

AMPs ... HERE THEY COME AGAIN

No, this has nothing to do with your electricity bill!

Way back in the Fall of 2013, Ontario's then Liberal government made a lot of noise about bringing in something called Administrative Monetary Penalties (AMPs) as a means of fining businesses, including motor vehicle dealers, for violating various laws.

Back then, the UCDA filed a submission with the Ministry of Consumer Services expressing our serious concerns about the proposal. So did other business organizations.

The government backed away and the proposal did not go anywhere or so we thought.

Now, more than six years later, the Conservative government is resurrecting the AMP idea as part of Bill 159, introducing amendments to the *Consumer Protection Act (CPA)*.

The government is proposing to add AMPs as a tool that could be used, not only by the government, but also by regulators, including OMVIC, as an option to enforce compliance with the law.

We are once again concerned for our Members.

Why?

Well, we are concerned because of what an AMP is. Unlike laying a charge for violating the *Motor Vehicle Dealers Act*, or CPA, and issuing a summons to the accused dealer to appear in court, an AMP is a conviction on the spot.

Even if you appeal an AMP and get your day in court, you are denied the defence of due diligence available to most accused. You are issued the fine, presumed guilty and you are expected to pay it. The usual due process is gone.

The 2013 proposal was very specific about what kind of charges an AMP could be used for and how much an AMP fine could be (up to \$20,000). The current proposal is very vague and difficult to get a handle on at this early stage, with the details to be left to regulations that would be brought in later.

We do know AMP fines could be as high as \$50,000!

We don't know who would keep the money from an AMP fine (the government or OMVIC).

We don't know what type of offences the government would allow AMPs to be used for.

We don't want to wait around to find out, so the UCDA has made a written submission to the Standing Committee on Justice Policy, which is reviewing Bill 159, expressing our concerns and asking, at least, for restrictions on how AMPs could be used and in what circumstances they could be used.

OMVIC currently has more than enough tools in its arsenal to deal with contraventions by both dealer and salesperson registrants.

OMVIC can lay charges against registrants in Provincial Offences Court.

Through a Notice of Complaint, OMVIC can initiate a Discipline Hearing, with penalties as high as \$25,000.

In appropriate situations, OMVIC can Propose to Revoke a dealer's or salesperson's licence.

Does OMVIC really need more power to do its job?

We'll keep you posted.

Extended Warranty Update

We have added additional warranty providers to our list, which we updated in our last newsletter. They have satisfied the UCDA that their warranties are fully insured by a licensed Ontario insurer:

Assurant Vehicle Protection Services 1-800-387-0119
(formerly Coast to Coast)

People's Choice Warranty Ltd. 1-888-284-2356

Each of the companies listed below have provided the UCDA with a copy of its insurance agreement, along with a written undertaking by the insurer to notify the UCDA in the event that the coverage is cancelled or changes are made. The UCDA asks the recognized warranty companies to have insurers provide annual updates to us, confirming that insurance remains in place.

Verified Insured Warranty Companies

After receiving updates from insurers, here is the current alphabetical list of warranty companies that have met our requirements for insurance recognition:

Assurant Vehicle Protection Services 1-800-387-0119
(formerly Coast to Coast)

Canada General Warranty Inc. 1-866-320-8975

Cornerstone United Warranty
(XtraRide and AutoXtra) 1-800-774-9992

Coverage One Warranty 1-866-988-1642

D.I.S.C.C. Enterprises Ltd 1-800-663-1303

First Canadian Protection 1-800-381-2580

Global Warranty 1-800-265-1519

Lubrico Warranty 1-800-668-3331

Nationwide Auto Warranty 1-888-674-8549

People's Choice Warranty Ltd. 1-888-284-2356

Specialty Administrative Services, LLC 1-888-668-4360

Sym-Tech i-Select Plus 1-800-363-5796 (press 2)

The UCDA does not endorse any specific warranty company or product, but strongly recommends that members only offer warranties that are insured by a licensed Ontario insurer.

Out-of-Province Buyers And Tax

As surprising as this might sound, despite the fact these tax rules have been in place for years now, dealers keep getting tripped up on sales to out of province buyers. Even large financial organizations, who fund a lot of these deals, don't seem to have a standard protocol to make it easy for dealers and consumers.

Suppose you have a buyer from Quebec. In most cases, Ontario dealers are not registered with the Quebec Government to collect Quebec tax (some Members close to the border who do a lot of business with Quebec buyers are registered to collect and remit Quebec Sales Tax [QST]).

That means the consumer will have to pay the QST, which is 9.975%, at the Quebec licence office when they register the vehicle. Don't forget that part. We get calls from consumers who were not told that and they are very upset when they get home to find out!

So what does the Ontario dealer actually have to collect and remit to the Federal Government (because all dealers are required to collect Federal tax)? The answer is simple.

If the vehicle is delivered in Ontario, charge 13% (HST). If the dealer ships the vehicle to the buyer in Quebec, charge 5% (GST). A Quebec consumer who takes delivery in Ontario, pays 13% and drives back home, can apply for a rebate from the Federal Government to get the 8% Ontario portion of the 13% HST back, so long as they have proof of the tax they have paid.

But, we still see deals where a dealer sells a vehicle to a consumer who takes delivery in Ontario and charges 5% federal tax and 9.975% QST on the bill of sale, messing things up considerably.

The dealer has not collected enough Federal tax. They have no way of sending the QST to the Quebec government, their paperwork is all wrong and the purchaser will be asked for the QST when registering the vehicle in Quebec. As we say, a mess.

We spoke with one lender about their process and as you might expect, they leave this pretty much up to the dealer. The dealer requests the loan advancement, including the tax that they determine needs to be collected to get the deal done. If the dealer chooses to send the customer with a cheque including the QST, that is entirely up to them.

All advancements are made to the dealer, so it is only through the dealer that the customer will get the money they need to pay the QST on a financed deal, or it will have to come out of the customer's own pocket. Dealer's need to keep this in mind and make sure the buyer understands, as well.

Of course, dealers get buyers from all Provinces and different issues arise depending on the tax regime in any given Province.

For a summary of all these rules and GST and HST rates in all Canadian jurisdictions, please visit our website at:

<https://tinyurl.com/r8d4drz>

The Resignation Boomerang

Our legal department recently received an interesting call from a Member. Apparently, one of the Member's employees, a service technician, exercised a fantasy many of us have had at least once in our working lives and told the boss to 'take this job and shove it, I ain't workin' here no more ...'.

Unlike in the old Johnny Paycheck song, however, the fellow was back the next day. Having cooled off, he decided the place wasn't so bad after all and he changed his mind about quitting.

Trouble was, the Member kind of liked his first answer!

As we've mentioned in Front Line before, employment law is littered with all kinds of land mines for unsuspecting employers. We urge any Member confronted with these sticky questions to consult the experts, a lawyer specializing in employment law preferably, as our legal folks here are no experts in this area. Like criminal law, it is a delicate area in which to give advice.

Having said that, there are some interesting takeaways from past court decisions.

The decision to leave one's job is a big deal. Courts will expect the intention to be crystal clear, so no one can doubt the person really meant to quit. Employers should try to get such a decision from the employee in writing; a temper tantrum and storming out may not be enough.

Even in a simple case, the decision can be pulled back by the employee unless and until the employer has made its intention to accept the resignation crystal clear. It should be in writing, such as a confirmation letter, email or text. Further evidence would include the hiring of a replacement.

Consider this Court of Appeal case, *Kerr v. Valley Volkswagen, 2015 NSCA 7 (CanLII)* in Nova Scotia. Mr. Kerr worked as a parts manager at the dealership and told his supervisor that he wanted a raise or he would quit, because he had another dealer who would pay him what he wanted.

Mr. Kerr was told if his performance improved in three weeks, he could earn the raise. His performance did not improve and his ultimatum was not withdrawn. After the three weeks, the dealer formally accepted his resignation. Mr. Kerr tried to revoke his ultimatum at that point, but it was too late.

The court found that a reasonable person would agree that Mr. Kerr had intended to quit.

We can't think of anyone more reasonable than a UCDA Member!

Compliance Quiz

1. How can a dealer sell a vehicle to a consumer, without any responsibility for known mechanical or other defects?
 - a) Sell it "As Is"
 - b) Write "no warranty" on the bill of sale
 - c) This cannot be done
 - d) Sell it without a Safety Standards Certificate

2. A lien is registered on a car to secure a loan by the party who lends a customer money to buy it. If the customer gets behind on payments or defaults on the loan. The lienholder may:
 - a) put a mortgage on the customer's house
 - b) repossess the vehicle from the customer, subject to some restrictions
 - c) complain to the police
 - d) none of the above

3. A customer buys a car from a dealer safety certified and drives home. On the way the engine fails. The dealer, by law, is likely:
 - a) not responsible once the car is driven off the lot
 - b) not responsible because the engine is not covered by a safety inspection
 - c) responsible only to rent a car for the customer for a few days
 - d) none of the above

4. Even if a bill of sale is silent, there is an implied warranty on the sale of every used vehicle that it will be fit for the purpose intended by the buyer for a reasonable time after the sale:
 - a) True
 - b) False

5. A curbsider is:
 - a) A dealership located close to the road
 - b) A car that can't be started
 - c) A person who pretends to be a private seller, but is really selling vehicles as a business without being registered with OMVIC
 - d) A dealer who offers no haggle pricing

Over 250 Charges Laid Following Investigation

The following comes from globalnews.ca.

Police have laid more than 250 charges following an eight-week investigation into tow truck companies.

Durham Regional Police launched Project Bondar, which focused on several tow truck companies in the Greater Toronto Area. It was all sparked after a series of complaints from drivers following an accident.

“They were told they had to pay a very high fee in order to get their vehicles back,” says Const. George Tudos with Durham Regional Police.

That fee sometimes reached thousands of dollars, according to a Global News investigation. Tudos says the issue was the car was being held for ransom as well.

“A lot of times the companies would not return them unless those monies were paid,” Tudos explained.

Global News spoke to a customer whose car was being held for more than \$4,000. It was later released after our investigation.

Through Project Bondar, more than 30 vehicles have been recovered — including two luxury cars, a Ferrari 488 and a BMW M4, among a number of vehicles police believe may have been stolen.

“Both of these vehicles were in the process of being taken apart,” Tudos said.

“We had eight tow trucks, two of which were engulfed in flames.”

The team executed warrants in Brampton, Scarborough, Etobicoke, Ajax, Clarington, Pickering and Whitby. As a result, a range of charges were laid.

“There were a lot of contraventions against the *Highway Traffic Act* and *Consumer Protection Act*,” Tudos said.

Police say they also met with tow truck drivers to educate them on best practices as well. Investigators say they also

want drivers to be mindful of who they allow to tow their car.

“Make sure you’re aware of what your insurance company covers,” Tudos said.

“Make sure the tow company removing your vehicle is a legitimate one.”

This comes just weeks after Toronto police investigated a number of tow truck fires in Toronto and York Region. Three vehicles were set ablaze within 30 minutes of each other, and police believe accelerant was used in two of those cases.

It appeared that tow truck drivers were competing for business, according to Mark Graves with the Provincial Towing Association of Ontario.

Graves told Global News in December it appears there was “a significant amount of escalation” recently, adding several companies seem to be challenging each other for work.

It’s not clear if Project Bondar is connected with this, but Const. Tudos says they are working with other police agencies.

If you have any information that could help, contact Durham Regional Police or Crimestoppers.

Quiz Answers

1. **The answer is “c”.** Unless known defects are declared, even on an “As Is” sale, a dealer can be held responsible for existing problems they know or should know about.
2. **The answer is “b”.** A lien holder may repossess a vehicle for non-payment, although a court order is required if more than two-thirds of the purchase price has been paid.
3. **The answer is “d”.** The *Sale of Goods Act* implies a warranty of fitness on every vehicle sold, that the vehicle will work as a means of transport for a reasonable time after the sale. The dealer will likely be responsible for this problem.
4. **The answer is “True”.**
5. **The answer is “c”.** Anyone buying and selling a vehicle with the intent of making a profit on the sale, is carrying on business, and must be registered under the *Motor Vehicle Dealers Act, 2002*.

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