

# NO AMPs FOR OMVIC!

The Ontario government will not be giving OMVIC the ability to use Administrative Monetary Penalties (AMPS) against dealers. That's the word from officials with the Ministry of Government and Consumer Services, following our front page report in last month's Front Line.

We have been told by the Ministry that "the proposed changes would not give any authority to OMVIC to issue AMPs". The proposals contained in Bill 159 to establish the use of AMPs in enforcing the *Consumer Protection Act* (CPA), will be restricted to the Consumer Services Operations Division of the Ministry. No other regulatory bodies will be given the power to issue AMPs.

This assurance follows our Front Line story, several UCDA meetings with Ministry officials and a formal submission to the Ontario legislature's Standing Committee on Justice Policy. The committee held public consultations and review of the proposals contained in Bill 159, a bill to amend the CPA.

While it's welcome news for members that OMVIC will not be able to issue AMPs, this doesn't mean that AMPs would not be used against dealers by Ministry compliance officers. Whether AMPs charges are laid by OMVIC investigators or by Ministry compliance officers, our concerns about what this could mean for members still exist.

As we wrote in the last Front Line, our concerns stem from what AMPs are and how they work. Generally, the process for laying charges under provincially administered legislation, like the CPA or the *Motor Vehicle Dealers Act*, begins by issuing a summons to the accused to appear in court. An AMP is more like a speeding ticket.

An accused does not automatically get their day in

court. An AMP means a fine is issued and the accused is presumed guilty and expected to pay the penalty. An accused can appeal to court, but because AMP offences are considered to be "strict liability" offences, the only defence available is to deny having committed the illegal act.

It doesn't matter whether there was any intent to commit the offence or if the accused used reasonable due diligence to avoid committing the offence. In short, the due process that is usually afforded an accused is gone.

AMPs have been used for many years to deal with offences, such as environmental spills, which can cause serious and often irreparable harm. However, their use in regulated consumer-oriented industries is quite new. The UCDA's position on the use of AMPs against MVDA registrants is that they are not necessary, since OMVIC has multiple enforcement options when violations occur.

The details of how AMPs will work and what types of offences they may relate to, will be set out in regulations that are expected to be drafted in March. The UCDA will be participating in a comprehensive review of whatever these draft regulations might say.

The UCDA is monitoring this very closely and will engage in consultation with the Ministry about the draft regulations, to seek clarification on how, if at all, our members will be affected and to ensure that what comes out of amendments to the CPA, is fair to members.

We're pleased and relieved to have received clarification about AMPs from the Ministry, but the UCDA will continue to be watchful, to ensure that the rights of members are not compromised.

More to come!

### Extended Warranty Update

We have added another extended warranty provider to our recognized list at: <https://tinyurl.com/w29crcg>

**Guarantee VC / GVC Premium Warranty Company**  
1-800-268-3284

Each of the companies listed has 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.

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.

### Who Should Receive a Light-Duty Vehicle Inspection Report?

It's already been five years since the Ministry of Transportation modernized the requirements for safety inspections. While there were early concerns about the time needed and the extra cost of more onerous inspection requirements and paperwork, the industry quickly became accustomed to the changes and it is now the new normal.

A significant change to the legislation brought in by the new standards was the requirement for the technician performing a safety inspection on a light-duty vehicle to complete an inspection report and provide it to the customer. This has always caused some confusion and we still receive inquiries from time to time about it.

The inspection report is meant to provide the "customer", for whom the inspection is being performed, with information on the thickness of brake rotors and pads, in the case of disc brakes and the condition of brake shoe lining and drums, in the case of drum brake systems. Tire tread depth and condition is also required to be recorded on the report. As well, "tell tales" (warning light indicators) also need to be made note of by the inspector on the report.

The confusion about the report stems from the requirement to provide the completed form to the "customer". Dealers, of course, think of their customer as any client purchasing or leasing a vehicle from the dealer. If the dealer has its own service department, clients for whom service is performed are also the dealer's customers. So

when a dealer does a safety on a vehicle as part of the sale, the report should be given to the dealer's customer who is purchasing the vehicle.

But, if a dealer sends its vehicles out to a third party service centre to perform repairs and service work, the *dealer* is the customer, as far as the service facility is concerned. Same for a garage which is a licensed Motor Vehicle Inspection Station (MVIS). If a dealer sends its inventory to an MVIS facility for safety certification, the station likely doesn't know, or care, who the dealer's customer is. As far as the station is concerned, the dealer is the customer. So the station will provide the inspection report to the dealer.

In this case, does the dealer need to pass the report on to its customer who is buying the vehicle?

Well, that's a good question. The legal answer is "No, they do not need to".

The rules about safety inspections, including the need to supply a customer with an inspection report, apply to MVIS stations. Unless the selling dealer is the MVIS station that issued the safety, the rule does not apply to the dealer.

Having said that, should a dealer supply a copy of the report received from an outside station to its customer when selling the vehicle? That's entirely up to the individual dealer, but being fully transparent will likely go a long way towards earning the customer's confidence and trust about the vehicle's condition.

### Curbsider New Year

A new decade begins with new convictions.

OMVIC got the New Year started with Ontario courts accepting some hefty curbsider guilty pleas; all on January 17th, 2020.

In Paris, Ontario, Robert Mcglogan a.k.a. "Kelly" pleaded guilty to one count of curbsiding under the *Motor Vehicle Dealers Act, 2002* and was given a fine of \$5,000.

In Kitchener, Robert Klein pleaded to one count of curbsiding and received a fine of \$2,500.

Finally, in Cambridge, a company called Motorhead Classic Cars Ltd. o/a Motorhead Classics, made more noise than the old metal-rock band of the same name, when they pleaded guilty to one count of curbsiding and were handed a fine of \$10,000!

## Competition Bureau Priorities for 2020 and Beyond

Everyone likes to make 'to do' lists when a new year dawns, especially when a new decade dawns. When the Deputy Commissioner of the Deceptive Marketing Practices Directorate at the Canadian Competition Bureau shares her list, it's hard not to take notice.

In recent remarks, Deputy Commissioner Josephine Palumbo identified four enforcement priorities for her office going forward into 2020:

- (a) influencer marketing;
- (b) false online consumer reviews;
- (c) dishonest information about data privacy; and
- (d) dishonest price claims.

For our members, in this digital age of online marketing, probably the two that could most affect members are false online consumer reviews and dishonest price claims.

These two issues speak for themselves, so we don't need to go into a whole lot of legal mumbo jumbo for dealers to understand. First, it is not a super idea to post fake reviews to try and make your dealership (or your products) look better in rankings on Google, Yelp, car listing sites and so on. Second, dishonest price claims are a very **bad** idea.

1. **Astroturfing** – This is the posting of reviews that speak highly of your dealership, but which are actually posted by your employees or friends of the dealership, not by "real" customers. Creating a falsely positive image of your business is not just silly, it can cost you big bucks. In 2015, this kind of practice cost Bell Canada over one million dollars in fines to resolve the Bureau's concerns.
2. **Dishonest price claims** – Ads that suggest your vehicles are somehow magically lower priced than your competition are risky. Why? Because the Bureau might come calling and expect you to actually be prepared to prove that! As reported in earlier Front Lines, this kind of deceptive pricing cost the Hudson's Bay Company over \$4.5 million in penalties and costs.

As Ms. Palumbo said in her remarks on January 22:

"It is also important for advertisers operating within this fast-paced economy to know and adhere to the rules of fair competition, as set out by the *Competition Act*.

Because strong, vigorous competition benefits Canadians.

It means better choices, better prices and fairer business practices, and it means a stronger economy where everyone can prosper and thrive."

## Compliance Quiz

1. What are the three brands that you may see on an Ontario vehicle registration permit?
  - a) Retail, Wholesale and Export
  - b) Write-off, Stolen, Accidented
  - c) Rebuilt, Salvage, Irreparable
  - d) Stolen, Irreparable, Rebuilt

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2. The registration of salespeople is administered by:
  - a) the Ministry of Consumer and Business Services
  - b) the Ministry of Transportation
  - c) Consumer and Corporate Affairs Canada
  - d) none of the above

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3. When operating a vehicle with a dealer plate, the *Highway Traffic Act* requires which of the following to be in the vehicle?
  - a) a bill of sale, the plate permit and proof of insurance
  - b) the vehicle registration permit or a true copy of it, the dealer plate permit and proof of insurance
  - c) the original vehicle registration permit, the plate permit and proof of insurance
  - d) a copy of the vehicle registration permit, proof that the registered owner of the vehicle is a registered dealer and proof of insurance

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4. The tenth digit of an automobile's seventeen digit VIN signifies:
  - a) Country of Manufacture
  - b) Model Year
  - c) Vehicle Type
  - d) Manufacturer

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5. Ontario law requires that motor vehicle dealers be closed on Sunday.

True

False

## The Luxury of Time

The Federal Government plans to introduce a 10% luxury goods sales tax (excise tax) on purchases of personal automobiles, boats, and aircraft valued at \$100,000 or more (indexed to inflation). Commercial use of automobiles, boats and aircraft will likely be exempt.

As we have not yet seen the 2020 budget, we don't know many details, such as when it will be implemented, how it will affect sales already made, and whether it will also apply to leases.

What we do know is that the Liberal Government is a minority government and this proposal likely faces some pretty stiff opposition, so stay tuned.

## Defamation

Members know the power of social media, both good and bad. While often on the receiving end of negative consequences, businesses are not the only ones who can find this medium cuts both ways.

A woman has learned the hard way that you can't say anything you want about a business in an email.

A disgruntled woman whose parents had sued a furniture store over a dining room table and won a small award in small claims court, sent emails to family, friends and colleagues calling the company "untrustworthy" and "deceitful".

The company considered the emails to be defamatory and sued her. It WON!

Because the woman showed malice (she admitted her motivation was "revenge"), refused to apologize and encouraged others to republish the email, the court awarded the company \$15,000 in damages and \$25,000 in court costs!

<https://tinyurl.com/yx3e23rs>

## LIEN SEARCHES Volume Discounts

Auto Check ... \$8.00

Carfax Canada ... \$35.50 • Owner History ... \$16.00

[www.ucdasearches.com](http://www.ucdasearches.com) • 1-800-668-8265

In another, more recent, case a disgruntled bride was so dissatisfied with her wedding planner that she mounted an online campaign. The wedding planner was convinced that this drove its customers away, and effectively put her out of business.

She sued the bride and WON \$115,000 in damages!

The judge said: "This case is an example of the dangers of using the internet to publish information without proper regard for its accuracy."

<https://tinyurl.com/tawucys>

Every case is unique and Members shouldn't expect to be able to sue over any negative comment made by an unhappy customer. However, these cases show that, in the right circumstances, a business can successfully take action for unjustified defamatory comments that may damage its reputation.

## Quiz Answers

1. **The answer is c.** Technically, there is a fourth brand that you will see on most registrations .... "None".
2. **The answer is d.** Motor Vehicle Salespeople are registered by the Ontario Motor Vehicle Industry Council (OMVIC).
3. **The answer is b.** Drivers of dealer-owned vehicles should always carry the green registration permit, or a true copy of the front and back of it, for both the vehicle and dealer plate attached to it, and an original pink insurance slip for the dealer plate being used. If a copy of the registration permit for the vehicle is not available, be sure to carry a copy of the signed bill of sale showing that the dealer has purchased it.

However, while an officer may accept this, it does not comply with current requirements. The UCDA is seeking amendments from the Ministry of Transportation to change regulations and make it compliant to carry a recent Bill of Sale, if the permit is not available.

4. **The answer is b.** Model year digits can be found at <https://tinyurl.com/te5am2s>
5. **The answer is False,** dealers may be open on Sundays.