

# GOVERNMENT OPENS CONSULTATION ON PROPOSALS TO AMEND THE MOTOR VEHICLE DEALER ACT

The Ministry of Government and Consumer Services has released a consultation paper for public comment on proposals to amend the *Motor Vehicle Dealers Act, 2002* and its regulations. The Act and regulations, which govern the activities of all dealers in Ontario, have been in place with almost no changes since 2010.

But a lot has changed in the industry since then. The digital world has exploded and dealers are very much a part of that now. There's no question that amendments are overdue, but there will likely be disagreements on some of what the Ministry is throwing out there for public consultation.

For example, there are proposals to lessen the importance of doing business only from a dealer's registered premises, such as allowing contracts to be signed and test drives to be taken at locations other than a dealership. There are proposals that could make significant changes to "As Is" selling and that could also increase the power of OMVIC to issue fines through something called Administrative Monetary Penalties (AMPs). We've written about our opposition to AMPs when they had been previously proposed in 2013 and in the pre-Covid days at the beginning of 2020.

The proposed changes can be found in the Ministry's [public consultation paper](#).

A few of the changes being explored in the consultation paper include:

- Allowing registrants to conduct business in locations outside of where they are registered to trade.
- Changing disclosures required in a sales contract under certain situations.
- No longer requiring registration certificates to be

returned once a registrant leaves the motor vehicle industry.

- Requiring costs for repair, inspections and getting safety standards certificates to be included in the advertised price of "as-is" vehicles.
- Extending the time limit for dealerships to provide warranty sellers with required warranty documents and payments from 7 days to 30 days.
- No longer requiring registrants to list a phone number in certain advertisements.
- Increasing fines for curbsiding, and increasing the number of disciplinary options for addressing registrant noncompliance.
- Removing requirements for wholesalers, exporters and brokers to post their registration certificates and a sign at each place they are registered to trade. Or, to remove this requirement only for wholesalers, exporters and brokers who don't sell directly to the public.
- Allowing exporters to trade from a home office or to only allow exporters who don't sell directly to the public to trade from a home office.
- Refreshing the [Code of Ethics](#) to bring it in line with specific regulatory requirements.
- Cleaning up the MVDA by removing outdated sections carried over from an older version of the Act.

The UCDA will be preparing a detailed response to the proposals which we will submit to the Ministry and share with Members. Individual dealers and salespersons may also submit their feedback to the Ministry by emailing [MVDA@ontario.ca](mailto:MVDA@ontario.ca), or by filling in the comment box at the bottom of the [consultation paper's web page](#).

All submissions must be received by September 17, 2021 at 11:59 pm.

## MVIS Changes

Many of our Members have repair facilities, and many perform motor vehicle safety inspections. Many Members who are MVIS stations will have received the notice from MTO announcing a change to "Passenger Transportation Vehicle" (PTV) safety requirements.

The communication was perhaps unfortunate as it has caused some confusion. It refers to vehicles that can carry 10 passengers or less and announces these will need semi-annual safety inspections as of July 1, 2021.

What it does not make clear is that it applies ONLY to vehicles transporting people for money i.e. a taxi, or ride-share vehicle.

### What is a PTV?

Interestingly, to add to the confusion, many of these vehicles seem to be exempt by the terms explained in the notice. This includes exemptions for taxis, ride-share vehicles (if they are already licenced by their local municipality, as most are). Carpoolers, who only charge for gas, are exempt as well.

Really, when it comes down to it, it's hard to imagine how many vehicles this will actually apply to. Since the responsibility rests with the vehicle owner, we do not see much exposure for our Members in any event. Vehicle owners should check "vehicle for hire" licensing in their local municipality to be certain they are exempt.

## Leases and Safety

Many issues can arise during a lease, but what about at the end of a lease?

### The Reluctant Lessee

Members often experience difficulty at the end of a lease, getting the lessee to cooperate in transferring the vehicle out of the dealer's name and into their name with a safety inspection.

Not to put too fine a point on it ... your lessee is avoiding you.

This concerns you because you don't want them to continue driving around in a vehicle registered in your name.

Your lessee may have other concerns. For example, the

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vehicle is 3 or 4 years older than when you first leased it out. You have no idea how well it's been maintained and you sure don't know what it's going to take to safety it. Neither does the lessee, but he does know he has a vehicle plated he can drive right now, so why risk it!

What can the lessor do to force the issue? Not much. All the lessor can do is ask the licence office to show the status of the vehicle as "SOLD", but it will remain registered in the dealer's name.

In most cases the lessor has no permit in the file with the lessee's signature accepting transfer. Lessors should consider obtaining that at the start of the lease, so they can avoid this problem at the end of the lease. A "true copy" (front and back) of the permits can be given to the lessee while you hold the originals.

A dealer could send a letter by courier or registered mail to the reluctant lessee and advise them that if they do not bring their vehicle back for a safety and accept plate and registration by a certain deadline, the vehicle will be transferred into their name without a safety.

This will cause it to go into their name "UNFIT" and "UNPLATED". The lessor could then use the signed permit to transfer the registration.

### The Frugal Lessee

Dealers have been calling us a good deal lately asking what to do with a consumer who insists that they can use their own safety at lease end. Why? Because they do not want to pay the dealer to do it, and they have probably found a cheaper option at a third party garage.

Understandably, dealers are concerned if they proceed to register and plate the vehicle using someone else's safety. A dealer might end up liable if safety problems arise on a vehicle they have not inspected.

Believe it or not, many (most?) leases are silent about the nitty gritty of what is supposed to happen at end of lease with respect to safety and who is to pay.

This is what the UCDA Lease Agreement says in the event an option to purchase at lease end is exercised:

*"I will be responsible for the cost of a Safety Standard Certificate ... and all repairs needed to obtain it."*

We tell dealers they do not have to agree to accept a third party safety at lease end. Their concerns about liability are real and while it is understandable that consumers will try to save a buck or two, when it comes to safety, you get what you pay for.

## Charity

It's easy to forget, amidst our fight with COVID-19, that other battles are being waged in other health wars.

These battles are quiet, because they involve children, but are no less harrowing.

The UCDA's Charitable Giving Committee has been making donations, on behalf of UCDA Members, to childhood cancer causes throughout Ontario for several years now.

The organizations tend to be smaller, local, grassroots charities that make a difference to the families and those children who are engaged in life and death struggles with this horrible disease.

We have heard directly from families through the charitable organizations we support about the difference our Member's contributions have made. Thus far, in 2021, we have made significant donations to 7 such causes including:

- Help a Child Smile in Brantford, serving a wide area
- Childcan in London and area
- Candlelighters in Ottawa and area
- Candlelighters in Simcoe County and area
- Ontario Parents Advocating for Children with Cancer (OPACC), Barrie
- Northern Ontario Families of Children with Cancer (NOFCC)
- Kids Kicking Cancer based in London

The UCDA has, over the years, supported summer camps for kids with cancer; gift baskets in the holiday season that brighten the lives of not just the children fighting cancer, but also their siblings; funded hospital equipment and supplies so a child can be at home when the disease takes an upper hand and the family can be with them, paid for gas cards and hospital parking passes. All of this, all over the Province, because we have UCDA Members all over the Province and cancer knows no borders.

It is hard and emotionally draining work, but so necessary, especially during these hard times, when donations are down across the board.

In the coming issues of Front Line, we'll share some heartwarming stories about kids with cancer and their families that the UCDA has been able help.

## Annual General Meeting

The UCDA Annual General Meeting will take place at 4:00 p.m., Thursday September 23, 2021, at the Hilton Doubletree Hotel, 925 Dixon Road in Toronto. A review of the Association's performance in 2020 and the election of a slate of Directors will take place.

## Dealer Quiz

1. Many dealers ask if dealer auctions are regulated by OMVIC. They are not, but are exempt under the *Motor Vehicle Dealers Act* (MVDA), as long as they:
  - a) Keep their offices neat and tidy
  - b) Ensure only registered dealers (or those with regulatory exemptions) can sell and buy there
  - c) Keep their books and records at an OMVIC approved location
  - d) Ensure that sellers comply with MVDA regulations governing dealers even if the seller is exempt
  - e) Promptly reply to emails

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2. For both online and physical dealer auctions, OMVIC has the power to insist that the auction:
  - a) Provide a bulletin board for OMVIC's own use
  - b) Provide a list of persons allowed in the bidding area or allowed to bid online
  - c) Use only approved bills of sale
  - d) Pay a monthly fee to OMVIC to cover its costs overseeing auction operations
  - d) Allow OMVIC free advertising space

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3. Vehicle wreckers are exempt from the MVDA.

### True or False?

4. Insurance companies who write-off a vehicle are exempt from the MVDA when they want to sell it so long as:
  - a) The vehicle is sold for "parts only"
  - b) The vehicle value is below \$3,000
  - c) They sell it to or through a motor vehicle dealer
  - d) They do not register it in their name
  - e) The vehicle is exported

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5. A registered charity must be registered under the MVDA and regulated by OMVIC if selling a vehicle in accordance with their charitable cause:

### True or False?

## What You See May Not Be What You Get

Tesla has apparently not availed itself of the opportunity to give its side of this story out of B.C., but it is an interesting cautionary tale about the difficulties of buying and selling used high tech road vehicles like a Tesla.

A consumer purchased a used 2019 Tesla Model 3 from a Vancouver dealer.

The ad said the vehicle had autopilot as an option. However, after buying it, the consumer discovered it did not have the autopilot feature they thought they had paid for.

Tesla has designed a fully-connected vehicle that allows upgrades and options, which can be downloaded directly to the vehicle.

The company wants to control the buying experience and is able to continue to make money long after the original sale.

However, that can create problems in after-market sales, especially if you are buying the used vehicle from a third party.

Apparently, even the dealer felt Tesla had confused matters when they appeared to confirm the feature was included prior to the sale.

In fact, it does not have the option and it will cost \$4,000 to obtain it. Naturally, the consumer thinks the dealer should pay that. Also, naturally, the dealer sees things differently and while they did offer to take the vehicle back and give the customer a refund, they will not agree to pay for the option.

Dealers would be well advised to confirm the option actually exists on the vehicle at the time of sale, and advise the consumer, in writing on the contract, that such options are fully within the control of the vehicle maker, not the dealer.

## It's BAAACK - Luxury Vehicle Tax

As we warned about, in Front Line last year, the Federal Government hinted at a Luxury Vehicle Tax to be implemented in an upcoming budget.

Well, the difficult terrain presented by running a minority government, and the even bigger impediment of a pandemic got in the way of all that, but with the unveiling of the latest budget on April 19, the proposed tax is back.

In the first budget Canada has seen in two years, Prime Minister Trudeau and his team plan to introduce a Luxury

Tax on new vehicles valued at more than \$100,000, and boats worth over \$250,000.

The Luxury Tax is set to come into effect on January 1, 2022.

The tax is calculated at the lesser of:

- 20 per cent of the value above threshold (\$100,000 for cars and personal aircraft; \$250,000 for boats) ; or
- 10 per cent of the full value of the luxury car, boat or personal aircraft.

The tax would affect all **new** passenger vehicles including sports cars, coupes, sedans, station wagons, SUVs, passenger pick-up trucks, and passenger vans and minivans that seat less than 10 people. HST will be calculated on the price of the vehicle including the Luxury Tax. Used vehicles won't be subject to the tax.

Motorcycles and certain off-road vehicles such as ATVs and snowmobiles, racing cars (used solely for on-track or off-road racing) and RVs are exempt from the Luxury Tax. Also exempt are off-road, construction and farm vehicles; certain commercial vehicles such as some trucks and cargo vans; and public sector vehicles such as buses, police cars, ambulances, and hearses.

## Answers

1. **The answers are b) and d).** Only registered dealers and others with statutory exemptions may purchase or sell vehicles at wholesale auctions. It is the auction's responsibility to ensure that everyone selling at the auction, including non-registrants selling under a statutory exemption, comply with MVDA regulations.
2. **The answer is b).** At the request of the registrar, auctions must provide information listing the persons allowed in an auction's bidding area, and the persons who are allowed to bid in an auction through electronic means.
3. **True.** Wreckers or recyclers are exempt from the MVDA in their normal course of business of wrecking and recycling vehicles. However, if they sell vehicles, they must be registered as a dealer.
4. **The answer is c).** In order to be exempt from needing a dealer licence, insurers who sell total loss vehicles MUST sell the vehicle through a registered dealer.
5. **False.** Registered charities are exempt from needing a dealer licence if they sell vehicles in the course of collecting funds for their charitable cause.