

the common lawyer

OMVIC ... a force for good, but improvement is needed

By Justin M. Jakubiak

While not yet a household name, the Ontario Motor Vehicle Industry Council's ("OMVIC") visibility and recognition among consumers is increasing. OMVIC has taken significant steps to promote itself and to raise awareness among Ontario consumers to ensure that it's known as the Ontario motor vehicle sales regulator.

Consumers are increasingly realizing that they can turn to OMVIC to assist them with a variety of issues – and this is extremely positive. Unfortunately, while focusing on consumers, OMVIC has largely ignored improving relationships and communications with dealers and salespersons.

In my view, OMVIC has failed to adequately manage its brand and reputation among new and used car dealerships, which is a shame given OMVIC is funded either directly or indirectly by the provinces' 8,000 dealers and 27,000 salespersons.

Many dealerships do not see OMVIC as a dealer partner committed to ensuring the growth and prosperity of Ontario's robust automotive sales industry. Some dealers view OMVIC with a level of apprehension given

OMVIC's almost singular commitment to consumer interests, even in instances where a consumer complaint, for example, is without significant merit or factual foundation.

I don't mean to suggest that OMVIC is not an excellent institution; but it can be better. I also don't ascribe to the perspective of some, which is that OMVIC is a protector of large dealership groups and franchise dealers and ignores the "small fish".

OMVIC also does not just target used car dealers. Several of the other anti-OMVIC myths simply aren't true as well. OMVIC, for the most part, does not discriminate among dealers by size, class or brand.

However, OMVIC does not always exercise its broad powers in a fair or reasonable manner. Many in the industry will agree that dealers are often pressured to make unfair resolutions and compromises in response to consumer complaints (even when the complaint is highly suspect).

Sometimes dealers are left with the impression that they must assist a consumer, or risk facing discipline or administrative action if they disagree with an OMVIC complaints' handler.



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Views and opinions are the author's alone.

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Additionally, and more importantly in my opinion, OMVIC sometimes lays charges (or takes disciplinary or administrative action) against some of the industry's best dealers and salespeople before stepping back and looking at the broader picture. Registrants ought to be fully comfortable and be able to trust that OMVIC only takes enforcement action as a last resort, in the most serious of circumstances, and after a full and careful analysis and thorough investigation.

Unknowingly Passing on False Information

I am currently involved in a matter, the outcome of which has the potential to impact all dealerships, salespersons, business managers and finance managers across Ontario. It deals with two sections of the **Motor Vehicle Dealers Act, 2002** ("MVDA") which can result in significant repercussions.

Sections 26 and 27 of the MVDA – False Information

Sections 26 and 27 of the MVDA fall under Part 6 of the MVDA, **Conduct and Offences**.

Section 26 reads:

No registrant shall falsify, assist in falsifying or induce or counsel another person to falsify or assist in falsifying any information or document relating to a trade in a motor vehicle.

Section 27 reads:

No registrant shall furnish, assist in furnishing or induce or counsel another person to furnish or assist in furnishing any false or deceptive information or documents relating to a trade in a motor vehicle.

These sections could apply in a number of scenarios. A common scenario is where a salesperson or a business manager assists a customer in completing a credit application. If the customer lies about his or her income, is the Registrant exposed to a possible charge? What if a mistake is made in the completion of the application?

Any individual who is convicted under either of these sections is liable to a fine of up to \$50,000, or imprisonment for up to two years less a day.

A convicted corporation is liable to a fine of up to \$250,000. These are significant penalties. What is worse, is that OMVIC will broadcast a charge under these sections, which can have significant negative consequences to one's reputation and ability to continue in the automotive industry, regardless of whether guilt or innocence is ever established.

The Business Manager

Imagine you have been in the automotive industry for all of

your working career. Most recently you have worked for years as a Business Manager in one of the largest dealerships in the country. You are extremely successful and have won awards recognizing your abilities and success as a Business Manager.

Your dealership, as with many car dealers, is a prime and regular target for exporters. One particular model is in extremely high demand as its retail price in China is three times its Canadian retail price.

As this is a new vehicle, the dealership is warned by the manufacturer to take steps to prevent this vehicle's export. Procedures are put in place, including review by senior management of the sales dockets for these particular vehicles.

You abide by the procedures - you obtain identification, employment information and ensure that all buyers execute non-export agreements with your dealership.

Despite such measures, there is often no way to guarantee that a vehicle will not be exported. Exporters have grown increasingly sophisticated and have developed systems and strategies to frustrate a variety of non-export measures instituted by dealerships.

Prior to the delivery of the vehicles, it's discovered that the insurance slips which had been provided by the purported buyers of the targeted vehicles were fake.

Without knowledge that these insurance slips were fake, you relied on the contents of the insurance slips in completing boxes #7 and #8 of Service Ontario's Application for Vehicle Registration. The result is that many of the vehicles you sold were registered and delivered with licence plates when there was no valid insurance in place.

The above is based on a true story - the conclusion is that the Business Manager is charged under Sections 26 and 27 of the MVDA. He loses his job and is publicly shamed. He has to fight tooth and nail and incur significant legal fees to maintain his OMVIC registration. All because he was duped by an exporter or group of exporters.

Conclusion

Ontarians and the dealer industry should be proud that we have one of the most sophisticated and best motor vehicle dealer regulators in the country, and arguably in North America. However, every time OMVIC attacks the good members of the industry, it is attacking its own supporters. OMVIC needs to take steps to encourage and grow trust and respect from Registrants. OMVIC has to strive to not only be an advocate and a partner with Ontario's buying public, but an advocate and partner with the industry as a whole. [OD](#)