

# BOUNCING BACK FROM COVID-19

The COVID-19 pandemic devastated the Canadian and world economies this Spring.

The used vehicle industry in Ontario was no exception. It was almost completely shut down in April, after the Ontario government announced that dealers would no longer be considered an essential service and had to stop on-site sales (though service and repair centres were allowed to remain open).

While in theory, remote sales were permitted (sales made to buyers away from a dealer's business location), test drives were prohibited by OMVIC. Not surprisingly, few buyers were willing to purchase a used vehicle untested. To make things worse, while bills of sale could be signed on-line, documentation relating to bank financing often could not, making financed deals almost impossible to close.

It quickly became clear that virtual or on-line sales do not work well in the motor vehicle industry, especially the used vehicle industry. Consumers want to see cars close up, sit in them, touch them and above all, drive them, prior to making their purchase decision. They're more than happy to find vehicles on-line ... but they're not buying on-line.

After dealers were allowed to re-open by appointment on May 4, business quickly picked up. A couple of weeks after that, dealers with outside storefront entrances could open to walk-in customers. Business was certainly not back to normal, but the easing of the restrictions on how and where dealers could sell, made a huge difference to many Members. It likely saved more than a few from closing permanently.

There was clearly pent up consumer demand from the month or so that dealers were shuttered. Buyers have been coming back.

Now the problem is starting to be supply. With the physical auctions shut down, online auctions simply can't handle the volume of vehicles waiting to be wholesaled and many Members have seen their inventory shrink. Retail prices are now starting to rebound due to these supply issues.

At the UCDA, we closed our office on March 16. Staff have been working from home since then and while it has not been

business as usual, we have been able to maintain all of the services and benefit programs that Members rely on, including vehicle searches and bill of sale and other paper form orders. Plans are in the works to re-open the office in July.

Throughout the pandemic, the UCDA has been here for Members, providing regular Dealer Alert updates on government programs to assist businesses and employees and outline proper protocols to help Members carry on business and protect staff and customers during the pandemic.

Tragically, in the midst of the worst of the pandemic, unrelated to COVID-19, the UCDA lost a long-time staff member. Ruth Fleming, who had worked in the Member Services and Legal Services Departments since 1992, passed away suddenly over the Easter Weekend.

Many Members who register liens through the UCDA knew Ruth well and regularly chatted with her. Her passing was a devastating blow to Ruth's family and friends here at the UCDA. She is sorely missed and when the office re-opens, it won't be the same without her.

What does the future hold? We don't know. Will auctions be able to ensure physical distancing and be able to re-open anytime soon? Will dealers be comfortable attending auctions in person? Will there be a second wave of COVID-19 in the Fall?

No one knows the answers to these questions, but if everyone remains diligent in maintaining a safe and clean environment for staff and customers, we'll hopefully be able to return to some sense of normalcy soon. Don't let up on using proper protocols relating to physical distancing, wearing masks and frequently sanitizing vehicles and office space. These protocols will continue to be necessary well into the foreseeable future.

<https://tinyurl.com/ybh7maaj>

Rest assured, the UCDA will continue to be here to help Members carry on through whatever may happen next.

## The Elderly Buyer

It's a fact of life that, as baby boomers grow older, dealers will encounter more and more elderly customers.

While customers in their 70's, 80's and 90's bring a wealth of experience to vehicle buying and ownership, have the security to afford what they want and the "know how" to find it, these customers can also bring unique challenges for dealers.

We often receive calls from members who are being criticized, usually by the extended family of such customers, over deals they have made.

Some complaints relate to issues of "capacity". For example, the family feel the elderly customer was not able to make the "right" decision, has made a "bad" deal or picked the "wrong" vehicle. In many cases it may just be that the adult children, and other family members, are unhappy that their aged relative is "spending their inheritance"!

How are dealers supposed to treat elderly customers?

With respect! They have contributed their entire lives to our society and economy and have the right to make purchasing decisions like any adult.

How are dealers supposed to respond to the family?

With caution. Remember, they are not your customer, the buyer is. Because of privacy concerns, there is little you may be able to even discuss or disclose to the family, unless the buyer gives you permission, preferably in writing, to do so.

On the other hand, in some cases, the family may be able to produce legal documents, court orders or "powers of attorney" that have some bearing on the issue of your customer's mental "capacity". If that is the case, make a copy of the documentation and call the UCDA Legal Department before proceeding.

What issues do dealers need to be alert to?

Be sensitive to any customer who seems confused, distracted or suffering from some disability that appears to affect their ability to understand the 'to and fro' of the negotiating process. This is good advice at all times, but especially so when dealing with the elderly consumer.

Be sure about the status of your customer's driver's licence and / or insurance. The MTO will suspend the licence of anyone unable to drive safely due to age related or other impairments (in particular for drivers over 80 years of age).

The Ontario *Consumer Protection Act, 2002*, contains specific warnings to businesses to be alert to consumers who are vulnerable and to avoid unfair or "unconscionable" sales. Such deals must be cancelled and all money refunded. Failure to do so could lead to claims for damages and / or fines.

Keep in mind that for many seniors a motor vehicle is both the symbol of, and the means to, an independent life. It guarantees their mobility and access to travel. All your customers have the right to shop and make purchasing decisions in peace, free from interference by anyone.

If you are ever concerned about any of the issues raised in this article, call the UCDA Legal Department (416) 231-2600 or 1 (800) 268-2598 before you proceed.

## Tricky Customer

Sometimes you just have to laugh. This story came to us by way of a reporter who deals with both sides of the dealer / repairer / consumer divide and shows that sometimes, the customer is not always as forthcoming as they should be when they have an issue:

A man claims that a transmission shop, which charged him thousands of dollars for tranny work, did a poor job. He drove "up North" and the transmission failed again. The transmission shop had the truck towed back to the shop to see what was up. They found that the transmission was burned out after only 120 kilometres!

Naturally, the transmission shop felt the customer must have had some kind of mishap. The customer of course denied that, so the transmission shop reluctantly agreed to again rebuild the transmission under warranty, but wanted to charge him for the tow from up North.

The customer asked the reporter to help him get the transmission shop to pay for his tow bill as well. The bill was high, so the reporter dug deeper and called the tow company to find out why.

The tow company told the reporter that they had to use two tow trucks to tow the truck, with a twenty six foot boat, attached out of a muddy field!

Not only did the transmission shop not pay the tow bill, they asked the customer to remove the vehicle from their shop as they would not be rebuilding the transmission under warranty after all!

## In-House Dealer Registration

We first reported on this issue in November of 2018, as the bill to allow this was before the Ontario legislature. The idea was not a new one, we'd seen a pilot project way back in 2011 along the same lines, but this time felt different. It felt like this Government was truly motivated to proceed with dealer in-house registration and licencing of motor vehicles.

A lot of water has gone under the bridge since then, and much progress too, and then along came COVID-19, which has disrupted the best laid plans of everyone.

Strong progress has been made toward a workable pilot for a Digital Dealer registration office within dealerships. Several UCDA Members were asked to participate, as this will be open to both new and used vehicle dealers, but the planned rollout for a pilot in the Spring has now been delayed.

We will let you know more when we have updates on this, but the Government assures us they remain "committed to adopting digital practices and technologies to deliver simpler, faster, better services to the people and businesses in Ontario."

## A Deal Is A Deal

At one time or another, we have all encountered the buyer who wishes they had made a different buying decision. Some Members are faced with buyer's remorse complaints from their own customers, or customers of other dealers who come to them with their tales of woe. Often, what it comes down to, is the customer thinks they did not make the "best" deal they could have or think they could have found a better price after the fact and they are not happy.

But does that mean their deal is not binding or legal?

A recent small claims court decision seems to suggest a "bad" deal is still a legal and binding one.

In a case from last summer, a consumer was involved in a Consumer Proposal (a type of bankruptcy process) and was rather desperate for a vehicle. The court suggests that may be why they acted in haste and did not read the lease they signed for 6 months or demand a test drive first.

The court heard they were vulnerable due to their circumstances and claimed difficulty with English, which may be why they agreed to a deal that was perhaps not the best in terms of the lease rate, costs, fees and vehicle condition ... but they did make that agreement.

The court said: "As bad as the agreement is however the Plaintiffs agreed to it ... [t]he Plaintiffs could have protected themselves, but chose not to."

People make bad decisions some times, but as adults they are able to enter into such contracts and courts are not going to interfere unless the dealer fails to deliver on what was promised or the vehicle is not as described, which was not the case here.

As the court said, buyer's remorse "does not justify setting the lease aside or finding against the Defendants. The Court cannot prevent people from entering into bad deals."

You can read the whole case here:

<https://tinyurl.com/ycefhu26>.

## Scams – Stay Alert

COVID-19 has crippled most businesses ... but not the business of the scammer.

One of our Members recently had this experience:

A customer came in, expressed interest in a newer used luxury car, said he would go to the bank and came back with a bank draft.

The Member was smart and went to the branch that drew the draft, spoke to the teller who actually wrote it and only then deposited it to their own bank account and delivered the car. Even so, the bank draft was no good. It was bought with fraudulent funds. In the time it took the bank to discover this, the car was long gone.

However, because the Member did their due diligence by visiting the issuing bank, their own bank didn't make them give up the funds; the issuing bank had to take the loss.

The lesson here ... be wary if you do not know the buyer. If they do little in the way of negotiation and they're quick to come up with a bank draft for a large sum, you should ask yourself some basic questions.

Like certified cheques, bank drafts can be fake. Wire transfers, if done directly from bank to bank, are safer.

Be skeptical. Question bad grammar in emails, sight unseen purchases, large cash purchases with no haggle, rushed transactions and any situation that is out of the ordinary.

Make certain all your staff understand the dangers that lurk out there and protect your dealership from becoming a victim.

## Return To Work

Some Members have contacted us with a perplexing problem. As dealers ramp services back up, they are calling employees back from COVID-19 layoffs only to find some do not want to return. Such employees cite COVID fears that may be legitimate, others may be less so, but what does the law say about all of this?

We do not claim any particular expertise in the highly specialized practice of Employment Law (which like Criminal Law is not an area one should “dabble” in), but these links may provide some guidance. The legal consensus would seem to suggest the law is on the employer’s side here, which is not something you hear every day in this complex area of law.

<https://tinyurl.com/ya6fm7lf>

### **Q: Can my employees refuse to return to work from a temporary layoff because they earn more on CERB?**

A: No, they cannot. If your employees refuse to return to a safe work place when you recall them from a layoff, you can deem them to have resigned and will owe them no severance pay. This would mean that they had voluntarily quit their employment, making them ineligible for the CERB.

<https://tinyurl.com/y9dh3sus>

### **Q: How do we handle employees who refuse to come back to work?**

A: It’s the employer’s right to have the employee attend at the workplace and that’s particularly so if the employee previously was reporting to a job site and working at the job site.

<https://tinyurl.com/y9uk7z66>

### **Q. My workplace has re-opened, but I don’t think it’s safe to return yet. Do I have to?**

A. The law is on the employer’s side here, even in a pandemic. If work is available, you are expected to be there, ... failure to attend for your regularly scheduled work hours [will be seen as] basically abandoning your job.

Having said this, do NOT get your legal advice from the internet, especially in a highly delicate area like Employment Law. This article is simply meant to frame the issue for you, but the devil is always in the details. Each employee and circumstance is different. So, before you take a formal position with any employee on their refusal to return, get advice from a qualified employment lawyer.

## Live By The Sword

A GTA paralegal has learned the hard way that being overly aggressive in a lawsuit can come back to bite you.

Scarborough Mitsubishi performed a Spring Maintenance package for Arnold Miguel at his request, but overcharged him by some \$127.97.

When Mr. Miguel pointed out the overcharge error, the store offered to refund the overcharge, but Mr. Miguel decided to sue the store instead in small claims court.

In his lawsuit he alleged the store made “false, misleading and deceptive representations” contrary to the *Consumer Protection Act* and sought not only a full refund for the repair, but also “punitive” damages of \$24,000. Punitive damages are reserved for cases where a court feels a party’s conduct warrants a punishment to make clear certain behaviour should be censored, prevented or deterred.

The court awarded Mr. Miguel the \$127.97 he was overcharged (the sum the dealer had earlier offered him anyway) and ordered him to pay court costs for the ill-advised punitive damages claim to Scarborough Mitsubishi in the sum of \$2,000.

The court found the store had made a simple and innocent error. The Spring promotion was intended to start on April 1, 2017, but the employee who posted the promotion had done so on March 31, 2017 because he was going to be off work for a couple of days.

The charging code required to bill for the maintenance package was not yet available. He was overcharged, but the court accepted the testimony of the store’s employees that this was an error.

Mr. Miguel doubled down on this turn of events and appealed. Unfortunately for him, the court found his appeal was procedurally flawed, as it was filed too late and on its merits could not succeed in any event, as the trial decision at the small claims court was correct.

The court ordered him to pay Scarborough Mitsubishi court costs for the appeal of another \$3,500.

So a \$127.97 overcharge dispute, that should have been easily resolved, ended up costing Mr. Miguel \$5,372.03!

<https://tinyurl.com/yb2j5ru2>