

ontariocars.ca

SIGN UP ... LIST FOR FREE ...

SITE GROWS ... YOU BENEFIT!

You've heard a lot this year about the UCDA's new vehicle listings site, Ontariocars.ca.

You've heard that over 1,600 of your fellow UCDA members are listing almost 65,000 vehicles on the site.

You've heard that you can syndicate your listings from sites like Trader.ca and Carpages.ca.

You've heard that you can upload your inventory to the site in seconds using the Ontariocars app.

You've heard that it's absolutely FREE to list your vehicles until the end of 2018.

That means FREE leads for the rest of the year!

To members who have registered and are listing inventory on the site, "Thank You" for supporting your association. Hopefully, some of those free leads have turned into sales!

To those members who haven't yet registered for the site and don't have vehicles listed for sale, on Ontariocars.ca, we ask, "What are you waiting for?"

The UCDA is here only for you, our members. As we wrote in the June issue of Front Line, it makes it easier for us to help you when you support our initiatives and make use of as many member services and benefits as you can.

If you're not already signed up with Ontariocars.ca, here's how you can do so quickly and easily.

Log-in with your UCDA account number and password at www.ucdasearches.com. Click on the Ontariocars.ca logo.

Complete the short on-line form that will appear on your screen and hit **SUBMIT**.

Once you've registered, you'll receive a welcome email, with your new Ontariocars.ca log in information. Once you have this, you can start listing your inventory immediately.

Start at <http://app.ontariocars.ca/>

You can download our app or log-in directly to add, modify or remove your vehicles from inventory.

To add a vehicle, click the "+" button which asks you to enter a VIN. If you're adding the vehicle using the app on your mobile device you can simply scan the VIN ... no typing needed.

No matter which option you're using, it's an easy step by-step-process.

You can add multiple photos of both the exterior and interior of the vehicle. If you're using the desktop version you'll need to have access to the photos on your computer. You'll be able to select the photos from the computer by either dragging the photos or adding them from a folder.

If you're using a mobile device, you can transfer the photos automatically to add to the listing you're building.

Once you're done, just click the "Save" button. This will post the vehicle listing live to the public. When a consumer searches for your vehicle on Ontariocars.ca, they will now be able to find it.

Need help? You can always email our support team at support@ontariocars.ca

Independent Contractors

We get calls from members on occasion who want to know if they can categorize workers as "independent contractors" rather than "employees".

For the member, it might mean less paperwork if they are not required to make deductions from pay for things like CPP, Employment Insurance and Income Tax. For the worker, it might mean more money in their pocket (at least up front).

The problem is, as with many things, the devil is always in the details. Just because you enter into a contract with a worker and call them a "contractor" does not necessarily mean the federal or the provincial governments will consider them to be "independent".

And it is not just the government you need to worry about. Often, at the end of the working relationship, the worker changes their mind about wanting to be considered a contractor. They try to argue for the benefits they would have been entitled to on termination if they had been an employee.

For dealers, the consequences of being wrong about this issue can be serious ... and potentially costly.

Federally, you can see what the Canada Revenue Agency ("CRA") says about this issue in a publication called "Employee or Self-Employed": <https://tinyurl.com/yd73dmaf>

Some (though not all) of the factors CRA will consider in this area are:

- The intention of the parties
- Level of control
- Who provides resources
- Can the worker hire subcontractors or assistants
- Financial risk
- Responsibility
- Profit opportunity

Recently, with the passage of Bill 148 in Ontario, the issue has become more complex provincially as well.

The *Fair Workplaces, Better Jobs Act 2017* shifts the burden from workers to employers to "prove" the worker is not an employee to whom legislation like the *Employment Standards Act* (and all its protections such as overtime pay, vacation, severance, etc.) would apply.

Again, somewhat vague "factors" similar to those considered by the CRA are considered in making these determinations and some of this can seem like trying to nail jello to a wall.

Among the recommendations adopted by the Ontario government in Bill 148 was to increase the proactive enforcement powers of the Ministry of Labour.

Employers found to have contravened the *Employment Standards Act* by misclassifying an employee as an independent contractor may face penalties of C\$350, C\$700 and C\$1,500 for the first, second and third contravention, respectively.

If the contravention affects more than one employee, these penalties will be multiplied by the number of employees that have been affected. Employers that violate the act may also face prosecution. If convicted, fines can range between \$50,000 and \$500,000, depending on whether the conviction applies to an individual or a corporation, and if it is a first, second or third offence.

In addition to monetary penalties, Bill 148 empowers the Ministry of Labour to publish the names of employers that fail to comply with the *Employment Standards Act*. This publicly available list will include:

- the name of the employer;
- the date and description of the contravention; and
- the penalty charged.

Of course, these risks do not even address the other concerns that can arise for employers such as liability for:

- vacation pay
- statutory holiday pay
- overtime pay
- termination and severance pay
- taxes
- Canada Pension Plan payments
- employment insurance
- health taxes or government health insurance
- workers' compensation insurance premiums

Be Well Advised

Before making a decision, dealers should consult their lawyer or accountant (or both) and minimize the risks of misclassifying individuals as independent contractors.

Criminal Record Searches

OMVIC commonly makes use of criminal record searches. They are required for new dealer and salesperson applications and reinstatement applications. OMVIC may run them on registrants from time-to-time, as it deems necessary.

So, members may be interested in knowing that as of November 1, 2018 the lay of the land will shift somewhat with the coming into force of a new law, the *Police Record Checks Reform Act*, 2015.

The Act is meant to address concerns about potential abuses of "too much information" being made available by enforcement agencies to parties that may not need it or be able to handle it properly.

The road to hell is often paved with good intentions, so organizations that might ask for criminal record searches in good faith, are still not entitled to receive irrelevant data about non-criminal matters of mental health or unproven criminal allegations affecting not only human rights but employment potential.

The Act seeks to balance these concerns, and it would seem OMVIC is not exempt, though some government agencies are.

The Act creates three classes of record checks:

- criminal record check (the one OMVIC does);
- criminal record and judicial matters check; and
- vulnerable sector check

Each one discloses varying degrees of information.

The reach of the Act is quite broad and it restricts the release of other information, including criminal convictions.

For example:

- A summary conviction offence will not be disclosed under any type of search after five years.
- A finding of guilt will not be disclosed where an individual was absolutely or conditionally discharged. (This information can be disclosed in a vulnerable sector check or criminal record and judicial matters check for a period of one year, only in relation to an absolute discharge. The time-frame increases to three years for a conditional discharge.)

You can view the Act, and the table that shows what information will appear in each search class, here: <https://www.ontario.ca/laws/statute/15p30>

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Compliance Quiz

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

1. A Mini-Cooper can tow a weight of about 1200 to 1400 pounds (or 544-635 kgs). A customer has a trailer which weighs 1200 pounds empty, and they ask the salesperson if the Mini-Cooper will suit their towing/hauling needs. The salesperson says it will.

- (a). If the salesperson is wrong it's not really their fault
- (b). The customer needs to do their own research about these issues
- (c). The customer should at least test drive it
- (d). The salesperson should know this vehicle is not fit for their needs
- (e). As long as the customer sticks to downhill trips, they will be fine

2. A dealer sells a modified vehicle to another dealer. Originally built to run on gasoline, the vehicle was modified to run on natural gas, which the dealer forgot to mention when he sold it. The buying dealer wants to return it when he discovers this.

- (a). The buyer should have checked this before buying
- (b). This is a material fact that should have been declared by the seller
- (c). Natural gas is cheaper than gasoline
- (d). Natural gas is cleaner than gasoline
- (e). It does not make a difference to price

3. Code of Ethics regulations apply on dealer to dealer sales, unless the wholesale bill of sale has a contract clause that says the Code does not apply to the transaction.

True False?

4. Aside from being a breach of contract, if a dealer taking a trade-in agrees to ensure a lien is paid out and fails to do so, it is also a breach of the Code of Ethics under the *Motor Vehicle Dealers Act*.

True False

5. How much time does the OMVIC registrar have to refer a dealer discipline matter to the Discipline Panel for action?

- (a). Thirty days from the date of sale
- (b). There is no time limit on the internal discipline process
- (c). OMVIC is not bound by time or space
- (d). As long as it takes
- (e). Two years from the time the Registrar learned about it

Lending Dealer Plates

A dealer plate is very useful to dealers for its flexibility. Under the right circumstances, it can be used on any vehicle. The plate is owned by a dealer for purposes relating to the sale of the vehicle being driven. Dealer plates may be used on any vehicle owned by the dealer for purposes relating to the sale of the vehicle and, under the right circumstances, may be also used for personal use on passenger class vehicles.

While the plate may be used by anyone with the permission of the dealership, including staff and potential buyers who have the vehicle for testing purposes, it can't be used on just any vehicle. It can only be used on vehicles OWNED by the dealer, or vehicles used in the OPERATIONS listed on the declaration page of the dealer's policy.

This is why it is a very bad idea to "lend" your plate to anyone for use on any other vehicle.

It would be illegal in light of the *Highway Traffic Act* and its Regulations. If there was an accident or incident while a vehicle was being operated with a dealer plate, and the vehicle is neither owned by the dealer nor being used in conjunction with the dealer's business operations, resulting losses would likely not be insured.

This could possibly leave the dealer potentially exposed to serious liability, depending on the circumstances. While most garage policies do provide limited liability coverage for non-owned automobiles, it is not just any vehicle you can put a dealer plate on. It still must be related to your use and business operation.

Unfortunately, we have heard reports of dealers letting curbsiders, who have no affiliation with the dealer's operations, use their dealer plates to move vehicles that they are selling illegally!

We checked with our garage insurance partner, Baird MacGregor Insurance Brokers, and here are some of their thoughts to help protect you:

From Baird MacGregor

Every situation can be different; however; a couple of things are clear:

- Dealer plate coverage DOES NOT extend your insurance coverage to any car or driver you want;
- Your dealer plate is listed in the policy and covers ONLY vehicles owned or USED in the dealer's business operations;
- Generally, you list each driver and employee you want covered under your policy and the driving records will be reviewed before they can be added.

If there is an accident, the police will identify everyone involved and every vehicle. From there it goes to the insurance company to sort it all out. The first thing the insurer will do is determine who the registered owner of the vehicle is before they confirm if there is coverage.

There are legal ramifications for any bodily injury involved. Things can get complicated if you lent the plate to someone for use, other than for your business operations. This is described on the declaration page of your garage auto policy, and if coverage were to be denied or reduced in the event of a claim; you could be held personally responsible.

What you would be risking, at least, would be an increase in future premiums. Worst case scenario, there would be no coverage for the claim and a possible notice of termination or placement in a high-risk market such as the Facility Program; which will result in a significant increase in premiums.

It's not worth the risk. Your dealer plates are yours ... keep it that way.

Quiz Answers

1. **The answer is (d).** *The Sale of Goods Act* requires that anything sold be fit for the purpose intended and since the purchaser told the salesperson what they planned to use the vehicle for, the vehicle will be expected to be able to tow the loaded trailer.

As well, OMVIC's Code of Ethics says "A registrant shall provide conscientious service to the registrant's customers in the course of a trade in a motor vehicle and shall demonstrate reasonable knowledge, skill, judgment and competence in providing the services".

2. **The answer is (b).** If a vehicle is materially different from the original or advertised production specifications, the selling dealer must inform the purchaser in writing before the vehicle is sold.
3. **The answer is False.** Dealers cannot contract out of Code of Ethics requirements.
4. **The answer is True.** Where a dealer agrees to pay out a lien on a trade-in, the Code of Ethics requires that the dealer follows through with that commitment.
5. **The answer is (e).** The registrar has no more than two years after receiving a complaint about a registrant to refer the complaint to the Discipline Panel.