

# DEALING WITH OMVIC ... GET IT IN WRITING

The UCDA offers a free mediation service to consumers having trouble resolving a dispute with a dealer, even when the dealer is not a member of the UCDA.

We are very careful in these 'alternative to court' settlement discussions, not to give legal advice, or appear to represent the interests of either the consumer or the dealer. We are there to help find a solution that avoids court ... not to take sides or give advice. The UCDA acts as a neutral mediator.

Unfortunately, we've seen that when OMVIC is involved in dispute resolution efforts it often seems that this neutrality is missing. In some cases we hear about, it appears as if OMVIC is playing the role of legal adviser and advocate (almost like a lawyer) for the consumer.

Here are a few recent examples of how some members have been treated. These accounts are based on what the members involved told us following a consumer complaint:

- A member wholesaled a vehicle to a leasing company (also a registered dealer) which leased it to a consumer. The consumer had complaints about the vehicle and started calling the first dealer, who told him he should call the leasing company. OMVIC called the first dealer and asked him to go 50/50 on repair costs with the leasing company. The member declined, and was told notes would go into his file that would affect how he was dealt with by OMVIC in the future.
- A member sold a car that, 4 months later, the Ministry of Transportation inspected and said had a rusted frame. The customer wanted a refund while the member offered to fix the car. According to the

member, the OMVIC complaint handler told him that if the purchase price was not refunded to the customer the member would be referred for discipline action.

- A member sold a car and the customer refused to take delivery. An OMVIC staff member told the member that they "have to" refund the deposit.
- Another member was so intimidated after apparently being called a "liar" by an OMVIC complaint handler, that the member agreed to send hundreds of dollars to a consumer even though the member did not feel responsible for the vehicle's mechanical problems.
- We've heard from a number of members that, after having been contacted by OMVIC about a consumer complaint that does not get resolved, OMVIC writes a letter to the consumer, with a copy to the dealer, telling the consumer they can sue the dealer. We've seen this type of letter on many occasions.

It's just not right for OMVIC to give advice to a consumer, or to tell a dealer that if they do not refund a customer's money, notes will go into OMVIC's records that may reflect negatively on the dealer and could result in future "disciplinary" action. This takes OMVIC beyond a neutral dispute resolver.

And, of course, since these statements are verbal, they can be denied in the future. So our advice to members is to stop talking to OMVIC and ask that all OMVIC communications be made in writing, either by email or letter.

Here is what OMVIC can legally do when dealing with a consumer complaint:

**Continued on page 2**

### GET IT IN WRITING (Continued from page 1)

1. OMVIC must explain the nature of the complaint to the dealer and may request, in writing, information and documents from the dealer that relate to the complaint;
2. Attempt to mediate or resolve the complaint;
3. Give the registrant a written warning;
4. Require the dealer to take further education courses and offer salespeople the opportunity to do so as well;
5. Refer the matter to OMVIC's discipline committee for further action;
6. Issue a proposal to revoke the dealer's registration;
7. Take further action as OMVIC considers appropriate.

We understand that there are two sides to every story ... often there are more than two, with the truth somewhere in between.

We'd like to see more evidence that OMVIC staff understand this too, in the hope that OMVIC complaint handlers will take a more co-operative approach with dealers when discussing the difficult matter of consumer complaints. Our members expect and deserve an open-minded approach when dealing with OMVIC staff.

In the meantime, you should protect yourself. If you are being asked, in a "threatening" way, by someone from OMVIC to do something you are uncomfortable with or don't think that you need to do, ask the OMVIC staff member to put their "request" or "demand" in writing.

Often they will not do so, which speaks for itself about the legitimacy of what the dealer was being asked to do. If the OMVIC representative does put the request in writing, a confirmed record will exist of what you are being asked to do. This record may be important if OMVIC does decide to take further action.

As always, you can contact the UCDA to discuss any OMVIC issue.

## As Good As The Paper It's Written On

You've heard the old saying "a deal is only as good as the paper it's written on"?

Since you've gone to the trouble of writing out your deal on a bill of sale contract which you and the buyer have signed, and since the *Motor Vehicle Dealers Act* requires that anyway, you may as well give a copy to the buyer.

And what if you don't?

Well the Ontario Divisional Court has told at least one dealer that their failure to provide a promised bill of sale to the buyer constituted an "unfair practice" under the *Consumer Protection Act*:

### False, misleading or deceptive representation

14. (1) It is an unfair practice for a person to make a false, misleading or deceptive representation.

In failing to provide the bill of sale and proper terms of financing to the consumer as the dealer had committed to do, **and is required by law to do**, the court considered that this qualified as a "false, misleading or deceptive representation."

So what?

Well, given that conclusion, the consumer was entitled to return the vehicle for a full refund (almost \$8,000) as if the sale had never happened in the first place. This is what lawyers call "rescission" of the contract. The dealer also had to pay an additional \$2,000 in court costs to the customer ... all of this many months after the purchase.

To read the full case visit: <http://www.canlii.org/en/on/onscdc/doc/2016/2016canlii84788/2016canlii84788.html>

The take away for dealers here is that the paperwork is as important to the customer as it is to the dealership. It's meant to protect the interests of both, so do not fail to give it to the buyer and make sure your deal stays as good as the paper it's written on!

## Dealers Who Purchased VW Diesels May Be Eligible For Compensation

Volkswagen Canada has reached a settlement with class action lawyers involving almost 105,000 2.0 litre Volkswagen and Audi TDI diesel vehicles. Dealers who purchased these vehicles may be eligible for compensation.

Dealers who purchased affected vehicles **prior to September 18, 2015 and sold them after that date but no later than January 4, 2017**, may be eligible for cash compensation. Dealers who purchased vehicles **after September 18, 2015 and have since sold them**, will not be entitled to compensation.

Dealers who purchased an affected vehicle **prior to September 18, 2015 and still own it** may be eligible for a buyback or trade-in of the vehicle or an emissions modification if approved by Transport Canada, a cash payment and an extended emissions warranty.

Dealers who purchased an affected vehicle **after September 18, 2015 and still own it** may also be eligible for an emissions modification if approved by Transport Canada, a cash payment and an extended emissions warranty.

The settlement must still be approved by courts in Ontario and Quebec before it can be finalized. This is expected to happen around late March. More details about the settlement can be found here <https://www.vwcanadasettlement.ca/en/>

Class action lawyers can be contacted at 1-866-881-2292 to answer questions at no charge.

The UCDA will monitor the progress of the settlement through the courts and keep members informed.

## Licence Fee Increases 60%

It seems lately that fee increases ... some might say tax grabs ... are as regular in Ontario as the changing of the seasons, or the coming of the New Year.

The latest round of fee increases has been known for some time (as they had been previously announced) but many dealers will still be surprised by some of them.

Most dealers likely noticed an increase from \$20 to \$32 (as of January 1st) to obtain a permit on the sale of a vehicle and permit. Plate and validation for a trailer increased from \$59 to \$72.

<https://www.ontario.ca/faq/are-driver-and-vehicle-fees-going>

## Winding Down Drive Clean

For most dealers, it's the first good news we've been able to report for many years about this program, so it's nice to be able to start the New Year by sharing it with you.

**It is anticipated that by April 1st, vehicles under 4,500 kilograms (i.e. light duty and passenger vehicles) will no longer need to be tested for the purpose of sale!**

As we reported last September, we shared our support for this significant change to Drive Clean with the Ministry of the Environment and Climate Change and it seems they have listened.

While the Ministry has not gone so far as to eliminate Drive Clean entirely, they are eliminating the needless expense and hassle involved in having to get a vehicle to "pass" in order to plate and deliver it to its new owner.

Vehicle owners who need to renew their plates will continue to require a test every two years ... for now.

## Compliance Quiz

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

1. When a dealer sells a vehicle to another dealer they do not have to declare if the air bags are working.

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2. There is no appeal from a decision of OMVIC's Discipline Panel.

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3. A dealer is not allowed to sell vehicles to another dealer if:

- (a) the dealer is from the U.S.
- (b) the dealer is not registered
- (c) the dealer only trades in heavy vehicles
- (d) the dealership is wholesale restricted
- (e) the dealer is subject to an OMVIC discipline hearing

4. A dealer that is a corporation must tell OMVIC on registration, and on every renewal, the identity of each person who owns shares. What share ownership percentage triggers the requirement?

- (a) 50% of the shares
- (b) 25% of the shares
- (c) 10% of the shares
- (d) None of the above

5. If OMVIC's registrar receives a complaint about a registrant, the registrar may request information in relation to the complaint from any registrant. The dealer is not obliged to provide the information unless:

- (a) the information relates to a consumer sale
- (b) the complaint is about a lien on a vehicle the dealer sold
- (c) OMVIC's request is made within 6 months of the sale
- (d) the request from OMVIC is in writing and explains the complaint
- (e) the sale involves a light duty / passenger class vehicle under 4,500 kg

## Where There's Smoke ...

We are used to getting calls from dealers being questioned by police over personal use of dealer plates. That confusion has been around for years and can often be easily resolved by explaining, through the use of our dealer plate cards, that Ontario law allows such use.

So, a call we got recently really threw us for a loop. A dealer was stopped and charged with smoking while driving a dealer-owned vehicle with their dealer plate for personal use. He was not on a test drive or other dealer-related business. There was no minor under 16 in the vehicle (in which case smoking is not permitted).

Turns out the state of the law on this point is uncertain. While we might view it as a nuisance and another example of the police unfairly targeting dealer plates, there are larger health issues at play.

The charge can arise under the *Smoke-Free Ontario Act*:

The fine, for a first offence, is \$1,000.

This is what the law says:

<https://www.ontario.ca/laws/statute/94t10>

### Definitions

"enclosed workplace" means,

- (a) the inside of any place, ... or vehicle or conveyance or a part of any of them,
  - (i) that is covered by a roof,
  - (ii) that employees work in or frequent during the course of their employment **whether or not they are acting in the course of their employment** at the time, and
  - (iii) that is not primarily a private dwelling, ...

### Prohibition

9. (1) No person shall smoke tobacco or hold lighted tobacco in any ... **enclosed workplace**. 2005, c. 18, s. 9.

**[bold is our emphasis]**

We anticipate future amendments to the Act may encompass the smoking of other substances including "vaping" and the like.

The debate, it seems to us, will arise over whether or not a dealer-owned vehicle qualifies as a "workplace" ... "that employees work in or frequent". This may seem like a bit of a stretch, but we shall see what the court rules. The dealer who has been charged has legal representation and we will let you know when we learn more.

Meanwhile, until we have more direction on this issue, dealers and their employees may wish to think twice before lighting up while driving vehicles with dealer plates.

## Certification Course Classes

Here's a list of scheduled MVDA Certification Classes through March.

Friday, January 20th	Tuesday, March 7th
Thursday, January 26th – Ottawa (Hilton Garden Inn)	
Thursday, February 2nd	Monday, March 20th
Tuesday, February 7th	Thursday, March 30th
Wednesday, February 22nd	

Classes are taught by UCDA trainers and held at Wye Management's training facility, 55 Winges Road, Unit 1 in Woodbridge, unless otherwise noted.

### Wye Management – Basic Sales Techniques Class

Two Wye Management Basic Sales Training courses have been scheduled through March. Students taking the in-class Certification course, receive a discounted rate for the sales training course. These courses are also offered at Wye Management's training facility.

Monday, February 6th      Monday, March 6th

Contact Sachin at [s.choudhary@ucda.org](mailto:s.choudhary@ucda.org), for more information or to register.

## Quiz Answers

1. **False.** Disclosure is required. If you know the airbags in a vehicle are inoperable, you should either fix them or disclose that they are not working. Of course, you can only disclose what you know. Inoperable airbags may be hard to determine without actually crashing the vehicle!
2. **False.** Decisions of the Discipline Panel may be appealed ... to OMVIC's Appeals Panel.
3. **The answer is (b).** A dealer should not sell a vehicle to anyone who you know is planning on re-selling it ... if the purchaser is not a **registered** dealer. The unregistered dealer is a curbsider and it's a violation of the MVDA to knowingly sell to a curbsider.
4. **The answer is (c).** OMVIC must be made aware of anyone who owns more than 10% of the shares in a corporation that is a dealer.
5. **The answer is (d).** OMVIC is entitled to ask for information relating to any of the items listed in the question. However, the request is not enforceable unless it is made in writing.