. All restrictions, limitations and conditions imposed on the buyer, stated in a clear, comprehensible and prominent manner.
23. Any required disclosure statement related to a vehicle's previous use, history and/or condition (see Chapter 5).
24. A statement of any particular facts respecting the vehicle that the buyer considers material to the purchase.

The dealer is responsible for ensuring that: the contract is signed by the parties; signed by the salesperson; buyer receives a copy immediately after signing.

Note: There must be a separate contract for each vehicle sold.

About Demonstrators

Demonstrators (demos) are used vehicles therefore new vehicle specific charges (e.g. air tax, freight) should not be itemized on a bill of sale when selling a demo.

While demonstrators are legally considered used vehicles, OMVIC recognizes most manufacturers qualify demos for new vehicle incentives and/or financing and that this may require the use of a new vehicle purchase contract. However, when selling a demonstrator, dealers should remove charges for freight, PDI, air tax, tire stewardship, etc. from the contract.

DMS System Limitations?

Some dealers have claimed their Dealer Management System (DMS) software does not allow new vehicle charges like freight to be deleted on bills of sale. OMVIC has contacted the major dealer software providers who explained their systems do allow charges like freight to be de-selected or zeroed. Dealers are encouraged to contact their DMS suppliers if they require assistance.

Should a dealer use software that will not allow new vehicle charges to be removed when selling a demo, the dealer should include a discount on the bill of sale, equal to the new vehicle charges, and separate from any other discount offered to the customer. This allows the dealer to demonstrate he/she is not charging freight, PDI, air tax, tire stewardship fee, etc., on a used vehicle.

4.05

Contract for Sale of a Used Vehicle

In a clear and comprehensible manner, a contract for the sale of a used vehicle *must* include the following:

1. Buyer's name and address.
2. Dealer's registered name (and legal name if different from registered name), address and registration number.
3. Salesperson's name and registration number.
4. Date of sale and date of delivery.
5. VIN.
6. Make, model, model year and trim level of vehicle.
7. Colour and body type of vehicle.
8.
 - a) The total distance the vehicle has been driven
 - b) If the vehicle is a used vehicle and the dealer cannot determine the total distance the vehicle has been driven, but can determine a distance the vehicle has been driven as of some past date, a statement of that distance and date, together with a statement that "the total distance the vehicle has been driven is believed to be higher"
 - c) If the dealer cannot determine the total distance the vehicle has been driven, or a past distance/date, a statement that "the total distance the vehicle has been driven is unknown and may be substantially higher than the reading shown on the odometer"
9. An itemized list of the charges the customer is required to pay (including any fees and levies).
10. If the dealer has agreed to provide items or inducements at no extra charge, an itemized list with "fair and accurate" descriptions and retail value of each (e.g., DVD players, warranties, service plans).
11. The total sale price, indicating the charges in 9 (above).
12.
 - a) Down payment or deposit paid by buyer
 - b) Balance to be paid
13. Itemized list of all other charges the buyer will pay at time of delivery (e.g., taxes, licensing).
14. If the dealer helps a consumer obtain financing, a statement providing the consumer with the information required in the IDS of Section 79 of the *Consumer Protection Act*. The IDS provides the consumer with full disclosure of payment terms, including monthly payments, interest rate, term, total payments and other charges. Refer to Chapter 13.14 for more details.
15. If the dealer or salespeople will receive from any source other than the dealer any commission, remuneration or incentive for providing the application for financing, a statement to that effect that is initialled by the buyer (this includes a dealer reserve).

16. If there is a trade-in, the “Additional Contract Requirements for Trade-Ins” (see Section 4.07).
17. This “Sales Final” Statement on the same page as the buyer’s signature and adjacent to the signature:

SALES FINAL (in 14 pt. bold font)

Please review the entire contract, including all attached statements, before signing. This contract is final and binding once you have signed it unless the motor vehicle dealer has failed to comply with certain legal obligations. (in 12 pt. bold font)

18. This OMVIC/Compensation Fund “Important Information” Statement:

IMPORTANT INFORMATION RESPECTING MOTOR VEHICLE SALES (in 14 pt. bold font)

In case of any concerns with this sale, you should first contact your motor vehicle dealer. If concerns persist, you may contact the Ontario Motor Vehicle Industry Council as the administrative authority designated for administering the *Motor Vehicle Dealers Act*.

You may be eligible for compensation from the Motor Vehicle Dealers Compensation Fund if you suffer a financial loss from this trade and if your dealer is unable or unwilling to make good on the loss.

You may have additional rights at law.

Contact **OMVIC**™ at 1-800-943-6002 or www.omvic.on.ca.

19. One of these two CAMVAP Statements in large bold print:
 - a) If CAMVAP is available:

CANADIAN MOTOR VEHICLE ARBITRATION PLAN

The Canadian Motor Vehicle Arbitration Plan may be available to resolve disputes concerning alleged manufacturer’s defects or implementation of the manufacturer’s new motor vehicle warranty.

b) If CAMVAP is NOT available:

CANADIAN MOTOR VEHICLE ARBITRATION PLAN NOT AVAILABLE

The manufacturer of this vehicle is not a participant in the Canadian Motor Vehicle Arbitration Plan. Therefore, the program under that plan is not available to resolve disputes concerning alleged manufacturer's defects or implementation of the manufacturer's new motor vehicle warranty.

20. All restrictions, limitations and conditions imposed on the buyer, stated in a clear, comprehensible and prominent manner.
21. An itemized list of all repairs under the contract the dealer has made or will make, and the cost to be paid by the buyer.
22. If a current Safety Standards Certificate (SSC) under the *Highway Traffic Act* is provided for the vehicle, the following SSC Statement in bold print:

SAFETY STANDARDS CERTIFICATE (SSC)

A Safety Standards Certificate (SSC) is only an indication that the motor vehicle met certain basic standards of vehicle safety on the date of inspection.

23. If the dealer is selling the vehicle on an "as is" basis, the following Vehicle Sold "As Is" Statement in bold print:

VEHICLE SOLD "AS IS"

The motor vehicle sold under this contract is being sold "as is" and 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 at the buyer's expense. It may not be possible to register the vehicle to be driven in its current condition.

Note: Dealers cannot sell a vehicle "as is" if an SSC has been issued for the vehicle.

Note: If a vehicle is sold "as is," the "as is" statement must be initialled by the purchaser.

24. Any required disclosure statement related to a vehicle's previous use, history and/or condition (see Chapter 5).
25. A statement of any particular facts respecting the vehicle that the buyer considers material to the purchase. Example: if the purchaser requests a specific disclosure such as "has this car ever been used as a tow vehicle?" The dealer must provide the appropriate information. If the dealer can't tell them with certainty, say so. In our example, if the dealer can assure the customer the vehicle has never had a hitch installed, put it in writing.



Note: There must be a separate contract for each vehicle sold.



Note: All required disclosures (including material facts) must be made, even if the vehicle is being sold as is or unfit.

The dealer is responsible for ensuring the contract is signed by the parties, by the salesperson and that the buyer receives a copy immediately after signing.

4.06

Contract for Lease of a Vehicle

There must be a separate contract for each vehicle leased, and it is the responsibility of the dealer (other than a Fleet Lessor) to ensure that the following are disclosed in a clear, comprehensible and prominent manner:

1. The name and address of the lessee.
2. Dealer's registration number and registered name (and legal name of dealer if different from registered name).
3. Business address.
4. Salesperson's registration number and name.
5. VIN, if known; colour; body type.
6. If vehicle subject to a service plan, a statement to that effect.
7. If there is a trade-in, the "Additional Contract Requirements for Trade-Ins"; General Regulation 43 (see Section 4.07).
8. This OMVIC/Compensation Fund "Important Information" Statement:

IMPORTANT INFORMATION RESPECTING MOTOR VEHICLE SALES

In case of any concerns with this sale, you should first contact your motor vehicle dealer. If concerns persist, you may contact the Ontario Motor Vehicle Industry Council as the administrative authority designated for administering the *Motor Vehicle Dealers Act*.

You may be eligible for compensation from the Motor Vehicle Dealers Compensation Fund if you suffer a financial loss from this trade and if your dealer is unable or unwilling to make good on the loss.

You may have additional rights at law.

Contact **OMVIC**™ at 1-800-943-6002 or www.omvic.on.ca.

9. One of these two CAMVAP Statements in large bold print:
a) If CAMVAP is available:

CANADIAN MOTOR VEHICLE ARBITRATION PLAN

The Canadian Motor Vehicle Arbitration Plan may be available to resolve disputes concerning alleged manufacturer's defects or implementation of the manufacturer's new motor vehicle warranty.

- b) If CAMVAP is NOT available:

CANADIAN MOTOR VEHICLE ARBITRATION PLAN NOT AVAILABLE

The manufacturer of this vehicle is not a participant in the Canadian Motor Vehicle Arbitration Plan. Therefore, the program under that Plan is not available to resolve disputes concerning alleged manufacturer's defects or implementation of the manufacturer's new motor vehicle warranty.

10. If a current SSC under the *Highway Traffic Act* is provided for the vehicle, the following SSC Statement in bold print:

SAFETY STANDARDS CERTIFICATE

A Safety Standards Certificate is only an indication that the motor vehicle met certain basic standards of vehicle safety on the date of inspection.



Note: CAMVAP Statements are required only if the vehicle is the current model year or one of the previous four, or has been driven less than 160,000 km (see Chapter 18.04 for more details).

11. All restrictions, limitations and conditions imposed on the lessee, stated in a clear, comprehensible and prominent manner.
12. Any required disclosure statement related to a vehicle's previous use, history and/or condition (see Chapter 5).
13. A statement of all particular facts, if any, respecting the vehicle that the lessee considers material to the lease.
14. If the lessee is a consumer, the dealer (other than a Fleet Lessor) must provide the information required in the "Lease Disclosure Statement" (LDS) of Section 79 of the *Consumer Protection Act*. The LDS provides the lessee with full disclosure of payment terms including monthly payments, interest rate, term, total payments and other charges. Refer to Chapters 13.15 and 13.17 for more details.

The dealer is responsible for ensuring the contract is signed by the parties and the salesperson, and that the lessee receives a copy immediately after signing. If the vehicle being leased is used, the dealer must also ensure the lessee receives a copy of the current SSC.

4.07

Additional Contract Requirements for Trade-Ins on Sales and Leases

The following applies when a dealer sells or leases a vehicle and the buyer or lessee trades in a vehicle to the dealer (or to another registered dealer). If the selling or leasing dealer receives the trade-in, this dealer must ensure the sale or lease contract includes in a clear, comprehensible and prominent manner the information set out below.

If another registered dealer receives the vehicle being traded in, then that dealer is responsible for ensuring the trade-in contract includes in a clear, comprehensible and prominent manner the information set out below:

1. The name and address of the owner of the traded-in vehicle
2. Dealer's registration number and registered name (and legal name if different from registered name)
3. Salesperson's registration number and name
4. Date of trade-in, if known, or manner of determining date, if known
5. Make, model, trim level, model year, colour, VIN and body type of the trade-in vehicle
6. The credit for the trade-in (or the amount paid for the vehicle by the dealer if another registered dealer receives the actual vehicle)
7. A statement from the person trading in the vehicle of the "additional information in contracts of sale and leases" found in Section 42 of the



Note: If the contract provides for the trade-in of more than one vehicle, the information required must be shown separately for each vehicle.

Ontario Regulations under the MVDA (i.e., disclosure of previous uses, vehicle history, quality, condition)

8. Recorded odometer reading
9. Condition of the vehicle
10. If the dealer receiving the vehicle agrees to pay any outstanding loan or outstanding repair or storage bill, a statement to that effect

To assist dealers with the requirement to obtain a “statement from the person trading in the vehicle of the additional information...found in Section 42 of the General Regulations,” some associations and business have created documents to assist with compliance. Below is a copy of the UCDA Trade-in Appraisal and Disclosure Form.

UCDA CUSTOMER INFORMATION, APPRAISAL & DISCLOSURE FORM

www.ucda.ca
or call: 416-598-7412 or 1-800-668-8285

APPRaisal DATE: _____ STOCK NO.: _____

APPRaised BY: _____

LAST NAME: _____ FIRST NAME: _____

ADDRESS: _____ CITY: _____ PROVINCE: _____ POSTAL CODE: _____

HOME PHONE: _____ BUS. PHONE: _____ CELL PHONE: _____ E-MAIL: _____

☐ GAS ☐ DIESEL ☐ HYBRID REGISTRATION VIEWED ☐ Yes ☐ No

ORIGINAL OWNER ☐ Yes ☐ No PURCHASED FROM: _____

VIN CHECKED (Date & Order) ☐ Yes ☐ No HAS VEHICLE EVER BEEN DECLARED A TOTAL LOSS BY AN INSURER ☐ Yes ☐ No

REGISTERED LIEN ☐ Yes ☐ No THEFT RECOVERY ☐ Yes ☐ No

MANUFACTURER'S WARRANTY CANCELLED ☐ Yes ☐ No

ODOMETER (Exact if at time of Appraisal) ☐ Known ☐ Miles IS ODOMETER FAULTY, BROKEN, REPLACED OR ROLLED BACK? ☐ Yes ☐ No

IF DISTANCE TRAVELLED UNKNOWN, EXPLAIN: _____

DAILY RENTAL ☐ Yes ☐ No POLICE CRUISER ☐ Yes ☐ No

FIRE DAMAGED ☐ Yes ☐ No EMERG. SERVICES VEHICLE ☐ Yes ☐ No

IMMERSED IN WATER ☐ Yes ☐ No TAXI OR LIMO ☐ Yes ☐ No

ANY BODY PANELS PAINTED OR REPLACED ☐ Yes ☐ No

WHERE HAS THE VEHICLE BEEN SERVICED? _____

HAVE ANY OF THE HYBRID COMPONENTS BEEN REPAIRED? ☐ Yes ☐ No

IS THERE A MANUFACTURER'S EXTENDED WARRANTY ON THE HYBRID COMPONENTS? ☐ Yes ☐ No

BATTERY ☐ Yes ☐ No FUEL SYSTEM ☐ Yes ☐ No

AIR BAGS ☐ Yes ☐ No BRAKING SYSTEM ☐ Yes ☐ No

POWER WINDOWS ☐ Yes ☐ No AIR CONDITIONING ☐ Yes ☐ No

POWER LOCKS ☐ Yes ☐ No WHEELS (ALLOY) ☐ Yes ☐ No

CRUISE CONTROL ☐ Yes ☐ No KEYLESS ENTRY ☐ Yes ☐ No

ENGINE ☐ Yes ☐ No COMPUTER ☐ Yes ☐ No

SUSPENSION/SUBFRAME ☐ Yes ☐ No ELECTRICAL SYSTEM ☐ Yes ☐ No

TRANSMISSION ☐ Yes ☐ No AIR CONDITIONING ☐ Yes ☐ No

FUEL SYSTEM ☐ Yes ☐ No STRUCTURAL PARTS DAMAGED ☐ Yes ☐ No

POWER TRAIN ☐ Yes ☐ No ALTERED OR REPAIRED ☐ Yes ☐ No

ANY PREVIOUS DAMAGE REPAIRED EXCEEDING \$3,000? ☐ Yes ☐ No

HAVE THE MANUFACTURER'S BADGES OR DECALS BEEN CHANGED OR HAVE THE ORIGINAL PRODUCTION SPECIFICATIONS BEEN CHANGED? ☐ Yes ☐ No

ANY OTHER DISCLOSURES? _____

INSPECTION AT APPRAISAL: _____

INSPECTION AT DELIVERY: _____

REPAIRS REQUIRED: _____

VALUE OF TRADE-IN: _____

Please be advised that the trade-in value may be adjusted if the vehicle is not in the same condition at time of delivery.

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Courtesy UCDA

4.08

Contracts for Sales on Consignment

Whether or not the consignor is a registered dealer, the dealer must ensure that the consignment contract is in writing and is signed by both the dealer and the consignor.

If the consignor is “an individual exempt from registration” (for example, an individual consigning their personal or family car, a lawyer winding up an estate, etc.), the contract must show in a clear, comprehensible and prominent manner:

1. Consignor’s name and address
2. Dealer’s registration number and registered name (and legal name if different from registered name)
3. The make, model, trim level, model year, colour, VIN and body type of the vehicle
4. If the vehicle is a used vehicle, the total distance that the vehicle has been driven (if the dealer can determine the distance)
5. If the vehicle is a used vehicle and the dealer cannot determine the total distance that the vehicle has been driven, but can determine a distance the vehicle has been driven as of some past date, a statement of that distance and date, together with a statement that “the total distance the vehicle has been driven is believed to be higher”
6. If the vehicle is a used vehicle and the dealer cannot determine the total distance the vehicle has been driven, or a past distance/date, a statement that “the total distance the vehicle has been driven is unknown and may be substantially higher than the reading shown on the odometer”
7. The total amount that the dealer will charge the consignor on the sale of the vehicle (whether as a fixed amount or a commission share), and an itemized list of all components of those charges
8. An estimate of the selling price of the vehicle and a minimum selling price of the vehicle
9. The term of the contract (and if applicable, how parties can extend it, or a statement they cannot extend it)
10. If the contract can be terminated before its term expires, the conditions regarding such early termination (including fees, if any, payable for early termination)
11. All restrictions, limitations, conditions and other obligations imposed on the consignor under the contract (stated in a clear, comprehensible and prominent manner)

4.09

Contract with Broker to Facilitate Purchase or Lease

A dealer registered as a Broker shall ensure any contract the Broker enters into to facilitate a trade in a motor vehicle on behalf of a customer who is not a registered dealer includes, in a clear, comprehensible and prominent manner, the following:

1. The name and address of the customer
2. The registered name and registration number of the Broker, together with the legal name of the Broker if it is different from the registered name
3. The business telephone number of the Broker and the other ways, if any, the customer can contact the Broker
4. Anything the customer has specified with respect to the vehicle or an explicit statement that the customer has not specified anything with respect to the vehicle if that is the case
5. If the customer is prepared to trade in a motor vehicle in connection with the trade, a description of the motor vehicle to be traded in and the minimum amount for the trade-in that is acceptable to the customer
6. An itemized list of the charges, if any, that the customer will be required to pay the Broker, including any taxes on those charges
7. The total charges, if any, payable by the customer to the Broker, including taxes, and the terms and method of payment
8. If the Broker will receive compensation from any person other than the customer, a statement of that fact and the name of the person from whom the broker will receive compensation. This statement must be initialled by the customer
9. The duration of the contract and any terms relating to the early termination of the contract
10. The date the contract is entered into
11. All restrictions, limitations and conditions imposed on the customer under the contract

12. The following statement (in 14 pt. bold font):

Any payment for the purchase or lease of a motor vehicle should be made directly to the seller or lessor, as the case may be. A broker is prohibited from taking or handling funds that are used to pay for the purchase or lease.

A broker is not authorized to make promises on behalf of any person.

13. A statement that includes the following information (in 14 pt. bold font):

OMVIC's contact information, including its website address, telephone number (including any toll free number) and its trademark



Ontario Motor
Vehicle Industry
Council

Conseil ontarien
du commerce des
véhicules automobiles



Note: If this statement does not appear on the first page of the contract, it must be initialled by the customer.

Brokerage contracts must be signed by the parties and the customer must receive a copy immediately after signing it.

4.10

Reflecting Negative Equity on Contracts

It is common today for lenders to finance vehicles purchases (and leases) that include negative equity; that is, when the customer owes more on their trade-in than the trade-in is worth. The Motor Vehicle Dealers Act (MVDA) requires that contracts **accurately** depict the true nature of the transaction; this includes accurately identifying negative equity.

This is an example of a correct way to reflect negative equity:

TOTAL VEHICLE PRICE		43,367.30
TRADE-IN ALLOWANCE		13,000.00
TOTAL VEHICLE PRICE LESS TRADE-IN ALLOWANCE		30,367.30
H.S.T. ON TOTAL VEHICLE PRICE LESS TRADE-IN ALLOWANCE (\$ 30,367.30)		3,947.75
Fuel		40.00
LICENCE FEE <input type="checkbox"/> TRANSFER <input type="checkbox"/> NEW PLATES <input type="checkbox"/> CITY OF TORONTO PVT 560		NEW 32.00
FUEL (INCLUDES H.S.T.)		N/A
PAYOUT ON LIENS AGAINST TRADE-IN		20,000.00
H.S.T. REGISTRANT NO.		

The trade-in allowance and lien payout are clear – identifying \$7,000 in negative equity.

Inflating the price of the vehicle, fees or other products (e.g. extended warranties), or adding fictitious charges to bury or hide negative equity, is illegal, even with a customer's acceptance of the practice. Dealers who create (or have a customer sign) an addendum acknowledging that the contract does not accurately reflect the true nature of the transaction (i.e. negative equity has been hidden) have actually created a written acknowledgement that the dealer has contravened the MVDA and Code of Ethics.

Note: these same principles apply to accurately reflecting the cost/value of an early lease return penalty or when financing includes additional cash that is returned to the consumer.

Lenders

In cases where negative equity exists, OMVIC encourages dealers to arrange financing for their customers only with lenders who allow for the truthful disclosure of negative equity. Falsifying information, even with a customer's acceptance and a lender's willful blindness, is prohibited.

4.11

Financing Representations

Arranging financing for customers is a valuable service provided by most dealers. But that service must entail providing clear and truthful information, both verbally during discussions/negotiations and in writing on the contract, to help customers make informed decisions and ensure they receive the best possible financing for their vehicle purchases.

Expectations Related to Customer Financing

Adherence to the following will help dealers and salespeople comply with the MVDA and Code of Ethics:

- Provide customers with clear information and financing options
- Notify (and get approval from) customers if the credit application will be sent to more than one lender
- Provide the customer with the offers from all lenders (if submitted to more than one)
- Accurately reflect the Annual Percentage Rate (APR) of a loan (the APR must include all fees)
- Ensure consumers understand the full price of a vehicle including the cost of borrowing, not just the payment
- Offer the best interest rate and terms for which the customer qualifies
- Disclose on the bill of sale if the dealer receives a fee from a lender for arranging financing
- Ensure the bill of sale depicts the true nature of the transaction including accurately identifying negative equity

Is an Extended Term Loan (ETL) the Best Option?

Before recommending seven, eight or nine year loans, dealers and salespeople should have a thorough conversation with their customers to determine what financial product best meets their needs. Some of the questions that may assist in making this recommendation include:

- How long does the consumer usually keep a vehicle? Do they usually trade it in before paying it off? This often leads to negative equity.
- How much does the consumer drive? Will the vehicle reliably last the term of the loan?
- What is the “overall” cost of the loan? Longer terms may mean lower monthly payments, but they usually mean higher overall costs of borrowing.
- Does the customer understand that if the vehicle is stolen or destroyed and there is negative equity involved, their insurance company will reimburse the vehicle’s value (not necessarily what is owed on the purchase loan)?

Failing to conduct business with honesty and integrity or committing an unfair business practice by making a false, misleading, deceptive or unconscionable representation can result in a discipline hearing, charges and/or the issuance of a Proposal to Revoke Registration.

4.12

Summary and Sample Contract

The MVDA sets out specific details that must be clearly, comprehensibly and prominently included in lease contracts and in contracts for the sale of new and used vehicles. In some cases, failure to follow these requirements may lead to a customer having the legal right to cancel a contract (see Chapter 6 – Rescission).

THE MVDA also stipulates “Advisory Statements” that are required to disclose very clearly to the customer such matters as “Sales Final,” “As Is,” OMVIC, the Compensation Fund, CAMVAP and SSCs.

UCDA Used Car Dealers Association Of Ontario 2010 Telephone: Toronto (416) 231-2600 Toll Free Ontario: 1-800-268-2588 or Fax: (416) 232-0775

UCDA USED VEHICLE BILL OF SALE

SALES FINAL

SALES FINAL Please review the entire contract, including all attached statements, before signing. This contract is final and binding once you have signed it, unless the motor vehicle dealer has failed to comply with certain legal obligations.

YOU ACKNOWLEDGE HAVING READ ALL THE TERMS OF THE CONTRACT, INCLUDING THOSE ON THE REVERSE AND ON ATTACHED PAGES, YOU UNDERSTAND THESE TERMS MAKE UP THE ENTIRE CONTRACT.

Purchaser's Signature _____
Co-Signer's Name (Print) _____
Co-Signer's Signature _____

WHITE - DEALER CANARY - CUSTOMER PINK - SALES/PERSON

New dealers do not have to create contracts from a blank piece of paper; a number of associations and businesses sell contracts (paper and electronic) to dealers. These are sample contracts from UCDA.

Contract page 1 – Courtesy UCDA

Finally, all contracts must be signed and a copy given immediately to the purchaser. According to Section 38 of the Regulations, **if there is no signed contract and a deposit or trade-in is given to the dealer, the purchaser can cancel the contract at any time and demand his/her deposit or trade-in back.**

IMPORTANT INFORMATION RESPECTING MOTOR VEHICLE SALES

In case of any concerns with this sale, you should first contact your motor vehicle dealer. If concerns persist, you may contact the Ontario Motor Vehicle Industry Council as the administrative authority designated for administering the Motor Vehicle Dealers Act, 2002.

You may be eligible for compensation from the Motor Vehicle Dealers Compensation Fund, if you suffer a financial loss from this trade and if your dealer is unable or unwilling to make good on the loss.

You may have additional rights at law.



Contact

789 Don Mills Road, Suite 800, Toronto, ON M3C 1T5
Call: 416-226-4500 or 1-800-943-6002 or go to www.omvic.on.ca

SAFETY STANDARDS CERTIFICATE

A safety standards certificate is only an indication that the motor vehicle met certain basic standards of vehicle safety on the date of inspection.

TERMS AND CONDITIONS

- TRADE-IN VEHICLE:** Any vehicle you trade-in shall be equipped and in the same condition, other than reasonable wear and tear, at the time of delivery to the dealer, as it was at the date of this agreement. You agree to be responsible for any repairs or maintenance needed to maintain this condition until the delivery date. If the trade-in vehicle has been damaged between the date of this agreement and the delivery date, or is in need of repair, the dealer may cancel this agreement and deduct any damages from the deposit or, if you agree, may reduce the amount of the trade-in allowance to compensate for the repairs needed. You also agree that you will be liable to compensate the dealer for any loss suffered because of any misrepresentation about the declared distance travelled, the declared prior use, or the condition of the vehicle traded-in.
- TAXES AND FINANCING:** You agree to pay the dealer an amount equal to any increase in taxes payable relating to the purchase of the vehicle, between the date of this agreement and delivery of the vehicle to you. Should the amount of tax payable be reduced, the dealer agrees to deduct this amount from the total amount owed by you.

You agree that you will be responsible for any damages suffered by the dealer if a financing contract cannot be arranged because of any default or misrepresentation by you.
- LEGAL OWNERSHIP AND PURCHASER'S OBLIGATIONS:** Legal ownership of the vehicle shall not pass to you until the entire purchase price has been paid in full. You agree that until that time you shall:
 - maintain insurance on the vehicle with the dealer as the named beneficiary in the event of a loss;
 - not sell or transfer the vehicle to anyone else;
 - not allow any lien or other interest to be taken in or against the vehicle;
 - not allow the vehicle to be used in the commission of any illegal act; and
 - reimburse the dealer for any costs the dealer may incur due to your failure to comply with any of (a), (b), (c) or (d) above.
- ACCEPTANCE BY PURCHASER:** If you refuse to take delivery of the vehicle when it is made available to you, or on the delivery date specified in this agreement, the dealer shall notify you by registered mail, sent to your last address known to the dealer, that the vehicle is available for delivery. If you fail to take delivery of the vehicle within seven (7) days of signed receipt of this notice, or if the notice is returned to the dealer undelivered, the dealer may resell the vehicle with no further notice to you.

When the dealer resells the vehicle, you agree to pay the dealer for all losses the dealer incurs. Any deposit or vehicle traded-in may be kept by the dealer to apply against any loss suffered by the dealer. If the loss is greater than the total of the amount paid as a deposit and the value of the trade-in, you agree to pay the difference to the dealer.

The dealer agrees to provide you with a detailed accounting of the resale and a list of expenses incurred. The dealer shall maintain the right to use any legal means available to collect any sum owing by you under this agreement.

CANADIAN MOTOR VEHICLE ARBITRATION PLAN

The Canadian Motor Vehicle Arbitration Plan may be available to resolve disputes concerning alleged manufacturer's defects or implementation of the manufacturer's new motor vehicle warranty.

Only vehicles less than 5 years old that have been driven less than 160,000 Km qualify.

OR

CANADIAN MOTOR VEHICLE ARBITRATION PLAN NOT AVAILABLE

The manufacturer of this vehicle is not a participant in the Canadian Motor Vehicle Arbitration Plan. Therefore, the program under that Plan is not available to resolve disputes concerning alleged manufacturer's defects or implementation of the manufacturer's new motor vehicle warranty.

Currently, BMW, Mitsubishi and most exotic foreign sports car manufacturers, do not participate in CAMVAP. Further information can be found at www.camvap.ca

Contract page 2 – Courtesy UCDA

Test Yourself

REMEMBER:

The questions on the Automotive Certification Test are in multiple-choice format only. This manual, however, contains a variety of question formats to help you understand the content, such as activities, assignments, multiple-choice questions, true-false questions and fill-in-the-blank questions.



The first questions below are the same questions asked in “What Do You Know?” at the beginning of this Chapter. Try answering these questions again and compare your results with your earlier answers.

Then, answer the additional questions.

1. On a purchase contract, what **must** be printed in 14 pt. bold font next to the buyer’s signature?
2. List four items that must be in a contract for the sale of a *new* vehicle.
3. If a dealer does not have a specific new vehicle in stock, but will locate the vehicle and bring it in, what must be disclosed to the purchaser regarding the mileage?
4. List four items (different from those provided in your answer to question 2) that must be included in contracts for the sale of a *used* vehicle.
5. If a Safety Standards Certificate is issued for a vehicle, it means:
 - a) The vehicle is safe and guaranteed free of mechanical defects
 - b) The vehicle met certain basic standards of safety on the date of inspection
 - c) The vehicle is safe and has a 36-day warranty
6. What does the term “as is” mean?
7. Choose the most correct answer. An “as is” sale...
 - a) Is not legal to a “consumer”
 - b) Does not require the buyer to initial the words “as is”
 - c) Must have the buyer write an explanation of “as is”
 - d) Must include a specific definition of “as is” in the contract
8. True or False: A dealer selling a vehicle “as is” may also provide a Safety Standards Certificate for the vehicle.
9. Other than the information that identifies the consignor, dealer and vehicle, list three details that must be included in consignment contracts.
10. Contracts must have advisory or educational statements designed to inform purchasers/lessees about their rights and responsibilities and to ensure they know about the existence of certain agencies or organizations. What are these organizations/agencies?
11. If customers give dealers a deposit but don’t sign a contract, what rights do they have?

Refer to Appendix 1 for the correct answers. Review the relevant section of the chapter for any question you answered incorrectly.

Chapter 5

RETAIL DISCLOSURE REQUIREMENTS

(With Customers – Not with Other Dealers)

5.01 Definition	5.06 Required Disclosures
5.02 Learning Objectives	5.07 \$3,000 Damage Discussion
5.03 What Do You Know?	5.08 Best Practices to Assist with Disclosures
5.04 Introduction	5.09 Summary
5.05 Clear, Comprehensible and Prominent	5.10 Test Yourself



5.02

Learning Objectives

After completing this chapter, you will understand what vehicle information must be disclosed regarding a vehicle's:

1. Previous use
2. History
3. Quality or condition

5.01

Definition

Disclosure: Revealing, or making known, facts and information

TIMELY DISCLOSURE

of information means the contract (including the information required to be disclosed) must be given to the customer for review before it is signed.

5.03

What Do You Know?

Try answering these questions to test your knowledge:

- 1.** List three “previous uses of a vehicle” dealers must disclose.
- 2.** List three types of *incident* damage that must be disclosed.
- 3.** True or False: Dealer A buys from a daily rental company, a car previously used in the rental fleet. Dealer A then sells the car (giving full disclosure of the car’s history as a daily rental) to a consumer who buys it for personal use. A year later, the consumer trades that car in to Dealer B. Dealer B does a history search and sees the car was once a daily rental. Under Regulation 42 of the MVDA, when Dealer B sells this car to another customer, they are not required to inform the customer of the car’s previous use as a daily rental.

Keep these questions in mind as you read through the following section.



5.04

Introduction

As a general rule, customers are entitled to the disclosure of any facts “that could reasonably be expected to influence the decision of a reasonable buyer or lessee to purchase or lease the vehicle on the terms disclosed in the contract.”

The *Motor Vehicle Dealers Act* (MVDA) goes further by setting explicit requirements for dealers to disclose specific information related to a vehicle’s previous use (e.g., a taxi), history (e.g., collision-damaged) and condition (e.g., missing airbags) to any customer.

Providing disclosure verbally does not meet the requirements of the MVDA. Disclosure **MUST** be made in writing (on the contract) in a “*clear, comprehensible and prominent manner*.”

Failure by the dealer to comply with certain disclosure requirements can result in a customer’s immediate right to cancel the contract and return the vehicle (see chapter 6).

This chapter is primarily based on the requirements set out in Section 42 of the Regulations under the MVDA.

5.05

Clear, Comprehensible and Prominent

Dealers are required to provide disclosures on contracts and in advertisements that are clear, comprehensible and prominent (CCP); and yet the MVDA doesn't specifically define CCP. The Ontario Motor Vehicle Industry Council (OMVIC) interprets CCP by turning to the *Canadian Oxford Dictionary* and by applying common sense:

Clear – The exact meaning of the statement or message is easily understood; it is not open to interpretation; it is not vague or ambiguous.

Comprehensible – The statement or message is written in language/words and manner that is easily understood; there are no hidden meanings; there is no special knowledge or experience required to understand the message.

Prominent – The statement or message is likely to attract the attention of the viewer/reader/listener; the statement or message is more noticeable (by size or type of font or placement on a page) than other information on/in the same document/page/announcement; it is not hidden or in small print, or written in font that is difficult to read due to size, style, colour, contrast, orientation (e.g., vertical) or placement on a page or document; it is not placed on a webpage that requires the reader to scroll down the page (or side to side) in order to view it.

When trying to interpret CCP, don't overthink it; it really is common sense. If you must ask yourself, "Is this CCP?" it probably isn't.

Remember that a dealer's "audience" (i.e., consumers/customers) does not likely have an in-depth knowledge and understanding of the automotive industry, so it's important to make disclosures in easily understood language and to make all required disclosure statements stand out from the page.

5.06

Required Disclosures

While the actual required disclosure will vary depending on a vehicle's history and condition, a contract *must* include statements about any of the following conditions:

1. The make, model, trim level and model year of the vehicle
2. If the vehicle has been used as a police vehicle or to provide emergency services
3. If the vehicle has been used as a taxi or limousine
4. If the vehicle has been leased (rented) on a daily basis and has not been subsequently owned by someone other than a dealer

5. If any collision or incident damage to the vehicle was greater than \$3,000 (and the total cost of repair if known by the dealer)
6. If the vehicle has been classified under the *Highway Traffic Act* as irreparable, salvage or rebuilt, and the most recent classification
7. If the vehicle was declared a total loss by an insurer, regardless of classification under the *Highway Traffic Act* as irreparable or salvage
8. If the vehicle has two or more adjacent panels that are not bumper panels that have been replaced
9. If the manufacturer's warranty on the vehicle has been cancelled
10. If the vehicle has sustained any damage caused by fire
11. If the vehicle has sustained any damage caused by immersion in liquid that has penetrated to the level of at least the interior floor boards
12. If there has been structural damage or the vehicle has had repairs, replacements or alterations to the structure of the vehicle
13. If the vehicle has an anti-lock braking system that is not operational
14. If any of the vehicle's airbags are missing or not operational
15. If the vehicle requires repair to any of its:
 - a) Engine, transmission or power train
 - b) Subframe or suspension
 - c) Computer equipment
 - d) Electrical system
 - e) Fuel operation system
 - f) Air conditioning
16. If the contract is for the sale or lease of a new specifically identified motor vehicle (e.g., VIN is known, in stock, etc.), the maximum distance that will be shown on the odometer at time of delivery
17. If the contract does not specifically identify a new vehicle (e.g., a vehicle that must be located, VIN unknown), the maximum distance that will be shown on the odometer at the time of delivery or a statement initialled by the buyer that there is no maximum
18. If the contract is for the sale or lease of a used vehicle:
 - a) The total distance driven
 - b) If the dealer cannot determine the total distance the vehicle has been driven, but can determine a distance the vehicle has been driven as of some past date, that distance and date, together with a statement that "the total distance the vehicle has been driven is believed to be higher"
 - c) If the dealer is unable to make any type of determination as to total distance driven or as to distance driven from a past date, that "the total distance driven is unknown and may be substantially higher than the reading shown on the odometer"

19. If the vehicle's odometer is broken or faulty, has been replaced or rolled back, or is in miles
20. If the vehicle is materially different from its original or advertised production specifications
21. If the badge or any other indication on the vehicle relates to a different vehicle model
22. If the vehicle was previously registered in a jurisdiction other than Ontario, and if so, a statement indicating which jurisdictions.
This requirement does not apply if the vehicle has since been registered in Ontario for more than seven years.
23. If the vehicle was recovered subsequent to being reported stolen
24. A statement of any other facts that could be expected to influence the decision of a reasonable buyer or lessee to purchase or lease the vehicle on the terms disclosed in the contract



5.07

\$3,000 Damage Discussion



Regulation 42 requires dealers to disclose, in writing on the bill of sale, any collision or incident damage to a vehicle greater than \$3,000. If the cost of the repair is known, it must also be disclosed. Often this information is available in vehicle history reports. Dealers should not attempt to circumvent this requirement by relying on vehicle history reports that do not provide this information. OMVIC strongly suggests dealers comparison shop and educate themselves on the strengths and weaknesses of the various vehicle history products. Using a thorough report AND adequately inspecting vehicles are key steps to help ensure dealers are in compliance with this part of the MVDA.

Note: collision repairs amounting to less than \$3,000 could still be considered material facts and therefore require disclosure.

When the Cost of Repair Is Different from the Repair Estimate

If the cost of the repairing collision or incident damage is less than the estimated cost, the repair cost AND the repair estimate must both be disclosed per an OMVIC Discipline Committee Ruling, upheld by an Appeal Committee decision that found: “Repair estimates ought to be disclosed under Subsection 42(19). [This is] not only reasonable but it is also correct.”

5.08

Best Practices to Assist with Disclosures

Disclosing Total Distance Driven

Many used vehicles are driven significant kilometers while in inventory. So when completing a contract for the sale of a used vehicle OMVIC highly recommends dealers implement a process that ensures the mileage disclosed on the contract is verified by having the salesperson visually check the vehicle's odometer reading at the time of sale. Relying on the mileage recorded in a vehicle's file (e.g. reported at the time of trade-in) could result in improper disclosure of the true distance driven. Remember, if the mileage provided on the bill of sale is inaccurate (off by the lesser of five percent or 1,000 kms), it triggers a customer's right to rescind the contract within 90 days of delivery.

Disclosing Needed Repairs and Related Material Fact

Complaints about vehicle condition are the most common OMVIC receives from consumers; to help ensure proper disclosures are provided, particularly as they relate to required repairs and material facts, dealers should implement a thorough vehicle inspection process; make a detailed record of any and all work done to the vehicle; disclose all repairs and inspection results to a buyer; and, ensure vehicles sold are of merchantable quality and fit for purpose as required by the *Sale of Goods Act*.

5.09

Summary



The MVDA sets out specific information related to a vehicle's previous use, history and condition. Just as a dealer would want these facts when purchasing a vehicle or accepting it in trade, the MVDA requires dealers provide this information to customers. These disclosures must be clearly, comprehensibly and prominently written on the contract and be presented in a timely manner so the customer can review them before signing the contract. There are sophisticated vehicle history reports available to all consumers, so it is in a dealer's best interest to know the history of the vehicles they offer for sale or lease and make proper disclosure to any customer.

Test Yourself



The first questions below are the same questions asked in “What Do You Know?” at the beginning of this chapter. Try answering these questions again and compare your results with your earlier answers.

Then, answer the additional questions.

- 1.** List three “previous uses of a vehicle” dealers must disclose.
- 2.** List three types of incident damage that must be disclosed.
- 3.** True or False: Dealer A buys from a daily rental company, a car previously used in the rental fleet. Dealer A then sells the car (giving full disclosure of the car’s history as a daily rental) to a consumer who buys it for personal use. A year later, the consumer trades that car in to Dealer B. Dealer B does a history search and sees the car was once a daily rental. Under Regulation 42 of the MVDA, when Dealer B sells this car to another customer they are not required to inform the customer of the car’s previous use as a daily rental.
- 4.** True or False: If a vehicle was declared a total loss in a collision, but has since been repaired and received a structural safety certificate and a Safety Standards Certificate (SSC) from an authorized repair centre, the dealer does not need to notify a purchaser of the previous damage.
- 5.** Which of the following must be disclosed?
 - a) The replacement of any single body panel (excluding bumper covers)
 - b) The replacement of two or more adjacent body panels (excluding bumper covers)
 - c) The repainting of two or more adjacent body panels (excluding bumper covers)

REMEMBER:

The questions on the Automotive Certification Test are in multiple-choice format only. This manual, however, contains a variety of question formats to help you understand the content, such as activities, assignments, multiple-choice questions, true-false questions and fill-in-the-blank questions.

Refer to Appendix 1 for the correct answers. Review the relevant section of the chapter for any question you answered incorrectly.

- 6.** Dealers must disclose known damage repairs in excess of:
 - a) \$2,000
 - b) \$3,000
 - c) \$5,000
 - d) \$10,000
- 7.** True or False: A dealer does not have to inform a purchaser that a vehicle's manufacturer's warranty has been cancelled, so long as the dealer offers or sells the purchaser an extended warranty.
- 8.** True or False: If a dealer knows the odometer of a vehicle is inaccurate, and cannot provide any indication of what the true mileage might be, they must write on the contract "TMU" (which stands for "true mileage unknown").
- 9.** Which of the following must be disclosed (select all that apply)?
 - a) A vehicle was previously registered, in another province, state or country
 - b) A vehicle's anti-lock braking system is not functioning
 - c) A vehicle's airbags are missing
 - d) A vehicle's air conditioning system requires repair
 - e) All of the above
- 10.** Disclosure must be provided in a timely manner, in writing, and be presented in a way that is:
 - a) Easy, precise and fair
 - b) Clear, comprehensible and prominent
 - c) Apparent, logical and friendly
- 11.** Give two examples of steps dealers can take to ensure they know the history of vehicles they buy or accept in trade.

Chapter 6

RESCISSION – A REMEDY FOR BREACH OF DISCLOSURE BY DEALER

6.01 Definition

6.02 Learning Objectives

6.03 What Do You Know?

6.04 Introduction

6.05 Cancellation of the Contract

6.06 Important Cancellation Details

6.07 Summary

6.08 Test Yourself



6.02

Learning Objectives

After completing this chapter, you will be able to identify:

1. When a customer may cancel a contract
2. Which customers may use the remedy of rescission
3. Important details regarding contract cancellation

6.01

Definition

Rescission:

The legal right to cancel (rescind) a contract

6.03

What Do You Know?

Try answering these questions to test your knowledge:

- 1.** True or False: The MVDA remedy of rescission (cancellation of a sales contract) is available only to a customer who is a “consumer.”
- 2.** Dealers are required to disclose all the information set out below (a – f); however, rescission is only granted automatically for failing to disclose three of them. Which are they?
 - a) The make, model and model year of the vehicle
 - b) The vehicle is missing airbags
 - c) The vehicle was previously a taxi or limo
 - d) The vehicle’s manufacturer’s warranty has been cancelled
 - e) The vehicle has been branded
 - f) The vehicle was involved in a collision
- 3.** There are three other disclosure requirements that, if not met, trigger a customer’s rescission rights. What are they?

Keep these questions in mind as you read through the following section.



6.04

Introduction

Dealers must disclose to customers specific information about the history of vehicles being sold or leased. The *Motor Vehicle Dealers Act* (MVDA) spells out specific circumstances in which a customer may cancel a contract and receive back all monies paid to the dealer when proper disclosure is not provided. This relates to required information dealers must disclose to customers about the history of vehicles sold or leased.

While rescission is not automatically granted for every breach of the disclosure requirements of the General Regulations of the MVDA (see Chapters 4 and 5), this chapter outlines the specific errors of disclosure that trigger a customer’s right to cancel a contract.

This remedy is available to any customer who is not a registered dealer.

RESCISSION

is available to any customer who is not a registered dealer.

6.05

Cancellation of the Contract

General Regulation 50 of the MVDA allows a customer to cancel a contract if the dealer and contract fail to disclose (or fail to disclose in a timely way):

1. The previous use of the vehicle as a taxi or limo
2. The previous use of the vehicle as a police or emergency services vehicle
3. The previous use of the vehicle as a daily rental (unless the vehicle has subsequently been owned by someone other than a dealer)
4. The make, model and model year of the vehicle
5. That the vehicle has been branded (irreparable, salvage or rebuilt), and how it was last classified
6. The actual distance the vehicle has travelled (when that cannot be determined, a dealer must then make the appropriate disclosure statement discussed in Chapters 4 and 5)

A customer may have additional remedies at law and may also pursue these remedies.

6.06

Important Cancellation Details

1. Under the MVDA, a customer has up to 90 days from the date of delivery to rescind the contract. Consumers may have up to one year to request rescission (for misrepresentation) under the *Consumer Protection Act*.
2. A customer may cancel the contract even if the dealer was unaware of a vehicle's true history or honestly believed the disclosure given to be accurate, regardless of the steps taken by the dealer to ascertain or verify the information.
3. When a sale or lease agreement is rescinded, it also cancels any other agreements under the contract such as those for warranties and financing.
4. A dealer is not required to return a vehicle traded in under the contract, but the dealer must refund the amount paid for that vehicle, or the amount of the credit allowed for the trade-in on the contract.



Note: If the contract inflated the selling price by \$1,000 and inflated the trade-in credit by \$1,000, should the contract be cancelled, the dealer would have to refund the inflated trade-in dollar amount.

NO DEALER wants to go through the hassle of rescinding a contract, so dealers should know the history of vehicles offered for sale, and ensure their customers make an informed decision.

5. A margin of error is allowed to the dealer where he or she determines the total distance driven (s.42(3)), or when he or she cannot determine the total distance driven, but can determine the distance driven as of some past date (s.42(4)). The disclosure of distance made by the dealer is deemed to be accurate if it is within the LESSER of five per cent or 1,000 kilometres of the correct distance required to be disclosed (s.50(4)).
6. The customer must take reasonable care of the vehicle from the time of receiving it until returning it to the dealer.
7. Rescission is **not** available to a person who leases a vehicle from a dealer and who enters into a contract with the dealer during or after the term of the lease to purchase that vehicle.
8. Rescission is **not** available under this regulation to another registered dealer who has purchased or leased a vehicle from the dealer.
9. There are sophisticated vehicle history reports (such as CarProof and CARFAX) available to all customers.



6.07

Summary

Customers have the legal right to cancel a contract should the dealer fail to make *certain disclosures*. In this circumstance, the customer has up to 90 days to rescind, even if the dealer was unaware of a vehicle's true history and sold it in good faith. Should rescission occur, it also cancels any other agreements under the contract, such as those for warranties and financing.



Under the *Consumer Protection Act* consumers may have up to one year to request rescission if a dealer commits an unfair business practice (see Chapter 13).

6.08

Test Yourself



The first questions below are the same questions asked in “What Do You Know?” at the beginning of this chapter. Try answering these questions again and compare your results with your earlier answers.

Then, answer the additional questions.

1. True or False: The MVDA remedy of rescission (cancellation of a sales contract) is available only to a customer who is a “consumer.”
2. Dealers are required to disclose all the information set out below (a – f); however, rescission is only granted automatically for failing to disclose three of them. Which are they?
 - a) The make, model and model year of the vehicle
 - b) The vehicle is missing airbags
 - c) The vehicle was previously a taxi or limo
 - d) The vehicle’s manufacturer’s warranty has been cancelled
 - e) The vehicle has been branded
 - f) The vehicle was involved in a collision
3. There are three other disclosure requirements that, if not met, trigger a customer’s rescission rights. What are they?
4. True or False: The remedy of rescission is available to a customer who is also a dealer.
5. Under the MVDA, a customer entitled to rescission has how long to request cancellation?
 - a) 30 days
 - b) 90 days
 - c) 180 days
 - d) One year
6. True or False: Consumers may also have up to one year to request rescission under the *Consumer Protection Act*.
7. What is the margin of error allowed to a dealer who provides the distance driven (odometer reading) or who cannot determine the total distance driven, but can determine the distance driven as of some past date?
8. True or False: If the dealer “inflated” the selling amount of a vehicle and the dollar amount of a trade-in, and the contract ends up being rescinded, the dealer would have to return the inflated trade-in dollar amount.
9. True or False: Customers cannot rescind a contract if the dealer was unaware of a vehicle’s true history, or honestly believed the disclosure given to be accurate.

REMEMBER:

The questions on the Automotive Certification Test are in multiple-choice format only. This manual, however, contains a variety of question formats to help you understand the content, such as activities, assignments, multiple-choice questions, true-false questions and fill-in-the-blank questions.

Refer to Appendix 1 for the correct answers. Review the relevant section of the chapter for any question you answered incorrectly.

Chapter 7

WHOLESALE DISCLOSURE IN CONTRACTS WITH ANOTHER REGISTERED DEALER

7.01 Learning Objectives

7.02 What Do You Know?

7.03 Introduction

7.04 Contract for Sale or Lease of a Vehicle to Another Registered Dealer

7.05 Summary

7.06 Test Yourself



7.01

Learning Objectives

After completing this chapter, you will be able to identify the information registered dealers must disclose to other registered dealers in contracts for the sale or lease of a vehicle.

7.02

What Do You Know?

Try answering these questions to test your knowledge:

- 1.** Check any statement that is correct (there may be more than one correct statement):
When selling to another *dealer*:
 - a) Selling dealers must disclose previous use as a taxi, police vehicle, etc.
 - b) Selling dealers must disclose damage repairs in excess of \$3,000
 - c) Selling dealers must disclose if the vehicle has two or more adjacent panels (that are not bumper panels) that have been replaced
 - d) Selling dealers are not required to make disclosures in wholesale transactions
- 2.** Are the requirements for the sale or lease of a vehicle to another dealer in the MVDA the General Regulations or the Code of Ethics Regulations?
- 3.** Provide two potential facts related to a vehicle's history (not including the examples given in question 1) that must be disclosed in dealer-to-dealer sales and leases.

Keep these questions in mind as you read through the following section.



7.03

Introduction

As seen in Chapters 4, 5 and 6, the MVDA has sweeping requirements for the type of information dealers must disclose to their customers. If dealers are to provide that information, they'll have to collect it and share it as well. So when dealers take a vehicle in on trade, there are specific details to collect and record, and when dealers sell or lease a vehicle to another dealer, or offer a vehicle at auction, the Code of Ethics Regulations (Ontario Regulation 332/08) of the MVDA specifies exactly what the selling/leasing dealer is obligated to disclose.

THIS CHAPTER

details exactly what selling/leasing dealers are required to disclose in contracts with another dealer.

7.04

Contract for Sale or Lease of a Vehicle to Another Registered Dealer

A contract for the sale or lease of a vehicle to another registered dealer is covered under Section 5 of the Code of Ethics Regulations and stipulates the following be disclosed:

1. If the vehicle is a used motor vehicle, the total distance that it has been driven if the dealer can determine the distance
2. If the vehicle is a used motor vehicle and the dealer cannot determine the total distance the vehicle has been driven, but can determine the distance the vehicle has been driven as of some past date, a statement of that distance and date, together with a statement that “the total distance the vehicle has been driven is believed to be higher”
3. If the vehicle is a used vehicle and the dealer cannot determine the total distance the vehicle has been driven, nor the distance the vehicle has been driven as of some past date, a statement that “the total distance the vehicle has been driven is unknown and may be substantially higher than the reading shown on the odometer”
4. If the vehicle’s odometer is broken or faulty, has been replaced, has been rolled back or is in miles
5. If any of the following is true, a statement to the effect that the vehicle was previously:
 - a) Leased on a daily basis, unless the vehicle was subsequently owned by someone other than a dealer
 - b) Used as a police vehicle or used to provide emergency services
 - c) Used as a taxi or limousine
6. If the vehicle has sustained any damage caused by fire
7. If the vehicle has sustained any damage caused by immersion in liquid that has penetrated to the level of at least the interior floorboards
8. If there has been structural damage to the vehicle or any repairs, replacements or alterations to the structure of the vehicle
9. If the vehicle is equipped with an anti-lock braking system that is not operational
10. If any of the vehicle’s airbags are missing or are not operational
11. If the vehicle is materially different from the original or advertised production specifications

12. If the vehicle has two or more adjacent panels that are not bumper panels and that have been replaced
13. The make, model, trim level and model year of the vehicle
14. If any badge or other indication on the vehicle relates to a different model than the model of the vehicle
15. If the total costs of repairs to fix the damage caused to the vehicle by a collision or incident exceed \$3,000, a statement to that effect and if the dealer knew the total costs, a statement of the total costs
16. If the manufacturer's warranty on the vehicle was cancelled
17. If the vehicle was declared by an insurer to be a total loss, regardless of whether the vehicle was classified as irreparable or as salvage under Section 199.1 of the *Highway Traffic Act*
18. If the vehicle previously received treatment in a jurisdiction other than Ontario (i.e., was registered in a different province or state), and if so, a statement indicating what jurisdictions the vehicle was registered in. This requirement does not apply if the vehicle has since been registered in Ontario for more than seven years
19. If the vehicle has been classified (branded) under Section 199.1 of the *Highway Traffic Act*, as irreparable, salvage or rebuilt, a statement as to how it was last classified
20. If the vehicle had been recovered after being reported stolen
21. Any other fact about the vehicle that affects the structural or mechanical quality or performance of the vehicle and that, if disclosed, could reasonably be expected to influence the decision of a reasonable buyer or lessee to buy or lease the vehicle

When dealers take a vehicle in on trade, there are specific details to collect and record. OMVIC highly recommends dealers enact a policy and process that ensures trade-in disclosure documents/vehicle history reports/etc. are provided to the staff person(s) responsible for wholesaling vehicles, so that proper disclosure can be made when selling to other dealers.

DEALER-TO-DEALER disclosure is a legal requirement in the Code of Ethics Regulations.



7.05

Summary

To help ensure dealers can provide full disclosure to their retail customers, it's important they make proper disclosure in wholesale transactions. This way dealers, and ultimately their customers, will be able to make fair and informed decisions.

7.06

Test Yourself



The first questions below are the same questions asked in “What Do You Know?” at the beginning of this chapter. Try answering these questions again and compare your results with your earlier answers.

Then, answer the additional questions.

1. Check any statement that is correct (there may be more than one correct statement):
When selling to another *dealer*:
 - a) Selling dealers must disclose previous use as a taxi, police vehicle, etc.
 - b) Selling dealers must disclose damage repairs in excess of \$3,000
 - c) Selling dealers must disclose if the vehicle has two or more adjacent panels (that are not bumper panels) that have been replaced
 - d) Selling dealers are not required to make disclosures in wholesale transactions
2. Are the requirements for the sale or lease of a vehicle to another dealer in the MVDA the General Regulations or the Code of Ethics Regulations?
3. Provide two potential facts related to a vehicles history (not including the examples given in question 1) that must be disclosed in dealer-to-dealer sales and leases.
4. True or False: In dealer-to-dealer transactions, the following disclosure is not required as it is for retail transactions only – any fact about the vehicle that affects the structural or mechanical quality or performance of the vehicle that, if disclosed, could reasonably be expected to influence the decision of a reasonable buyer or lessee to buy or lease the vehicle.
5. When selling to another dealer, what must the selling dealer do if he/she cannot determine the distance the vehicle has been driven?
6. Check any statement that is correct:
A contract for sale or lease of a vehicle between dealers:
 - a) Must disclose specific information to comply with the Code of Ethics Regulations
 - b) Must disclose exactly the same information required in the sale of a vehicle to a purchaser who is a consumer
 - c) Must disclose a statement as to whether CAMVAP is available
 - d) Is subject to the provisions of the *Consumer Protection Act*

REMEMBER:

The questions on the Automotive Certification Test are in multiple-choice format only. This manual, however, contains a variety of question formats to help you understand the content, such as activities, assignments, multiple-choice questions, true-false questions and fill-in-the-blank questions.

Refer to Appendix 1 for the correct answers. Review the relevant section of the chapter for any question you answered incorrectly.

Chapter 8

DISCLOSURE IN ADVERTISING

- | | |
|---------------------------------------|---|
| 8.01 Learning Objectives | 8.10 Lease Advertising |
| 8.02 What Do You Know? | 8.11 Advertising as Manufacturer's Suggested Retail Price (MSRP) |
| 8.03 Introduction | 8.12 The Code of Ethics and Standards of Business Practice on Advertising |
| 8.04 What is an Advertisement? | 8.13 Using Stock Photographs in Advertisements |
| 8.05 Disclosure in Dealer Advertising | 8.14 Summary |
| 8.06 "All-In Price" Advertising | 8.15 Test Yourself |
| 8.07 Advertising "As Is" Vehicles | |
| 8.08 Advertising Unfit Vehicles | |
| 8.09 Advertising Cost of Credit | |



8.01

Learning Objectives

After completing this chapter, you will be able to:

1. Identify the information and disclosure required in dealer advertising
2. Understand the possible penalties for breaching these advertising requirements

8.02

What Do You Know?

Try answering these questions to test your knowledge:

- 1.** If a dealer's advertisement contains a price for a vehicle, that price **must** include:
 - a) Administration fees
 - b) Taxes (unless ad states in a clear, comprehensible and prominent manner that taxes are included)
 - c) Freight and pre-delivery inspection (PDI)
 - d) "Other" mandatory fees such as documentation fees, window-etching fees, SSC fees, etc.
 - e) All of the above
- 2.** True or False: If an advertisement is for a vehicle that was previously used as a police vehicle, that information must be prominently displayed in the advertisement.
- 3.** True or False: If an advertisement is for a vehicle of the current model year, but the vehicle is used, the advertisement must clearly state the vehicle is used.

Keep these questions in mind as you read through the following section.



8.03

Introduction

The *Motor Vehicle Dealers Act* (MVDA), *Consumer Protection Act* (CPA) and Code of Ethics (including the Standards of Business Practice) clearly specify the information dealers must disclose in advertisements for vehicles offered for sale or lease. The MVDA also requires dealers provide "all-in pricing" in their advertisements (if a price is listed).

If a dealer's advertisement includes a price for a vehicle, that vehicle must be available for sale. If advertising for a limited supply of "certain vehicles," the advertisement must indicate the number of vehicles available at that price.

Should the Ontario Motor Vehicle Industry Council (OMVIC) reasonably believe a dealer's published material or advertisement to be false, misleading or deceptive, it can order the dealer to cease the use of the material and/or order the dealer to retract the statement or publish a correction of equal prominence in the original publication. The Registrar's order may be appealed to the Licence Appeal Tribunal (LAT), but takes effect immediately.

Dealers who breach the advertising regulations can face charges, a discipline proceeding and/or a proposal to revoke or suspend registration. The Registrar may also require the dealer to submit all advertising to the Registrar for pre-approval for a period of up to two years.

ADVERTISING DISCLOSURE

requirements help create a fair and open marketplace for dealers, and eliminate confusion for consumers.

This chapter is primarily based on the requirements set out in Section 36 of the Regulations under the MVDA.

8.04

What is an Advertisement?

An advertisement is any inducement to buy or lease and includes:

- Newspaper ads
- Magazine/publication ads
- Website ads
- Social media ads
- Radio/TV ads
- Billboards
- Signs (including those displayed in or on a vehicle)
- Information printed on the vehicle itself



Note: This is not an exhaustive list; these examples are illustrative and meant to assist learning. Any other type of advertising must meet the same legal requirements.

To assist with compliance, OMVIC makes available free downloadable signs on its website. These signs are for use on vehicles and contain all required disclosure statements. To download, visit www.omvic.on.ca.

8.05

Disclosure in Dealer Advertising

Advertisements must include the registered name and phone number of the selling dealer in a clear, comprehensible and prominent manner. Where there are space or time limitations (e.g., a billboard or radio/TV ad), the ad must, at a minimum, state that it has been placed by a registered dealer.

An advertisement must indicate in a clear, comprehensible and prominent manner if the vehicle:

- Was previously a daily rental (unless subsequently owned by a non-dealer).
- Was previously a police vehicle or emergency services vehicle.
- Was previously a taxi or limousine.
- Is a used car of the current model year or the immediate previous model year. This is meant to ensure consumers can tell if an advertised vehicle is new or used. *Note: as demonstrators are used vehicles they must not be listed on a dealer's website (or elsewhere) under a tab or link for new vehicles. Instead, they should be listed with other used vehicles or under a separate tab/link for demonstrators.*

Vehicle advertisements that state the inclusion of an extended warranty must clearly, comprehensibly and prominently include the term of the warranty and maximum claim limits, if any.



Note: Advertisements that indicate an extended warranty is included with a vehicle must clearly indicate the term of the warranty and any claim limits.

This advertisement indicates the term is for the “lifetime” of the vehicle, but does not provide any claim limits. In this instance, a customer may assume there are NO claim limits. If, in fact, the warranty has claim limits, the advertisement is NOT compliant.

8.06

“All-In Price” Advertising

If a dealer’s ad includes a price for a vehicle, that price must include **all** charges related to the sale of the vehicle. This includes freight and inspection charges, administration fees, other fees, charges, levies and taxes.

Dealers don’t have to include HST and licensing in the advertised price, as long as the ad indicates in a clear, comprehensible and prominent (CCP) manner that HST and licensing are not included in the price.

Note: The following are more detailed explanations and examples of OMVIC’s expectations for meeting certain requirements set out in Section 36 of the General Regulations under the MVDA including “all-in pricing.”

Where there is a requirement for information/disclosure to be set out in a CCP manner, OMVIC will consider the size and proximity of this disclosure relative to the advertised price.

Section 36(7) states,

“If an advertisement indicates the price of a motor vehicle, the price shall be set out in a clear, comprehensible and prominent manner and shall be set out as the total of,

- a) The amount the buyer would be required to pay for the vehicle; and**
- b) Subject to subsections (9) and (10), for all other charges related to the trade in the vehicle, including, if any, charges for freight, charges for inspection before delivery of the vehicle, fees, levies and taxes.”**

“All other charges” includes any charge treated as mandatory by the dealer. A charge is deemed to be mandatory if:

- The customer is not given an *express opportunity* to decline the charge during the negotiation process; or
- It pertains to features or additions referred to in the advertisement or during negotiations (unless they are described as optional extras in the advertisement or during negotiations).

For instance, if a customer is expected to pay an administration fee, documentation fee, fee for a Safety Standards Certificate (SSC) or for a window-etching product, those amounts must be included in the all-in price. (These are examples only and are not intended to be a complete list of all fees.)

Section 36(8) states,

“If an advertisement that indicates a price for a motor vehicle is placed jointly by two or more registered motor vehicle dealers, the advertisement shall state that the price for the vehicle in an actual trade may be less than the price set out in the advertisement.”

If the ad is placed by more than one dealer, words such as “Dealer may sell for less” must be used.

Section 36(9) states,

“Subject to subsection (10), if an advertisement that indicates a price for a motor vehicle is placed jointly by two or more registered motor vehicle dealers and if an amount of a charge mentioned in clause (7)(b) varies as between the dealers, the advertisement shall indicate, in a clear, comprehensible and prominent manner,

- a) That a buyer of the vehicle may be requested to pay that amount in addition to the price indicated in the advertisement; and**
- b) What the charge is for.”**

If the ad has been placed by two or more dealers, and there is a fee that varies from one dealer to another, that fee may be excluded from the all-in price, but the amount of the fee must be disclosed in the ad, along with a description of what the fee is for, in a CCP manner. For instance, “The above price does not include administration fees, which vary from \$199 to \$499, depending on the dealer.”

Section 36(10) states,

“Clause 7(b) and subsection (9) do not apply to amounts under the *Retail Sales Tax Act* or to the federal goods and services tax if the advertisement indicates in a clear, comprehensible and prominent manner that those amounts are not included in the price indicated in the advertisement.”

Section 36(10) allows dealers to exclude HST from the advertised price as long as this fact is disclosed in a CCP manner in the advertisement.

Section 36(11) states,

“If an advertisement that indicates a price for a motor vehicle is placed jointly by two or more registered motor vehicle dealers, each of the dealers shall ensure that the advertisement complies with subsection (7), (8), (9) and (10).”

Section 36(11) requires **each** dealer involved in placing an advertisement ensures it complies with the MVDA.



8.07

Advertising “As Is” Vehicles

If an ad includes a price for a vehicle being sold “as is,” the ad must include in a clear, comprehensible and prominent manner the following statement:

“This vehicle is being sold “as is,” unfit, not e-tested and 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 at the purchaser’s expense. It may not be possible to register the vehicle to be driven in its current condition.”



It is NOT sufficient to simply state the vehicle is being sold “as is.”

8.08

Advertising Unfit Vehicles

If an ad includes a price for a vehicle that is not certified and/or e-tested, the ad must state in a clear, comprehensible and prominent manner:

“This vehicle is not driveable, not certified and not e-tested. Certification and e-testing are available for \$XXX.”

Note: If a dealer intends to offer certification and e-testing, the fee **MUST** be disclosed in the above statement. Certification and e-testing **CANNOT** be mandatory charges. Vehicles advertised unfit may not be sold at or above the advertised price using the “as is” clause on the bill of sale.

8.09

Advertising Cost of Credit

CPA Section 61 sets out the disclosure required in advertising credit agreements.

When the advertisement offers financing to purchase a vehicle and discloses the interest rate or the amount of the payment by the borrower, the following must also be disclosed:

1. Annual percentage rate (must be displayed as prominently as the most prominent of the interest rate or monthly payments)
2. Length of the term
3. Cash price of the vehicle (if applicable) and the “cost of borrowing,” unless:
 - a) The only element of cost of borrowing is interest
 - b) The advertisement is broadcast on radio or television, displayed on a billboard or bus board, or made through any other medium with similar time or space limitations

8.10

Lease Advertising

The CPA also sets out the requirements for advertising a lease. Lease ads must disclose:

1. The ad is for a lease
2. The term of the lease
3. The payment
4. The annual percentage rate (APR)
5. The amount of upfront payment required
6. For leases with kilometre allowances less than 20K/year, the excess kilometre cost (e.g., 18,000 km/year, \$0.20/km for excess)

Note: Broadcast advertisements, or those with space/time constraints, may direct consumers to a phone number or publication to obtain term and APR information.

8.11

Advertising as Manufacturer's Suggested Retail Price (MSRP)

The guidance provided in the Standards of Business Practice (see 8.12(27)) stipulates that “savings amounts” shown in new vehicle advertisements are to be based on a vehicle’s average selling price, not the Manufacturer’s Suggested Retail Price (MSRP). But what if no savings amount is referenced in an advertisement that includes an MSRP?

For example:



2020 Tahoe
MSRP \$79,925

ABC CHEVY Price
\$75,000
Plus HST and Licensing

As there is no savings amount stated or claimed in the example ad for the NEW Tahoe, there is no breach of the Standards or Code of Ethics. In other words, the example is acceptable as the advertisement did not claim a savings amount: i.e. the ad did not state “save \$4,925”, or similar language.

Given today’s DMS systems that generate individual MSRP’s for each vehicle based on its specific options, OMVIC believes this interpretation makes advertising simpler for new vehicle dealers and helps create a level playing field, without affecting consumer protection.

Advertising M.S.R.P. and Manufacturer Credits/Discounts

Consumers are bombarded by manufacturer advertising that often promotes credits or discounts. Dealers are prohibited from implying that a manufacturer credit/discount is their own.

For example, if RAM is offering a \$12,000 discount on all pickup trucks and a dealer wants to advertise a new Ram Sport with an MSRP of \$49,453 (inclusive of all charges), in order to comply, the dealer should advertise:

2020 Ram Sport
\$37,453
Plus HST and Licensing

Price includes
\$12,000 RAM discount


OR



2020 Ram Sport
\$49,453 MSRP
- \$12,000 in RAM credits

Price: **\$37,453**
Plus HST and Licensing

If the dealer wants to include an additional discount, it can be itemized separately. For example:

2020 Ram Sport \$35,953 Plus HST and Licensing Price includes \$12,000 RAM credits and \$1,500 additional dealer discount	OR 	2020 Ram Sport \$49,453 MSRP - \$12,000 in RAM credits - <u>\$1,500 dealer discount</u> Price: \$35,953 Plus HST and Licensing
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It is important that a dealer's advertised price that includes a manufacturer's credit or discount make it clear the credit/discount has been applied to the advertised price. If a dealer fails to do this, consumers could be misled and anticipate the manufacturer's discount will be applied to the dealer's advertised price. These are three examples of non-compliant ads:

MSRP: \$49,453 ON SALE FOR: \$35,953 Plus HST and Licensing	MSRP: \$49,453 Price: \$35,953 Plus HST and Licensing SAVINGS: \$12,000	MSRP: \$49,453 Price: \$35,953 Plus HST and Licensing
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Note: these examples do not constitute an exhaustive list of non-compliant advertising representations.

Used Vehicles and MSRPs

Comparisons to MSRP are prohibited when advertising a used vehicle.

Advertising MSRPs – Conclusion

Dealers may advertise a vehicle's MSRP and their all-in selling price. If the ad also references a savings amount, then the average selling price must also be included.

Dealers can include manufacturer discounts/credits in advertised prices IF the ad clearly and prominently indicates the credits/discounts have been applied. Additional dealer discounts can be itemized separately.

Dealer advertised prices must include all fees and charges the dealer intends to collect. Note: HST and licensing can be excluded if the advertisement clearly indicates they are excluded. For example: \$33,453 + HST and licensing.

8.12

The Code of Ethics and Standards of Business Practice on Advertising

The MVDA Code of Ethics also speaks to dealer advertising and marketing. It requires dealers and salespeople to be “clear and truthful in describing the features, benefits and prices connected with the motor vehicles in which the registrant trades and in explaining the products, services, programs and prices connected with those vehicles” and to “ensure that all representations, including advertising, made by or on behalf of the registrant in connection with trading in motor vehicles, are legal, decent, ethical and truthful” Further, the Code of Ethics states registrants “shall not engage in any act or omission that, having regard to all of the circumstances, would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming of a registrant.” These are often the Code of Ethics sections relied upon when dealers are disciplined due to non-compliant advertising.

To help dealers and salespeople understand and interpret the Code of Ethics, OMVIC developed the Standards of Business Practice (SBP). The SBP sets out guidelines and examples dealers/salespeople must meet or exceed.

Standards of Business Practice

Before entering into a contract for a trade-in for a motor vehicle, with a customer who is not a registered dealer, a dealer shall explain to the customer the terms of the contract between the customer and the dealer, including the financial and other obligations, if any, of the customer under the contract.

EXAMPLES

1. Any information required by these SBP to be disclosed is sufficiently clear and prominent so that, in the consideration of the Registrar, it can be easily noticed and understood by a consumer. Disclosure is in a form appropriate to the advertising medium. The Registrar will consider factors that include:
 - Size of print
 - Clarity/legibility of font
 - Location of the disclosed information in the advertisement
 - Prominence of the disclosed information compared to other information in the advertisement
 - In a broadcast advertisement, the length of time that the message appears or is presented

2. In addition to example 1, all disclosure in advertisements appearing in newspapers, periodicals and other publications is printed in a minimum size and font that is the same as that normally used in classified advertising by the publication where the advertisement appears.
3. Where disclosure of leasing or financial information is required by these SBP and applies to a broadcast advertisement, the advertisement includes, as an alternative to the requirements in examples 1 and 2, one of the following messages:
 - A telephone number and a statement that the number may be called to obtain pre-recorded disclosure of the information; for example, “Call [telephone number] for full financing information.” The required information must be available on a pre-recorded message and may be followed by an option connecting the caller to a live operator.
 - A pre-recorded message is not required if the broadcast advertisement discloses the down payment, the periodic payment, the period of the payment, the term, the annual finance or lease rate and, in the case of a lease, the maximum allowable kilometres over the term of the lease and the lease end obligations. The above will be based on the all-in price required by Section 36 of the General Regulations.
 - A statement that full disclosure can be obtained in a concurrent newspaper advertisement; for example, “See our ad in your local newspaper for full financing information.” The newspaper must be locally available in the market area of the advertiser.
4. The message in example 3 is sufficiently clear and prominent so that in the consideration of the Registrar, it can be easily noticed and understood by a consumer.
5. Advertisements by or on behalf of a dealer disclose the dealer’s status in one of two ways:
 - With a trade style name provided to the Registrar. This can be the dealer’s registered name.
 - By including the word “Dealer” in the advertisement.
6. Advertisements do not indicate or imply that consumers may purchase or lease a car from an unregistered salesperson; for example, “No Salespeople.”
7. Advertising of specific vehicles do not indicate or imply, through words, phrases or style, that it is not presented for commercial purposes; for example, “Public Service Announcement.”

8. Advertisements do not contain statements that, in the consideration of the Registrar, are ambiguous, misleading or deceptive due to unclear, unverifiable or inaccurate information.
9. Advertisements do not refer to an award unless its source and date is disclosed. Advertisements do not refer to an award when it was purchased by the Registrant and is not based on any verifiable test or research. This does not refer to celebrity endorsements.
10. Advertisements do not indicate or imply that vehicles are being offered out of the ordinary course of business unless full disclosure of the situation is made. Examples of prohibited terms include:
 - Going out of business, closing
 - Bankrupt, in receivership, liquidation
 - Lease expired, moving
 - Fleet sale
 - Repossessed motor vehicles
11. “Wholesale” is not used to describe any transaction other than one between motor vehicle dealers.
12. If a dealer’s registered or trade style name includes “liquidation” or “wholesale,” all advertisements for vehicles offered for retail sale or lease include the word “retail.”
13. Advertisements do not indicate or imply that vehicles are offered for retail sale or lease without economic advantage to the Registrant. Examples of prohibited terms include:
 - Dealer cost
 - Factory price, invoice price, under/over invoice price
14. Advertisements for specific vehicles that are of the current model year or the previous model year disclose whether the vehicle is new or used. Advertisements of used vehicles must include one of the terms “used,” “pre-owned” or “previously driven,” or another term that is accurate and discloses that the vehicle is not new.
15. Advertisements of a specific used vehicle disclose all known material facts about the prior regular use of the vehicle, including if it was:
 - Leased on a daily basis, unless the vehicle was subsequently owned by a person who was not registered as a motor vehicle dealer under the MVDA
 - A police cruiser or used to provide emergency services
 - A taxi vehicle or limousine

16. The advertised vehicle is to be:
 - At the advertised location or available at the advertised location;
 - In condition to be shown;
 - Willingly shown to a consumer;
 - Willingly shown under the same terms as advertised; and
 - Sold on the same terms as advertised; or
 - If not available from the dealer's on-site inventory, disclosed as available by factory order or dealer trade.
17. A vehicle or class of vehicles is not advertised at a specific price or other incentive unless the Registrant is able to supply a quantity of those vehicles that, in the consideration of the Registrar, is reasonable considering factors that include the size of the dealership and the target area of the advertisement.
18. Advertisements do not misrepresent the opportunity to purchase a vehicle. If the available supply of vehicles is unusually limited, the nature of the limit, such as the number available or the time they are available, must be disclosed. If a factory order or acquisition from another dealer is, or may be, required, this must be disclosed.
19. Registrants do not use phrases such as "supply limited" and "limited time only" if they are misleading considering factors including the number of vehicles available to the Registrant, and the Registrant's target area.
20. Illustrations of vehicles offered for sale will be reasonable representations of the vehicle(s) if an exact illustration is not available.
21. Advertisements do not encourage a breach of contract; for example, "We will beat your best deal."
22. Advertisements using the word "free" clearly indicate that the item is free only with purchase at the advertised price.
23. Advertisements do not guarantee a minimum trade-in allowance; for example, "Push, Pull, Drag your trade in for \$2,000 guaranteed."
24. Advertisements do not offer an extended warranty included with purchase unless the following information is declared in a CCP manner: term and the maximum individual claim limits, if applicable.
25. Words or phrases that indicate or imply that a warranty covers all of a vehicle, or lasts for an unlimited time, or both, are not used unless the warranty is without such exclusions. Prohibited terms include:
 - Bumper-to-bumper
 - Inclusive/all-inclusive
 - Total

26. All disclosure in advertisements appearing in newspapers, periodicals and other publications is printed in a minimum size and font that is the same as that normally used in classified advertising by the publication where the advertisement appears.
27. Savings amounts shown in new vehicle advertising are based on a vehicle's average selling price, not the manufacturer's suggested retail price (MSRP) The Registrant is able and willing to support the average selling price. For example:
 - MSRP \$20,000
 - Average Selling Price \$19,000
 - Sale Price \$18,500
 - Savings \$500
28. Advertisements that offer no interest period state the period of time that the offer applies and disclose whether:
 - The transaction is without any interest during the advertised period; or
 - Interest accumulates during the advertised period but will be forgiven under certain conditions.
29. If interest accumulates during the period but may be forgiven, the advertisement discloses:
 - The conditions for interest forgiveness; and
 - The interest rate for the period, if the conditions for forgiveness of interest are not met.
30. An advertisement that does not disclose all information required by examples 28 and 29 is considered to indicate that the transaction is unconditionally interest-free during the advertised period.
31. Advertisements offering a choice between a favourable interest rate financing and a rebate or cash purchase price disclose the effective interest rate of the financing option. In the case of a rebate the effective interest rate is the cost of borrowing at the low interest rate plus the value of the rebate. In the case of a cash purchase price, the effective interest rate is the cost of borrowing at the favourable interest rate plus the differential between cash purchase price and price if favourable interest rate is chosen. For example, if the choice is between a 1.9% annual interest rate or a \$2,000 cash rebate, the real cost of the financing option is 1.9% annually plus \$2,000. The following is an example of acceptable wording: "If vehicle financed at 1.9 % and the \$2,000 rebate is not taken, the effective interest rate is 9.2%."

32. The following terms are restricted or prohibited.

They are provided as examples only. Other terms that have a similar meaning or intent to those shown below are subject to the same restriction or prohibition.

No salespeople
Public service announcement
Going out of business
Closing
Bankrupt, bankruptcy
In receivership
Liquidation
Lease expired
Moving, relocating
Fleet sale
Repossessed motor vehicles
Wholesale
Dealer cost
Factory price
Invoice price, under/over invoice price
Supply limited
Limited time only
Beat your best deal
Free
Push, pull, drag (or similar)
Extended warranty included
Bumper-to-bumper
All-inclusive
Savings

Note: More information about the SBP can be found in Chapter 17.07.

8.13

Using Stock Photographs in Advertisements

When a vehicle is advertised for sale and a photograph is to be used, dealers should use best efforts to ensure the photo is of the actual vehicle advertised. If that is not possible and a stock photo is to be used, that picture must accurately reflect the make, model, model year and condition of the actual vehicle.



8.14

Summary and Sample Ad

Dealers are responsible for the content of their ads. Should OMVIC believe a dealer's ad to be false, misleading or deceptive, it can order the dealer to cease the use of the material, and/or order the dealer to issue a retraction or correction.

Dealers found in breach of the advertising regulations may face charges, a discipline hearing, and/or proposal to revoke registration; they may also be required to submit all advertising to the Registrar for pre-approval for a period of up to two years!

The MVDA requires dealer ads to include the dealer's registered name and phone number (unless there are legitimate time/space constraints), accurately disclose an advertised vehicle's history (such as taxi, limo or emergency services use), status as used (if applicable), and availability (if price is given in the ad).

If a dealer's ad provides a price for a vehicle, that price must include freight and inspection charges, administration fees and all other fees, levies and taxes.

HST and licensing may be left out of the advertised price so long as the ad states in a clear, comprehensible and prominent manner that HST and licensing are not included in the price.

**PROVIDING YOU WITH QUALITY
VEHICLES FOR MORE THAN 10 YEARS**



**2007
FAMILY
SEDAN**

\$15,000 PLUS TAXES

• Only 3 vehicles available for this price and model
• Former daily rental



**PRE-OWNED
2010
FAMILY
SEDAN**

\$25,500 PLUS TAXES

• Only 2 vehicles available for this price and model
• 1-year extended warranty or up to 20,000 kms with \$1,500 maximum claim limit

CONTACT US Phone: 1-800-123-4567 • Web: www.janesusedcars.ca • Address: 1234 Yonge Street, Markham ON

MVDA compliant ad

1) All-in pricing – includes all costs and no hidden fees

2) Identifies how many vehicles are available for this price and model

3) Identifies the vehicle as a former daily rental

4) Provides terms of extended warranty

5) Includes full contact information

Test Yourself

REMEMBER:

The questions on the Automotive Certification Test are in multiple-choice format only. This manual, however, contains a variety of question formats to help you understand the content, such as activities, assignments, multiple-choice questions, true-false questions and fill-in-the-blank questions.



The first questions below are the same questions asked in “What Do You Know?” at the beginning of this chapter. Try answering these questions again and compare your results with your earlier answers. Then, answer the additional questions.

1. If a dealer’s advertisement contains a price for a vehicle, that price **must** include:
 - a) Administration fees
 - b) Taxes (unless ad states in a clear, comprehensible and prominent manner that taxes are not included)
 - c) Freight and PDI
 - d) “Other” mandatory fees such as documentation fees, window-etching fees, SSC fees, etc.
 - e) All of the above
2. True or False: If an advertisement is for a vehicle that was previously used as a police vehicle, that information must be prominently displayed in the ad.
3. True or False: If an advertisement is for a vehicle of the current model year, but the vehicle is used, the ad must clearly state the vehicle is used.
4. If OMVIC believes a dealer’s advertisement to be false, misleading or deceptive, it can:
 - a) Take the dealer to the LAT
 - b) Sue the dealer for misrepresentation
 - c) Order the dealer to issue a retraction or correction
5. Dealers found in breach of the advertising regulations may have to have their ads pre-approved by OMVIC for a period of up to:
 - a) Six months
 - b) One year
 - c) 18 months
 - d) Two years

Refer to Appendix 1 for the correct answers. Review the relevant section of the chapter for any question you answered incorrectly.

Chapter 9

EXTENDED WARRANTIES AND SERVICE PLANS

9.01 Learning Objectives	9.05 Sale of a Service Plan (s.48)
9.02 What Do You Know?	9.06 Summary
9.03 Introduction	9.07 Test Yourself
9.04 Sale of an Extended Warranty (s.47)	



9.01

Learning Objectives

After completing this chapter, you will understand:

- 1.** How extended warranties must be backed or insured
- 2.** Contract requirements for the sale of an extended warranty
- 3.** Contract requirements for the sale of a service plan

9.02

What Do You Know?

Try answering these questions to test your knowledge:

- 1.** Extended warranties must be backed or guaranteed financially to ensure their viability. List two methods by which this backing can be provided.
- 2.** If a dealer wishes to offer their own uninsured extended warranty, they must provide to the Compensation Fund an irrevocable letter of credit in the amount of:
 - a) \$100,000
 - b) \$250,000
 - c) \$500,000
 - d) \$1,000,000
- 3.** Provide three pieces of information related to the *coverage* offered by the warranty that must be included in the warranty contract.

Keep these questions in mind as you read through the following section.



9.03

Introduction

Under the *Motor Vehicle Dealers Act* (MVDA), extended warranties must be insured by a company licensed under the *Insurance Act*, or, if a dealer wishes to sell uninsured warranties, they must provide security to the Motor Vehicle Dealers Compensation Fund. That security must be in the form of an irrevocable letter of credit in the amount of \$100,000 if the warranty provider is also the dealer who sold or leased the vehicle, or \$500,000 in all other cases. If a dealer sells a warranty that does not meet these requirements and the warranty company goes out of business, the dealer is responsible for all claims under the warranty.

All contracts for extended warranties and service plans must include the information set out below and be signed by both parties. Immediately after signing, the purchaser must be given a copy of the contract. Within seven days of selling a warranty or service plan, dealers must provide the warranty or service plan provider with all documents detailing the contract, all payments the dealer has received from the purchaser and, in the case of an extended warranty, a statement that accurately describes the condition of the motor vehicle and the distance the motor vehicle has been driven, if the dealer has such a statement in its possession.

This chapter is primarily based on the requirements set out in Section 47 and 48 of the Regulations under the MVDA.

ENSURING warranties are adequately backed protects consumers, dealers and the Compensation Fund.

SECURITY PAID to the Motor Vehicle Dealers Compensation Fund must be in the form of an irrevocable letter of credit in the amount of \$100,000 if the warranty provider is also the dealer who sold or leased the vehicle, or \$500,000 in all other cases.

9.04

Sale of an Extended Warranty (Section 47)

1. A dealer shall not sell an extended warranty to a vehicle purchaser or lessee or facilitate the sale of an extended warranty to that purchaser or lessee unless:
 - a) The performance of the warranty is insured; or
 - b) The seller of the warranty has provided security to the Compensation Fund (for the extended warranties that it supplies) in the form of an irrevocable letter of credit in the following amounts:
 - i) \$100,000 if the warranty provider is the dealer who sold or leased the vehicle to the purchaser or lessee; or
 - ii) \$500,000 in any other case.
2. A dealer who forwards an application for an extended warranty by a purchaser or lessee of a motor vehicle to the seller of the warranty is deemed to facilitate the sale of the warranty for the purposes of subsection (1).
3. If the dealer is not the seller of the extended warranty, the dealer is liable for the amount that cannot be settled because the seller of the warranty is no longer in business.
4. A dealer that sells an extended warranty for a motor vehicle to a purchaser or lessee shall ensure that the contract for the warranty includes, in a clear, comprehensible and prominent manner, the following information:
 - a) The name and address of the purchaser of the warranty
 - b) The name and address of the purchaser of the warranty, or the warranty holder, if the purchaser is not the warranty holder
 - c) The business address, registered name and registration number of the dealer that entered into the contract, together with the legal name of the dealer if it is different from the registered name
 - d) The registered name and registration number of the salesperson, if any, who is acting on behalf of the dealer
 - e) All restrictions, limitations and conditions imposed by the warranty company
 - f) A statement as to whether or not the warranty is insured and, if it is, the name and address of the insurer
 - g) The make, model and model year of the vehicle
 - h) The vehicle identification number (VIN)
 - i) The total sale price of the vehicle, if sold



Note: These apply when the purchaser or lessee is a customer who is not a registered dealer.

- j) The lease value of the vehicle determined in accordance with clause (a) of the definition of “lease value of the leased goods” in subsection 72 (1) of Ontario Regulation 17/05 (General) made under the *Consumer Protection Act* if the vehicle is being leased and if:
 - i) Part VIII of that act applies to the lease; or
 - ii) Part VIII of that act does not apply to the lease by reason only of the fact that the purchaser of the warranty is not a consumer as defined in that act
 - k) A description of the components covered by the warranty that is sufficient to identify them with certainty and if the warranty is related to the manufacturer’s warranty, a description indicating how the warranty extends the manufacturer’s warranty
 - l) The commencement date and end date of the warranty, expressed by way of calendar date, kilometres the vehicle has been driven, or a combination of both
 - m) The maximum individual claim limits, if any
 - n) The maximum total liability, if any
 - o) The amount of the deductible, if any
 - p) The sale price of the warranty, including an itemized list of all fees or costs that must be paid at the time of purchase or afterwards
 - q) The obligations of the warranty holder under both the warranty and the manufacturer’s warranty, if applicable
 - r) Whether the warranty is transferable to another owner or lessee of the vehicle and the amount of any fee for that transfer
5. In each contract for an extended warranty, the dealer shall ensure that:
- a) The contract is signed by the parties;
 - b) If a registered salesperson is acting on behalf of the dealer, the salesperson signs next to the indication on the contract of the information described in paragraph 4 of subsection (4); and
 - c) The purchaser receives a copy of the contract immediately after signing it.
6. A dealer shall not facilitate the sale of an extended warranty unless the contract for the warranty includes, in a clear, comprehensible and prominent manner:
- a) The information required by subsection (4), except for paragraphs 3 and 4;
 - b) The name and address of the seller (provider) of the warranty;
 - c) A registered name and the registration number of the dealer who facilitated the sale of the contract, together with the legal name of that dealer if it is different from the registered name; and
 - d) The registered name and registration number of the salesperson, if any, who is acting on behalf of the dealer who facilitated the sale of the contract.

7. If a dealer facilitates the sale of an extended warranty through the dealer to a purchaser or lessee of a motor vehicle, the dealer shall:
- Use best efforts to ensure that the contract for the warranty meets the requirements set out in clauses (5) (a) and (c); and
 - Ensure that:
 - The dealer signs next to the indication, on the contract for the warranty, of the information described in clause (6) (c);
 - If a registered salesperson is acting on behalf of the dealer, the salesperson signs next to the indication, on the contract for the warranty, of the information described in clause (6) (d); and
 - Within seven days after the parties enter into the contract for the warranty, provide the seller of the warranty with:
 - All documents detailing the contract the dealer has in its possession.
 - All payments the dealer has received from the purchaser.
 - A statement accurately describing the condition of the motor vehicle and the distance the motor vehicle has been driven, if the dealer has such a statement in its possession.

9.05

Sale of a Service Plan (Section 48)

1. A dealer who sells a service plan to a purchaser or lessee of a motor vehicle shall ensure the contract for the plan includes, in a clear, comprehensible and prominent manner, the following information:
- The name and address of the purchaser of the service plan
 - The name and address of the beneficiary of the service plan, if the purchaser is not the beneficiary
 - The business address, registered name and registration number of the dealer that entered into the contract, together with the legal name of the dealer if it is different from the registered name
 - The registered name and registration number of the salesperson, if any, who is acting on behalf of the dealer
 - All restrictions, limitations and conditions imposed by the seller of the service plan under the service plan
 - A statement as to whether or not the service plan is insured, and if it is insured, the name and address of the insurer
 - The make, model and model year of the vehicle
 - The VIN of the vehicle
 - A list of the goods and services provided under the service plan and a specific description for each item listed



Note: These apply when the purchaser or lessee is a customer who is not a registered dealer.

- j) The commencement date and end date of the service plan, expressed by way of calendar date, kilometres the vehicle has been driven, or a combination of both
 - k) The amount of the deductible, if any, for goods and services provided under the service plan
 - l) The sale price of the service plan, including an itemized list of all fees or costs that must be paid at the time of purchase and during the term of the service plan
 - m) The obligations, if any, of the beneficiary of the service plan
 - n) The locations at which the vehicle can be serviced under the service plan
 - o) Whether the service plan is transferable to another owner or lessee and the amount of any fee for that transfer
2. For each contract for a service plan, the dealer shall ensure that:
- a) The contract is signed by the parties
 - b) If a registered salesperson is acting on behalf of the dealer, the salesperson signs next to the indication on the contract
 - c) The purchaser receives a copy of the contract immediately after signing it
3. A dealer shall not facilitate the sale of a service plan to a purchaser or lessee of a motor vehicle unless the contract for the plan includes, in a clear, comprehensible and prominent manner:
- a) The information required by subsection (2), except for paragraphs 3 and 4;
 - b) The name and address of the seller (provider) of the plan;
 - c) The registered name and registration number of the dealer who facilitated the sale of the contract, together with the legal name of that dealer if it is different from the registered name; and
 - d) The registered name and registration number of the salesperson, if any, who is acting on behalf of the dealer who facilitated the sale of the contract.
4. A dealer who forwards an application for a service plan by a purchaser or lessee of a motor vehicle to the seller of the plan is deemed to facilitate the sale of the plan for the purposes of subsection (4).
5. If a dealer facilitates the sale of a service plan to a purchaser or lessee, the dealer shall:
- a) Use best efforts to ensure that the contract for the plan meets the requirements set out in clauses (3) (a) and (c);
 - b) Ensure that:
 - i) The dealer signs next to the indication, on the contract for the plan, of the information described in clause (4) (c); and
 - ii) If a registered salesperson is acting on behalf of the dealer, the salesperson signs next to the indication, on the contract for the plan, of the information described in clause (4) (d); and

- c) Within seven days after the parties enter into the contract for the plan, provide the seller of the plan with:
 - i) All documents detailing the contract that the dealer has in its possession; and
 - ii) All payments that the dealer has received from the purchaser.



9.06

Summary

Extended warranties must be backed or “guaranteed,” either by an insurance company or by a letter of credit provided to the Motor Vehicle Dealers Compensation Fund. Ensuring warranties are adequately backed protects consumers, dealers and the Fund.



Warranty and service plan disclosures must be clear. The regulations also mandate clear disclosure of specific information on contracts for warranties and service plans, including the components covered, conditions imposed and locations where service can be obtained. These requirements help purchasers and lessees understand the scope of protection and value offered.

Test Yourself

REMEMBER:

The questions on the Automotive Certification Test are in multiple-choice format only. This manual, however, contains a variety of question formats to help you understand the content, such as activities, assignments, multiple-choice questions, true-false questions and fill-in-the-blank questions.



The first questions below are the same questions asked in “What Do You Know?” at the beginning of this chapter. Try answering these questions again and compare your results with your earlier answers.

Then, answer the additional questions.

1. Extended warranties must be backed or guaranteed financially to ensure their viability. List two methods by which this backing can be provided.
2. If a dealer wishes to offer their own uninsured extended warranty, they must provide to the Compensation Fund an irrevocable letter of credit in the amount of:
 - a) \$100,000
 - b) \$250,000
 - c) \$500,000
 - d) \$1,000,000
3. Provide three pieces of information related to the coverage offered by the warranty that must be included in the warranty contract.
4. Dealers must send all payments and documents detailing the contract to the warranty company within:
 - a) Two days
 - b) Seven days
 - c) Two weeks
 - d) 30 days
5. True or False: Service plans must be backed by an insurance company.
6. Contracts for service plans must disclose in a clear, comprehensible and prominent manner:
 - a) The goods and services provided under the plan and a specific description for each item listed
 - b) All restrictions, limitations and conditions
 - c) The locations at which the vehicle can be serviced
 - d) Information stating whether or not the service plan is transferable to another owner or lessee
 - e) All of the above

Refer to Appendix 1 for the correct answers. Review the relevant section of the chapter for any question you answered incorrectly.

Chapter 10

INSPECTIONS AND INVESTIGATIONS

10.01 Learning Objectives

10.02 What Do You Know?

10.03 Introduction

10.04 Inspections

10.05 Inspection Guide & Checklist

10.06 Investigations

10.07 Summary

10.08 Test Yourself



10.01

Learning Objectives

After completing this chapter, you will be able to identify:

- 1.** The role and authority of the OMVIC inspector
- 2.** The importance of dealers and salespersons cooperating with inspectors
- 3.** The penalties for obstructing an inspector
- 4.** The powers of an OMVIC investigator
- 5.** The possibility of an investigator presenting a search warrant

10.02

What Do You Know?

Try answering these questions to test your knowledge:

- 1.** OMVIC inspectors must give how much notice before visiting/inspecting a dealer:
 - a) 24 hours' notice
 - b) 48 hours' notice
 - c) Seven days' notice
 - d) None
- 2.** True or False: An OMVIC inspector has the right to access dealer records, but not the vehicles on the dealer's lot.
- 3.** True or False: If an OMVIC inspector asks for assistance from the dealer, there is no legal obligation for the dealer to help.

Keep these questions in mind as you read through the following section.



10.03

Introduction

The Ontario Motor Vehicle Industry Council (OMVIC) employs inspectors and investigators to visit dealers, to handle complaints by customers and other dealers, and to ensure dealers and salespersons follow the *Motor Vehicle Dealers Act* (MVDA).

What is the difference between an inspector and an investigator?

Inspectors are somewhat similar to auditors. They have the right to inspect a dealer's premises, records and vehicles.

Investigators are somewhat similar to police officers. Conducting investigations based on complaints and allegations, OMVIC investigators are provincial offences officers and can lay charges if warranted.

The law requires that dealers and salespersons cooperate fully with inspectors and investigators.

10.04

Inspections

Under the MVDA, OMVIC **inspectors** have the right to access and inspect the dealer's premises, vehicles and vehicle parts, money, valuables, plus all books and records (electronic or otherwise) required to be maintained by the dealer. Inspectors also have the right to remove records to make photocopies if need

be, and to make inquiries regarding any complaint received about the dealer's conduct. No prior notice of the inspection is required. A record is kept of all completed inspections and follow-up action is taken as necessary. Dealers may ask an inspector to show evidence of their authority to conduct an inspection.

The inspector may use the dealer's own computer systems to produce information (including the dealer's data storage, processing or retrieval devices).



The inspector may copy anything that they believe is relevant to the inspection.

The dealer must assist the inspector when asked, such as producing a document or record, or helping the

inspector use the dealer's own data storage, processing or retrieval device.

The inspector can remove from the dealer items relevant to the inspection (including data storage disks or some other retrieval device) in order to complete the examination or make copies. The inspector must give the dealer a receipt for anything taken and return it promptly.

If issues are uncovered during an inspection, the inspector may leave a notice with the person in charge of the dealership to ensure everyone understands any changes required for compliance with the MVDA.

If OMVIC receives a complaint from the public about a dealer, an OMVIC client service representative may attempt to resolve the issue over the telephone. Alternatively, an OMVIC inspector may perform an inspection and discuss the complaint with the dealer.

OMVIC inspectors are based regionally to provide an inspection program for the entire province.

10.05

Inspection Guide & Checklist



The majority of dealers recognize OMVIC's inspection program as vital to ensuring compliance with the *Motor Vehicle Dealers Act* (MVDA) and its regulations. JUST as importantly, inspections serve as an educational opportunity and provide an excellent OPPORTUNITY FOR DEALERS AND SALESPEOPLE to have questions answered.

Inspectors have the right to:

- Access and inspect the dealer's premises, vehicles, books, records, etc.
- Remove records to make photocopies.
- Make inquiries regarding any complaint about the dealer's conduct.

OBSTRUCTION

is prohibited. No one can obstruct an inspector, or withhold, conceal, alter or destroy any money, valuables, documents, records, vehicles or vehicle parts relevant to an inspection.

A VISIT FROM an OMVIC inspector does not necessarily mean there has been a complaint against the dealer. As a matter of routine, OMVIC inspectors visit dealerships to ensure dealers and salespeople understand and conform to all requirements of the MVDA. This also provides dealers and salespeople with an opportunity to ask questions, and inspectors welcome the opportunity to address any concerns.

Investigations usually start after receiving information from various sources, including:

- Referrals from OMVIC inspectors
- Consumer complaints
- Police
- Other dealers

If substantiated, investigations can result in prosecution, issuance of a proposal for revocation of registration or referral to the OMVIC Discipline Committee.

DEALERS or salespersons contacted by an investigator are not always the subject of an investigation or may be involved only indirectly. The law requires dealers and salespeople to cooperate with an investigation.

To assist dealers prepare for an inspection and gain the most benefit, OMVIC has developed the Inspection Guide & Checklist. This resource:

- Suggests steps to take prior to an inspection
- Makes dealers aware of what to expect during an inspection
- Makes dealers aware of the appropriate steps to take on receipt of an Inspection Findings Notice (post-inspection)

The content of the *Inspection Guide & Checklist* can be downloaded at: <https://www.omvic.on.ca/portal/Consumers/EnforcementCompliance/Inspections/InspectionGuideChecklist.aspx>

10.06 Investigations

OMVIC's **investigators** are appointed under the MVDA and the *Provincial Offences Act*.

They are empowered to conduct investigations and lay charges under several relevant statutes including the MVDA and the *Consumer Protection Act*.

Investigations fall into two broad categories: unregistered activity (curbsiders) and dealer/salesperson misconduct. This typically involves allegations of non-compliant advertising, failure to disclose required information, falsification of records or unfair business practices (false, misleading, deceptive or unconscionable representations).

Dealers or salespersons contacted by an investigator are not always the subject of an investigation or may be involved only indirectly. The law requires dealers and salespeople to cooperate with an investigation.

OMVIC investigators may have to remove from the dealer items relevant to the investigation (including data storage disks or some other retrieval device). In most circumstances, the investigator will return the item within a reasonable time.



10.07 Summary

OMVIC inspectors and investigators have the right to enter a dealer's registered premises **without giving prior notice**. The inspector/investigator is entitled to have **unobstructed access** to the dealer's books, records, vehicles and vehicle parts. Refusing access or obstructing access can result in charges being laid, in revocation of registration or in refusal of registration, based on OMVIC's pre-approval inspection.

10.08

Test Yourself



The first questions below are the same questions asked in “What Do You Know?” at the beginning of this chapter. Try answering these questions again and compare your results with your earlier answers.

Then, answer the additional questions.

1. OMVIC inspectors must give how much notice before visiting/inspecting a dealer:
 - a) 24 hours’ notice
 - b) 48 hours’ notice
 - c) Seven days’ notice
 - d) None
2. True or False: An OMVIC inspector has the right to access dealer records, but not the vehicles on the dealer’s lot.
3. True or False: If an OMVIC inspector asks for assistance from the dealer, there is no legal obligation for the dealer to help.
4. True or False: The inspector cannot remove anything from the dealer without the dealer’s permission or a warrant.
5. What is the main difference between an OMVIC “inspector” and an “investigator”?
6. Choose the most correct answer:
The OMVIC inspector:
 - a) Can remove a document or a disk only if the inspector has a search warrant
 - b) May copy a document only if the dealer agrees
 - c) May use the dealer’s own computer system to produce required information
 - d) Cannot demand assistance from the dealer if the inspector wants to make use of the dealer’s computer system
7. Provide two sources of information that might trigger an investigation.

REMEMBER:

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Refer to Appendix 1 for the correct answers. Review the relevant section of the chapter for any question you answered incorrectly.

Chapter 11

AVOIDING CURBSIDERS

11.01 Learning Objectives

11.02 What Do You Know?

11.03 Introduction

11.04 Steps to Avoid Selling
to Curbsiders

11.05 Summary

11.06 Test Yourself



11.01

Learning Objectives

After completing this chapter, you will understand:

1. The definition of “curbsiders”
2. Steps that can be taken to ensure dealers don’t sell vehicles to curbsiders

11.02

What Do You Know?

Try answering these questions to test your knowledge:

1. What is a curbsider?
2. What are common problems with the vehicles curbsiders sell?
3. Studies have shown the percentage of “private” vehicle ads that are actually placed by curbsiders is:
 - a) Five per cent
 - b) 10 per cent
 - c) 20 per cent
 - d) 25 per cent

Keep these questions in mind as you read through the following section.



11.03

Introduction

Curbsiders are illegal unlicensed dealers. They are in the business of selling vehicles, but often pose as private sellers. Commonly, the vehicles curbsiders sell are in someone else's name, and curbsiders often misrepresent themselves and the vehicles they sell. Regularly, some curbsiders buy insurance “write-offs” and “fix” them up. Often, those repairs are substandard and the vehicles remain unroadworthy, but a phony structural repair certificate and Safety Standards Certificate (SSC) may hide this; the vehicles are then sold to unsuspecting consumers, often with no disclosure of the vehicle's true history. These vehicles may pose a danger to the purchaser and anyone who shares the road with him or her.

Curbsiders tarnish the retail automotive industry, and consumers who unwittingly buy from them are not protected by any consumer protection legislation. These illegal sellers pose a very real risk to the car-buying public and OMVIC spends a considerable portion of its resources investigating and prosecuting them. Often curbsiders are dealers whose licences have been revoked or who have been refused registration. Curbsiders have an unfair competitive advantage over registered dealers because they ignore tax laws and avoid the overhead expenses incurred by registered dealers and, in some instances, curbsiders compete with dealers for the same customers. Unfortunately, many dealers willingly, or with willful blindness, routinely provide curbsiders with inventory, selling them vehicles they don't want on their used lots. **This is illegal.** Regrettably, the Ontario Motor Vehicle Industry Council's (OMVIC's) investigations have revealed that most curbsiders obtain their inventory from dealers.

SOME STUDIES

have shown 25 per cent of all “private” classified vehicle ads are posted by curbsiders.

11.04

Steps to Avoid Selling to Curbsiders

There are a number of easy steps dealers can take to ensure they are not selling vehicles to curbsiders.

Register the vehicle in the buyer's name. Many curbsiders are able to escape detection by not registering vehicles in their own name. They simply take the signed vehicle permit from the seller and register it directly into a buyer's name. Dealers can stop this practice by ensuring all vehicles they sell are registered in the name of the buyer before they release the vehicle. Dealers should also check the identification of the buyer to ensure they are registering the vehicle in the correct name.

Be cautious when selling to an unknown dealer or wholesaler. If a buyer claims to be a dealer or wholesaler, ask to see their OMVIC registration certificate. By law, they must present it to anyone asking to see it. If there are concerns the registration certificate is not valid or is expired, dealers can check it on the OMVIC website: <https://www.omvic.on.ca/RegistrantSearch/index.aspx>.

Check the garage register. Dealers should conduct periodic checks of their garage register. Does the same purchaser's name appear numerous times? Can this be explained? Be vigilant.

Establish a zero-tolerance policy. A dealer should make it clear to the managers and staff of their used car department that selling to curbsiders is forbidden. The dealer may find himself or herself facing charges or a discipline hearing and the possibility of significant fines for selling to a curbsider.



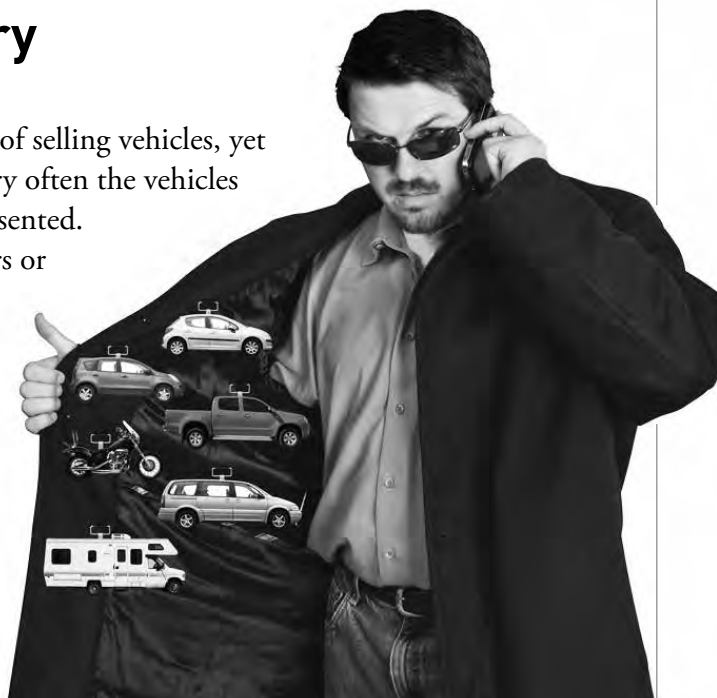
11.05

Summary

What is a Curbsider?

Curbsiders are in the business of selling vehicles, yet they pose as private sellers. Very often the vehicles they sell are seriously misrepresented.

It is illegal for registered dealers or salespersons to supply vehicles to curbsiders. Dealers can help prevent this by ensuring all vehicles are registered in the buyer's name and periodically checking the garage register.



Test Yourself

REMEMBER:

The questions on the Automotive Certification Test are in multiple-choice format only. This manual, however, contains a variety of question formats to help you understand the content, such as activities, assignments, multiple-choice questions, true-false questions and fill-in-the-blank questions.



The first questions below are the same questions asked in “What Do You Know?” at the beginning of this chapter. Try answering these questions again and compare your results with your earlier answers.

Then, answer the additional questions.

1. What is a “curbsider”?
2. What are common problems with the vehicles curbsiders sell?
3. Studies have shown the percentage of “private” vehicle ads that are actually placed by curbsiders is:
 - a) Five per cent
 - b) 10 per cent
 - c) 20 per cent
 - d) 25 per cent
4. Curbsiders:
 - a) Ignore tax laws
 - b) Avoid overhead
 - c) Have an unfair advantage over registered dealers
 - d) All of the above
5. List three steps a dealer can take to avoid selling vehicles to curbsiders.

Refer to Appendix 1 for the correct answers. Review the relevant section of the chapter for any question you answered incorrectly.

Chapter 12

MOTOR VEHICLE DEALERS COMPENSATION FUND

12.01 Learning Objectives	12.05 Valid Claims Against the Fund
12.02 What Do You Know?	12.06 Spreading the Word
12.03 Introduction	12.07 Reimbursing the Fund
12.04 Who Pays into the Compensation Fund?	12.08 Summary
	12.09 Test Yourself



12.01

Learning Objectives

After completing this chapter, you will be able to identify:

1. The purpose of the Motor Vehicle Dealers Compensation Fund
2. Who does and who does not pay into the Compensation Fund
3. The circumstances under which a consumer can make a claim against the Compensation Fund
4. Two methods of promoting the Compensation Fund's existence
5. Why dealers must reimburse the Compensation Fund, and penalties for not doing so

BE AWARE that a dealer who causes the Fund to pay a consumer's claim on the dealer's behalf may face revocation of registration due to the conduct that led to the claim or a lack of financial responsibility.

12.02

What Do You Know?

Try answering these questions to test your knowledge:

1. Is the Compensation Fund available to all customers, or only customers who are considered "consumers"?
2. How much does each salesperson pay into the Fund?
3. How much does each dealer pay into the Fund?

Keep these questions in mind as you read through the following section.



12.03

Introduction

The Motor Vehicle Dealers Compensation Fund (the Fund) was established to compensate consumers who suffer a financial loss arising from a transaction (sale or lease) with a registered motor vehicle dealer.

Under the *Motor Vehicle Dealers Act* (MVDA), the maximum claim allowed against the Fund is \$45,000.

12.04

Who Pays into the Compensation Fund?

A General Dealer or Broker pays \$324 for each location from which the dealer is authorized to trade. This is a one-time fee payable at the time of initial registration. (This is not an annual fee.) If a dealer adds a location, then an additional \$324 must be paid.

These one-time fees are subject to change by the Fund's Board of Trustees.

Salespeople do **not** pay into the Fund.

Should the Fund be depleted by claims (dropping its holdings below \$3 million), General Dealers and Brokers would have to make a payment to cover any shortfall in the Fund.

Which Dealer Classes Pay into the Fund?

- General Dealers
- Brokers



Note: In October 2017, the Fund's balance was \$6.3 million.

12.05

Valid Claims Against the Fund

In order to file a claim, the consumer must have suffered a loss as a result of a transaction involving the purchase or lease of a motor vehicle.

Circumstances such as these would be considered valid claims:

- A law enforcement authority has seized the vehicle (e.g., it was stolen) and indicated that it will not be returned to the buyer or lessee.
- A creditor (other than a creditor of the customer) has legally seized the vehicle and indicated it will not be returned to the buyer or lessee.
- The claim is for a deficiency the dealer has refused to remedy (the customer had indicated in the sale or lease contract that the matter was material to him or her).
- The dealer has been convicted of an offence in connection with the sale or lease of the vehicle (e.g., the dealer was convicted of fraud for tampering with an odometer).
- The customer has given a deposit, but the dealer has not provided the vehicle or an alternative acceptable to the consumer. For example, if a customer provides a down payment on a 2020 Ford and the dealer tries to substitute a 2019 model and refuses to refund the deposit, the customer could apply for compensation from the Fund.
- The customer has made a payment for an uninsured extended warranty or service plan (sold by the dealer or facilitated by the dealer) and the dealer is unable to provide the service. For example, if a dealer closes two years into a three-year warranty, the consumer could claim for one-third of the cost of the warranty.
- The dealer has gone bankrupt. For example, if a dealer was obligated to pay out a lien on a vehicle received as a trade-in but goes bankrupt before doing so, the customer could claim for the amount of the unpaid lien.
- A court has ordered the dealer to pay the customer. For example, a customer who finds the odometer on a vehicle had been rolled back could sue the dealer for misrepresentation. If the customer wins but the dealer refuses or is unable to pay, the customer could claim the money from the Fund.
- The claim is for a refund owed to a consumer entitled to rescission under clause 50 (10)(b) or 11(b) of the MVDA (see Chapter 6 – Rescission).

Consumers can claim up to \$45,000 for losses on one proven claim against a registered dealer (the previous maximum was \$15,000).

12.06

Spreading the Word

Most consumers have no idea the Motor Vehicle Dealer Compensation Fund exists, which is unfortunate because the Fund offers great protection to consumers when they buy from a registered dealer!

The MVDA allows the Fund's Board of Trustees to promote public awareness of the Fund and educate consumers on the procedure for making a claim.

As well, to help make customers aware of the Fund, the MVDA mandates the following statement be included on all retail sales and lease contracts:

You may be eligible for compensation from the Fund if you suffer a financial loss from this trade and if your dealer is unable or unwilling to make good on the loss.

12.07

Reimbursing the Fund

If a customer has suffered a loss as a result of a trade, the dealer should do everything possible to correct the problem and compensate the customer. If the customer has to submit a claim to the Fund (and the claim is legitimate), the dealer will be required to reimburse the Fund or risk losing registration. The dealer may not be considered for re-registration as long as they are indebted to the Fund.

A former dealer is required to reimburse the Fund for monies paid out to customers for claims against the former dealer.

A dealer who was an officer in a corporation that owed money to the Fund might wonder if they can set up a new dealer corporation without settling the amount owed to the Fund. The dealer's argument might be, "The money was owed by Corporation A, but now I am an officer of Corporation B, and you cannot 'pierce the corporate veil' (that is, you cannot hold me liable for the debts of the corporation)." **Financial responsibility is one of the criteria for registration and this behaviour does not demonstrate financial responsibility.** The Registrar can refuse to register the new Corporation B and can refuse to register the dealer as an individual.



12.08

Summary

The Motor Vehicle Dealers Compensation Fund was established to protect consumers should they suffer a loss as a result of a transaction with a registered dealer. Examples of valid claims might include unreturned deposits (should the dealer go out of business before delivering a vehicle), having a purchased or leased vehicle seized (vehicle was stolen or had a lien), or failing to provide the customer with material information or proper disclosure (e.g., vehicle was previously salvaged or the odometer was rolled back) causing the consumer a financial loss.

Should the Fund pay out on behalf of a dealer, the dealer is responsible for reimbursing the Fund.

The protection the Fund offers is a great reason for consumers to buy from a registered dealer. Spread the word!

THE MAXIMUM

claim per transaction to the Fund is \$45,000.

Test Yourself

REMEMBER:

The questions on the Automotive Certification Test are in multiple-choice format only. This manual, however, contains a variety of question formats to help you understand the content, such as activities, assignments, multiple-choice questions, true-false questions and fill-in-the-blank questions.

Refer to Appendix 1 for the correct answers. Review the relevant section of the chapter for any question you answered incorrectly.



The first questions below are the same questions asked in “What Do You Know?” at the beginning of this chapter. Try answering these questions again and compare your results with your earlier answers.

Then, answer the additional questions.

1. Is the Compensation Fund available to all customers, or only customers who are considered “consumers”?
2. How much does each salesperson pay into the Fund?
3. How much does each dealer pay into the Fund?
4. True or False: The maximum individual claim from the Fund is \$15,000.
5. List three types of valid claims against the Fund.
6. True or False: The Fund is similar to an insurance policy, so a dealer does not have to reimburse the Fund should the Fund pay out a claim on behalf of a dealer.
7. Choose the correct answer:
 - a) The maximum individual claim is \$45,000
 - b) A claim can be made only if the dealer is bankrupt or insolvent
 - c) A salesperson makes a one-time payment into the Fund
 - d) Dealers pay \$300 to the Fund each year

Chapter 13

CONSUMER PROTECTION ACT

- | | |
|--|--|
| 13.01 Learning Objectives | 13.12 “Material Fact” |
| 13.02 What Do You Know? | 13.13 “Honest Mistake” |
| 13.03 Introduction | 13.14 Financing Agreements |
| 13.04 Customers vs. Consumers | 13.15 Leasing Agreements |
| 13.05 Penalties for Breaching the <i>Consumer Protection Act</i> | 13.16 Disclosure Statement for a Lease (s.74) |
| 13.06 Remedy Available to the Consumer | 13.17 Maximum Liability Under a Lease; “Residual Obligation Lease” |
| 13.07 Two-Thirds Exception on Repossession | 13.18 “Net Sale Proceeds” |
| 13.08 Oral Evidence in Court | 13.19 Dealer Financing (s.44) |
| 13.09 Credit Card Refunds | 13.20 Summary |
| 13.10 Ambiguity | 13.21 Test Yourself |
| 13.11 Unfair Practices | |



13.01

Learning Objectives

After completing this chapter, you will be able to identify:

1. Where and when the *Consumer Protection Act* applies
2. The differences between a “customer” and a “consumer”
3. The penalties for conviction of an offence under the CPA
4. The remedies available to the consumer under the CPA
5. How the two-thirds exception on repossession is applied
6. The type of evidence that is admissible in court under the CPA
7. The consumer’s rights regarding credit card refunds
8. The approach of the courts to “ambiguity” in a consumer contract
9. The two types of unfair practices prohibited by the CPA
10. The essential element in an “unconscionable representation”
11. The meaning of “material fact”
12. The dealer’s obligations in financing and leasing agreements under the CPA
13. The maximum liability under a “residual obligation lease”
14. The use of the term “net sale proceeds”

THE PROTECTIONS

granted to consumers by the CPA cannot be nullified in a contract.

13.02

What Do You Know?

Try answering these questions to test your knowledge:

- 1.** “Not all customers are consumers, but all consumers are customers.” Explain the difference between a consumer and a customer.
- 2.** True or False: The *Consumer Protection Act* protects “consumers” only.
- 3.** True or False: Protections under the *Consumer Protection Act* would apply to a carpenter buying a van for his small carpentry business.

Keep these questions in mind as you read through the following section.



13.03

Introduction

The *Consumer Protection Act, 2002* (CPA), applies to nearly all Ontario businesses (not just dealers), and it covers both goods and services, including vehicle sales, leasing and repairs. The CPA applies to consumer transactions if either the consumer or the supplier is in Ontario. If an Ontario-based business has sales with a consumer in another jurisdiction, that customer is protected under the CPA.

However, the protection provided in the CPA applies only to consumers. The CPA does not extend protection to businesses/corporations nor to an individual who is engaged in a business-to-business transaction.

The protections granted to consumers by the CPA cannot be nullified in a contract. Should a consumer sign a document that would waive some CPA rights, the piece of paper is worthless; the consumer is still entitled to all of his or her rights under the CPA.

Simply, a consumer’s rights under the law cannot be taken away by a contract.

13.04

Customers vs. Consumers

What is the difference between a customer and a consumer?

A “**customer**” is anyone who buys, leases or receives services from a dealer.

A customer may be an individual acting for personal, family or household purposes, an individual acting for business purposes (such as a sole proprietor) or a corporation.

A “**consumer**” also buys, leases or receives services from a dealer. However, a consumer is someone acting for personal, family or household purposes, but is NOT an individual acting for business purposes or a corporation.

Therefore, not all customers are consumers, but all consumers are customers.

13.05

Penalties for Breaching the *Consumer Protection Act*

Penalties for breaching the CPA can be severe. Individuals convicted of an offence under the CPA can receive a maximum of two years less a day in jail and/or a fine of up to \$50,000. A corporation convicted of an offence can be fined up to a maximum of \$250,000.

13.06

Remedy Available to the Consumer

Under Section 18 of the CPA, if consumers believe they have been subjected to an unfair practice (a false, misleading, deceptive or unconscionable representation; see 13.11), they have the right to request rescission (cancellation) of the contract within one year of signing the contract. After one year, consumers cannot cancel the contract, but can still sue for damages.

THE CONSUMER PROTECTION ACT, 2002,

protects consumers only.



Example: Last September, Shelly bought a used car that had been advertised as having anti-lock brakes (ABS). Thirteen months later, during the course of routine maintenance, she discovered the car was not equipped with ABS. Shelly is beyond the time limit to cancel the contract, but she can still sue for damages. Because the vehicle was misrepresented, this would be an example of an unfair business practice under the CPA.

THE TWO-THIRDS

exception applies only to vehicles bought by consumers and does not apply to business vehicles.

13.07

Two-Thirds Exception on Repossession

If the consumer defaults on a loan/payment schedule but has paid off more than two-thirds of the total purchase price, the dealer must get permission from the court to repossess the vehicle.

Even if the dealer has a registered lien on the vehicle, court permission is still required to repossess a vehicle that has been two-thirds paid for.

13.08

Oral Evidence in Court

If a consumer goes to court and informs the judge that specific representations were made or certain matters were verbally discussed in negotiating the deal, even though none of these discussions are mentioned in the written agreement, the judge can still take these verbal discussions into account.

Under Section 18 of the CPA, such “oral evidence” is admissible. This means the dealer could be bound to some statement, term, condition or undertaking that a judge believes was discussed, even if it’s not included in the written agreement.

13.09

Credit Card Refunds

If a consumer paid by credit card, under Section 99 of the CPA, it is possible for the consumer to get the credit card company to process a refund.

When a consumer is entitled to a refund under the CPA and the dealer does not make the refund, then after 60 days, the consumer also has a right to request a charge back from his or her credit card company.

At the same time, the consumer could file a complaint with the Ontario Motor Vehicle Industry Council (OMVIC) about the dealer’s refusal to issue a refund.

The credit card company makes its own determination as to whether it will issue the refund or reverse the original charge.

13.10

Ambiguity

If the language in any agreement, contract, bill of sale, lease, etc., is ambiguous (that is, the document can be interpreted in more than one way), the ambiguity will be interpreted in favour of the consumer and against the dealer.

Therefore, it is important for the dealer to ensure all contract language is clear and correct.

13.11

Unfair Practices

The CPA defines unfair practices, makes it very clear “misrepresentation” is not allowed, sets serious penalties for breaches and gives consumers real recourse if they have been misled.

Under Section 18 of the CPA, a court might award punitive or exemplary damages in cases of unfair practices. The consumer who takes the dealer to court might be awarded a sum much higher than the amount of the actual damage if the judge decides to punish or make an example of that dealer.

There are two types of unfair practices:

1. False, misleading or deceptive representations
2. Unconscionable representations (Section 15)

“False, misleading or deceptive practices” include:

1. Failing to disclose a “material fact” (e.g., not informing a customer of structural damage to the vehicle)
2. Deceiving a customer by distorting a “material fact” (using exaggeration, hints or double meanings)
3. Telling the customer the car can perform in a way that it cannot or is still under manufacturer’s warranty if it is not
4. Saying the car is of a particular model, style, quality or grade if it is not.
5. Telling the customer that the vehicle or a part is new (or unused) if it’s not
6. Seriously understating the distance the vehicle has been driven or the amount of use it has had
7. Selling a repair, replacement, service or part that is not needed
8. Saying there is a specific price advantage if this is not true (e.g., “The price will go up on Monday morning!”)
9. The dealer or salesperson misrepresents the authority of some employee to negotiate the final terms of the agreement

UNCONSCIONABLE REPRESENTATION:

A grossly unfair practice in which a business takes advantage of a consumer

10. The dealer or salesperson misrepresents the purpose of an additional charge (e.g., freight and registration fee)

“Unconscionable representations” occur if:

1. The consumer cannot protect his or her own interests (perhaps because of a disability, illiteracy, impairment, etc.); for example, if the customer was drunk or under heavy medication when he signed the contract, he can have the deal cancelled
2. The price grossly exceeds the price that should be charged
3. The dealer or salesperson put too much pressure on the customer
4. The consumer has no possibility of meeting the payments
5. This is an absolutely poor deal for the consumer (and is a one-sided, excellent deal for the dealer)
6. The dealer or salesperson gave a misleading opinion and the consumer relied on that opinion to his or her detriment

Consider these scenarios:

Example 1: Alex, a dealer, has in inventory a four-year-old vehicle that had been owned for the full four-year period by a leasing company. Alex assures a customer the car had only one owner.

Example 2: Shane allows someone who obviously cannot read well to sign a contract for a three-year lease without explaining the conditions of the contract.

Example 3: Lucas pressures a widow to buy a car he knows is unsuitable, telling her that her late husband would have wanted her to have this car.

The above practices would likely be deemed by a court or tribunal as unfair business practices, and are illegal for the following reasons:

Example 1: Although Alex’s statement that the vehicle had only one owner is technically correct, it is misleading. It implies the vehicle was cared for by one individual, when in fact many different people have used the vehicle.

Example 2: This is an example of an unconscionable practice. Shane cannot enter into a contract with someone who is not able to protect his or her own interests due to physical infirmity (such as senility), illiteracy or an inability to understand the language of the contract.

Example 3: A court might consider this an unconscionable practice for two reasons:

1. Lucas is putting undue pressure on the customer.
2. Lucas is making a misleading statement of opinion that the customer is likely to rely on to her own disadvantage.

13.12

“Material Fact”

The CPA assumes that dealers and salespeople have more resources, knowledge and experience than the consumer does in determining the facts about a vehicle.

Dealers and salespeople have an obligation to disclose all “material facts” about the vehicle, even if the customer does not ask. A material fact is information that might affect the customer’s decision to purchase or lease the vehicle if he or she knew about it.

What is considered “material” may differ among customers.

For example, a minor “fender bender” may not matter to a customer who pays \$1,000 for a 15-year-old vehicle, but it will likely be important to a customer who pays \$50,000 for a brand new vehicle. One way to determine what “material” is to a particular customer is to listen to the questions that he or she asks about the vehicle.



Note: If a vehicle had been in a serious collision or incident, knowledge of this information would very likely affect any customer’s decision to buy, or the price the customer would be willing to pay. It is always best to err on the side of caution: dealers should tell a customer everything they can about a vehicle.

13.13

“Honest Mistake”

Dealers and salespeople should reveal everything they know about the vehicles they are selling, even if the customer doesn’t ask. If the dealer or salesperson had no knowledge of a problem, the dealer can still be held liable if they *should* have known.

If the dealer unknowingly breaches the CPA, the consumer is still fully entitled to the protection of the CPA. For example, the dealer buys a used vehicle at fair market value with 52,000 km on it and sells it to a consumer. A month later, the consumer discovers the odometer had been rolled back by a previous owner. Even though the dealer did not know about the roll back, and bought and sold in good faith, the consumer is protected by the CPA and may request cancellation of the contract or negotiate other compensation.

13.14

Financing Agreements

If the dealer assists a consumer in arranging financing for a vehicle, it is the dealer's obligation to ensure the consumer receives an Initial Disclosure Statement (IDS) or a Lease Disclosure Statement (LDS). Typically these are given when the consumer agrees to purchase or lease. It is an offence under the CPA if the dealer fails to deliver an IDS or an LDS to the consumer at or before the time the consumer enters into the agreement. The IDS must include:

- What the consumer will receive from the lender, including when and how they will receive it (e.g., the vehicle, cash rebate, payment of warranty premiums or other fees, etc.)
- The term of the agreement (e.g., three years)
- The cost of borrowing
- The amortization period if different from the term (in motor vehicle transactions, the amortization period and the term are usually the same)
- The interest rate
- If the interest rate may change during the term of the agreement, an explanation of those details
- When the lender will start charging interest
- When interest will be compounded
- Any other payments the consumer must make as a condition of borrowing (other than the interest)
- The details of any grace period under the agreement (e.g., if there is no interest for the first year of the agreement, a detailed description of how this works)
- The annual percentage rate
- Information about optional services (e.g., price, description, termination rights) if the dealer has not provided the consumer with a separate statement about these services
- The total of all payments the consumer is required to make
- If the consumer is not required to make regular payments, a description of how he or she is required to make payments
- An explanation of how each payment will be applied to the outstanding principal and interest
- Any prepayment rights, charges or penalties
- Required refund if consumer pays full balance early

- Charges the consumer will need to pay if he or she does not comply with his or her responsibilities under the agreement
- If there is mandatory insurance, an explanation that the consumer does not have to buy insurance through the dealer.

Include Multiple Agreements in the LDS

If the consumer signs more than one agreement (e.g., a lease and a bill of sale), the information required in the LDS should be included in both documents to ensure there is no confusion. If it is not possible to include all the details in both agreements, the dealer could include a statement that the consumer has received the detailed information on a separate agreement (and have the consumer initial that statement). Refer to Chapter 13.16 for more information about the LDS.

Ultimately, it is the dealer's responsibility to ensure the consumer has received this information in a clear, comprehensible and prominent fashion in accordance with the CPA.

13.15

Leasing Agreements

The CPA requires that:

1. Conditions and warranties of merchantable quality, fitness for purpose and freedom from liens (in the *Sale of Goods Act*) are extended to include leased vehicles.
2. Restrictions apply to the amount charged on residual obligation (open-end) leases.
3. Full disclosure of the cost of credit is included in lease agreements and advertisements.

CPA Regulation 73 requires vehicle lease advertisements disclose:

1. That it is a lease
2. Length of the lease
3. Any payment to be made before or at the beginning of the lease
4. The amount of the monthly payment
5. Details of any other payments and how they are calculated
6. The amount that the lessee will be charged for exceeding the mileage allowance and how it is calculated
7. Annual percentage rate for the lease (this must be displayed as prominently as the most prominently disclosed payment that forms part of the lease)

Question: What if the advertisement applies to a range of leases and the information would not be the same for each lease?

Answer: This advertisement must make it clear that it is disclosing information for a “representative lease” that fairly depicts the leases to which this advertisement applies. There are special requirements for advertisements that are broadcast on radio or television, are on a billboard or bus board, or anywhere there are similar time and space limitations.

13.16

Disclosure Statement for a Lease (Section 74)

Under the CPA, disclosure must be made before the agreement is signed or before accepting payment.

Disclosure statements must be in writing and disclose:

1. That it is a lease
2. Length of the lease
3. A fair and accurate description of the leased vehicle
4. Lease value of the vehicle (this should be comparable to what a cash customer would pay for the vehicle)
5. Details of any advance to be made by the person leasing the vehicle
6. Any payment to be made before or at the beginning of the lease
7. Amount of the monthly payment
8. Number of monthly payments
9. “Capitalized amount”
10. “Estimated residual value” of the vehicle
11. If it is an “option lease,” complete details of how the option may be exercised
12. If it is a “residual obligation lease,” complete details of the lessee’s liability at the end of the lease
13. Circumstances, if any, of early termination of the lease by the lessee and/or the lessor, and how the lessee’s payment is calculated
14. Any other payment by the lessee (including calculation for unreasonable or excessive wear or use)
15. Implicit finance charge
16. Annual percentage rate
17. Total lease cost

13.17

Maximum Liability Under a Lease; “Residual Obligation Lease”

CPA Regulation 76 details the maximum liability of the lessee under a “residual obligation lease.” The maximum liability of the lessee at the end of the lease term of a residual obligation lease, after returning the leased goods to the lessor, is the amount determined using the formula:

$$P + (V - R)$$

in which:

“P” is the amount that the lessee is required to pay to the lessor at the end of the lease term if the realizable value of the leased goods at the end of the lease term equals the estimated residual value of the lease goods. This is what the lessee needs to pay regardless of what the vehicle is worth at the end of the lease, such as a flat-rate termination charge of \$500.

Note: You cannot charge these amounts unless they are disclosed in the original lease document.

“V” is the estimated residual value of the leased goods.

“R” is the realizable value of the leased goods at the end of the lease term, as determined under subsections (2), (3) and (4).

Subject to subsections (3) and (4), the realizable value of leased goods at the end of the lease term is the greatest of:

- a) The price, exclusive of taxes, at which the lessor disposes of the leased goods
- b) 80 per cent of the estimated residual value of the leased goods
- c) The amount determined by subtracting, from the estimated residual value of the leased goods, the product obtained by multiplying the average monthly payment under the lease by three

If the amount determined under clause (2) (b) is the greatest of the three amounts, the realizable value of leased goods at the end of the lease term is the amount obtained by subtracting, from the amount determined under clause (2) (b), that part of the difference between the amount determined under clause (2) (b) and the amount determined under clause (2) (a) that is attributable to unreasonable or excessive wear or use of the leased goods or to damage to the leased goods for which the lessee is responsible under the lease.

If the amount determined under clause (2) (c) is the greatest of the three amounts, the realizable value of leased goods at the end of the lease term is the amount obtained by subtracting, from the amount determined under clause (2) (c), that part of the difference between the amount determined under clause (2) (c) and the amount determined under clause (2) (a) that is attributable to unreasonable or excessive wear or use of the leased goods or to damage to the leased goods for which the lessee is responsible under the lease. The effect of the wording is to limit what the dealer can claim in “unreasonable or excessive wear or damage” to the leased vehicle.

EXAMPLE

Basic Facts:

- Monthly payment is \$400.
- Estimated residual value is \$2,000.
- Vehicle sells at end of lease for \$1,400.
- There are no termination charges disclosed on the lease agreement (i.e., P = zero).

Basic Calculations:

- Section 76 (2) (a) is \$1,400.
- Section 76 (2) (b) is \$1,600 (80 per cent of \$2,000).
- Section 76 (2) (c) is \$800 [\$2,000 less (3 x \$400)].
- The greatest of above three is \$1,600.
- This means that Section 76 (3) applies.
- Section 76 (3) is used to determine R (realizable value); take the Section 2 (b) amount of \$1,600, and subtract that portion of the difference between 2 (b) and 2 (a) that is attributable to “unreasonable or excessive wear and damage.” The difference between 2 (a) and 2 (b) is \$200.
- The lessor can automatically charge back the customer \$400 for the loss (i.e., the difference between the residual value V on the contract of \$2,000 and the realizable value R of \$1,600). In addition, if the lessor can prove the vehicle has been subjected to excess wear and tear, the lessor can charge the customer for additional losses up to a maximum of \$200. Therefore, in this example, the most that the lessor can charge back the customer is \$600.

13.18

“Net Sale Proceeds”

Dealers should not use the term “net sale proceeds” to make the consumer lessee liable for expenses incurred by the dealer for disposing of the vehicle.

For example, if the lessor sells the vehicle at auction for \$5,000 and pays an auction fee of \$300, the realizable value is \$5,000 (not \$4,700).

The only way the lessor can recover the \$300 is by having disclosed it on the original lease agreement as a separate fee, and incorporating that into the “cost of borrowing” (i.e., if auction fees or costs of inspection were included as lease-end charges in the lease agreement).

13.19

Dealer Financing (Section 44)

The MVDA contains additional requirements for dealers to ensure a customer receives the proper disclosures required by the CPA.

For example, if a registered motor vehicle dealer enters into a contract for the sale of a motor vehicle with a buyer and provides financing for the purchase or the application for the financing to the buyer, the selling dealer shall use best efforts to ensure the terms of the credit agreement between the buyer and the person providing the financing do not vary from the information the dealer has provided to the buyer on the bill of sale or lease agreement.



13.20

Summary

The *Consumer Protection Act* forbids a business from using “false, misleading, deceptive or unconscionable representations.” The CPA sets out remedies for consumers who have been victims of these “unfair practices,” including the right to cancel a contract for a period of up to one year. There are also serious penalties and/or fines for individuals and businesses that breach the CPA.

The CPA has specific requirements in such areas as the advertised cost of credit, financing agreements and leasing agreements, and the lease disclosure statement.

The CPA may not apply equally to all “customers.” The protections under the CPA apply only to consumers (persons acting for personal, family or household purposes) and do not apply to an individual acting for business purposes, nor to a corporation.

13.21

Test Yourself



The first questions below are the same questions asked in “What Do You Know?” at the beginning of this chapter. Try answering these questions again and compare your results with your earlier answers.

Then, answer the additional questions.

1. “Not all customers are consumers, but all consumers are customers.” Explain the difference between a consumer and a customer.
2. True or False: The CPA protects “consumers” only.
3. True or False: Protections under the CPA would apply to a carpenter buying a van for his or her small carpentry business.
4. True or False: The CPA covers sales but not leases, and not services such as repairs.
5. True or False: The consumer can waive their rights under the CPA, but this must be in writing.
6. Penalties for breaching the CPA can be severe. What is the maximum penalty for an *individual* convicted of an offence under the CPA?
7. True or False: In matters related to the CPA, courts will only consider evidence that is written into the contract.
8. True or False: If a consumer defaults on a loan/payment schedule but has paid off more than two-thirds of the total purchase price, the dealer must get permission from the court to repossess the vehicle.
9. The two “types” of unfair practices are (choose two):
 - a) Unconscionable representations
 - b) Ambiguous representations
 - c) Disingenuous representations
 - d) False, misleading or deceptive representations
10. Provide three examples of a “false, misleading or deceptive practice.”
11. What is the essential element of an “unconscionable representation”?

REMEMBER:

The questions on the Automotive Certification Test are in multiple-choice format only. This manual, however, contains a variety of question formats to help you understand the content, such as activities, assignments, multiple-choice questions, true-false questions and fill-in-the-blank questions.

Refer to Appendix 1 for the correct answers. Review the relevant section of the chapter for any question you answered incorrectly.

- 12.** Choose the most correct answer.
An unconscionable representation:
- a) May involve taking advantage of a consumer who cannot protect his or her own interests
 - b) Involves a customer who has no conscience
 - c) Must involve selling a vehicle at a price that is ridiculously high
- 13.** Provide three examples of an “unconscionable representation.”
- 14.** Explain “material fact.”
- 15.** List four pieces of information that must be included in an Initial Disclosure Statement.
- 16.** List four pieces of information that must be included in a Lease Disclosure Statement.
- 17.** True or False: If a dealer acted in good faith and unknowingly breached the CPA, the consumer is no longer protected by the CPA.

Chapter 14

REPAIRS

14.01 Learning Objectives
14.02 What Do You Know?
14.03 Introduction
14.04 Repairs

14.05 Invoice for Repairs
14.06 Summary
14.07 Test Yourself



14.01

Learning Objectives

After completing this chapter, you will be able to identify:

- 1.** The act that regulates vehicle repairs
- 2.** Repair estimate requirements
- 3.** Replaced parts requirements
- 4.** The statutory warranty on repairs
- 5.** The requirements for telephone authorization of repairs
- 6.** The signage that must be posted at the dealer
- 7.** The importance of a detailed repair invoice
- 8.** The statement that must be printed on every repair invoice

14.02

What Do You Know?

Try answering these questions to test your knowledge:

- 1.** Motor vehicle repairs are governed by what Ontario legislation?
 - a) *Motor Vehicle Repair Act*
 - b) *Consumer Protection Act*
 - c) *Motor Vehicle Dealers Act*
 - d) None of the above
- 2.** True or False: Dealers/repairers must provide estimates for repairs.
- 3.** True or False: Final repair costs may not exceed the estimate by more than 10 per cent.

Keep these questions in mind as you read through the following section.



14.03

Introduction

Motor vehicle repairs are covered under Part VI of the *Consumer Protection Act* (CPA), not the *Motor Vehicle Dealers Act* (MVDA). The CPA protects a “consumer” only (that is, an individual acting for personal, family or household purposes, and not a person who is acting for business purposes).

If a dealer offers repairs to a consumer’s vehicle, there are specific legal requirements that must be adhered to, particularly in the area of estimates, authorizations, parts installation and warranties. This chapter provides a brief summary of key points of Part VI of the CPA, “*Repairs to Motor Vehicles and Other Goods.*”

14.04

Repairs

The CPA stipulates the following obligations for the dealer or any other motor vehicle repairer:

- The dealer must give the consumer an estimate of how much repairs will cost. The final bill must not be more than 10 per cent above that estimate. There is one exception: if the dealer offers to give the consumer an estimate and the consumer declines an estimate but specifically authorizes a maximum amount for the repair, the final bill cannot exceed the maximum amount authorized – not even by one penny.
- If the cost is being paid directly or indirectly by an insurance company (an “insurance job”), the dealer cannot give a higher estimate or charge more than if the job was not being paid by an insurance company.
- When the dealer replaces a part, the old part must be offered to the consumer. This offer to return old parts must be automatic (meaning that consumers don’t have to ask first) and the parts must be returned in a clean container.
- Repairs involving the installation of new or reconditioned parts come with a mandatory minimum warranty of 90 days or 5,000 km, whichever comes first. This warranty includes installed parts and required labour. While warranty repair work will normally be done at the same dealer that performed the original work, sometimes it is not reasonable to return the vehicle to the original repairer. In such a circumstance, the vehicle may be taken to the closest facility available for repairs and the consumer is entitled to recover from the original repairer the cost of the repairs and reasonable towing charges.
- If a consumer subjects the vehicle to misuse or abuse, they are not entitled to any part of this warranty.
- The dealer must provide the consumer with a written invoice.
- The dealer should ask the customer to sign a written authorization before any repairs are started. The customer can authorize repairs by telephone, but the dealer must document four key pieces of information: the name of the person authorizing, their phone number, the date of the call and the time of the call.



Note: If the dealer offers to give the consumer an estimate and the consumer declines an estimate, but specifically authorizes a maximum amount for the repair, the final bill cannot exceed the maximum amount authorized – not even by one penny.

- Under CPA Regulation 50, the dealer must post a sign stating:
 - a) The dealer's obligation regarding estimates
 - b) How labour charges are computed (hourly rate, flat rate, charge for diagnostic time)
 - c) Details of any commission received by the dealer on parts sold
 - d) A list of other possible charges (e.g., vehicle storage or delivery, charge for a "loaner vehicle")
 - e) That each part removed will be available to the consumer
- Under CPA Regulation 51, the dealer must ensure the following statement is printed on every invoice:

"The *Consumer Protection Act, 2002*, provides you with rights in relation to having a motor vehicle repaired. Among other things, you have a right to a written estimate. A repairer may not charge an amount that is more than ten (10) per cent above that estimate. If you waived your right to an estimate, the repairer must have your authorization of the maximum amount that you will pay for the repairs. The repairer may not charge more than the maximum amount you authorized. In either case, the repairer may not charge for any work you did not authorize. If you have concerns about the work or repairs performed by the repairer or about your rights or duties under the *Consumer Protection Act, 2002*, you should contact the Ministry of Consumer Services."

14.05

Invoice for Repairs

CPA Section 62 and CPA Regulation 51 set out the requirements for vehicle repair invoices.

Repair invoices must be in writing and include:

1. The name of the consumer
2. The name of the repairer (and if different, the name under which the repairer carries on business)
3. The business address, telephone number, email address and fax number of the repairer

4. The make, model, vehicle identification number (VIN) and licence number of the vehicle
5. The date the consumer authorized the work and repairs
6. The date the work and repairs were completed
7. The date the vehicle is returned to the consumer
8. The odometer reading at the time the consumer authorized the work or repairs and when it is returned to the consumer
9. An exact description of the work performed or repairs made to the vehicle
10. An itemized list of the parts installed and a statement as to whether each part is a new part provided by the original equipment manufacturer, a new part not provided by the original equipment manufacturer, a used part or a reconditioned part
11. The amount the consumer is being charged for each part listed under paragraph 10
12. An itemized list of the shop supplies used for which the consumer is being charged, and the amount charged for each of the supplies
13. The total charge for labour and the method used to compute it, including:
 - The number of hours billed
 - If a flat rate was applied in respect of any of the work or repairs, the flat rate
 - The amount, if any, charged for diagnostic time
14. An itemized list of all other goods and services (such as storage, picking up or delivering the vehicle, providing a loaner vehicle, etc.) for which the consumer is charged.
15. If the consumer has declined the return of any parts removed, work on or repairs to the vehicle:
 - A statement to that effect
 - The resulting reduction, if any, in price
16. The total amount billed to the consumer and the terms and methods of payment.



14.06

Summary



Repair invoices must include all information specified under the *Consumer Protection Act*.

Motor vehicle repairs are regulated under the CPA, which clearly sets out the dealer's/repairer's specific obligations regarding estimates (provide them in writing), parts replacement (offer to return old parts to the consumer), warranties (minimum of 90 days/ 5,000 km), telephone authorization (document authorizing person's name, phone number, and the date and time of the call), and the signage that must be posted at the dealer.

14.07

Test Yourself



The first questions below are the same questions asked in “What Do You Know?” at the beginning of this chapter. Try answering these questions again and compare your results with your earlier answers.

Then, answer the additional questions.

1. Motor vehicle repairs are governed by which Ontario legislation?
 - a) *Motor Vehicle Repair Act*
 - b) *Consumer Protection Act*
 - c) *Motor Vehicle Dealers Act*
 - d) None of the above
2. True or False: Dealers/repairers must provide estimates for repairs.
3. True or False: Final repair costs may not exceed the estimate by more than 10 per cent.
4. List five pieces of information that must be on all repair invoices.
5. If a repair involves the installation of new or reconditioned parts, which of the following statements is most correct?
 - a) The minimum warranty on repairs is 90 days or 5,000 km (whichever comes first)
 - b) The minimum warranty on repairs is 180 days or 10,000 km (whichever comes first)
 - c) There is no warranty on repairs unless it is written on the repair invoice
6. Choose the most correct answer.
When the dealer replaces a part:
 - a) The consumer can have the old part returned if the consumer asks for it
 - b) The dealer must offer the old part to the consumer
 - c) The dealer must warn the consumer that the part is greasy and dirty
 - d) The dealer can keep the old part
7. If the dealer/repairer is seeking authorization for repairs by phone, they must document four pieces of information. What are they?
8. Dealers must post a sign stating:
 - a) Labour charges and how they are computed
 - b) The dealer's obligation to provide estimates
 - c) That each part removed is available to the consumer
 - d) All of the above

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Refer to Appendix 1 for the correct answers. Review the relevant section of the chapter for any question you answered incorrectly.

Chapter 15

RESEARCHING THE VEHICLE

15.01 Learning Objectives	15.05 Researching “Distance Driven”
15.02 What Do You Know?	15.06 Liens
15.03 Introduction	15.07 Summary
15.04 Total Distance a Vehicle Has Been Driven	15.08 Test Yourself



15.01

Learning Objectives

After completing this chapter, you will be able to identify:

- 1.** The necessary disclosure when the dealer or salesperson believes the distance shown on the odometer does not accurately reflect the vehicle’s true distance driven
- 2.** The process required when an odometer has been replaced
- 3.** How to research and determine the true distance a vehicle has been driven
- 4.** The importance of checking for liens and providing clear title to customers

DUE DILIGENCE:

Such a measure of prudence or activity as is properly expected from and ordinarily exercised by a reasonable and prudent person.



The research must also allow the dealer to make all disclosure requirements, including “any other fact about the vehicle that affects the structural or mechanical quality or performance of the vehicle that, if disclosed, could reasonably be expected to influence the decision of a reasonable purchaser or lessee to buy or lease the vehicle.”

15.02

What Do You Know?

Try answering these questions to test your knowledge:

1. Explain four techniques that can be used to determine or research the distance a vehicle has been driven.
2. Why should a dealer do a lien check on a vehicle that is being taken in on trade?
3. Is it possible for more than one party to hold a lien on the same vehicle?

Keep these questions in mind as you read through the following section.



15.03

Introduction

In order to make proper disclosure, a dealer must execute “due diligence” by researching the vehicles advertised and offered for sale. This includes determining if the odometer reading is accurate and ensuring there are no liens on the vehicle.

15.04

Total Distance a Vehicle Has Been Driven

Dealers must disclose the distance a vehicle has been driven, which is usually obtained from the odometer. However, if the dealer is unable to determine the distance driven, the *Motor Vehicle Dealers Act* (MVDA) lays out specific information and disclosure that must be provided to the purchaser.

It is NOT sufficient to have the customer sign the words or acronyms “true kilometres unknown” (TKU) or “true miles unknown” (TMU).

As discussed in Chapters 4 and 5, a dealer who is unable to determine the distance driven but can determine the distance driven as of a past date must disclose to the customer (and on the contract) the distance driven as of that past date, and also state that “the total distance driven is believed to be higher than that distance.”

If the dealer simply cannot make any type of determination as to total distance driven (or the distance driven as of a past date), the dealer must disclose to the customer (and on the contract) that “the total distance driven is unknown and may be substantially higher than the reading shown on the odometer.”

As well, the dealer must disclose to the customer if the vehicle's odometer is broken, faulty, has been replaced, is rolled back or is in miles.

It is an offence to alter the reading of an odometer from the actual distance the vehicle has been driven.

If the dealer unknowingly sells a vehicle with a rolled-back odometer, he or she is still liable and responsible to his or her customers. The Ontario Motor Vehicle Industry Council (OMVIC) recognizes that there are incidents in which “good faith mistakes” may occur, such as when a dealer innocently sells a vehicle that is later discovered to have a rolled-back odometer. However, the MVDA requires the dealer to take responsibility. Understandably, the dealer may feel cheated because he or she bought the car in good faith from another dealer. In these cases, OMVIC will assist the dealer in the process of “tracing back” the vehicle, and will attempt to negotiate with the previous dealer to absorb some or all of the current dealer's loss.

15.05

Researching “Distance Driven”

Here are some of the ways dealers and salespeople can research a vehicle to protect themselves:

1. Conduct a **thorough** physical examination of the vehicle.
2. Be suspicious of an inaccurate odometer reading if the mileage seems particularly low for the age or condition of the vehicle.
3. Check service records (which may indicate mileage), check oil-change stickers, or call the garage or dealer that previously worked on the vehicle.
4. Contact the vehicle's previous owners to verify mileage.
5. Check the manufacturer's warranty records, which indicate odometer readings when the vehicle was serviced or repaired under the warranty.
6. Consult vehicle history reports such as CARFAX Canada (CarProof) or Auto Check.
7. Consult Used Vehicle Information Package (UVIP) and Ontario Ministry of Transportation (MTO). A UVIP may contain historical odometer readings. If the UVIP does not have this information, consider ordering transfer documents from the MTO. The MTO will search the vehicle identification number and find the mileage that was recorded when the vehicle's registration was last transferred.



Note: This search takes some time and there are fees involved.

15.06 Liens

A vehicle must have clear title before a dealer can sell it. This means the customer has a right to assume no one else has a security interest in a vehicle when it is sold by the dealer.

A security interest may be declared by registering a lien on a vehicle. A lien is any registered claim on a vehicle as security for the payment of a debt. If a lien is held on a vehicle and the debt is not repaid, the creditor has the right to take possession of the vehicle and sell it to recover the money owed.

For example, a bank may hold a security interest in a vehicle until the loan is paid in full. It might also be possible for a garage to have a lien on a vehicle against payment for repairs. It is also possible for more than one party – such as both the bank and the garage – to hold liens on the same vehicle.

If a dealer sells a vehicle with a lien on it, the dealer will have to discharge the lien or take back the vehicle. Dealers can protect themselves and their customers by doing the proper research in advance. This requires dealers to do a lien check on any vehicle they plan to buy or take on trade. This report will indicate if the vehicle has any liens against it. If a seller says that the lien has been or is about to be discharged, dealers should obtain written confirmation from the holder of the lien. Dealers should still conduct a lien check to ensure there are no other liens on the same vehicle.

Liens on Trade-ins

If a dealer is to pay out a lien on a customer's trade-in vehicle, OMVIC requires the dealer to do so **immediately** and provide the customer with a release letter from the financial institution (if the financial institution provides one). Failure to immediately remove liens from trade-ins, or selling vehicles with liens, may lead to the issuance of an immediate suspension and Proposal to Revoke registration.



15.07 Summary

Providing proper disclosure is meant to protect customers. Doing “due diligence” will help protect dealers and ensure their customers have a positive car-buying experience. This is accomplished by ensuring odometer readings are checked, and when they're not accurate, providing the proper disclosure statement.

It also means ensuring clear title will pass to the purchaser and any liens are properly removed.



15.08

Test Yourself



The first questions below are the same questions asked in “What Do You Know?” at the beginning of this Chapter. Try answering these questions again and compare your results with your earlier answers.

Then, answer the additional questions.

1. Explain four techniques that can be used to determine or research the distance a vehicle has been driven.
2. Why should a dealer do a lien check on a vehicle that is being taken in on trade?
3. Is it possible for more than one party to hold a lien on the same vehicle?
4. If a dealer agrees to pay out a lien on a customer's trade-in, the lien must be paid out:
 - a) Within five business days
 - b) Within two weeks
 - c) Any time prior to reselling the vehicle
 - d) Immediately
5. True or False: If a dealer pays out a lien on a customer's trade-in, he or she must give the customer a copy of the release letter from the financial institution.
6. True or False: A customer should do a lien check on a vehicle being purchased from a dealer.

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Refer to Appendix 1 for the correct answers. Review the relevant section of the chapter for any question you answered incorrectly.

Chapter 16

SALE OF GOODS ACT

16.01 Learning Objectives	16.07 Customer's Refusal to Complete the Sale
16.02 What Do You Know?	16.08 Damages (Costs of Resale)
16.03 Introduction	16.09 Summary
16.04 "As Is" Sales	16.10 Test Yourself
16.05 Other Conditions of Sale	
16.06 Deposit to be Returned if No Contract is Made	



16.01

Learning Objectives

After completing this chapter, you will be able to identify:

1. What is meant by “merchantable quality,” “fit for purpose,” and “quiet possession” as defined by the *Sale of Goods Act*
2. Requirements in “as is” sales
3. The dealer’s obligation regarding conditions of sale
4. The meaning of a “conditional” contract
5. What happens to a deposit if no written contract is made
6. What happens if the customer refuses to complete the sale
7. Damages a dealer can deduct from a deposit received

**MERCHANTABLE
QUALITY:** Goods free
from defects that, if known,
would impact the price

16.02

What Do You Know?

Try answering these questions to test your knowledge:

1. Explain “merchantable quality” as it relates to a used vehicle.
2. True or False: The *Sale of Goods Act* covers repairs.
3. Purchasers are entitled to “quiet possession” of their vehicles. If a dealer innocently sold a consumer a vehicle that subsequently turned out to be stolen and was seized by the police, what should the dealer do?

Keep these questions in mind as you read through the following section.



16.03

Introduction

The *Sale of Goods Act* requires that vehicles sold are of “merchantable quality” and “fit for purpose” and that the buyer receive “quiet possession.”

“Merchantable Quality”

A vehicle is not of merchantable quality unless it provides transportation.

There must be no hidden defects and the vehicle must provide reasonable transportation for a reasonable period of time. This does not need to be written into the sales agreement; the *Sale of Goods Act* implies this as a condition within the contract.

“Fit for Purpose”

Vehicles must be fit for the purpose for which they are intended. If a farmer is buying a used truck and tells the salesperson that he will sometimes be using the truck for hauling in his gravel pit operation, then the truck must not only be strong enough for normal farm work but also strong enough for the heavier gravel. This does not need to be written into the sales agreement; the *Sale of Goods Act* implies this as a condition within the contract.

“Quiet Possession”

Purchasers are entitled to quiet possession of their vehicles, secure that a bailiff will not seize the vehicle because of an undisclosed lien or that the police will not seize the vehicle because it turned out to be stolen. This does not need to be written into the sales agreement. Under the *Sale of Goods Act*, it is an implied condition that the seller has the right to sell the vehicle (even if the dealer acted in good faith and did not know the vehicle was stolen). The buyer is entitled to demand and receive all money back from the dealer. The *Sale of Goods Act* does not cover leases or services (repairs); however, the *Consumer Protection Act* (Section 9) extends the implied conditions and warranties in the *Sale of Goods Act* to cover consumer leases.

16.04

“As Is” Sales

In the past, “as is” has meant different things to different people. To some buyers, it meant the car had no warranty. To others, it meant the car was not road worthy, while others simply thought it meant the seller didn’t know the condition, so stating it was “as is” meant the buyer “took their chances.”

Under the *Motor Vehicle Dealers Act* (MVDA) there is no longer any ambiguity about the meaning and use of “as is.” Just as importantly, using the term “as is” does not give a dealer protection from its obligations under the *Sale of Goods Act* (and its additional obligations under the *Consumer Protection Act* if the buyer is a “consumer”).

Even if a vehicle is sold without a Safety Standards Certificate, or “as is” is written on the contract, a court may hold that the vehicle must be capable of providing transportation.

Therefore, bills of sale for vehicles sold “as is” must always include additional disclosure concerning the condition of the vehicle, its intended purpose and this statement (which must be initialled by the purchaser):

The motor vehicle sold under this contract is being sold “as is” and 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 at the buyer’s expense. It may not be possible to register the vehicle to be driven in its current condition. (s.40(6))

A buyer who reads and initials this statement may find it more difficult later on to argue that the implied conditions and warranties of the *Sale of Goods Act* should apply to this purchase.

Dealers should not allow a vehicle sold “as is” to be driven off the lot by the customer.

Remember, under the MVDA vehicles that are sold “as is” cannot be sold with a Safety Standards Certificate.



Note: Provisions of the *Environmental Protection Act* also apply to an “as is” sale.

CONDITION:

An essential requirement that must be fulfilled in order for a deal to go through.

Every contract between a dealer and a buyer includes certain implied conditions that cannot be excluded. If a condition is breached, the customer can terminate the contract and sue for damages.

16.05

Other Conditions of Sale

The word “condition” has a specific meaning in contract law and in the *Sale of Goods Act*. It means an essential requirement must be fulfilled in order for a deal to be complete. If a “condition” is breached by the dealer, the customer can terminate the contract and sue for damages.

Sometimes a vehicle is sold conditionally on approval of financing, insurance, or by that of the purchaser’s spouse, partner, parent, etc. The contract may also be conditional upon certain repairs being conducted or some other modification (e.g., the dealer may promise to replace the muffler or install a roof rack). These conditions should be written into the contract.

The buyer may be able to cancel the contract if the conditions are not met or claim the costs of meeting the conditions from the dealer (e.g., if the purchaser didn’t receive the roof rack and had to buy his or her own).

16.06

Deposit to be Returned if No Contract is Made

If a customer (who is not a registered motor vehicle dealer) gives a dealer a deposit, or a vehicle as a trade-in before entering into a written contract for the purchase or lease of a vehicle, the customer may at any time demand the return of the deposit or trade-in vehicle and the dealer shall immediately return the deposit or the trade-in vehicle to the customer, even if:

1. The dealer is not the dealer who sells or leases the vehicle being sold or leased to the customer.
2. The customer does not enter into a contract for the purchase or lease of a motor vehicle.

For this purpose, the customer has not “entered into a contract” unless he or she has signed an agreement that contains all of the important disclosures required by the MVDA.

16.07

Customer's Refusal to Complete the Sale

Once the dealer and the customer sign a contract, both parties are legally bound to complete the deal. But what happens if customers do not meet their obligations? Can they refuse to take a vehicle after signing a contract?

Many customers mistakenly believe they have a “cooling-off period” that allows them to change their mind within 10 days. That is why the MVDA requires a dealer to disclose in the agreement that the sale is “final.”

A customer's signature on the contract is only required at the end of the negotiating process when both the customer and the dealer are prepared to enter into a binding agreement. To suggest that a customer's signing does not bind the customer or is necessary to show that the customer is “serious” is an unfair business practice that could make the contract unenforceable.

If a customer wants to breach a legally binding contract, the dealer has three options:

1. The dealer can refund the customer's deposit.
2. The dealer can keep damages.
3. The dealer can sue to force the customer to take the vehicle.

When a customer backs out of a deal, the vehicle can almost always be sold again to another customer. The cheapest and quickest solution is usually to accept the fact the customer is backing out of the deal, sell the vehicle to another person as soon as possible and then claim liquidated damages from the customer.

While this may sound like a difficult procedure, it is usually more expedient than trying to force the customer into the deal, which involves the time and expense of a court case. Meanwhile, the vehicle sits on the dealer's lot as useless inventory since it cannot be sold to anyone else. In the end, the court may expect the dealer to recover expenses by selling the car at fair market value to someone else and claiming the difference as liquidated damages.

MANY CUSTOMERS

mistakenly believe that vehicle sales have a “cooling-off period.” There is no cooling-off period on vehicle sales.

FOR MOST DEALERS,

the third option may be impractical. As a general rule, courts expect people involved in a legal dispute to find the quickest and least expensive solution to their problems. This is called “mitigation of damages.”

16.08

Damages (Costs of Resale)

A buyer who backs out of a written contract must compensate the dealer for the costs of resale if the dealer chooses to demand it. These costs or damages must be a reasonable estimate of the non-recoverable out-of-pocket expenses incurred by the dealer when the vehicle has to be resold.

For example, if the vehicle has to be resold because the buyer refuses to take it, the dealer may have to pay for more advertising, storage, another Safety Standards Certificate, etc. In this case, the dealer could recover these costs from the customer's deposit.

If the dealer chooses to recover the costs, they must be kept reasonable and the dealer will have to provide to the buyer evidence of these itemized costs. After the vehicle is resold, the dealer's costs can be taken from the original buyer's deposit. If there is any money left, it is returned to the buyer. If the costs are more than the deposit, the dealer is entitled to seek the balance.

Another option is to simply return the buyer's deposit or trade-in vehicle and allow the cancellation of the contract. The dealer may choose this option for the sake of good customer relations or if the vehicle can be resold easily.



16.09

Summary

The *Sale of Goods Act* grants consumers implied conditions and warranties by stipulating vehicles sold be of “merchantable quality” and “fit for purpose” and that buyers receive “quiet possession.”

In “as is” sales, it's important to provide the appropriate disclosure statement.

Finally, dealers have options when a customer backs out of a contract. These range from allowing cancellation (for good customer relations), to determining costs of reselling the vehicle and taking that from the purchaser's deposit (and returning any amount left over) or demanding the customer complete the transaction (although this is rarely done, since it may involve an expensive legal battle).



16.10

Test Yourself



The first questions below are the same questions asked in “What Do You Know?” at the beginning of this chapter. Try answering these questions again and compare your results with your earlier answers.

Then, answer the additional questions.

1. Explain “merchantable quality” as it relates to a used vehicle.
2. True or False: The *Sale of Goods Act* covers repairs.
3. Purchasers are entitled to “quiet possession” of their vehicles. If a dealer innocently sold a consumer a vehicle that subsequently turned out to be stolen and was seized by the police, what should the dealer do?
4. Select all that apply: Under the *Sale of Goods Act*, vehicles sold must:
 - a) Provide reasonable transportation for a reasonable period of time
 - b) Be covered by a 30-day warranty
 - c) Be fit for the purpose for which they are intended
 - d) Be covered by a 90-day warranty
5. True or False: The *Sale of Goods Act* does not apply to vehicles sold “as is.”
6. Provide three examples of “conditions” customers may want included in the contract.
7. What rights do customers have if they give a deposit or trade-in to a dealer, but no written contract was signed?
8. The “cooling-off period” when a customer signs a contract to purchase a vehicle from a registered dealer is:
 - a) 24 hours
 - b) 48 hours
 - c) 10 days
 - d) There is no “cooling-off period”
9. True or False: If the customer enters into the contract but refuses to complete the sale, the dealer can keep 100 per cent of any deposit, regardless of the amount.
10. List two costs/expenses that a dealer can deduct from a deposit if the purchaser backs out of the deal.

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Refer to Appendix 1 for the correct answers. Review the relevant section of the chapter for any question you answered incorrectly.

Chapter 17

CODE OF ETHICS REGULATIONS

17.01 Learning Objectives	17.06 Disciplinary Procedure
17.02 What Do You Know?	17.07 Standards of Business Practice
17.03 Introduction	17.08 Summary
17.04 Code of Ethics Regulations	17.09 Test Yourself
17.05 Discussion of the Code of Ethics Regulations	



17.01

Learning Objectives

After completing this chapter, you will be able to identify:

- 1.** The dealer's and salesperson's responsibilities under the Code of Ethics Regulations
- 2.** The seven categories within the Code of Ethics Regulations
- 3.** The meaning of "clear and truthful"
- 4.** The meaning of "legal, decent, ethical and truthful"
- 5.** The disciplinary process for dealers or salespersons who breach the Code of Ethics Regulations
- 6.** The roles of the Discipline Panel and Appeals Panel

17.02

What Do You Know?

Try answering these questions to test your knowledge:

- 1.** True or False: The Code of Ethics Regulations are guidelines or “best practices” but do not have any real legal authority.
- 2.** Dealers and salespeople are required to conduct business in accordance with the law and with (select all that apply):
 - a) Integrity
 - b) Honesty
 - c) Fairness
 - d) Passion
- 3.** Failure to abide by the Code of Ethics Regulations can result in:
 - a) Revocation of registration
 - b) Refusal to grant or renew registration
 - c) A disciplinary hearing
 - d) All of the above

Keep these questions in mind as you read through the following section.



17.03

Introduction

In some industries, a “code of ethics” is a pledge or a promise of certain standards of conduct, but their “code” doesn’t really have the force of law. That is not the case with the *Motor Vehicle Dealers Act* (MVDA) Code of Ethics. The Code of Ethics Regulations are now part of the Regulations under the MVDA. These regulations are the law and dealers and salespeople must abide by this code.

The MVDA (Section 6) requires that all dealers and salespeople conduct business in accordance with the law and with *integrity and honesty*. Section 23 requires that dealers ensure their employees/salespeople carry out their duties in compliance with the MVDA and Regulations, including the Code of Ethics Regulations.

A DEALER’S or salesperson’s failure to abide by the Code of Ethics Regulations can result in revocation of registration, refusal to grant or renew registration or the registrant can be brought before a Disciplinary Panel (see 17.06).

17.04

Code of Ethics Regulations

The Code of Ethics Regulations (Ontario Regulation 332/08) sets out the following requirements for dealers and/or salespersons:

1. Integrity:

- a) A dealer and a salesperson must be financially responsible.
- b) A dealer and a salesperson must never indicate that the Ontario Motor Vehicle Industry Council (OMVIC) has set or approved any payment or commission.

2. Disclosure and marketing:

- a) Dealers and salespeople must be clear and truthful in describing a vehicle, products, services, programs and prices.
- b) Advertising must be legal, decent, ethical and truthful.
- c) Before entering into a contract, the dealer must explain to the customer the terms of a contract and the customer's obligations under the contract.

3. Disclosure of the required information in sales contracts and in leases:

The Regulation lists 22 items that must be disclosed when a dealer sells or leases to another registered dealer (for details, see Chapter 7).

4. Accountability:

- a) The dealer must ensure that the salesperson complies with the Code of Ethics Regulations.
- b) The salesperson must not do anything (or omit to do anything) that causes the dealer to break the Code of Ethics Regulations or break the law.

5. Compliance:

- a) The dealer or salesperson must make sure that all dealer documents are current and comply with the law.
- b) The dealer must assist the buyer or lessee with subsection 11(2) of the *Highway Traffic Act* (applying within six days for a new vehicle permit) unless the buyer/lessee instructs the dealer not to do so.

6. Respect:

- a) i) A dealer or salesperson must not do anything insulting to human dignity or integrity; and
ii) Shall not use offensive symbols.
- b) A dealer and a salesperson must carry on business ethically and with respect for all persons with whom they do business.

7. Professionalism:

- a) A dealer and a salesperson must not do anything disgraceful, dishonourable, unprofessional or unbecoming.
- b) A dealer and a salesperson shall act with honesty, integrity and fairness.
- c) A dealer and a salesperson shall use his or her “best efforts” to prevent error, misrepresentation, fraud or any unethical practice.
- d) A dealer and a salesperson shall provide “conscientious service” to customers and demonstrate reasonable knowledge, skill, judgment and competence.
- e) If a customer trades in a vehicle to a dealer, and the dealer agrees to pay any outstanding loan (or outstanding bill for repair or storage), then the dealer must fulfill that obligation.

17.05

Discussion of the Code of Ethics Regulations

The Code of Ethics Regulations stipulates that required disclosures by a registrant (either a dealer or a salesperson) be clear and truthful:

1. In giving information about the features, benefits and prices of a vehicle
2. In telling all about the products, services, programs and prices that are available with the purchase of the vehicle

As well, any representation (including any form of advertising) by the registrant must be legal, decent, ethical and truthful.

“Clear and Truthful”

Being “clear and truthful” means that any statement a salesperson or dealer makes is the truth as he or she knows it to be. The statement cannot be a lie or a “half-truth” intended to mislead. Such a statement would also be prohibited by the *Consumer Protection Act*.

Being clear means that the customer understands the information.

A salesperson or dealer must be certain the information is given in a manner that meets the circumstances of the customer. This could include:

1. Providing a translator if the customer is not fluent in or does not understand the language spoken by the salesperson or dealer
2. Fully explaining to the customer any technical terms or jargon
3. Explaining to the customer the available information about a vehicle and its products, services, programs and prices

“Legal, Decent, Ethical and Truthful”

Salespersons and dealers must ensure that any statements they make are legal, decent and ethical. The statement cannot be false, misleading or illegal.

17.06

Disciplinary Procedure

Section 14 of the MVDA provides OMVIC with a number of means for handling complaints.

OMVIC may:


- Attempt to resolve the complaint
- Give a written warning to the registrant
- Require the dealer or salesperson to take further educational courses
- Issue a proposal to refuse to register the dealer or salesperson, suspend or revoke a registration, refuse to renew a registration, or place a condition on a registration
- Refer the matter in whole or in part to the Discipline Committee (for breaches of the Code of Ethics)

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 held.

The discipline hearing will take place in front of three “panellists” who will rule on the outcome. If a dealer has been brought before the panel, at least one of the panellists will be a dealer; if a salesperson is the subject of the hearing, at least one of the panellists will be a salesperson, and one of the panellists 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 the registrant did breach the Code of Ethics, the panel can order:

- 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

 Think what is meant by the phrase “a clear view.” This means a person is able to see everything before him or her. Nothing is hidden from sight and he or she knows exactly what to expect when stepping forward.

A DEALER or salesperson may appeal the decision of the Discipline Panel within 30 days.

THE APPEALS COMMITTEE may overturn, affirm or modify the order of the Discipline Committee.

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. The ruling of the Appeals Panel cannot be appealed.

Time Limits

Under the Code of Ethics Regulation 13, there is a time limit for discipline proceedings; OMVIC has two years from the day on which OMVIC first came to know the facts upon which the complaint is based to begin the process.

Making Decisions Public

The MVDA requires OMVIC to make public the details of all discipline cases in which dealers/salespeople are found to have breached the Code of Ethics.

17.07

Standards of Business Practice



The Standards of Business Practice (SBP) have been developed by OMVIC to help dealers and salespersons (registrants) interpret and understand the expectations of the Code of Ethics, the Code of Ethics Regulations, and the General Regulations by providing practical examples and by applying the standards of honesty and integrity in specific situations.

These practices represent minimum standards and are meant to be illustrative rather than exhaustive. OMVIC anticipates dealers and salespersons will wish to exceed these minimum standards and that they will conduct all business activities with honesty, fairness, integrity and within the law at all times.

Note: Despite any contract or waiver to the contrary, the Code of Ethics applies to all registrants.

Integrity

1. A registrant shall be financially responsible in carrying on business.
2. A registrant shall not indicate to any person, directly or indirectly, that any payment, commission or other remuneration in connection with a trade (sale, purchase or lease) in a motor vehicle is fixed or approved by OMVIC, a government authority or any motor vehicle board or association.

Examples of Integrity

1. Registrants meet all financial obligations incurred in relation to motor vehicle transactions, including buying, selling or leasing vehicles. This would include immediately removing a lien from a customer's trade-in if that was part of an agreement.
2. Registrants promptly, honestly and willingly perform all of their contractual obligations.

Disclosure and Marketing

1. Dealers and salespersons shall be clear and truthful in describing the features, benefits and prices connected with the motor vehicles in which they trade, and in explaining the products, services, programs and prices connected with those vehicles.
2. Dealers and salespersons shall ensure that all representations, including advertising, made in connection with trading (buying, selling or leasing) in motor vehicles, are legal, decent, ethical and truthful.
3. Before entering into a contract with a customer, the dealer shall explain the terms of the contract, including the financial and other obligations, if any, of the customer under the contract.

Examples of Disclosure

1. All information requiring disclosure by these SBP clear and prominent so that in the consideration of the Registrar (OMVIC), it can be easily noticed and understood by a consumer. The Registrar will consider factors that include:
 - a) Size of print
 - b) Clarity and legibility of font
 - c) Location of the disclosed information in the advertisement;
 - d) Prominence of the disclosed information compared to other information in the advertisement; and
 - e) In a broadcast advertisement, the length of time that the message appears or is presented
2. Disclosure in advertisements appearing in newspapers, periodicals and other publications is printed in a minimum size and font that is the same as that normally used in the classified advertising of the publication where the advertisement appears.
3. Where disclosure of leasing or financial information is required by these SBP in a broadcast advertisement, the advertisement should include either of the following messages:

- a) A telephone number and a statement that the number may be called to obtain pre-recorded disclosure of the information. For example, “Call [###-####] for full financing information.” The required information must be available on a pre-recorded message and may be followed by an option connecting the caller to a live operator.
Note: A pre-recorded message is not required if the broadcast advertisement discloses the down payment, the periodic payment, the period of the payment, the term, the annual finance or lease rate, and in the case of a lease, the maximum allowable kilometres over the term of the lease and the lease end obligations.
The above must be based on the all-in price required by Section 36 of the General Regulations; or
 - b) A statement that full disclosure can be obtained in a concurrent newspaper advertisement. For example, “See our ad in your local newspaper for full financing information.” The newspaper must be locally available in the market area of the advertiser.
- 4. Advertisements disclose that they have been placed by a dealer.
This can be done in one of two ways:
 - a) By including a trade style name provided to OMVIC, usually the dealer’s registered name; or
 - b) By including the word “dealer” in the advertisement.
 - 5. Advertisements do not indicate or imply that consumers may purchase or lease a car from an unregistered salesperson; for example, “No Salespeople.”
 - 6. Advertising of specific vehicles does not indicate or imply, through words, phrases or style, that it is not presented for commercial purposes; for example, “Public Service Announcement.”
 - 7. Advertisements do not contain statements that are ambiguous, misleading or deceptive due to unclear, unverifiable or inaccurate information.
 - 8. Advertisements do not refer to an award unless its source and date is disclosed, nor may they refer to an award if it was purchased by the registrant, and is not based on any verifiable test or research. This does not refer to celebrity endorsements.
 - 9. Advertisements do not indicate or imply that vehicles are being offered out of the ordinary course of business unless full disclosure of the situation is made. Examples of prohibited terms include:
 - a) Going out of business, closing
 - b) Bankrupt, in receivership, liquidation
 - c) Lease expired, moving
 - d) Fleet sale; and
 - e) Repossessed motor vehicles

10. The term “wholesale” is not used to describe any transaction other than one between motor vehicle dealers.
11. If a dealer’s registered or trade style name includes “liquidation” or “wholesale,” all advertisements for vehicles offered for retail sale or lease include the word “retail.”
12. Advertisements do not indicate or imply that vehicles are offered for retail sale or lease without economic advantage to the dealer. Examples of prohibited terms include:
 - a) Dealer cost; and
 - b) Factory price, invoice price, under/over invoice price.
13. Advertisements for used vehicles that are of the current model year or the previous model year indicate that the vehicle is used. This could include the use of terms or phrases such as:
 - a) “Used”;
 - b) “Pre-owned”;
 - c) “Previously driven” or another phrase that is accurate and discloses that the vehicle is not new.
14. Advertisements of a specific used vehicle disclose all known material facts about the prior use of the vehicle, including if it was a:
 - a) Daily rental, unless the vehicle was subsequently owned by a person who was not registered as a motor vehicle dealer;
 - b) Police vehicle or emergency services vehicle; or
 - c) Taxi vehicle or limousine.
15. Advertised vehicles are:
 - a) At the advertised location or available at the advertised location;
 - b) In condition to be shown;
 - c) Willingly shown to a consumer;
 - d) Willingly shown under the same terms as advertised;
 - e) Sold on the same terms as advertised; or
 - f) If not available from the dealer’s on-site inventory, disclosed as available by factory order or dealer trade.
16. A vehicle (or class of vehicles) is not advertised at a specific price or with specific incentives unless the dealer is able to supply a quantity of those vehicles that is reasonable considering factors that include the size of the dealership and the target area of the advertisement.
17. Advertisements do not misrepresent the opportunity to purchase a vehicle. If the available supply of vehicles is unusually limited, the nature of the limit, such as the number available or the time they are available, is disclosed. If a factory order or acquisition from another dealer is or may be required, this is also disclosed.

18. Dealers do not use phrases such as “supply limited” or “limited time only” if they are misleading considering factors including the number of vehicles available to the dealer and the dealer’s target area.
19. Illustrations/photos of vehicles offered for sale accurately reflect the make, model, model year and condition of the vehicle(s) if an exact illustration is not available.
20. Advertisements do not encourage a breach of contract. For example, “We will beat your best deal.”
21. Advertisements using the word “free” clearly indicate that the item is only free with purchase at the advertised price.
22. Advertisements do not guarantee a minimum trade-in allowance. For example, “Push, pull, drag your trade-in for \$2,000 guaranteed.”
23. Advertisements that include an extended warranty with purchase also include in a clear, comprehensible and prominent manner the term of the warranty and the maximum individual claim limits, if applicable.
24. Words or phrases that indicate or imply that a warranty covers all of a vehicle, or lasts for an unlimited time, or both, are not used unless the warranty is without such exclusions. Prohibited phrases include:
 - a) Bumper-to-bumper;
 - b) Inclusive/all-inclusive; and
 - c) Total.
25. All disclosure in advertisements that appear in newspapers, periodicals and other publications is printed in a size and font that is, at a minimum, the same as that normally used in classified advertising by the publication where the advertisement appears.
26. Savings amounts shown in new vehicle advertising is based on a vehicle’s average selling price, not the Manufacturer’s Suggested Retail Price (MSRP). Dealers may demonstrate and support the average selling price. For example:

MSRP \$20,000
Average Selling Price \$19,000
Sale Price \$18,500
Savings \$500
27. Advertisements that offer no interest periods also state the period of time that the offer applies and disclose whether:

- a) The transaction is without any interest during the advertised period; or
- b) Interest accumulates during the advertised period but will be forgiven under certain conditions.

An advertisement that does not disclose all information required is considered to indicate that the transaction is unconditionally interest-free during the advertised period.

If interest accumulates during the period but may be forgiven, ads disclose:

- a) The conditions for interest forgiveness; and
- b) The interest rate for the period, if the conditions for forgiveness of interest are not met.

An advertisement that does not disclose all information required is considered to indicate that the transaction is unconditionally interest-free during the advertised period.

28. Advertisements offering a choice between financing at a favourable interest rate and a rebate or cash purchase price disclose the effective interest rate of the financing option. In the case of a rebate, the effective interest rate is the cost of borrowing at the low interest rate plus the value of the rebate. In the case of a cash purchase price, the effective interest rate is the cost of borrowing at the favourable interest rate plus the differential between cash purchase price and price if favourable interest rate is chosen. For example, if the choice is between a 1.9% annual interest rate and a \$2,000 cash rebate, the real cost of the financing option is 1.9% annually plus \$2,000. The following is an example of acceptable wording: "If the vehicle is financed at 1.9% and the \$2,000 rebate is not taken, the effective interest rate is 9.2%."
29. Advertisements that indicate or imply that all credit applications will be approved disclose whether a down payment may be required.
30. The use of potentially misleading or incomplete terms or phrases in advertising is not allowed. The following are examples of such terms or phrases that are restricted or prohibited. These are provided as examples only. Other terms that may have a similar meaning or intent to those shown below are subject to the same restriction or prohibition.
- a) All-inclusive
 - b) Bankrupt, bankruptcy
 - c) Beat your best deal
 - d) Bumper-to-bumper

- e) Closing
- f) Dealer cost
- g) Extended warranty included
- h) Factory price
- i) Fleet sale
- j) Free
- k) Going out of business
- l) In receivership
- m) Invoice price, under/over invoice price
- n) Lease expired
- o) Liquidation
- p) Limited time only
- q) Limited supply
- r) Moving, relocating
- s) No salespeople
- t) Public service announcement
- u) Push, pull, drag (or similar)
- v) Repossessed motor vehicles
- w) Savings
- x) Wholesale

Disclosure of Information in Contracts of Sale and Lease Between Dealers

A dealer who enters into a contract to sell or lease a motor vehicle to a person who is also a registered motor vehicle dealer shall ensure the following information is disclosed in the contract:

1. If the vehicle is used, the total distance that it has been driven.
2. If the dealer cannot determine the total distance that the vehicle has been driven, but can determine the distance that the vehicle has been driven as of some past date, a statement of that distance and date, together with a statement that “the total distance the vehicle has been driven is believed to be higher than that distance.”
3. If the dealer can determine neither the total distance that the vehicle has been driven, nor the distance that the vehicle has been driven as of some past date, a statement that “the total distance the vehicle has been driven is unknown and may be substantially higher than the reading shown on the odometer.”
4. If the vehicle’s odometer is broken or faulty, has been replaced, has been rolled back or is in miles, a statement to that effect.
5. If any of the following is true of the vehicle, a statement to the effect that the vehicle was previously:
 - a) Leased on a daily basis (daily rental), unless the vehicle was subsequently owned by a person who was not registered as a motor vehicle dealer;

- b) Used as a police vehicle or used to provide emergency services; or
 - c) Used as a taxi or limousine.
6. If the vehicle has sustained any damage caused by fire, a statement to that effect.
 7. If the vehicle has sustained any damage caused by immersion in liquid that has penetrated to the level of at least the interior floorboards, a statement to that effect.
 8. If there has been structural damage to the vehicle or any repairs, replacements or alterations to the structure of the vehicle, a statement to that effect.
 9. If the vehicle is equipped with an anti-lock braking system that is not operational, a statement to that effect.
 10. If any of the vehicle's airbags are missing or are not operational, a statement to that effect.
 11. If the vehicle is materially different from the original or advertised production specifications, a statement to that effect.
 12. If the vehicle has two or more adjacent panels that are not bumper panels and that have been replaced, a statement to that effect.
 13. If the model year of the vehicle is the current model year or the immediately preceding model year and any panels have been repainted, a statement to that effect.
 14. The make, model, trim level and model year of the vehicle.
 15. If any badge or other indication on the vehicle relates to a different model than the model of the vehicle, a statement to that effect.
 16. If the total costs of repairs to fix the damage caused to the vehicle by an incident exceed \$3,000, a statement to that effect and if the dealer knew the total costs, a statement of the total costs.
 17. If the manufacturer's warranty on the vehicle was cancelled, a statement to that effect.
 18. If the vehicle was declared by an insurer to be a total loss, regardless of whether the vehicle was branded as irreparable or as salvage, a statement to that effect.
 19. If the vehicle was previously registered in some other jurisdiction(s) (province, state, country), a statement to that effect and a statement of which jurisdictions, unless the vehicle has been registered in Ontario for at least the seven previous consecutive years.
 20. If the vehicle has been branded as irreparable, salvage or rebuilt, a statement as to how it was last classified.
 21. If the vehicle has been recovered after being reported stolen, a statement to that effect.

22. Any other fact about the vehicle that affects the structural or mechanical quality or performance of the vehicle that if disclosed, could reasonably be expected to influence the decision of a reasonable purchaser or lessee to buy or lease the vehicle.

Accountability

1. Dealers shall ensure that every salesperson the dealer employs or retains to act as a salesperson carries out his or her duties in compliance with the Code of Ethics.
2. Salespersons shall not do, or omit to do, anything that causes the dealer who employs or retains the salesperson to contravene the Code of Ethics or any applicable law with respect to trading in motor vehicles.

Examples of Accountability

1. Registrants are responsible for the business conduct of employees of the dealership and for maintaining a high quality of sales and service practices.
2. Dealers are responsible for the business conduct of employees of the dealership and for maintaining a high quality of sales and service practices.

Compliance

1. Registrants shall ensure that all documents used in the course of a trade in a motor vehicle are current and comply with the law.
2. A dealer who enters into a contract with a person for the sale of a motor vehicle shall register the vehicle in the purchaser's name, unless the person instructs the dealer not to do so.

Examples of Compliance

1. Where a retail contract expressly provides for a return policy, all terms and conditions of the return policy, including the length of the return period, are disclosed on the contract.
2. Where a vehicle is sold on an "as is" basis, this fact is clearly indicated on the front of the retail contract, along with the following statement:
"The motor vehicle sold under this contract is being sold "as is" and 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 at the purchaser's expense. It may not be possible to register the vehicle to be driven in its current condition."

3. Where a dealer sells an extended warranty, product warranty or service plan for a third party, the dealer completes and submits the application and payment to the warrantor within seven days. In the event that the warrantor does not accept the application, the dealer promptly refunds the warranty fee.
4. If a dealer sells a vehicle on consignment, the bill of sale between the dealer and the final purchaser is the same as for any other vehicle sale. The same disclosure requirements, implied warranties and obligations as set out in the *Consumer Protection Act*, *Sale of Goods Act*, and any other consumer protection legislation in force in Ontario, apply to dealers offering and selling vehicles on consignment as they do to any other consumer transaction.
5. The Standards of Business Practice apply to dealers who carry on business as a public motor vehicle auction.
6. The use of the “as is” statement does not eliminate potential liability, since a purchaser may still choose to pursue the matter against a dealer through civil action. The “as is” statement is being provided to dealers as a means of providing clear disclosure to a purchaser. If a dealer believes further disclosure is required, then the dealer ensures the disclosure is made in writing on the bill of sale and has the disclosure signed by the purchaser.
7. If a retail contract does not clearly indicate that a vehicle was sold on an “as is” basis by using the prescribed “as is” definition statement (example 2 above), then the vehicle is not considered sold on an “as is” basis.
8. A vehicle sold to a consumer that is not sold on an “as is” basis is considered to be fit for the purpose of being driven for regular daily use for a reasonable period of time, having regard to factors including:
 - a) The type or class of vehicle;
 - b) Prior use of the vehicle previously disclosed to the consumer;
 - c) Age and distance travelled; and
 - d) Material facts described in example 7, which were previously disclosed to the consumer.
9. Retail contracts state on the front whether an extended warranty, guarantee or service plan is provided with the motor vehicle. If a warranty is provided, the source of the warranty, guarantee or service plan is identified on the front of the contract.
10. Dealers only sell extended warranties that are insured, or for which the appropriate letter of credit has been posted.

11. All terms and conditions of a credit agreement, including a consumer loan or lease, are set out in a written agreement that includes all matters required by credit disclosure legislation in force in Ontario.
12. The following standards apply, with necessary modifications to vehicles sold on a consignment basis, and to dealers who carry on business as a public motor vehicle auction. In addition, where a dealer intends to sell a vehicle on consignment, the consignment agreement includes:
 - a) The name and address of the consignor;
 - b) The business name, a registered name and the registration number of the dealer, together with the legal name of the dealer if it is different from the registered name;
 - c) The make, model, trim level and model year of the vehicle;
 - d) The colour, vehicle identification number (VIN) and body type of the vehicle;
 - e) If the vehicle is used, the total distance that the vehicle has been driven if the dealer can determine the distance;
 - f) If the vehicle is used and the dealer cannot determine the total distance that the vehicle has been driven, but can determine the distance that the vehicle has been driven as of some past date, a statement of that distance and date, together with a statement that “the total distance that the vehicle has been driven is believed to be higher than that distance”;
 - g) If the vehicle is used and the dealer can determine neither the total distance that the motor vehicle has been driven, nor the distance that the vehicle has been driven as of some past date, a statement that “the total distance the vehicle has been driven is unknown and may be substantially higher than the reading shown on the odometer”;
 - h) The total amount that the dealer will charge the consignor on the sale of the vehicle, whether as a fixed amount or as a commission share of the total amount payable by the purchaser, and an itemized list of all components of those charges;
 - i) An estimate of the selling price of the vehicle and a minimum selling price of the vehicle;
 - j) The term of the contract and, if applicable, how the parties can extend it or a statement that the parties cannot extend it;
 - k) If the contract can be terminated before it is set to expire, the conditions respecting such early termination, including the fees, if any, payable for early termination;
 - l) An acknowledgement the dealer is required to hold all monies received towards the purchase of the consigned vehicle (including trade-in allowances given) in favour of the consignor, in trust,

- until the purchase is concluded; acknowledgement of this must be initialled by the consignor;
- m) Disclosure statements (required by Section 42 of the General Regulations) are obtained from (initialled or signed) the consignor, along with a statement that the consignor understands they are not required to provide the dealer with a signed original ownership for the consigned vehicle until the vehicle is sold. Such disclosure is initialled by the consignor if the dealer obtains a signed ownership;
 - n) An indication of who is responsible for loss or damages to the vehicle while consigned. If the consignor is responsible, the dealer obtains the consignor's insurance information;
 - o) Lien disclosure from consignor;
 - p) OMVIC's contact information similar to what is required in a retail bill of sale; and
 - q) An indication of how long after the sale of the vehicle the consignor will be informed of the sale and the consignor will receive payment.

Consigning dealers obtain prior written consent of the consignor for any of the following:

- a) *Selling the vehicle for an amount below its minimum selling price;*
 - b) *Using the consigned vehicle for any other purpose besides offering it for sale;*
 - c) *Removing the vehicle from the dealers business premises for more than 24 hours; or*
 - d) *Affecting any alterations, repairs, servicing or reconditioning of the consigned vehicle unless they are done as part of an agreement to sell the consigned vehicle.*
- 13. If a dealer sells a vehicle on consignment, the dealer notifies the purchaser, prior to the sale, that the purchaser's name and address will be disclosed to the consignor of the vehicle.
 - 14. If a dealer sells a vehicle on consignment, the dealer discloses to the consignor the name and address of the final purchaser of the motor vehicle, and the sale price of the motor vehicle, after the sale.
 - 15. Dealers who enter into an agreement to sell a vehicle on consignment comply with the provisions of the *Highway Traffic Act* by entering all required information with respect to the motor vehicle in the Dealer's garage register upon making the agreement.

Respect

- 1. In carrying on business, dealers and salespersons shall not engage in any act or omission that would reasonably be regarded as insulting to human dignity or integrity, nor shall they use symbols that would reasonably be regarded as offensive.

2. Dealers and salespersons shall carry on business ethically and with respect for the rights and interests of the persons with whom they do business.

Examples of Respect and Ethics

1. Advertisements do not present insulting portrayals of individuals or groups, and do not exploit violence, sex, children, customs or characteristics of religious or ethnic groups, persons with disabilities or any person or group in a way that offends current legal and ethical standards. Advertisements do not portray the motor vehicle industry, salespeople or dealers in an insulting or derogatory manner.
2. Dealers and salespersons only collect and use personal information, including financial information, disclosed in the course of negotiating a transaction that is necessary to complete it.
3. Dealers and salespersons do not collect or use personal information without the knowledge or consent of the individual, unless:
 - a) It is required or expressly permitted by law;
 - b) The collection or use of the information is clearly in the interests of the individual and consent cannot be obtained in a timely way; or
 - c) It is reasonable to expect that collection of the information from the individual would adversely affect its accuracy or would defeat the purpose for collecting or using the information.
4. Dealers and salespersons use personal information only for the purpose for which it was collected, except where used in accordance with example above.
5. Dealers and salespersons do not disclose personal information, without the knowledge or consent of the individual unless:
 - a) It is required or expressly permitted by law; or
 - b) For the purpose of conducting legal proceedings to recover a debt by the registrant against the individual.
6. Dealers and salespersons only disclose personal information for the purpose for which it was collected, except where disclosed in accordance with example 3 above.
7. Dealers and salespersons comply with the provisions of the Ontario's *Human Rights Code*.
8. Registrant employees treat customers in a courteous, straightforward and respectful manner, acting professionally at all times.

Professionalism

1. In carrying on business, a dealer or salesperson shall not engage in any act or omission that would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming of a registrant.
2. In carrying on business, dealers and salespersons shall act with honesty, integrity and fairness.
3. Dealers and salespersons shall use best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in a vehicle.
4. Dealers and salespersons shall provide conscientious service to their customers in the course of a trade in a vehicle and shall demonstrate reasonable knowledge, skill, judgment and competence in providing the services.
5. If:
 - a) a dealer enters into a contract to sell or lease a vehicle to a purchaser or lessee who is not another dealer;
 - b) the purchaser or lessee trades in another motor vehicle to the dealer under the contract or to another registered dealer under a separate contract; and
 - c) the dealer who receives the vehicle being traded in agrees to pay any outstanding loan on the vehicle or to pay any outstanding bill for the repair or storage of the vehicle

the dealer who receives the vehicle being traded in shall fulfil the obligations under the agreement described in clause (c).

Examples of Professionalism

1. Dealers and salespersons promptly, honestly and courteously respond to complaints made about them by other registrants, consumers or others.
2. Dealers and salespersons keep informed with respect to all matters essential to the conduct of business in the motor vehicle industry.
3. Dealers and salespersons cooperate with OMVIC representatives carrying out OMVIC's administrative activities including inquiries, inspections, investigations and discipline.
4. The obligations in example 3 apply whether the issue concerns that registrant, another registrant or any other person.
5. Dealers and salespersons sell or lease vehicles reasonably fit for the intended use that a consumer expressly or by implication makes known to the registrant. A vehicle may be considered not reasonably fit because it is not designed for the intended use, or because it has structural or mechanical defects.

6. Dealers ensure that all liens have been discharged prior to selling a motor vehicle to a purchaser.
7. Should a dealer sell a vehicle that has a lien on it, the dealer will:
 - a) Ensure that the lien is discharged;
 - b) Ensure that the lien holder has confirmed in writing that it no longer has a financial interest in the vehicle; or
 - c) Buy the vehicle back from the purchaser for an amount representing the current fair value of the motor vehicle, accounting for depreciation.
8. All contracts respecting motor vehicle transactions are to be in writing and disclose all terms and conditions, including the total amount of all payments made or received in relation to the sale or lease of a vehicle. After all terms and conditions have been filled out on the contract, every contract is signed by all parties to the contract and a signed, duplicate original copy of the contract is given to all parties to the contract.
9. All terms and conditions in contracts respecting motor vehicle transactions are set out clearly and in plain language. Disclosure statements are expressed clearly and concisely in a logical order and in a manner that is likely to bring the information to the attention of the purchaser.
10. Dealers and salespersons encourage consumers to read and understand the terms and conditions of all contracts before signing the contract.
11. Dealer employees are clear and truthful in describing vehicle features, benefits and prices, and in explaining products, services, programs and charges. They help customers to find a vehicle that best meets their needs and financial ability.
12. Dealers and salespersons comply with all the laws that govern the motor vehicle industry, including applicable parts of the following legislation:
 - a) *Motor Vehicle Dealers Act*;
 - b) *Consumer Protection Act*;
 - c) *Highway Traffic Act*;
 - d) *Human Rights Code*;
 - e) *Sale of Goods Act*;
 - f) *Environmental Protection Act*;
 - g) *Personal Property Security Act*;
 - h) *Repair and Storage Liens Act*; and
 - i) *Competition Act* (as it pertains to the advertising of motor vehicles).
13. Dealers and salespersons have knowledge of, and comply with the Code of Ethics. Registrants cannot create or enter into an agreement that negates any obligation under the Code of Ethics.
14. Dealers and salespersons do not knowingly do business with curbsiders.

15. Dealers and salespersons do not provide anyone who is not registered under the *Motor Vehicle Dealers Act* with access to dealer-only vehicle auctions (e.g., wholesale auctions).
16. Dealers and salespersons do not knowingly allow anyone, other than a registered salesperson, to be involved in negotiating or approving vehicle transactions or to provide information about specific vehicles that are for sale or lease. This would include such positions typically known as business managers, finance and insurance staff, leasing staff, sales staff and all sales and leasing managers.
17. Dealers and salespersons do not encourage or counsel anyone to break a contract already made with another dealer.
18. When leasing a used motor vehicle, registrants ensure that the vehicle has been inspected and that a Safety Standards Certificate (SSC) has been issued for that vehicle.
19. Registrants comply with the *Environmental Protection Act* with respect to the storage and disposal of waste material, and all laws in force in Ontario with respect to vehicle emissions, catalytic converters and abandoned motor vehicles.
20. Dealers and salespersons do not create, solicit, post or make available to the public any false, misleading or fictitious reviews, ratings, critiques, etc. of their own dealership, products, services or that of another dealership, their products or services.

Conclusion

These Standards of Business Practice have been created to help dealers and salespersons develop an understanding of the Code of Ethics, and the minimum standards that are required to ensure compliance with the Code. All registrants are encouraged to develop practices that exceed the expectations outlined here, thereby building consumer confidence, enhancing our industry's reputation, and creating a fair and level marketplace for all dealers.

17.08

Summary

The Code of Ethics is part of the MVDA. Simply, it is the law, and it requires dealers and salespeople to carry on business in accordance with the law and with integrity and honesty.

One major component of the Code of Ethics Regulations sets out the required disclosures in wholesale transactions (see Chapter 5). Ensuring dealers provide one another with proper disclosure will make it dramatically easier for dealers to provide the necessary disclosure to their customers.

Breaching the Code can have serious repercussions, including revocation of registration or a disciplinary hearing.

Test Yourself

REMEMBER:

The questions on the Automotive Certification Test are in multiple-choice format only. This manual, however, contains a variety of question formats to help you understand the content, such as activities, assignments, multiple-choice questions, true-false questions and fill-in-the-blank questions.



The first questions below are the same questions asked in “What Do You Know?” at the beginning of this chapter. Try answering these questions again and compare your results with your earlier answers.

Then, answer the additional questions.

1. True or False: The Code of Ethics Regulations are guidelines or “best practices” but do not have any real legal authority.
2. Dealers and salespeople are required to conduct business in accordance with the law and with (select all that apply):
 - a) Integrity
 - b) Honesty
 - c) Fairness
 - d) Passion
3. Failure to abide by the Code of Ethics Regulations can result in:
 - a) Revocation of registration
 - b) Refusal to grant or renew registration
 - c) A disciplinary hearing
 - d) All of the above
4. True or False: If the Discipline Panel decides that a dealer or salesperson failed to comply with the Code of Ethics Regulations, the committee may impose a maximum fine of \$10,000.
5. Other than a fine, what other penalties might the Discipline Committee impose?
6. True or False: An “order” of the OMVIC Discipline Committee is final and cannot be appealed.
7. Choose the *two* correct answers:
 - a) A salesperson must not do anything that causes the dealer to break the Code of Ethics Regulations
 - b) A salesperson must ensure that the dealer does not break the Code of Ethics Regulations
 - c) The dealer must ensure the salesperson complies with the Code of Ethics Regulations
 - d) While it is good to follow the Code of Ethics Regulations, this is not required by any law

Refer to Appendix 1 for the correct answers. Review the relevant section of the chapter for any question you answered incorrectly.

Chapter 18

A VARIETY OF TOPICS

- | | |
|---|--|
| 18.01 Learning Objectives | 18.09 Maintaining a Garage Register |
| 18.02 What Do You Know? | 18.10 Branding Vehicles |
| 18.03 Introduction | 18.11 Safety Standards Certificate |
| 18.04 Canadian Motor Vehicle Arbitration Plan | 18.12 Used Vehicle Information Package |
| 18.05 Consignment Sales | 18.13 Summary |
| 18.06 Consignment Best Practices | 18.14 Test Yourself |
| 18.07 Dealer Plates and Service Plates | |
| 18.08 Wholesale Auctions | |



18.01

Learning Objectives

After completing this chapter, you will be able to identify:

1. The role of CAMVAP
2. The disputes eligible for CAMVAP
3. The meaning of a consignment transaction
4. The dealer's obligations regarding consignment contracts
5. When dealer plates may be used
6. When service plates may be used
7. Who may attend a wholesale auction
8. What information the wholesale auction will require from the dealer
9. The legal requirements to maintain a garage register
10. The meaning of the brands "irreparable," "salvage" and "rebuilt"
11. The purpose of an SSC
12. The purpose of a UVIP

18.02

What Do You Know?

Try answering these questions to test your knowledge:

- 1.** What is the Canadian Motor Vehicle Arbitration Plan?
- 2.** Briefly explain a “consignment transaction.”
- 3.** True or False: The total amount the dealer will charge the consignor on the sale of the vehicle (whether as a fixed amount or a commission share) can be negotiated after the sale and does not have to be included in the contract.

Keep these questions in mind as you read through the following section.



18.03

Introduction

The *Motor Vehicle Dealers Act* (MVDA), *Consumer Protection Act* (CPA) and *Sale of Goods Act* are three pieces of legislation that dramatically govern the retail automotive industry. This final chapter will address a few key remaining topics from the MVDA as well as cover important information found in other legislation, including:

1. Canadian Motor Vehicle Arbitration Plan (CAMVAP)
2. Consignment sales
3. Dealer plates and service plates
4. Wholesale auctions
5. Maintaining a garage register
6. Branding vehicles
7. Safety Standards Certificate (SSC)
8. Used Vehicle Information Package (UVIP)

18.04

Canadian Motor Vehicle Arbitration Plan

CAMVAP is a program in which disputes between consumers and vehicle manufacturers about alleged manufacturing defects or implementation of a manufacturer's new vehicle warranty can be put before a neutral third party (arbitrator) for resolution. According to CAMVAP, the arbitration process is intended to be "fair, fast, friendly, free and final." Once a decision is made by the arbitrator, it is binding and cannot be appealed by either side.

In the United States, many states have "lemon laws" which provide relief to the buyer of a new or recent vehicle that appears to have been poorly manufactured (a "lemon"). There is no such lemon law in Ontario.

CAMVAP is the Canadian approach to dispute resolution. However, not all manufacturers participate in the program: BMW (which also includes the Mini and Rolls-Royce brands), Mitsubishi and Suzuki are three larger manufacturers that do not participate.

CAMVAP does cover most domestic and imported passenger cars, light trucks, sport utility vehicles, vans and multi-purpose passenger vehicles purchased or leased in Canada, as long as the vehicle is the current model or one of four previous model years, and has travelled less than 160,000 km.

Eligible disputes:

- The application or administration of the manufacturer's new vehicle warranty as it applies to the vehicle.
- Allegations of defect in vehicle assembly or materials specific to the vehicle as delivered to an authorized dealer.
- The vehicle is a passenger car, light duty truck, van, sport utility vehicle or multi-purpose passenger vehicle weighing no more than 4,536 kg (10,000 lbs) gross vehicle weight.
- The vehicle has travelled less than 160,000 km at the time of the hearing.
- The vehicle is of the current or four previous model years.

Ineligible disputes:

- Dispute involving any personal injury and/or third-party property damage.
- Disputes claiming consequential or incidental damages, loss of profits or inconvenience.
- The claim is being litigated in the courts (or as part of a class action).
- The vehicle is used primarily for business or commercial purposes.

THE CONSUMER

does not have to keep the outcome of CAMVAP confidential and may discuss involvement in the Plan, including the arbitrator's award, as the consumer sees fit.

A CAMVAP arbitrator may use a number of different “remedies” and can order one or more of the following:

- The manufacturer repairs the vehicle at its expense.
- The manufacturer buys the vehicle back at a price set by a formula (with or without a reduction for use).
- The manufacturer reimburses for previous repairs.
- The manufacturer reimburses for certain out-of-pocket expenses up to \$500.
- The manufacturer reimburses up to \$100 of total costs to summon witnesses.
- The manufacturer has no liability for the claim.
- The arbitrator has no jurisdiction (authority) over the claim.

A CAMVAP arbitrator **cannot** order:

- Exemplary, punitive or other damages (except as allowed by CAMVAP).
- That the agreement to buy or lease the vehicle be voided or set aside.
- Reimbursement of expenses to buy or lease the vehicle.
- A buy-back if the consumer exceeds the buy-back eligibility requirements, even if repairs cannot be made.
- Extended service contracts or warranty extensions.

The MVDA requires sales agreements (new and used vehicles) and lease agreements to fully disclose the availability (or non-availability) of CAMVAP.

If CAMVAP is available, the statement reads:

Canadian Motor Vehicle Arbitration Plan

The Canadian Motor Vehicle Arbitration Plan may be available to resolve disputes concerning alleged manufacturer's defects or implementation of the manufacturer's new motor vehicle warranty.

If CAMVAP is NOT available, the statement reads:

Canadian Motor Vehicle Arbitration Plan Not Available

The manufacturer of this vehicle is not a participant in the Canadian Motor Vehicle Arbitration Plan. Therefore, the program under that plan is not available to resolve disputes concerning alleged manufacturer's defects or implementation of the manufacturer's new motor vehicle warranty.

Note: This is only a brief overview of CAMVAP. Refer to the CAMVAP website for complete information (www.camvap.ca).

18.05

Consignment Sales

Rather than buying a vehicle for resale, dealers sometimes take vehicles on consignment. In a consignment deal, the **owner (consignor)** gives the vehicle to the **dealer (consignee)** to sell on the owner's behalf.

Once sold, the dealer gives the money to the owner and keeps a fee. Consignments can be arranged between a dealer and a consumer or between two registered dealers.

All consignment agreements must be in writing and signed by both parties. When the vehicle is sold, the vehicle's registration is transferred from the consignor (the person who owns the vehicle) through the consignee (selling dealer) and then into the buyer's name. At this point, the consignment contract has been executed and is final. The consignor gets the final sale price, minus the consignee's (selling dealer's) fee.

All money received by the dealer from a consignment sale **must** be deposited in the dealer's trust account when the consignor is an individual who had originally purchased the vehicle for personal or family use.

Signed consignment agreements are not only requirements of the MVDA – they make good business sense and protect both parties by eliminating misunderstandings.

A CONSIGNOR'S

vehicle on the dealer's lot must clearly indicate it is received on a consignment basis.

Consignment Contracts:

- When the dealer is taking in a vehicle on a consignment basis, the contract must be in writing, signed by the dealer and the other party.
- When the consignor is an individual who purchased the vehicle for personal or family use (or is any other person exempt from registration), General Regulation Section 45(4) spells out that the contract must include, in a clear, comprehensible and prominent manner, the following:
 1. The name and address of the consignor.
 2. Dealer's registration number and registered name (and legal name of dealer if different from registered name).
 3. The make, model, model year, trim level of vehicle, colour, vehicle identification number (VIN) and body type of the vehicle.
 4. If the vehicle is a used vehicle, the total distance that the vehicle has been driven if the dealer can determine the distance.
 5. If the vehicle is a used vehicle and the dealer cannot determine the total distance the vehicle has been driven, but can determine the distance that the vehicle has been driven as of some past date, a statement of that distance and date, together with a statement that "the total distance that the vehicle has been driven is believed to be higher than that distance."
 6. If the vehicle is a used vehicle and the dealer cannot determine the total distance the vehicle has been driven, nor a distance the vehicle has been driven as of some past date, a statement that "the total distance that the vehicle has been driven is unknown and may be substantially higher than the reading shown on the odometer."
 7. The total amount the dealer will charge the consignor on the sale of the vehicle (whether as a fixed amount or a commission share), and an itemized list of all components of those charges.
 8. An estimate of the selling price of the vehicle and a minimum selling price of the vehicle.
 9. The term of the contract (and, if applicable, how parties can extend it, or a statement that they cannot extend it).
 10. If the contract can be terminated before it is set to expire, the conditions regarding such early termination (including fees, if any, payable for early termination).
 11. All restrictions, limitations, conditions and other obligations imposed on the consignor under the contract (stated in a clear, comprehensible and prominent manner).

Further requirements for such consignment sales in which the consignor (the person who is giving the vehicle for sale) has purchased the vehicle for personal or family use (any other person exempt from registration) include:

- The dealer must ensure that if a registered salesperson is acting on this consignment, the contract is also signed by that salesperson.
- The consignor must receive a copy of the contract immediately after he or she signs it.
- The dealer must use best efforts to obtain a copy of the UVIP from the consignor.

Further requirements for all consignment sales include:

- The dealer must ensure the contract clearly indicates, in a manner in which it is likely to be noticed, that the vehicle is being sold on a consignment basis.
- The dealer must “use best efforts” to ensure the consignor and the buyer of the vehicle promptly receive a copy of the sales contract.

MVDA General Regulation 46 sets out special rules if the consignment vehicle is being sold at an auction conducted by the dealer.

18.06

Consignment Best Practices

The guidelines in Chapter 18.06 are Ontario Motor Vehicle Industry Council (OMVIC) recommendations. These “best practices” are meant to inform dealers and aid in compliance with the MVDA and Code of Ethics; they should not be construed as a legal opinion. Registrants are encouraged to review the relevant sections of the MVDA and its regulations and to consult with a lawyer should questions arise.

Liens and Encumbrances

Dealers have an obligation pursuant to the *Sale of Goods Act* to ensure all vehicles offered for sale are free of liens or encumbrances. Accordingly, before taking any vehicle on consignment, dealers should:

- Run a lien check on the vehicle. Section 45(6) of the Regulations requires the consignee to use best efforts to obtain a UVIP from the consignor. This document will show Ontario liens and brands (e.g., salvage, rebuilt, irreparable). However, UVIPs will not show accident history. OMVIC recommends consignees also obtain a comprehensive vehicle history report.
- Have the consignor confirm (in writing) whether the vehicle has a lien on it.
- Confirm the consignor is the owner of the vehicle by checking his or her driver’s licence and vehicle registration.

- Ensure any liens are paid out before a purchase is completed.
Consignees should deduct the lien amount from the proceeds the consignor would be entitled to receive and pay this amount to the lien holder from the trust account immediately after the purchase is concluded.

Disclosure

Dealers have an obligation under the CPA to disclose all material facts about the vehicles they sell. Dealers must also provide the buyer with information pursuant to Section 5 of the Code of Ethics when trading with another dealer, or Section 42 of the Regulations to the CPA when trading with a non-dealer.

These disclosure requirements apply equally to vehicles sold on consignment. In order to meet these obligations, dealers taking vehicles on consignment should not rely solely on disclosures made by the consignor but should also perform their own due diligence to ensure proper disclosures are made to the buyer. This may include:

- Obtaining specific written disclosures from the consignor – similar to those from a consumer trading in a vehicle
- Performing a vehicle history search (i.e., in addition to a UVIP obtained from the consignor)
- Conducting a thorough physical inspection and/or having the vehicle inspected by a qualified mechanic.
- Providing all relevant information to the buyer before he or she enters into an agreement to purchase the vehicle

Vehicle Registration

The consignee is not authorized to transfer vehicle registration out of the consignor's name until the vehicle is sold in accordance with the consignment agreement. However, consignees may obtain the original ownership from the consignor when the consignment agreement is entered into.

While Offering a Vehicle on Consignment

Dealers must ensure the vehicle is clearly indicated on their lot as a consigned vehicle. This can be done by keeping consigned vehicles in a separately marked area of the lot or by putting a sign in/on each consigned vehicle. This is required by Section 45(7) of the Regulations. In addition, it is recommended the dealer obtain the consignor's prior written consent to:

- Sell the vehicle for an amount less than the minimum selling price.
- Use the consigned vehicle for any other purpose besides offering it for sale.
- Remove the consigned vehicle from their registered premises for more than 24 hours.

- Affect any alterations, repairs, servicing or reconditioning other than what is specified in the original consignment agreement. This applies whether the consignee intends to charge the consignor for these services. This does not apply to repairs to be made as part of an agreement with the buyer for which the consignor will not be responsible.

Trust Account

When a consigned vehicle is sold, Section 48(5) of the Regulations requires the consignee to “hold the amounts in trust until the purchase is concluded”; therefore, any payments received from the buyer must be deposited in the dealer’s trust account.

Dealers must set up an account at an institution that is a bank, a loan or trust corporation, a credit union or an authorized foreign bank under Section 2 of the *Bank Act*. The name on this account should contain the words “*Motor Vehicle Dealers Act, 2002, Trust Account*” and the registered name of the dealership. If there is not enough room for both, dealers can just use the words “Trust Account” and their registered name.

When a Consigned Vehicle Is Sold

The dealer should promptly (within two days) notify the consignor when the consigned vehicle is sold. Section 58(5) requires monies be held in trust “until the purchase is concluded.” Accordingly, the consignor should be paid promptly out of the trust account. Dealers should pay the consignor no later than 30 days after the vehicle is sold, regardless of whether the purchaser has paid in full. Section 45(8) of the Regulations also requires the consignee to make “best efforts to ensure that the consignor and the purchaser of the motor vehicle promptly receive a copy of the sales contract.”

Trade-Ins

As a result of a consignment arrangement, the consignor is entitled to receive the proceeds of the sale of their consignment vehicle (including any trade-in allowances given by the dealer to the purchaser) less any amounts disclosed to the consignor in the consignment agreement (e.g., lien payouts, consignment fees, sale fees). Accordingly, any trade-in vehicle or the proceeds from its sale should be treated as trust assets to the extent necessary to ensure the dealer can meet its obligations to the consignor.

Consignment Records

Consignment records, including trust account statements and monthly reconciliations must be maintained at the dealer’s location in accordance with the MVDA. Section 60 of the *Highway Traffic Act* also requires dealers to enter consigned vehicles into their garage register. It is also recommended that dealers

maintain a separate file for each consignment containing all documentation relating to the consigned vehicle (including, but not limited to, lien searches, UVIPs, vehicle history searches, repair/service records, consignment agreement, condition reports, insurance information, warranties, copy of vehicle registration and consignor's driver's licence, bill of sale and payment information).

OMVIC Disclosure

Note: the following is an OMVIC-recommended disclosure statement and is not required by regulation.

ATTENTION:

In case of any concerns with this consignment agreement, you should first contact the dealer/consignee. If concerns persist, you may contact the Ontario Motor Vehicle Industry Council as the administrative authority responsible for administering the *Motor Vehicle Dealers Act, 2002*. You may be eligible for compensation from the Motor Vehicle Dealers Compensation Fund if you suffer a financial loss from this consignment and the dealer/consignee is unable or unwilling to make good on the loss. You may have additional rights at law. Please contact OMVIC at 1-800-943-6002 or at consumers@omvic.on.ca.

18.07

Dealer Plates and Service Plates

Dealer Plates:

Ontario motor vehicle dealers who are licensed under the MVDA are eligible for dealer plates/permits. The dealer plate/permit is a single portable plate with the word "DEALER" on the left side and red alphanumeric characters on a white background. It is for **exclusive use by motor vehicle dealers on vehicles owned as part of the dealer's inventory of vehicles** for sale and cannot be loaned. Private use of motor vehicles or trailers with a dealer plate is permitted.

Service Plates/Permits:

Service providers (including anyone who repairs, customizes, modifies, manufactures or transports motor vehicles or trailers) may use a service plate:

- On a trailer or motor vehicle (other than a motorcycle or motor-assisted bicycle) for purposes related to the repair, road testing, customization or modification of the vehicle, if the vehicle is in the possession of the person by whom the service plate is used
- For the purpose of transporting the vehicle by a person engaged in the business of transporting vehicles
- For purposes related to the manufacturing or sale of a trailer
- For the purpose of towing the vehicle by a person engaged in the business of transporting vehicles
- To tow a vehicle to a location where its load will be removed or to an impound facility

Private use of motor vehicles or trailers with a service plate is not permitted.

OMVIC does not issue or control dealer or service plates. They are issued by the Ontario Ministry of Transportation. For additional information, refer to: www.mto.gov.on.ca/english/vehicles/dealer.shtml

18.08

Wholesale Auctions

Only registered dealers and dealers registered in another jurisdiction are permitted to purchase vehicles at wholesale auctions.

If an auction is conducted where bidders are physically present, the bidding area is restricted to registered dealers, OMVIC staff, law enforcement personnel, directors or officers of the auction or those in their company, and employees or agents of the sellers. Everyone in the bidding area must wear visible photo ID. Only registrants or out-of-province dealers who have registered with OMVIC are permitted to bid. Non-registrants in the bidding area cannot be there for the purpose of acquiring a vehicle.

Wholesale auctions can also require further documentation and information from a dealer wishing to register to obtain an auction card. The auction card is required to be presented by the registered person in order to enter and access the bidding area of the auction. The information could include:

- Dealer HST registration
- Dealer vendor permit (HST)
- Trade and credit references
- Proof of insurance
- Copy of other auction cards

Online Auctions

If access is available to an auction online or electronically, it must be conducted in a secure manner so that only registrants or registered dealers in other jurisdictions may gain access.

Dealers may not allow a customer to “shoulder surf” an online auction, participating in the auction surreptitiously.

It is an offence for a registrant to facilitate access to a wholesale auction, regardless of whether the auction is conducted in person or over the Internet.

Persons and their employees and agents who conduct an auction of motor vehicles (known as wholesale auctions) are exempt from the requirement of registration as a motor vehicle dealer pursuant to MVDA if they satisfy the following conditions:

- That they have no property interest in any of the motor vehicles being sold.
- That vehicles sold are owned by a motor vehicle dealer or a person exempt from registration requirements of the MVDA.
- That the sale of vehicles is only to registered motor vehicle dealers.
- That best efforts be made to ensure disclosures required by the MVDA and Code of Ethics Regulations has been made
- That access to the auction is limited to registrants.

18.09

Maintaining a Garage Register

The *Highway Traffic Act* requires that registered motor vehicle dealers record and keep a complete record of information of each vehicle so that the vehicle can be readily identified. This information is required to be recorded in a garage register.

In addition to maintaining the garage register, a dealer must notify the Ministry of Transportation of any motor vehicle (or trailer) bought or sold.

Some dealers may select to maintain this information electronically. Dealers who choose this method over the traditional paper-based garage register must ensure the electronic document:

- Records the same information under the same headings as the paper-based garage register
- Is available for viewing by OMVIC, police or Ministry of Transportation staff at all times during normal business hours; this requires a properly functioning computer at the dealership

Because of the sometimes fragile nature of computers and data storage

THE GARAGE REGISTER

is available from the Ministry of Transportation by calling 416-235-3473, or online at www.ontario.ca/page/get-renew-or-replace-garage-licence.

devices and the unfortunate prevalence of computer viruses and malware, it is imperative dealers storing documentation electronically back up their files on a regular basis and exercise due diligence to protect electronically stored information.

18.10

Branding Vehicles

Insurance companies write off approximately 90,000 vehicles each year in Ontario. Many of these “write-offs” find their way back onto Ontario roads illegally or are sold to unsuspecting consumers. The vehicles may be severely damaged and unsafe to drive. Ontario’s vehicle branding program makes it more difficult for stolen and damaged vehicles to find their way on to our roads.

This program requires insurers and others (including self-insurers, auctioneers, importers, salvagers and individuals) to “brand” vehicles that are severely damaged and declared a total loss (write-offs). They must also report those brands to the Ministry of Transportation’s Registrar of Motor Vehicles, where they are maintained in the Vehicle Registration System. With the exception of the “stolen” designation, brands are printed on registration permits, vehicle histories and UVIPs, all of which can be purchased from any Driver and Vehicle Licence Issuing Office or ServiceOntario self-service kiosk.

There are four different types of vehicle brands that fall under the mandatory vehicle branding program:

“Irreparable”:

- Vehicle has been written off as a total loss.
- Can be used only for parts or scrap.
- Cannot be driven again in Ontario.

“Salvage”:

- Vehicle has been written off as a total loss.
- Can be repaired or used for scrap.
- If repaired, vehicle must pass a structural inspection test and be inspected by an authorized technician (see “rebuilt”).

“Rebuilt”:

- Vehicle was written off, branded as “salvage” and then repaired.
- Vehicle must have a Structural Inspection Certificate from an authorized technician at a licensed Motor Vehicle Inspection Station (MVIS).

THE BRANDING PROGRAM

enhances road user safety, protects consumers in the used vehicle market and reduces vehicle registration fraud and theft. As a result of this program, vehicles that can never be adequately repaired for on-road use (“irreparable” vehicles) will not be put back onto Ontario roads, and vehicles that may be rebuilt (“salvage” vehicles) must be reconstructed and then pass an inspection to be deemed safe to go back on the road, their brand now changed to “rebuilt.”

“None”:

- Vehicle has not been given one of the other three brands in Ontario.
- Vehicle may have had a damage-related brand applied outside Ontario.
- Vehicle may have been damaged or rebuilt before March 31, 2003.
- Degree of damage does not meet branding criteria.
- Vehicle may never have been in a collision.

The Ministry of Transportation has a specific criterion that deems a vehicle as *“Stolen”*:

- Vehicle has been declared stolen by the police.
- No vehicle transaction can be completed as long as this designation is in place.
- “Stolen” is not a vehicle brand. “Stolen” is the status of the vehicle and can only be removed when the Ministry of Transportation is advised by the police that the vehicle has been recovered.

Vehicles from Outside Ontario

Vehicle brand information from other Canadian or U.S. jurisdictions will be carried forward if these vehicles are registered in Ontario, with the exception of the “rebuilt” brand. Imported vehicles with a “rebuilt” designation (or its equivalent from another Canadian or U.S. jurisdiction) will be registered as “salvage” in Ontario, thus requiring the vehicle to undergo a structural inspection to ensure the vehicle has been repaired properly. If the vehicle passes that inspection, it will be branded as “rebuilt” in Ontario.

Ontario has expanded its recognition of brands for imported vehicles. The “irreparable” brand is now applied to all imported branded vehicles previously identified with “fire or flood” damage, regardless of the brand identified on the title. For example, if a customer has a Certificate of Title or other acceptable proof of registration with a brand of “salvage” and a description of “flood damage or fire damage,” it must be branded in Ontario as “irreparable.”

All imported motorcycles previously branded “salvage” or “rebuilt” (or an equivalent brand) will be branded “irreparable” when registered in Ontario. This means that the vehicle will never be eligible to be driven on Ontario’s roads. This policy became effective on July 16, 2007. There are no exemptions from this requirement (i.e., no exemptions for dealers, wreckers, etc.).

18.11

Safety Standards Certificate

In order for a vehicle to be plated and driven, it has to pass a safety inspection. This inspection, which is conducted by a government-approved Motor Vehicle Inspection Station (MVIS), covers specific components that must meet minimum safety requirements (as set by the Ministry of Transportation). If the vehicle passes an inspection, the MVIS issues a Safety Standards Certificate (SSC).

For the purposes of transferring ownership, an SSC is valid for 36 days from the date it was issued. A vehicle may be sold without an SSC, but licence plates cannot be attached to the vehicle without it.

An SSC is not a warranty or guarantee of the general condition of the vehicle. Under the MVDA, this must be explained in all contracts for the sale or lease of a used vehicle by using this statement:

An SSC is only an indication that the motor vehicle met certain basic standards of vehicle safety on the date of inspection.

An SSC is required when:

- Transferring a used motor vehicle to a new owner as fit
- Registering a motor vehicle in Ontario that was previously registered in another province or country
- Changing the status of a vehicle from unfit to fit
- Registering a rebuilt motor vehicle

18.12

Used Vehicle Information Package

The Used Vehicle Information Package (UVIP) contains vehicle registration history in Ontario, including all present and previous owners in Ontario as well as the municipality of residence, odometer information, vehicle lien information (if there are any liens registered in Ontario), the fair market value (“Red Book”) on which the minimum tax payable will apply and other information, such as consumer tips, vehicle safety standards inspection, retail sales tax information and forms for bills of sale.

UVIPs do not include ownership history or odometer readings for any time the vehicle was registered outside Ontario.

The private seller of a used motor vehicle must supply the buyer with a UVIP at the time of sale unless the types of vehicle and transfer situations are exempt (e.g., transfers between linear family members). The buyer must then present the UVIP to the Driver and Vehicle Licence Issuing Office when transferring the vehicle registration.

A USED VEHICLE INFORMATION PACKAGE

is mandatory for most transfers of vehicles between private sellers. A dealer is not required to supply a UVIP to any buyer.



18.13

Summary

CAMVAP is a voluntary program offering binding arbitration to consumers and manufacturers to settle disputes involving vehicle defects or warranties.

The proceeds from a consignment sale must be deposited in the dealer's trust account if the consignor is an individual who originally purchased the vehicle

for personal or family use. All consignment agreements must be in writing and contain specific information required by the MVDA. This includes what the dealer will charge the consignor and an estimated selling price and the minimum selling price.

Dealer plates are available from the Ministry of Transportation and may be used on any vehicle in the dealer's inventory of vehicles for sale.

There are four "brands" that may be affixed to a vehicle's title in Ontario: "irreparable," "salvage," "rebuilt" and "none." Vehicles branded "irreparable" may never be licensed for use on the road in Ontario. "Salvage" vehicles may only be licensed by undergoing

proper repairs and a special inspection. If the vehicle passes the inspection, its brand is changed to "rebuilt" and it may be put back on the road.

SSCs are issued by Ministry of Transportation-approved MVISs. The certificates are good for 36 days from the date of issue and are required when transferring any used motor vehicle to a new owner as "fit." An SSC means only that the vehicle met specific minimum safety standards on the date of issue.

UVIPs contain vehicle registration history and lien and odometer information. They are required for almost all private vehicle sales, but dealers are NOT required to provide them to buyers.



Auctions:

- Wholesale auctions are restricted to registered dealers and dealers registered in another jurisdiction.
- While on the auction floor, all participants must wear visible photo ID.
- Electronic or online auctions must be kept secure.

18.14

Test Yourself



The first questions below are the same questions asked in “What Do You Know?” at the beginning of this chapter. Try answering these questions again and compare your results with your earlier answers.

Then, answer the additional questions.

1. What is the Canadian Motor Vehicle Arbitration Plan?
2. Briefly explain a “consignment transaction.”
3. True or False: The total amount the dealer will charge the consignor on the sale of the vehicle (whether as a fixed amount or a commission share) can be negotiated after the sale and does not have to be included in the contract.
4. True or False: All new car manufacturers participate in CAMVAP.
5. List three criteria that must be met for a vehicle to be eligible for CAMVAP.
6. True or False: A four-year-old vehicle with 151,000 km *could* qualify for CAMVAP.
7. True or False: CAMVAP decisions cannot be appealed.
8. True or False: Only monies over \$10,000 that are received from a consignment sale must be deposited in the dealer’s trust account.
9. List five pieces of information that must be included in a consignment contract.
10. Dealer plates are issued by:
 - a) Ministry of Consumer Services
 - b) OMVIC
 - c) Ministry of Transportation
 - d) TADA
11. True or False: At a wholesale auction, dealers may be accompanied by a customer so long as the customer bids only through the dealer.
12. True or False: Dealers must wear visible photo ID at wholesale auctions.

REMEMBER:

The questions on the Automotive Certification Test are in multiple-choice format only. This manual, however, contains a variety of question formats to help you understand the content, such as activities, assignments, multiple-choice questions, true-false questions and fill-in-the-blank questions.

Refer to Appendix 1 for the correct answers. Review the relevant section of the chapter for any question you answered incorrectly.

- 13.** The *Highway Traffic Act* requires dealers to keep a complete record of each vehicle sold. Where is this information to be recorded and where can the “book” be obtained?
- 14.** List the four “brands” that fall under the vehicle branding program.
- 15.** True or False: Vehicles branded as *irreparable* can be rebranded as *rebuilt* only after the vehicle receives a Structural Repair Certificate from a licensed repair facility.
- 16.** A Safety Standards Certificate is required when:
 - a) Transferring a used motor vehicle to a new owner as fit
 - b) Registering a motor vehicle in Ontario that was previously registered in another province or country
 - c) Changing the status of a vehicle from unfit to fit
 - d) Registering a rebuilt motor vehicle
 - e) All of the above
- 17.** How long is a Safety Standards Certificate valid?
- 18.** Used Vehicle Information Packages are required in:
 - a) Private sales
 - b) Dealer sales
 - c) Consignment sales
 - d) All sales

Answers to Questions in Chapters 1 through 18

Chapter 1

1. The *Motor Vehicle Dealers Act, 2002*
see 1.04
2. c)
see 1.04
3. Any three of the following:
 - Administers and enforces the MVDA
 - Inspects dealers
 - Maintains a complaint line for consumers
 - Conducts investigations
 - Conducts disciplinary hearings
 - Conducts prosecutions
 - Administers the Compensation Fund
 see 1.07
4. Twelve total, nine dealers and three consumer reps
see 1.07
5. Under the transaction fee program, dealers are required to remit \$10 for each vehicle sold or leased (including fleet and “as is” transactions) to OMVIC. These funds are remitted annually with the dealer’s registration renewal fee.
see 1.08
6. True
see 1.08
7. True
see 1.08
8. d)
see 1.12
9. OMVIC may issue an order requiring the dealer to cease publication and/or issue a retraction or correction.
see 1.12

10. Up to two years
see 1.09
11. This action might be taken:
 - If there has been an investigation
 - If the dealership is about to fail
 - If OMVIC is proposing to revoke a registration
 - If a freeze order is about to be made
 see 1.10

Chapter 2

1. 18
see 2.05
2. Three requirements are:
 - Complete/pass certification course
 - Pay fee
 - Be employed or retained by a registered dealer to act as a salesperson
 see 2.07
3. True
see 2.03
4. a), b), c), d)
see 2.04
5. Any two of:
 - Past conduct
 - False statement on application
 - Failed to comply with terms
 - Cannot be expected to be financially responsible
 - The Compensation Fund has paid out a claim and has not been reimbursed
 see 2.05 and 2.10
6. One of the following:
 - Two years have passed
 - New evidence to demonstrate circumstances have changed
 see 2.13
7. Licence Appeal Tribunal (LAT)
see 2.12

8. Any four classes listed in 2.16
9. Any three from 2.14
10. Any of the following:
 - Change of dealer address
 - Changes of officers or directors (if dealer is a corporation or partnership)
 - The date of commencement of employment of every salesperson
 - The termination of employment of a salesperson and the date and reason for termination

see 2.19

11. c)
see 2.08

12. An interested person:
 - Has or may have a beneficial interest in the business
 - Exercises or may exercise control either directly or indirectly over the dealer/salesperson
 - Has provided or may have provided financing either directly or indirectly to the business

see 2.11

13. Posted so the public is likely to see it
see 2.09

14. True
see 2.09

15. Compare your definitions to those in 2.16.

Chapter 3

1. False
see 3.04
2. Any two of:
 - Have a business office (large enough to store records securely)
 - Have a clearly visible sign identifying registered name
 - Be approved for use as a dealership by municipality

see 3.04

3. True
see 3.05
4. Any four points from 3.05 1
5. d)
see 3.05
6. b)
see 3.05
7. Apply for and receive written authorization from OMVIC's Registrar.
see 3.05
8. b)
see 3.05
9. False
see 3.07
10. c)
see 3.07
11. False
see 3.08

Chapter 4

1. The mandatory "Sales Final" statement
see 4.04 19. or 4.05 17.
2. Any four from 4.04.
3. A maximum distance that will be shown on the odometer at the time of delivery or a statement (initialled by the buyer) that there is no maximum.
see 4.04 9.
4. Any four from 4.05.
5. b)
see 4.05 22.
6. "As Is": The vehicle 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 at the buyer's expense. It may not be possible to register the vehicle to be driven in its current condition.

see 4.05 23.

7. d)

see 4.05 23.

8. False

see 4.05 23.

9. Any four from 4.08 4. – 11.

10. The agencies are:

- OMVIC
- Motor Vehicle Dealers Compensation Fund
- CAMVAP

see 4.04 20. – 21. or 4.05 18. – 19. or 4.06 8. – 9.

11. If there is no signed contract and a deposit or trade-in is given to the dealer, the purchaser can cancel the contract at any time and demand his or her deposit or trade-in back.

see 4.12

Chapter 5

1. Any three of:

- Taxi
- Limo
- Police vehicle
- Emergency services vehicle
- Daily rental (unless subsequently owned by someone other than a dealer)

see 5.06

2. Any three of:

- Collision (greater than \$3,000 damage)
- Fire
- Flood
- Structural damage or alterations

see 5.06 5., 10. – 12.

3. True

see 5.06 4.

4. False

see 5.06 8.

5. b)

see 5.06 8.

6. b)

see 5.07

7. False

see 5.06 9.

8. False

see 5.06 18.

9. e)

see 5.06 12. – 15.

10. b)

see 5.09

11. Any two of:

- Use a vehicle history report
- Understand the strengths and weaknesses of the various vehicle history reports
- Thoroughly examine the vehicles

see 5.07

Chapter 6

1. False

see 6.05

2. a), c), e)

see 6.05

3. Rescission is triggered if the following is not disclosed:

- Previous use as police/emergency services vehicle
- Previous use as daily rental (unless subsequently owned by someone other than a dealer)
- Mileage/distance travelled

see 6.05

4. False
see 6.04
5. b)
see 6.06
6. True
see 6.07
7. A margin of error is allowed to a dealer when he or she determines the total distance driven or when he or she cannot determine the total distance driven, but can determine the distance driven as of some past date. The disclosure of distance made by the dealer is deemed to be accurate if it is within the LESSER of five per cent or 1,000 km of the correct distance required to be disclosed.
8. True
see 6.06
9. False
see 6.06 2.

Chapter 7

1. a), b), c)
see 7.04
2. Code of Ethics Regulations
see 7.03
3. Any two from 7.04.
4. False
see 7.04
5. If the dealer cannot determine the total distance the vehicle has been driven, but can determine the distance the vehicle has been driven as of some past date, provide a statement of that distance and date, together with a statement that “the total distance the vehicle has been driven is believed to be higher.”
If the dealer cannot determine the total distance the vehicle has been driven, nor the distance

the vehicle has been driven as of some past date, provide a statement that “the total distance the vehicle has been driven is unknown and may be substantially higher than the reading shown on the odometer.”

see 7.04 2., 3.

6. a)
see 7.04

Chapter 8

1. e)
see 8.06
2. True
see 8.05 or 8.12
3. True
see 8.05 or 8.12
4. c)
see 8.03 or 8.14
5. d)
see 8.03 or 8.14

Chapter 9

1. Warranties can be backed by:
 - An insurance company licenced under the *Insurance Act*
 - An irrevocable letter of credit to the Compensation Fund
 see 9.03 or 9.04 1.
2. a)
see 9.04 1.b) i)
3. Any three from 9.04 4 (k – r).
4. b)
see 9.04 7.b) iii)
5. False
see 9.05 1.f)
6. e)
see 9.05

Chapter 10

1. d)
see 10.04
2. False
see 10.04
3. False
see 10.04
4. False
see 10.04
5. Inspectors are somewhat similar to an auditor. They have the right to inspect a dealer's premises, records and vehicles.
Investigators are somewhat similar to a police officer. They conduct investigations based on complaints and allegations and can lay charges if warranted.
see 10.03
6. c)
see 10.04
7. Any two of the following:
 - OMVIC inspectors
 - Consumer complaints
 - Police
 - Government ministries/agencies
 - Other dealerssee 10.06

Chapter 11

1. Curbsiders are unlicensed dealers. They are in the business of selling cars but pose as private sellers.
see 11.03
2. Often the cars curbsiders sell are misrepresented, accident-damaged, odometer-tampered, stolen or have liens.
see 11.03

3. d)
see 11.03
4. d)
see 11.03
5. Three steps are:
 - Register the vehicle in the buyer's name
 - Check the garage register looking for individual buyer of multiple vehicles
 - Establish a zero-tolerance policysee 11.04

Chapter 12

1. Consumers only
see 12.03
2. Nothing
see 12.04
3. \$324
see 12.04
4. False
see 12.05
5. Any three from 12.05
6. False
see 12.07
7. a)
see 12.04 and 12.05

Chapter 13

1. A "customer" is anyone who buys, leases or receives services from a dealer and may be an individual acting for personal, family or household purposes, an individual acting for business purposes (such as a sole proprietor) or a corporation.
A "consumer" also buys, leases or receives services from a dealer; however, a consumer is someone acting for personal, family or household purposes only, NOT an individual acting for business purposes or a corporation.

2. True
see 13.04
 3. False
see 13.04
 4. False
see 13.03
 5. False
see 13.03
 6. A maximum of two years less a day in jail and/or a fine of up to \$50,000
see 13.05
 7. False
see 13.08
 8. True
see 13.07
 9. a), d)
see 13.11
 10. Any three of the following (there may be others as well):
 - Failing to disclose a “material fact” (e.g., not informing a customer of structural damage to the vehicle)
 - Deceiving a customer by distorting a “material fact” (using exaggeration, hints or double meanings)
 - Telling the customer the car can perform in a way that it cannot, or is still under a manufacturer’s warranty if it is not
 - Saying the vehicle is of a particular model, style, quality or grade if it is not
 - Telling the customer that the vehicle or a part is new (or unused) if it’s not
 - Seriously understating the distance the vehicle has been driven or the amount of use it has had.
 - Selling a repair, replacement, service or part that is not needed
 - Saying there is a specific price advantage if this is not true (e.g., “The price will go up on Monday morning!”)
 - The dealer or salesperson misrepresents the authority of some employee to negotiate the final terms of the agreement
 - The dealer or salesperson misrepresents the purpose of an additional charge
 11. Demonstrating a lack of conscience; taking advantage of a consumer who cannot adequately protect his or her own interests
see 13.11
 12. a)
see 13.11
 13. Any three of the following representations in which:
 - The consumer cannot protect his or her own interests (perhaps because of a disability, illiteracy, impairment, etc.)
 - The price grossly exceeds the price that should be charged
 - The dealer or salesperson put too much pressure on the consumer
 - The consumer has no possibility of meeting the payments
 - This is an absolutely poor deal for the consumer (and is a one-sided, excellent deal for the dealer)
 - The dealer or salesperson gave a misleading opinion and the consumer relied on that opinion to his or her detriment
 14. Material fact is information that might affect a customer’s decision to purchase or lease the vehicle if he or she knew about it, or the price the customer would be willing to pay.
see 13.12
 15. Any four from 13.14
 16. Any four from 13.16
 17. False
see 13.13
- ## Chapter 14
1. b)
see 14.03
 2. True
see 14.04

3. True
see 14.04
4. Any five from 14.05
5. a)
see 14.04
6. b)
see 14.04
7. The four pieces of information are:
 - The name of the person authorizing
 - His or her phone number
 - The date of the call
 - The time of the callsee 14.04
8. d)
see 14.04

Chapter 15

1. Any four of the following:
 - Do a thorough physical examination of the vehicle.
 - Be suspicious if the mileage seems particularly low for the age or condition of the vehicle.
 - Check service records and oil-change stickers, or call the garage or dealer that previously worked on the vehicle.
 - Contact the vehicle's previous owners.
 - Check the manufacturer's warranty records.
 - Consult vehicle history products.
 - Check with the Ontario Ministry of Transportation. The Used Vehicle Information Package (UVIP) may contain odometer readings, as will transfer documents.see 15.05
2. To protect the dealer and to ensure the dealer does not subsequently sell a vehicle with a lien.
see 15.06
3. Yes
see 15.06

4. d)
see 15.06
5. True
see 15.06
6. False
see 15.06

Chapter 16

1. A used vehicle of merchantable quality has no hidden defects and will provide reasonable transportation for a reasonable period of time.
see 16.03
2. False
see 16.03
3. Return the purchaser's money and contact the seller of the vehicle to seek a refund of the money paid by the dealer. The dealer may also contact OMVIC for assistance.
see 16.03
4. a), c)
see 16.03
5. False
see 16.04
6. The following are examples of conditions customers may want to include, but there may be many others:
 - Financing approval
 - Finding affordable insurance
 - Spouse, partner, parent approval
 - Equipment to be added
 - Repairs to be conductedsee 16.05
7. The customer may demand the return of the deposit or trade-in vehicle and the dealer shall immediately return the deposit or the trade-in vehicle.
see 16.06

8. d)
see 16.07
9. False
see 16.07
10. The following are examples of expenses that can be deducted from a deposit, but there may be many others:
- Further advertising
 - Storage
 - Another Safety Standards Certificate (SSC)
 - Another detailing
- see 16.08

Chapter 17

1. False
see 17.03
2. a), b), c)
see 17.04 7.b)
3. d)
see 17.03
4. False (the maximum fine is \$25,000)
see 17.06
5. The Discipline Committee can also order:
- The dealer or salesperson to take further educational courses
 - The dealer to pay for educational courses for its salespeople
 - The dealer or salesperson to pay costs
- see 17.06
6. False
see 17.06
7. a), c)
see 17.04

Chapter 18

1. CAMVAP is a program where disputes between consumers and vehicle manufacturers about alleged manufacturing defects or implementation of a manufacturer's new vehicle warranty can be put before an arbitrator for resolution.
see 18.04
2. A vehicle owner (consignor) gives a vehicle to the dealer (consignee) to sell on the owner's behalf.
see 18.05
3. False
see 18.05 7.
4. False
see 18.04
5. Any three of the following:
- The vehicle was manufactured by a participant in CAMVAP
 - The vehicle is a passenger car, light duty truck, van, sport utility vehicle or multi-purpose passenger vehicle that weighs no more than 4,536 kg (10,000 lbs) gross vehicle weight
 - The vehicle has travelled not more than 160,000 km at the time of the hearing
 - The vehicle is of the current or four previous model years
- see 18.04
6. True
see 18.04
7. True
see 18.04
8. False (All monies received in a consignment deal must be placed in a trust account.)
see 18.05
9. Any five from 18.05
10. c)
see 18.07

11. False
see 18.08
12. True
see 18.08
13. In a “garage register” available from the Ministry of Transportation.
see 18.09
14. The four brands are:
 - Irreparable
 - Salvage
 - Rebuilt
 - Nonesee 18.10
15. False
see 18.10
16. e)
see 18.11
17. 36 days
see 18.11
18. a)
see 18.12

Resource List

Ontario Motor Vehicle Industry Council (OMVIC)

Administers and enforces the *Motor Vehicle Dealers Act* (MVDA). Maintains a fair and informed marketplace by ensuring registration of dealers and salespeople, inspecting dealers, staffing a complaint line for consumers and conducting investigations, disciplinary hearings and prosecutions.

65 Overlea Boulevard
Suite 300
Toronto, ON M4H 1P1
Tel: 416-226-4500
Toll Free: 1-800-943-6002
General Fax: 416-226-3208
Registration Fax: 416-512-3701
Website: www.omvic.on.ca
Email: omvic@omvic.on.ca

Industry Associations

Associated Canadian Car Rental Operators (ACCRO)

A national association of daily vehicle rental operators.

8473 Regional Road 25
Unit 3
Milton, ON L9T 9C2
Tel: 905-864-8884
Toll Free: 1-800-361-3691
Fax: 905-864-8714
Website: www.accro.org
Email: info@accro.org

Canada Revenue Agency (CRA)

The Canada Revenue Agency administers the harmonized sales tax.
Website: www.cra.gc.ca

Canadian Automobile Dealers Association (CADA)

National association made up of auto dealers' associations representing franchise auto dealers across Canada.

123 Commerce Valley Drive East
Suite 303
Thornhill, ON L3T 7W8
Tel: 905-940-4959
Toll Free: 1-800-463-5289
Website: www.cada.ca/web/cada/

Canadian Motor Vehicle Arbitration Plan (CAMVAP)

Toll Free: 1-800-207-0685
Website: www.camvap.ca

Canadian Finance & Leasing Association (CFLA)

National association of vehicle and equipment lessors and asset-based financing in Canada.

15 Toronto Street
Suite 301
Toronto, ON M5C 2E3
Tel: 416-860-1133
Toll Free: 1-877-213-7373
Website: www.cfla-acfl.ca
Email: info@cfla-acfl.ca

Trillium Automobile Dealers Association (TADA)

Representing franchise car dealers across Ontario.

50 Leek Crescent
Suite 2B
Richmond Hill, ON L4B 4J3
Toll Free: 1-800-668-6510
Fax: 905-940-6232
Website: www.tada.ca
Email: info@tada.ca

Used Car Dealers Association of Ontario (UCDA)

A not-for-profit association whose stated mission is “to enhance the image of the used vehicle industry.” Offers members services and information including mediation, educational and cost savings programs and representation with all levels of government.

230 Norseman Street
Toronto, ON M8Z 2R4
Tel: 416-231-2600
Toll Free: 1-800-268-2598
Fax: 416-232-0775
Website: www.ucda.org
Email: web@ucda.org

Ontario Government Resources and Information

Ministry of Government and Consumer Services

Protects, educates and serves Ontario consumers by ensuring a fair, safe and informed marketplace.

5th Floor
777 Bay Street
Toronto, ON M5B 2H7
Tel: 416-212-2665
Toll Free: 1-844-286-8404
Website: www.ontario.ca/page/ministry-government-and-consumer-services

Ministry of Transportation (MTO)

Information on vehicle licensing issues and the *Highway Traffic Act*.

Toll Free: 1-800-268-4686
Website: www.mto.gov.on.ca

Information regarding garage registers.

Tel: 416-325-8305
Toll Free: 1-800-461-2156
Website: www.ontario.ca/page/get-renew-or-replace-garage-licence

Publications Ontario

Sale of Ontario government publications, including relevant acts and regulations.

Service Ontario Publications

134 Bay Street

Toronto, ON M5S 3A9

Tel: 416-326-5300

Toll Free: 1-800-668-9938

Website: www.publications.gov.on.ca

Online Access to Ontario Statutes and Regulations

Website: www.e-laws.gov.on.ca

Ministry of Revenue

Retail sales tax information, including how to obtain a vendor permit.

Tel: 1-866-ONT-TAXS (1-866-668-8297)

Website: www.rev.gov.on.ca

ServiceOntario

Apply for government registrations or permits online, including HST number, vendor permit number and business name registration.

Website: www.serviceontario.ca

Summary of Acts

Competition Act

Sections of this federal act deal with business conduct and false advertising. For example, dealers cannot advertise that consumers have 100 cars to choose from when they only have 10. As well, businesses cannot participate in “price fixing” by agreeing to match prices with a competitor.

Consumer Protection Act, 2002 (CPA)

This act provides protection to consumers for most consumer transactions, including vehicle sales. It does not apply to wholesale or business-to-business sales.

The CPA includes rules as to repossession, disclosure of credit terms, false advertising, unfair practices and misrepresentation. It is administered by the Ministry of Government and Consumer Services. The CPA came into effect on July 30, 2005, and repealed a number of statutes, including the *Business Practices Act* and the *Motor Vehicle Repair Act*.

Environmental Protection Act

This act imposes a number of requirements on vehicles and those who sell or repair them, whether registered under the *Motor Vehicle Dealers Act* or not. No one may expose for sale, advertise, offer to sell or sell a vehicle unless it complies with the regulations regarding emissions. Where a manufacturer has installed an emissions control device on a vehicle, no one may remove the device except for the purposes of repairing it, and no one may advertise, offer to sell or sell the vehicle unless the device is in good working order and the vehicle complies with the regulations.

The *Environmental Protection Act* also states that environmentally dangerous materials such as used oil, antifreeze and used parts must be disposed of in a responsible manner.

Highway Traffic Act (HTA)

This act requires dealers to keep records of the purchase and sale of each vehicle in a standard-form garage register and to notify the Ontario Ministry of Transportation within six days of the purchase or sale of a motor vehicle or trailer. Requirements for vehicle registration, branding and Safety Standards Certificates are also covered under this act. The *Highway Traffic Act* is administered by the Ministry of Transportation.

Motor Vehicle Dealers Act, 1990

The MVDA 1990 is replaced by the MVDA 2002 (see below).

Motor Vehicle Dealers Act, 2002

The MVDA is a public protection statute that requires all motor vehicle dealers and salespersons to be registered and to meet high standards of honesty, integrity and financial responsibility. It replaced the MVDA 1990 and took effect on January 1, 2010.

Motor Vehicle Repair Act

The *Motor Vehicle Repair Act* was repealed as of July 30, 2005. Many of the provisions of this act were included in the CPA.

Ontario's Human Rights Code

The *Human Rights Code* gives Ontarians equal rights and opportunities without discrimination in areas such as jobs, housing and services. It provides the individual customer with a right to equal treatment with respect to the purchase of goods without discrimination because of his or her personal situation, including race, religion or sexual orientation. The customer is also entitled to the right of a contract on equal terms with all others. A breach of an individual's right to equal treatment can result in penalties being imposed on the dealer or salesperson, including a requirement to pay compensation to the individual.

Personal Information Protection and Electronic Documents Act

This federal act protects the individual customer from unauthorized use or disclosure of personal information. Information of a personal nature obtained from a customer by the dealer in carrying on its business cannot later be used for non-business purposes or provided to unauthorized parties.

Personal Property Security Act

This act sets out the procedure for registration of a lien. It also contains the rules for repossession of the vehicle by the lender if the monies owed are not repaid. Dealers must ensure all vehicles sold are free of liens. The *Personal Property Security Act* is administered by the Ministry of Government and Consumer Services.

Repair and Storage Liens Act

This act is administered by the Ministry of Government and Consumer Services. The *Repair and Storage Liens Act* (RLSA) provides repairers the ability to register a lien on a vehicle or, under certain conditions, sell the vehicle to recover the costs of unpaid repairs. If a vehicle has two liens on it, one under the *Personal Property Security Act* (PPSA) and the other under the RSLA, the lien holder registered under the RSLA is paid the amount owed before any payment to the PPSA lien holder.

Sale of Goods Act

This act states that every contract for sale of “goods” (which would include a new or used motor vehicle) includes certain implied warranties and conditions. These implied warranties and conditions state that every vehicle sold to a buyer must be fit for the buyer’s particular purpose, be of merchantable quality and be free of liens. The *Sale of Goods Act* also requires dealers ensure they have the right to sell the vehicle, thus ensuring that the buyer enjoys quiet possession.

Glossary

appeal: A formal process whereby a higher court (or an Appeals Committee) will re-examine a decision made by a lower court (or by a Tribunal, the Registrar or a Discipline Committee).

breach of contract: Failure to live up to conditions of a contract.

business premises: Generally does not include a “dwelling.”

Code of Ethics Regulations: Fall under the *Motor Vehicle Dealers Act*. Have the same effect as any other regulations under the MVDA.

Consumer Protection Act (CPA): The Ontario *Consumer Protection Act*.

class action: A lawsuit launched by one person who represents a larger group whose members have similar claims against the same defendant.

condition (in contract law): An essential requirement that must be fulfilled in order for a deal to go through. Every contract between a dealer and a buyer includes certain implied conditions that cannot be excluded. If a condition is breached, the customer can terminate the contract and sue for damages.

condition (of OMVIC registration of a dealer or salesperson): A stipulation; something that must be done, upon which something else depends. For example, the Registrar may approve the registration of a dealer on condition that the dealer complies with an arrangement made with the Ministry of Revenue regarding remittance of arrears of sales tax.

consignment: An owner (consignor) delivers a vehicle to a dealer (consignee) with instructions for its sale, and a fee is deducted from the proceeds of the sale. For the duration of a consignment, the consignor retains title and the consignee has possession until both title and the vehicle are delivered to a purchaser.

consumer: The consumer is an individual acting for personal, family or household purposes, and does NOT include an individual acting for business purposes. “Consumer” does NOT include a corporation. Not all customers are consumers, but all consumers are customers.

consumer transactions: Purchases by individuals of goods or services for personal use and not for resale or for business purposes.

contract: A legal agreement between two or more parties, each promising to fulfill certain obligations. Contracts for the sale or lease of motor vehicles must be in writing.

cooling-off period: A statutorily defined period during which buyers may change their minds and rescind a contract. There is no such cooling-off period when a vehicle is purchased from a motor vehicle dealer.

corporation: A legal entity created by or under the authority of the laws of a province or Canada. The corporation is distinct from the shareholders who comprise it.

curbsiders: Unlicensed dealers in the business of selling cars who pose as private sellers. Very often the cars they sell are misrepresented, accident-damaged, odometer-tampered, stolen or have liens.

damages: Money that is paid to compensate one person for a loss caused by another.

deposit: Money prepaid toward the purchase or lease of a vehicle with the full amount being due at a later date.

disclosure: The legal requirement to reveal all material facts to a customer in writing.

due diligence: Such a measure of prudence or activity as is properly expected from and ordinarily exercised by a reasonable and prudent person.

dwelling: Any premises, or part thereof, occupied as living accommodations.

employ (under the *Motor Vehicle Dealers Act*): To employ, appoint, authorize or otherwise arrange to have another person act on one’s behalf, including as an independent contractor.

extended warranty (under the *Motor Vehicle Dealers Act*): A contract whereby a 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 by law or implied by the operation of law.

false or misleading advertising: Promotional statements that are false or have the ability to mislead a consumer.

“force majeure”: A catastrophic event (e.g., theft, fire, flood) outside the control of the parties and that could not be avoided by the exercise of due care.

future performance agreement (under the *Consumer Protection Act*): A consumer agreement in respect of which delivery, performance or payment in full is not made when the parties enter the agreement.

garage register: A record of every car that is bought or sold through a dealer. Garage registers are required by law and are available from the Ministry of Transportation, and may be maintained electronically.

Gen. Reg.: Abbreviation for one of the *Motor Vehicle Dealers Act* General Regulations.

GST: The goods and services tax dealers must add to the net selling price of all cars they sell. Now included in the HST.

HST: (harmonized sales tax) A combination of provincial sales tax and goods and services tax.

hearing: A formal, legal proceeding where an independent adjudicator from the Licence Appeal Tribunal listens to appeals of the Registrar’s proposals to refuse, suspend or revoke a dealer’s registration.

implied term: A provision that may not be expressly included in a contract but that is necessary to give effect to the parties’ intention.

independent contractor: A person working for himself or herself who contracts to provide specific services to another.

Initial Disclosure Statement (IDS): A statement (required by the *Consumer Protection Act*) that must be given to a consumer when the dealer has agreed to assist the consumer with financing arrangements.

insolvency: The inability to meet financial obligations as they become due, or having insufficient assets to meet obligations.

lease: A secured arrangement whereby possession of the goods goes to the lessee, while the title to the goods remains with the lessor.

Lease Disclosure Statement (LDS): A statement (required by the *Consumer Protection Act*) that must be given to a lessee before the lease is entered into or any money paid.

Licence Appeal Tribunal (LAT): An independent tribunal that hears appeals of the Registrar’s proposal to refuse, suspend or revoke the registration of a dealer or a salesperson.

lien: Any claim on a vehicle as security for the payment of a debt. Dealers should register a lien whenever they are owed money for the purchase, sale or repair of a vehicle.

lien holder: The person who has registered a lien against a debt.

lien registration: The process of recording a security interest within the public registry system.

MTO: Ontario Ministry of Transportation.

material fact: A piece of information that, if known, could cause a reasonable person to change his or her mind about buying a particular vehicle (or would have a significant effect on the price the buyer would be willing to pay).

mediator: A neutral third party who facilitates discussion between parties to a dispute to encourage and assist their coming to an agreement; also known as a conciliator.

merchantable quality: Goods free from defects that, if known, would impact the price of the goods.

misrepresentation: A false statement of fact that persuades someone to enter into a contract or take some other action.

motor vehicle (under the *Motor Vehicle Dealers Act*): 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.

motor vehicle dealer (under the *Motor Vehicle Dealers Act*): A person who trades 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 buying or selling motor vehicles.

Motor Vehicle Dealers Act, 2002 (MVDA): Governs the business practices of Ontario motor vehicle dealers and salespersons. Although the Ministry of Government and Consumer Services is responsible for the MVDA, OMVIC administers and enforces it on a day-to-day basis.

Motor Vehicle Dealers Compensation Fund: A fund that compensates consumers under specific circumstances.

MVDA: *Motor Vehicle Dealers Act, 2002*; legislation governing motor vehicle dealers and salespeople.

new motor vehicle (under the *Motor Vehicle Dealers Act*):

- a) A motor vehicle for which no permit has been issued under Section 7 of the *Highway Traffic Act* (or by another jurisdiction having an equivalent requirement to that section), or
- b) A motor vehicle that meets the following conditions:
 - i) The first permit for the vehicle issued under Section 7 of the *Highway Traffic Act* was issued to a buyer or lessee who purchased or leased

the vehicle, as the case may be, from a registered motor vehicle dealer.

- ii) The buyer or lessee did not take possession of the vehicle and the vehicle remained in the possession of the dealer until a new permit for the vehicle was issued under Section 7 of the *Highway Traffic Act* to the dealer within 14 days after the issuance of the first permit for the vehicle, but does not include a motor vehicle that has been used in a way for which a permit would have been required under Section 7 of the *Highway Traffic Act*.

officer (under the *Motor Vehicle Dealers Act*):

Includes the chair and any vice-chair of the board of directors, the president and any vice-president, the secretary and assistant secretary, the treasurer and assistant treasurer and the general manager and 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 bylaw or resolution or any other individual who performs functions normally performed by an individual occupying such office.

Ontario Motor Vehicle Industry Council (OMVIC): Ontario Motor Vehicle Industry Council; the body that administers and enforces the *Motor Vehicle Dealers Act*.

open-end lease: The customer returns the vehicle at the end of the lease and is responsible for the residual value of the vehicle; if there is a difference between the residual value of the vehicle and the price the lessor was able to sell the vehicle for at the end of the lease, the customer must pay or be paid the difference. (See "residual obligation lease.")

PST: The provincial sales tax that dealers must add to the net selling price of all cars they sell. Now included in the HST.

registrant: A motor vehicle dealer or salesperson who is registered under the *Motor Vehicle Dealers Act*.

Registrar: The person at OMVIC who is in charge of registering dealers and salespeople. The Registrar is also responsible for issuing notices of proposal to refuse, revoke or suspend a registration.

Regulations: An act (such as the *Motor Vehicle Dealers Act*, the *Consumer Protection Act* and the *Highway Traffic Act*) has Regulations that set out the detailed requirements of that act; the Regulations set out the rules under the act. The Regulations are part of the law.

Regulations (under the *Motor Vehicle Dealers Act*): There are two sets of regulations:

- a) The General Regulations (in this student manual the reference to such a regulation may be abbreviated as “Gen. Reg.”); and
- b) The Code of Ethics and Operation of Committees Regulations (in this student manual the reference to such a regulation may be abbreviated as “Code of Ethics Regulation” or “Code of Ethics”).

representation (under the *Consumer Protection Act*): A representation, claim, statement, offer, request or proposal that is or purports to be:

- a) Made respecting or with a view to the supplying of goods or services to consumers; or
- b) Made for the purpose of receiving payment for goods or services supplied or purporting to be supplied to consumers.

representative lease (under the *Consumer Protection Act*): A “representative lease” fairly depicts a range of leases to which a lease advertisement applies.

rescission: The cancellation of a contract that results in the parties being returned to their pre-contractual position.

residual obligation lease (under the *Consumer Protection Act*): A lease under which the lessor may require the lessee at the end of the lease term to pay the lessor an amount based in whole or in part on the difference, if any, between:

- a) The estimated wholesale value of the leased goods at the end of the lease term
- b) The realizable value of the leased goods at the end of the lease term (see “open-end lease”)

retail sales tax: The provincial sales tax that dealers must add to the net selling price of all cars they sell. Now included in the HST.

Safety Standards Certificate (SSC): The certificate issued when a used vehicle has been inspected by a licensed facility and meets the minimal safety standards set by the Ministry of Transportation. In most cases a vehicle must have a certificate in order to be transferred and plated.

Sale of Goods Act: Requires that vehicles sold are of “merchantable quality” and “fit for purpose,” and that the buyer receives “quiet possession.” This act does not cover leases or vehicle repairs.

sales agreement: See “contract.”

salesperson (under the *Motor Vehicle Dealers Act*): An individual employed by a dealer to trade in vehicles on behalf of the dealer.

service plan (under the *Motor Vehicle Dealers Act*): A contract that is sold to a buyer or lessee of a vehicle by a dealer or through a dealer before the vehicle is delivered to the buyer or the lessee, as the case may be, whereby a person agrees to provide goods or services to alter or maintain the vehicle, whether the goods or services are provided before the vehicle is so delivered or afterwards.

sole proprietorship: An individual carrying on business alone.

spouse (under the *Motor Vehicle Dealers Act*):

A person:

- a) To whom the person is married, or
- b) With whom the person is living outside marriage in a conjugal relationship, if the two persons:
 - i) Have cohabited for at least one year;
 - ii) Are together the parents of a child; or
 - iii) Have together entered into a cohabitation agreement under Section 53 of the *Family Law Act*.

statute law: A law passed by the provincial legislature or by the federal parliament.

supplier (under the *Consumer Protection Act*):

A person who is in the business of selling, leasing or trading in goods or services or is otherwise in the business of supplying goods or services, and includes an agent of the supplier and a person who holds himself or herself out to be a supplier or an agent of the supplier.

TKU: True kilometres unknown; this abbreviation is specifically prohibited by OMVIC, since most customers do not understand its meaning.

TMU: True mileage unknown; see “TKU.”

trade (under the *Motor Vehicle Dealers Act*):

Includes buying, selling, leasing, advertising or exchanging an interest in a motor vehicle or negotiating or inducing or attempting to induce the buying, selling, leasing or exchanging of an interest in a motor vehicle (and “trade” when used as a noun has a corresponding meaning).

Tribunal (under the *Motor Vehicle Dealers Act*):

The Licence Appeal Tribunal.

unconscionable transaction: A grossly unfair practice in which a business takes advantage of a consumer.

used motor vehicle (under the *Motor Vehicle Dealers Act*):

- a) A motor vehicle for which a permit has been issued under Section 7 of the *Highway Traffic Act* (or by another jurisdiction having an equivalent requirement to that section), or
- b) A motor vehicle that has been used in a way for which a permit would have been required under Section 7 of the *Highway Traffic Act*, but does not include a motor vehicle if:
- c) The first permit for the vehicle issued under Section 7 of the *Highway Traffic Act* was issued to a buyer or lessee who purchased or leased the vehicle, as the case may be, from a registered motor vehicle dealer, and,

- d) The buyer or lessee did not take possession of the vehicle and the vehicle remained in the possession of the dealer until a new permit for the vehicle was issued under Section 7 of the *Highway Traffic Act* to the dealer within 14 days after the issuance of the first permit for the vehicle.

Used Vehicle Information Package (UVIP): Available from the Ministry of Transportation, a UVIP includes a description of the vehicle, names of previous owners and a list of liens (in Ontario only) against the car. Private sellers must provide a UVIP package to a buyer. Dealers do not have to provide UVIPs.

valid contract: An agreement legally binding on both parties.

vehicle identification number (VIN): A unique 17-digit code assigned to all vehicles in North America. VINs are used to register the vehicle, search for liens or research the vehicle’s history.

vendor’s permit: The permit a dealer receives from the Ministry of Finance when they register for the retail sales tax. A vendor’s permit exempts dealers from paying PST on cars they plan to resell.

void contract: An agreement that has been cancelled or is not legally binding.

warranty: A guarantee. Every contract between a dealer and a buyer includes certain implied warranties that cannot be excluded.

wholesalers: Dealers who sell and buy vehicles to and from other registered dealers.

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