

# SUPREME COURT OF CANADA GETS IT RIGHT!

## UCDA Member Successful On Appeal

When we wrote in Front Line about this tragic story in November 2016, we couldn't help but feel the dealer (and UCDA member) got the short end of the liability stick.

### To recap:

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 requires 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 the car and other vehicles, unlocked, outside on the lot ... with the keys in them. Apparently, this was their normal overnight practice.

The dealer was made to share some of the blame, and the liability, for the sad injuries caused because he made it too easy for this crime to occur.

The dealer lost at trial and again on appeal to the Ontario Court of Appeal, which held the dealer responsible to pay 37% of the costs of the passenger's injuries and future care. Some, but not all, of the costs would have been paid by the dealer's insurer.

The decision was appealed to the Supreme Court of Canada, which injected a little bit of common sense back into the equation. The Court reversed the lower court decisions on the basis that the loss was not foreseeable because it had never happened before.

### The Court said:

"While the risk of theft was reasonably foreseeable, the evidence did not establish that it was foreseeable that someone could be injured by the stolen vehicle.

Here, there was no evidence to support the inference that the stolen vehicle might be operated in an unsafe manner, causing injury ... [The dealer] had been in operation for many years and no evidence was presented to suggest that there was ever a risk of theft by minors at any point in its history."

This decision was very good news for our member. However, this is not to say the risk is not there in cases with different facts in evidence, where the decision could easily go the other way. Members should always lock all vehicles and keep the keys securely locked inside the dealership.

Never leave vehicles unlocked overnight with the keys in them!

You can read the full decision here:

<https://tinyurl.com/y7q9jlgj>

## Watch Your Weight

*Highway Traffic Act* (HTA) laws and regulations governing heavier pick-up trucks have been on the books for years now, but there is still confusion out there on the part of many purchasers and non-commercial operators (and maybe some dealers) about their annual safety obligations.

Let's define our terms ...

### Commercial Motor Vehicle:

- a truck or highway tractor with a gross weight or registered gross weight of more than 4,500 kilograms (kg)  
OR
- a bus with a seating capacity for ten or more passengers

### GVW: Gross Vehicle Weight

### CVOR: Commercial Vehicle Operator's Registration

### Personal-use pickup truck:

- used for personal purposes without compensation
- has a manufacturer's gross vehicle weight rating of 6,000 kg (13,227 lb) or less, and is fitted with either:
  - the original box that was installed by the manufacturer, which has not been modified, or
  - a replacement box that duplicates the one that was installed by the manufacturer and has not been modified
- is not carrying or towing a trailer carrying commercial cargo or tools or equipment of a type normally used for commercial purposes

You hear these terms all the time, but what do they mean to you?

Well, GVW and CVOR are two different things.

Although the HTA considers all pick-up trucks to be "commercial" motor vehicles, a pick-up truck needs a CVOR certificate only if it has an actual or registered gross weight of more than 4,500 kg AND it is used only for commercial purposes, not for personal use.

*Does a personal use pick-up truck need an annual safety inspection and the "yellow sticker" on the windshield?*

Yes. If the truck's rated GVW is greater than 4,500 kg, it needs to be inspected each year.

The key to understanding all of this (and it can get even more complicated when you start talking about trucks that also pull trailers) is that, for most consumers, the need for the annual safety is determined simply by the weight of the vehicle, not their use of the vehicle.

Many consumers don't understand this basic fact and

get confused by the distinction between commercial use trucks that need CVOR and the much more common GVW over 4,500 kg issue.

Hopefully, this article helps to clarify this area for members.

### Final Point

On a final note, dealers are exempt from the annual inspection requirement for these vehicles as long as they are part of inventory. This is another issue that has caused confusion on the part of police and MTO enforcement on occasion.

## Crossing The Border

Dealers often ask us, especially in the summertime, about driving in the U.S. with dealer plates. It's legal, and if you follow the rules, you probably won't have any problems.

On the other hand, there is no accounting for how an individual police officer, unfamiliar with what might seem common to a Canadian driver, will react to something outside their usual experience. Just ask the poor grad student who spent a night in a jail cell in Georgia because a police officer did not think her Canadian drivers licence was "legal" for her to use in the U.S.!

<https://tinyurl.com/y7py44dd>

She was speeding, and did not have an original passport or Nexus Card to show the officer. Cell phone pictures of these were not enough to avoid handcuffs and jail!

Although we have always enjoyed a good relationship with our "friends to the south", it is wise to remember it is a foreign country and you are crossing an international border. Conduct yourself accordingly.

First, check with your own insurance to make sure they are OK with you driving inventory in the U.S.

Second, always carry proof of vehicle and plate registration and insurance when driving with a dealer plate and appropriate identification for drivers and passengers to enter the U.S. (e.g. Passport, enhanced Driver's Licence, Nexus card).

### Driving Across the Border with a Dealer Plate

Dealers entering the U.S. to buy or to pick up vehicles already purchased should carry one of more of the following:

- Auction Access Card
- Purchase orders
- Auction announcements
- Storage and towing receipts

- Pre-bid printouts

Dealers entering for private, non-commercial visits should carry documentation relating to the U.S. destination, such as:

- Airline tickets
- Tickets for attractions, sporting events or concerts
- Hotel reservations/vacation itinerary
- U.S. addresses of destination or venue

These documents are not exhaustive and do not guarantee entry to the United States if CBP officers have other concerns. However, having appropriate documentation, such as listed above, should reduce problems crossing the border.

Please feel free to call the UCDA's Legal Department if you have questions or concerns about this issue.

## No More Free Garage Registers From MTO: An Update

As we reported earlier, the days of the paper Garage Register are numbered ... at least the free ones. MTO is phasing out the books that they have supplied to dealers for years.

Those they have left are available at a limit of one per dealer. When those are gone, they are gone for good. If you want one, please call MTO at 416-679-8657. We anticipate their supply will run out sometime in 2019.

The UCDA's supply ran out in early May and MTO will not take any more orders from us to replace them.

This lack of supply does not change the fact that dealers are legally required to maintain a Garage Register. We know many members prefer to keep this record in paper form, rather than just on their computer.

We have an MTO approved Garage Register pdf at <http://tiny.cc/4v5oty> for those that wish to use a printed version.

For the more computer savvy, there is an electronic version coming that can be filled out on your computer, but it is not available yet from the MTO.

We are still exploring the possibility of printing paper books ourselves depending on the demand from members. If you have an interest and would be willing to pay a small fee to cover the cost of its production, please let us know.

## Compliance Quiz

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

1. A dealer advertises a promotional event. In order to draw crowds and create buzz, the dealer promises balloons and rides for the kids, free cake and pop and a demonstration of "dwarf" tossing performed by local professionals in the sport. Is there a possible OMVIC Code of Ethics problem here?
  - (a). balloons are bad for the environment
  - (b). pop is bad for kids' teeth
  - (c). "dwarf" tossing could be viewed as insulting to human dignity
  - (d). free cake is almost certainly bad cake and besides, nothing is ever really "free"
  - (e). the dealer may need a permit for the rides

2. Registrants are professionals. In carrying on business, which of the following would NOT classify as a possible failure that could attract OMVIC attention?
  - (a). Disgracefulness
  - (b). Distractedness
  - (c). Dishonourable behavior
  - (d). Unprofessionalism
  - (e). Conduct unbecoming of a registrant

3. Generally, the *Motor Vehicle Dealers Act* (MVDA) makes it the buyer's responsibility, not the dealer's, to register a vehicle into their name under the *Highway Traffic Act* (HTA).

### True or False?

4. What degree of damage by fire to a motor vehicle must be declared by a dealer?
  - (a). 100% damage
  - (b). 50% damage
  - (c). Fire damage to interior only
  - (d). Any fire damage
  - (e). Fire damage affecting more than two body panels

5. A court award of punitive damages against a dealer on a consumer sale can be compensated by the Compensation Fund.

### True or False?

## Discipline ... It Can Get Personal

In an OMVIC Discipline Decision in 2016, the Discipline Panel showed a willingness to levy fines on individuals, and not just the dealership itself.

In an agreed statement of facts that formed the basis of a settlement without a full Tribunal Hearing, OMVIC and the accused - the dealership and two individuals - agreed that the used car manager had sent emails to staff encouraging them to mislead consumers as to vehicle availability and pricing.

A number of vehicles were advertised as available that had long since previously been sold.

The dealership was fined \$2,000 for this offence. In addition to the corporation, the general manager was ordered to pay \$2,000 and the used car manager was ordered to pay \$6,000!

Both managers were also ordered to take the OMVIC education course.

Failing to follow the rules can hurt more than just the dealership, it can impact your own wallet too.

<https://tinyurl.com/ybxbjn4j>

## Tampering With Auto Check™

We've recently had two cases of dealers, one of which was a UCDA member, providing Auto Checks™ that were tampered with to create the false impression there were no accident claims.

### Complaint #1

We first learned about this last summer when a finance company, unfamiliar with UCDA's Auto Check™, called to confirm if the Auto Check™ provided to them by a consumer was "real". It was not.

The "real" one was altered to remove information that a vehicle they were being asked to finance, had been involved in two separate accidents totaling approximately \$27,500. The Auto Check™ they had been given showed no accidents claims at all.

The dealer that the report had come from was not a UCDA member. We sued them to recover damages for the falsification of the Auto Check™ report. The matter settled and the UCDA was awarded damages.

### Complaint #2

Early in 2018, we received a call from a consumer. He bought

a 2015 Nissan Rogue in October of 2016. He took some comfort from the Auto Check™ the dealer had given him that showed no accident claims.

That Auto Check™ was fake and this time it was a UCDA member dealer who gave it to him. The real Auto Check™ showed a \$34,000 insurance write off.

It was no surprise when it turned out that the first dealer and the second dealer knew each other well and worked on deals together.

We expelled the dealer from membership in the UCDA and referred the whole matter to OMVIC for investigation, as we don't know how many consumers may have been affected.

We've had no more calls from consumers, or other dealers, of a similar nature so, fingers crossed, we have nipped this in the bud.

Rest assured, the UCDA will spare no effort to preserve the integrity of Auto Check™ so that our members, and the consumers they serve, can trust the authenticity of what they are being shown. When we learn of such tampering we will take swift and decisive action, as we did in these cases.

## Quiz Answers

1. **The answer is (c).** Section 8 (1) of OMVIC's Code of Ethics states "In carrying on business, registrants shall not engage in any act or omission that, having regard to all of the circumstances, would reasonably be regarded as insulting to human dignity or integrity."
2. **The answer is (b).** OMVIC's Code of Ethics prohibits behaviour that could be considered to fall under (a), (c), (d) or (e).
3. **The answer is False.** While the HTA makes it the buyer's responsibility to transfer a vehicle's registration within six days of purchase, Section 3(2) of the MVDA puts this responsibility on dealers, unless the buyer requests otherwise. The requirement is enforceable by OMVIC.
4. **The answer is (d).** If a vehicle has sustained any damage caused by fire, it must be disclosed.
5. **The answer is False.** The Compensation Fund is prohibited from paying out punitive damages awarded by a court.