

# IT'S NO APRIL FOOLS JOKE NO MORE DRIVE CLEAN ON SALES

On April 1st, Drive Clean effectively ends for dealers!

As of that day, vehicles under 4,500 kilograms (i.e. light duty and passenger vehicles) will no longer need to be emission tested when being sold or leased.

This will mark the end of an era, that began in 1999, when the Drive Clean program came into effect in the GTA. It spread across most of southern Ontario over the next three years.

The end was a long time coming, with the UCDA and others providing solid evidence for years that testing was no longer needed, especially on newer vehicles.

The introduction of a new On Board Diagnostic (OBD) based testing system in 2013 brought with it many new problems for dealers, such as difficulty getting vehicles ready for a test, that almost all would pass anyway. However, the Ministry of the Environment and Climate Change finally heard the points dealers have been making and to their credit they made the right decision. Better late than never!

The Ministry has eliminated the needless expense and hassle involved in having to get a "Pass", just to plate and deliver a vehicle to its new owner.

However, at least for now, the Ministry has not gone so far as to eliminate Drive Clean entirely. The program will continue for owners of 7 year old and older vehicles when renewing their plates in areas of the province covered by Drive Clean.

This requirement will also include white plated vehicles owned by dealers. As of April 1st, the \$30 fee for a required test will be waived, though re-tests will still be subject to a fee.

Members may still need to deal with the occasional customer who, accustomed to having a Drive Clean test done on vehicles they purchase, insist on having the vehicle pass a test.

Members will need to decide how to accommodate these customers. Options include having the vehicle tested ... but the \$30 fee will apply since such a test would not be legally required.

The UCDA recommends that if you know that a vehicle has passed a Drive Clean test in the last twelve months, that you let your customer know. It will provide reassurance for the customer and may help you make a sale without the customer insisting on having a new Drive Clean test performed.

You can check a vehicle's Drive Clean test history by entering the VIN at:

[http://www.driveclean.ene.gov.on.ca/ONPublicWeb/pages/vir/vehSearch.jsf?LOCALE=en\\_CA](http://www.driveclean.ene.gov.on.ca/ONPublicWeb/pages/vir/vehSearch.jsf?LOCALE=en_CA)

The search will tell you the dates of all previous Drive Clean tests on the VIN searched and whether the result was a Pass or Fail. There is no charge for this check.

## OMVIC Inspection Powers

We had quite a reaction to our January article about OMVIC complaint handling and the disconnect some members felt between OMVIC's role as a neutral complaint resolver and something that felt more like consumer advocacy.

This article will deal with another issue some dealers stress a good deal over ... OMVIC inspections.

At its best, this is OMVIC's chance to visit a dealer in the spirit of co-operation and education to confirm the things the dealer is doing right and point out where things may be going wrong.

At its worst, it can feel like a witch hunt where the inspector comes in looking for a problem, assuming the dealer has done "something" wrong and the only job left to do is to find it.

We have little doubt that the majority of inspections are handled correctly and follow the first approach. We have heard from many dealers who felt their inspection had gone very well and that they were treated professionally.

However, dealer frustration with the inspection process can still result, from a combination of factors. On the inspector's side, it could be caused by insufficient training or not properly following guidelines provided during training, a lack of understanding about the laws that govern OMVIC's inspection powers or just a confrontational approach.

A defensive attitude by the dealer being inspected can also contribute to the inspection going off the rails, as can a lack of understanding about what the OMVIC inspector is permitted to ask for during the inspection.

Most dealers have been or will be visited by OMVIC at some point for the kind of inspection we are talking about here. We're not talking about an inspection resulting from a complaint, a dispute or a reasonable suspicion of wrongdoing. We're talking about a "routine" general books and records check that all dealers will at some point be subject to.

A routine inspection is similar to a routine audit by government tax, labour or safety inspectors. While not required to, the OMVIC inspector usually provides advance written notice of the date and time he or she plans to inspect the dealer's premises. This allows the dealer to prepare for the visit based on the items listed in the notice that the inspector may ask to see.

A dealer might get a notice that reads something like this:

In order to ensure that you are in compliance with the MVDA and to offer any assistance you require, an inspection of your premises and books and records is needed (inspection to be conducted at \*\*\*\*\*).

An appointment to conduct the inspection is set for \*\*\*\*\* @ 10:00am. I'll be pleased to answer any questions you have and offer any assistance you require at that time.

Please have all records regarding motor vehicle trades for the past 12 months available. This includes but is not limited to:

- All purchases with corresponding sale/lease contracts (wholesale and retail)
- Safety Standard Certificates and repair invoices
- Warranty documents and proof of warranty premium remittances
- Garage register
- Banking records - bank statements with cancelled cheques (also floor plan and trust account statements if applicable)
- Payroll records
- OMVIC transaction fee remittance details
- Examples of online, radio and print ads (for recently sold vehicles, if applicable)
- Dealership's most recent HST notice of assessment

The records you provide may be compared to your RIN history from the Ministry of Transportation.

If you are unable to keep this appointment please notify me in advance as soon as possible so that we may reschedule to a mutually convenient time.

I am looking forward to seeing you in the near future.

While most inspections go smoothly, here are some examples of problems reported to us by members over the years:

- Inspector treating dealer suspiciously, rudely or disrespectfully
- Inspector giving incorrect advice, for example, about what must be noted on contracts or that certain vehicle information searches **MUST** be run

- Sharing personal opinions about a dealer's guilt or innocence
- Sharing personal opinions about other dealers
- Leaving behind coffee cups or other items for dealer staff to clean up after them
- Conducting personal business during inspections
- Taking documents, by copying, photographing or physically removing, and not giving a receipt. We understand inspectors now often do not make paper copies or remove documents, but instead take cell phone photos of them. This is fine, but dealers are still entitled to a receipt listing the documents photographed.

### What Does The Law Say?

The *Motor Vehicle Dealers Act* ("MVDA") says an ordinary (non-complaint based) inspection is meant to ensure compliance with the MVDA.

The inspector can ask to see money, valuables, documents, records, motor vehicles and motor vehicle parts relevant to the inspection and may, upon giving a receipt for them, remove for examination and copy anything relevant to the inspection.

Dealers are required to cooperate, but there are limits on OMVIC's power here too.

OMVIC has provided some information about inspections, and a checklist to provide dealers with some guidance in this area:

<https://www.omvic.on.ca/portal/DealersSalespersons/EnforcementCompliance/Inspections.aspx>

The MVDA gives OMVIC significant regulatory power over dealers, but it also recognizes that with power comes responsibility. The MVDA regulations were drafted wisely enough to place controls on the exercise of that authority.

That, along with basic common sense and a non-confrontational approach by both inspector and dealer, should help prevent the kind of issues listed earlier.

If reasonable guidelines are followed, these visits can and should go smoothly with the least disruption to dealers while still allowing OMVIC to fulfill its mandate of ensuring professionalism.

Don't hesitate to contact the UCDA if you have questions or concerns about an upcoming or past inspection. We can offer advice and, depending on the circumstances, may be able to help you resolve any issues with OMVIC.

## Compliance Quiz

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

- An applicant that meets the basic requirements (e.g. is over 18 years old) is entitled to registration as a dealer, unless:
  - the applicant cannot reasonably be expected to be financially responsible
  - past conduct suggests the applicant will not carry on business in accordance with law and with integrity and honesty
  - the applicant cannot provide at least two written references
  - the applicant makes a false statement in the application
  - there are already too many dealers in the town the applicant plans to operate in.

Is it:

a, b, c? or a, b, d? or b, c, e?

- An applicant for registration can agree to accept conditions on their registration?

True

False

- Sam is a sole proprietor, but he is ready to retire so he plans to transfer his dealer licence to his son to carry on. Can Sam do this?

Yes

No

- A motor vehicle dealer is responsible to make sure that every salesperson that the motor vehicle dealer employs is carrying out his or her duties in compliance with the Act and the regulations.

True

False

- A dealer has just changed its business address. How soon must OMVIC be told of the move?

- 10 days
- 5 days
- It should have been done before the move
- 14 business days
- There is no need to notify OMVIC.

## Misleading Advertising And The Competition Tribunal

Dealers know that OMVIC monitors dealer ads and can take action, usually disciplinary in nature, to make sure that everyone is following the rules.

Perhaps less well known is the fact that the Feds have a hand in this too. *The Competition Act* allows action to be brought by the Federal Government against any vendor seen to be engaging in deceptive marketing practices.

A recent action before the Tribunal against the Hudson's Bay Company (HBC) is interesting because many of the allegations brought to bear in this case could conceivably be encountered by motor vehicle dealers too. It's useful as a cautionary tale to be aware of the issues raised.

At this early stage the action is not complete and the Tribunal has yet to rule on the guilt or innocence of HBC, so all of the allegations are unproven at this point. Indeed, as this article is written, HBC has not yet filed responding materials to give their side in all of this.

The Competition Bureau, which prosecutes competition actions at the tribunal, claims that HBC engages in deceptive marketing by offering sleep sets at grossly inflated prices (prices so high no one ever buys them at that price point) then drastically lowers the price to actually sell them at a more normal market price, while claiming huge savings result for the purchaser.

The Bureau says "[s]ince the regular price is not an actual regular price, the ... savings promoted by reference to the regular price are not actual savings."

The Bureau also alleges that HBC falsely advertises "clearance" or "end of line" sleep sets with the implication created in the minds of the public that these are priced to move while, during these periods, HBC continues to order new sleep sets to replenish its inventory.

What if we take these two allegations and substitute cars or trucks for "sleep sets"?

If dealers did the things alleged here they could face the same action from the Bureau. And when you think about it, you can see why it matters. How would there ever be a level playing field between vendors or confidence in the public perception of an industry that engaged in this kind of system rigging?

Indeed, that is why OMVIC's Standards of Business Practice, [https://www.omvic.on.ca/portal/portals/0/pdf/CodeofEthics/Standards\\_of\\_Business\\_Practice.pdf](https://www.omvic.on.ca/portal/portals/0/pdf/CodeofEthics/Standards_of_Business_Practice.pdf) which dealers have lived with now for almost two decades specifically contains sections to prevent:

1. Misleading price advertising;  
and
2. Language to falsely suggest inventory "must go", "fire sale" pricing, "last chance" and that kind of thing ... unless truthful.

Some of this is common sense really, but it bears repeating and keep in mind it is not just OMVIC that is watching!

## Quiz Answers

1. **The answer is a, b and d.** Applicants do not need to supply references and the right of an applicant to be registered is not affected by how many registered dealers operate in the same community as the applicant.
2. **True.** Applicants can **agree** to Terms and Conditions proposed by the registrar, but Terms and Conditions can only be **imposed** on an applicant through legal proceedings.
3. **No.** Because Sam is a sole proprietor, he cannot transfer his registration to another person. Sam's son would have to apply to OMVIC for a new dealer licence. If Sam's company had been incorporated, it would have been easier for Sam to transfer the business to his son.
4. **True.** Dealers are responsible for the actions of their employees.
5. **The answer is (b).** Any change of address must be reported to OMVIC within 5 days of the change. Dealers who change address must also provide OMVIC with a municipal licence or letter confirming the new property is zoned for the sale of motor vehicles, and a copy of a lease or something confirming ownership of the property by the dealer.

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