

USED CAR DEALERS ASSOCIATION OF ONTARIO

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DEALER FOUND LIABLE FOR INJURY TO DRUNK CAR THIEF

A drunk underage teenager, without a driver's licence, steals a car from a small town dealer's lot late at night and smashes it up. His friend in the passenger seat suffers a severe brain injury and will require special care for the rest of his life.

The driver's mother had supplied him with the beer he had been drinking during the evening. The family of the injured passenger sues the driver, the mother, and the dealer. The dealer???

Yes, the dealer, who had left this car and other vehicles, unlocked, outside on the lot ... **with the keys in them.** Apparently, this was their normal overnight practice. It's not anymore.

The Ontario Court of Appeal upheld an earlier trial decision that found the dealer 37% responsible for the passenger's injuries. The court reasoned that the dealer should have foreseen what could happen by leaving the keys overnight in unlocked vehicles.

To a lesser degree, the thief, his mother and the passenger himself were found to also bear some responsibility, but the dealer's share of the liability was ruled the highest.

The unsaid reasoning behind the judgment is that the dealer's insurance company has the "deepest pockets" and is most able to afford the damages to help cover the passenger's medical care.

But, in a sad irony, the dealer was the only one of them that did not actually break the law.

Whether anyone thinks this decision is fair or not isn't the issue. Dealers should be shocked into action by this judgment.

If you're not paying close attention to your key security, you need to start doing so now. Even a salesperson leaving an unattended key fob on their desk, during regular business hours, is inviting someone to take it and the vehicle.

The same is true for keys left in a service department, clean up shop, or anywhere else, during the day ... let alone left in unlocked cars overnight. The end result could be something much worse than a stolen car.

This case shows how the law will look at serious personal injury cases where a reasonable level of care has not been taken. While not the direct cause of the injury, the dealer could likely have prevented it by just using common sense.

If the dealer had simply locked the cars and kept the keys inside his locked building, in all likelihood, the car would not have been stolen and the accident would not have happened.

Even if it had still happened, the dealer would likely not have been liable for damages, since he would have been able to show that he had taken reasonable steps to prevent the theft from happening. By not doing so, the dealer left himself wide open to liability in the type of scenario that took place.



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Company Product Name	UCDA Plan UCDA Benefits	GMSManulife OmniPlan	Blue Cross FlexCare ComboPlus Enhanced	BlueChoice
Single - MONTHLY	\$135.21	\$192.00	\$188.80	\$224.24
Family - MONTHLY	\$311.01	\$481.25	\$533.20	\$569.76
HEALTH INSURANCE				
Drug Max.	\$1 million per person	\$5,000 per person	\$10,000 per person	\$10,000 per person
Drug co-insurance	80%	100%	90% of first \$2,000 then 100% next \$8k	80%
Vision Care	\$200 every 24 months	\$200 every 24 months + \$90 for exams	\$250 every 24 month + \$50 exams	\$150 every 24 months
Private-duty nursing	\$10,000 @ 80%	\$2,500 @ 80%	\$2,500	\$2,500
Paramedicals	\$500 each \$30 or \$50 per visit	\$300 each \$35 per visit	\$400 each \$20 per visit, some higher	\$625 each \$25 per visit
DENTAL CARE				
Maintenance dental	80%	75% 1st yr 80% thereafter	100% of 1st \$500 60% of next \$420	70% basic 1st year 75% 2nd, 80% 3rd
Maintenance dental maximum	\$1,500 per person	\$500 1st yr \$750 2nd, \$1,000 3rd	\$920 per person \$1,000 2nd/\$1,250 3rd	\$750 1st yr.
Endodontic, periodontal, surgery	80%	80%	60% in first 2 yrs, then 80%	70% basic 1st year, 75% 2nd, 80% 3rd
Major Dental	none	50% starting 2nd yr, combined max.	60% starting in 3rd yr., combined max.	50% major in 3rd year up to \$500 max.
Dental care deductible	none	none	none	none

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*All prices are shown including applicable taxes. Monthly premiums accurate as of November 2016. This chart does not cover all benefits, please see the websites of each company for more detailed explanations.

Taking Misleading Advertising Up A Notch

It might come as a surprise to some, in this day and age of full disclosure, truth in advertising and careful regulatory controls, that old-time gimmick advertising still finds a place.

But it does!

Earlier this year, news came from British Columbia of dealers who were suffering terribly from blow back on social media, and unwelcome attention from dealer regulators, because of an ill-considered ad campaign they had run.

The brainchild of a U.S. company (as a lot of these wacky notions seem to be); it involved a mail-out of something called the "Canada Automotive Rebate Program".

It was dressed up to look like a tax missive from the Canadian government. The ad displayed a Canadian flag and told the lucky recipient that they were entitled to money to help them buy a car from the dealer referred to in the mailing.

The notice promised to match the customer's tax refund by up to \$1,000, if the funds were applied to the purchase of a new or used vehicle, before the looming "expiry" date of the "program".

Trouble is, this was not a government initiative, it did not have an expiry date, it was not a "program". It was, in a word, a lie.

It was timed to coincide with tax refund time to create maximum effect. Unfortunately, at least one Ontario dealer appears to have used the scheme as well.

Doing so cost this dealer \$4,500 in a fine levied by the OMVIC Discipline Panel on October 24th.

The test for a misleading ad is pretty simple ... does the ad tell the truth or does it tend towards trickery, falsehood or innuendo?

Most people know one when they see one!

Members can contact the UCDA anytime if they are unsure about any ad ... before they run it and possibly incur the wrath of negative publicity or OMVIC penalties.

Email us at: web@ucda.org.

Compliance Quiz

Here's this month's compliance quiz. The answers are on page 4. Good Luck!

- Which of the following rules apply to motor vehicle dealers and Vehicle Identification Numbers (VINs) on motor vehicles:
 - dealers may not attach one themselves
 - dealers must use the correct one
 - dealers may not allow one to be used for dishonest purposes
 - dealers may not remove or alter the VINs
 - dealers may not buy or sell a vehicle with a VIN that is unreadable, altered or not recognizable
 - all of the above.
- A dealer, on a contract, must write down if a vehicle has an odometer that is broken or faulty.

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F
- Once OMVIC learns that a dealer has breached a regulatory requirement, they can refer the matter for discipline for up to 3 years.

T
F
- If a previous accident required repairs that cost under \$3,000 the dealer does not have to declare it unless it:
 - affects the structure of the vehicle
 - impacts the vehicle's mechanical quality in some way
 - impedes performance of the vehicle
 - affects structure, quality or performance and could reasonably be expected to influence the decision of a reasonable purchaser or lessee to buy or lease the vehicle
 - none of the above, if the repair cost is under \$3,000
- Some consumers are not entitled to claim compensation of up to \$45,000 from the Motor Vehicle Dealers Compensation Fund.

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OMVIC Transaction Fee Fun Facts

The OMVIC transaction fee has been with us for so long now, you'd think we'd all know the rules, but reminders are always welcome.

The fee is \$10 and applies to all retail sales of motor vehicles¹:

- Sales to non-dealers
- Leases to non-dealers (the transaction fee applies at the start of the lease, but does not have to be paid again if the lessee opts to exercise a buy out)

It does not apply to:

- Selling or leasing a vehicle directly to another registered dealer
- Selling or leasing a commercial vehicle², unless the customer is an individual obtaining it for personal or family use.

1. *For the purpose of the transaction fee, a vehicle is any motorized vehicle other than: a non-motorized trailer, a vehicle used primarily for farming, a specialized construction machine, a snowmobile or a vehicle that is not built for use on the road (e.g. ATVs, watercraft, dirt bikes, etc. which are not to be used on roads or highways).*

2. *"Commercial Vehicle" is defined in the Highway Traffic Act as a motor vehicle having permanently attached thereto a truck or delivery body [such as pickup trucks] and includes ambulances, hearses, casket wagons, fire apparatus, buses and tractors used for hauling purposes on the highways [our emphasis added].*

Dealer Plates

Personal Use

Personal use of dealer-owned "passenger-class" vehicles with dealer plates is absolutely legal, but not on "commercial vehicles" (i.e. pickup trucks, cargo vans, ambulances, etc.) where the "cargo" area is separate from the passenger compartment.

Dealer plates may also be used on dealer-owned vehicles for all purposes related to the sale of the vehicle and this includes commercial vehicles.

Documents Needed!

Use of a dealer plate is not restricted solely to the owner of the dealership. It may be used by anyone that has the permission of the dealership. That would include staff and potential buyers who have the vehicle for test drives.

Three documents must be with the vehicle whenever a dealer plate is used ... not just when it's used for private purposes:

1. the original or a copy of the permit for the dealer plate;
2. an original pink insurance certificate;
- *3. the original or a copy of the vehicle permit.

* *If the vehicle has recently been purchased, a copy of the Bill of Sale may be accepted by the police.*

Please contact the UCDA if you would like a handy wallet card you can show the police if you are stopped and asked about your use of a dealer plate.

Quiz Answers

1. **The answer is (f).** All of the above.
2. **The answer is True.** If a dealer knows the odometer is "broken" or "faulty", this must be disclosed in writing to the purchaser.
3. **The answer is False.** OMVIC must bring a Discipline action against a registrant within two years of discovering the violation.
4. **The answer is (d).** Damage under \$3,000 still needs to be disclosed where it may reasonably affect the decision of a reasonable purchaser to purchase or lease the vehicle at the price at which it is being offered.
5. **The answer is True.** Consumers who are related to the selling dealer are not eligible to make a claim against the Compensation Fund.

This concept is known as a "material fact". Something that would reasonably be considered to be a material fact must be disclosed, even if it is not specifically set out in the MVDA regulations.

Neither are consumers who are part of illegal activity in the purchase transaction, such as schemes to evade tax, or a consumer who provides misleading information when making a claim. If a vehicle is predominantly used for business purposes, the purchaser is also not eligible to make a claim.

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