

OMVIC: WHERE IS THE LEADERSHIP DURING COVID-19? DO DEALERS MATTER?

For the better part of 15 years I have represented various members of the automotive community (Manufacturers, Dealers, Salespeople, Repairers, Lenders, Lead Generators and more) throughout Ontario and Canada. During this time I have done my utmost to assist and represent the interests of the automotive community by ensuring that I was up to date, knowledgeable and passionate about the issues of the day.

Today, there is no more pressing issue than COVID-19, and the industry's response to it.

Amazingly, despite an incredibly difficult economic environment, the community has quickly taken steps to evolve and overcome. Dealers and their teams have quickly embraced technology and ways to sell and deliver vehicles in a safe manner, mindful of the dangers of COVID-19.

Unfortunately, for dealerships and salespeople especially (but the ripple effects have hit the entire community), the greatest hurdle so far has not been the pandemic itself, nor Ontario's emergency orders, but Ontario's vehicle sales regulator, OMVIC. Rather than being a partner and a protector of the industry during these dark times, OMVIC has put up roadblocks that are preventing any chance of survival for a large portion of the industry, save, maybe, some of the biggest and most well-funded dealers and dealer groups.

The automotive sector is an incredibly important contributor to both Ontario and Canada's respective economies. Millions of families rely on it to pay their rent, mortgages and to keep food on the table. Accordingly, OMVIC, now more than ever, needs to step up and support dealers and salespersons; it needs to do what it can to ensure the survival of this critical industry.

Emergency Order

On March 17, 2020, and as a result of the COVID-19 pandemic, the Government of Ontario made an Order declaring an emergency under section 7.0.1(1) of Ontario's *Emergency Management and Civil Protection Act*. On March 23, 2020, the Government of Ontario announced the mandatory closure of all non-essential businesses starting March 24, 2020 for a 14-day period under section 7.02(4) of the Act. As of March 24, 2020, the list of essential businesses fell into 74 categories.

A subsequent order was made on April 3, 2020 that narrowed the list of essential businesses further (to 44 categories) and required non-exempt businesses to close commencing on April 4, 2020. Dealerships were included in this subsequent order and were no longer considered essential businesses.



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Bright Side

Fortunately, while dealerships were ordered closed, vehicle and equipment repair were kept as essential, as well as "*businesses that provide and support online retail, including by providing warehousing, storage and distribution of goods that are ordered online.*"

The emergency order further states:

This does not preclude the provision of work and services by entities not on this list either online, by telephone or by mail/delivery.

Teleworking and online commerce are permitted at all times for all businesses.

OMVIC's Interpretation

Unfortunately, notwithstanding the wide latitude of the wording of the Emergency Order, OMVIC has decided to interpret it incredibly narrowly. OMVIC has declared, for example, that all test drives are prohibited (under penalty of administrative action!), including those conducted at a consumer's home. In lieu of test drives, OMVIC is encouraging customers to demand a contract cancellation period.

OMVIC further states on its website that it interprets the Emergency Order to mean:

that the physical premises of the dealership must be closed to everyone, including staff, other than to provide delivery of a vehicle that was sold online or via telecommerce. For staff to engage in sales activity online, it must be done remotely (such as at the employee's home), on behalf of the dealer. Important note: OMVIC's interpretation of the order prohibits customers from picking up vehicles at the dealership. Only deliveries to the customer's location are permitted.

The unfortunate result of the foregoing is that OMVIC's interpretations of the Emergency Order unnecessarily provide further pain to the industry, at a time when it is already hemorrhaging sales and employees.

OMVIC, instead of providing solutions, has only provided roadblocks to an industry in need.

Is there a better answer?

First, while everyone shares the same concern for public health, there was no need, and certainly no direction from the Province, for OMVIC to offer their opinion that remote test drives, or by appointment "show and tell" of vehicles, should be forbidden. Such a draconian interpretation of the Emergency Order helps no one, including consumers.

There are a number of common sense things that can be done to make test drives safe, such as:

- Requiring test drives to be organized by phone/email by a licensed sales person.
- Requiring test drives to be conducted by a driver exhibiting no COVID symptoms and wearing gloves and a mask.

- Requiring vehicle touching surfaces to be disinfected before and after each test drive.
- Requiring 2 meter distancing to be maintained at all times between consumers and dealer staff.
- Making sanitizer, gloves and masks available.
- Requiring consumers to take the test drive **unaccompanied**, unless it is with a member of the same household (but consumers should be encouraged to come to the dealership alone, where possible).

Without test drives, customers have to opt for refund options that would require contact with the dealership all over again. This is not a reasonable nor practical solution; it increases the risk of transmission, and it puts dealers and their employees in an even more vulnerable position than they already are.

It is my understanding that OMVIC feels that test drives at a consumer's home moves the place of business away from the dealership to the customer's driveway, and therefore violates the emergency order. This is not referred to in the emergency order; and one has to consider whether it is OMVIC's mandate to attempt to enforce the emergency order in any event.

I am further of the opinion that it would be in everyone's best interests that consumers be permitted to attend at dealerships solely for the purposes of test drives and vehicle deliveries. This avoids sales staff having to travel to consumer's homes (an uncontrolled environment); and in the case of vehicle deliveries, it would avoid the requirement of having one staff member attend at a consumer's home to deliver a car, while another follows in a separate car and the two staff member's driving back to the dealership together (in an enclosed space). The reality is that permitting in-person attendances at dealerships for these limited purposes is no more dangerous than permitting restaurants to offer take-out (which is expressly permitted in the emergency order); if anything, it is probably safer.

Allowing a limited number of consumers to attend at a dealership for the exclusive purposes of a test drive or a vehicle retrieval would permit the dealership to ensure that the vehicle was properly sanitized (prior to delivery or test drive), and that controls were in place to ensure adequate social distancing.

In summary, the automotive industry needs OMVIC now, more than ever. OMVIC needs to step up and support the industry by interpreting the emergency order, and the current health crisis, in a reasonable and safe manner that is mindful of the extremely important role the automotive industry plays in Ontario. OMVIC needs to provide its members with solutions, not just prohibitions and the threat of administrative sanctions. The present interpretation of the emergency order by OMVIC has likely caused irreparable harm to countless dealers.

Working together, everyone, including dealers and salespeople, can be involved in the trade of vehicles in a manner which is safe, socially responsible and commercially reasonable.

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