

THE COMMON LAWYER

Back to School, Back to Basics



By Justin M. Jakubiak

I JUST RECEIVED MY FIRST back-to-school flyer and immediately felt a pit in my stomach. Growing up, I always hated back-to-school flyers and the sight of corn fields (especially in August when the stalks got high!) It was as if the mere sight of corn or flyers would bring the start of school, and the end of summer freedom, closer.

Although it's been quite a few years since I was last in school, August still fills me with a bit of melancholy. That said, I have always found that taking a moment to take stock and ensuring that I was prepared for what lay ahead was always a great salve to the August blues.

I hope that this article helps you this back-to-school season; Fall is a great time to remind you and your team of the little

things that are crucial to your dealer's long-term success, and its compliance with the law.

Legal Liability

Owning a business can mean many things – pride, purpose, and profits! However, it can also entail the not so great aspects of entrepreneurship, namely liability and costs. With risk comes reward, right? While often true, the savviest business people know how to maximize their reward, while minimizing risk.

Competition, customers, regulators and even your own dealership can pose a risk to your profits. Sometimes the simplest solution is the best solution – remain compliant. Sounds easy enough, but with everyday tasks and endeavours it can be all too easy get caught up in the whirlwind of making deals and to brush off the more tedious aspects of running a business.

Know Your Rights!

The Motor Vehicle Dealers Act (MVDA) is a broad statute which imposes a long list of obligations upon dealers and salespersons and provides OMVIC with very broad powers – including the right to carry out an inspection of your dealership to ensure compliance with the MVDA.

During an inspection, an OMVIC inspector has the right to:

- Access and inspect the dealer's premises, vehicles, books and records;
- Remove records to make copies; and
- Make inquiries regarding any complaint about the dealer's conduct.

Obviously, and guilt or innocence aside, anyone facing an OMVIC inspection is going to feel apprehensive and will likely have many questions and concerns. It is therefore incredibly important that you either know your rights, or have a trusted advisor to turn to for guidance.

Whatever you do, don't go it alone and DO NOT lose your temper and take it out on the OMVIC inspector (they are just doing their job!). A dealer I know took this approach and ended up with a Notice of Proposal to Revoke the licences of both himself and his dealership.

Complete Forms on Time and Accurately!

Taking steps to maintain your registration is crucial and can have disastrous consequences if done incorrectly, or not on time. Many dealerships, while great at completing the paperwork for customers, such as Bills of Sale, may not be as good at completing its own paperwork to OMVIC. Incorrect paperwork, or its late submittal, can lead to big headaches.

Too often, I have seen salespeople suffer significantly because they have failed to renew their licence on time. A best practice is for dealers to record and monitor expiry dates of all salespeople



to ensure renewal applications are submitted on time. It is a mistake to think being a few days late in filing a renewal application is not a big deal. I have seen more than one salesperson be without work for many months as a result of a late filing, and a subsequent Proposal to Refuse Registration being issued by the Registrar.

I recommend one person be responsible for ensuring all sales staff are properly registered. This is particularly prudent when your business is thriving and new faces become a common occurrence; a gatekeeping approach can help streamline the process and minimize mistakes. However, it remains important for salespeople to review their applications for accuracy before they are submitted.

Sales Contracts

As you know, the MVDA sets out the basic requirements for sales contracts – such as the salesperson's name and registration number, the make, model, model year and trim level of the vehicle, and required disclosure related to a vehicle's history. However, two other Acts that influence what a sales contract really means are the *Consumer Protection Act* and the *Sale of Goods Act*.

The implications that arise from these two acts are that any ambiguities within the contract will typically be interpreted in favour of the consumer, and a wide range of implied conditions and warranties will be 'read-in' to the contract – even if not expressly included! Some of these implied conditions and warranties include:

- That the vehicle will be free from any charge or encumbrance in favour of a third party

- That the vehicle will be reasonably fit for the purpose a buyer makes known to the seller

Selling vehicles 'As Is' might seem like a get-out-of-jail-free card; however, even if the contract contains the required 'As Is' statement, all required disclosures under the MVDA must still be included, or the customer may be able to cancel the contract.

Marketing Your 'Product'

Advertising is one way to reach potential clients, so it's important that that they are accurate and in accordance with the requirements of the MVDA. I have worked with many dealers who have struggled with getting advertising right – and not just small dealers, but some of the province's biggest franchise dealers as well. In short, advertising correctly can be tough and the rules around advertising can be confusing.

It is an offence under the MVDA to make false, misleading or deceptive statements in any advertisement relating to motor vehicles. Mistakes can have serious repercussions on a dealer's reputation, and may lead to charges being levied by OMVIC for non-compliant advertising.

There is no doubt that theatrics and dramatizations are effective at capturing the attention of customers – who doesn't want to try the world's best cup of coffee? However, honesty remains the best approach. Customers are interested in the physical product, but also in reliability, convenience and trust – and they are willing to pay for these! A reputable history, ethical practices, and positive client experiences are marketable qualities a dealership can use to attract long-term business.

It is more worthwhile to direct your advertisements to the appropriate clients, rather than pretend your product is something it isn't. Don't risk your dealership being charged thousands of dollars because painting a lemon as a lime might turn a quick buck.



It is also important to remember that if an advertisement for a vehicle includes a price, that price must be the 'All-In Price' and include ALL fees and charges the dealer intends to collect. The only additional fees a dealer may charge are HST and licensing. As OMVIC likes to say, all-in price advertising is the law.

Easy Steps Dealers Can Take

In conclusion, I would recommend that all dealers and salespeople take a moment during the dog days of summer to brush up on their requirements under the MVDA and associated regulations. OMVIC and the UCDA each have great resources outlining the various items that trip-up dealers on a regular basis. Additionally, OMVIC offers free educational seminars and advertisement review services.

Being pro-active and seeking outside advice to ensure your dealership is in compliance can be significantly less costly than dealing with the aftermath of a provincial offence charge, discipline matter or worst of all, a Proposal to Revoke.

Preparation and best practices will also allow you to step away from your dealership and focus on the fact that the dreaded time is near -- school is almost here.

Justin is a Partner with Fogler, Rubinoff LLP and is recognized by the Law Society of Upper Canada as a Specialist in Civil Litigation. This article was written with the assistance of Matthew Rutledge, a summer law student. ■

