

# THE COMMON LAWYER

## The Legal Skeletons Hiding on Your Lot: What hidden legal risks are baked into your current inventory?



By Justin Jakubiak

I EXPECT, BY THE TIME YOU READ THIS, you may be thinking more about the red-suited fleet manager with a penchant for rooftop deliveries and who drives a zero-emission vehicle. However, as I type, strong wind and rain is driving the leaves from the trees onto my windows, and my dog, Buckle, is very scared. He doesn't like leaves, especially wet ones, and for him, it is definitely the spooky season.

So, a spooky article for the spooky season. For Ontario dealers, the real hauntings aren't in the showroom decorations, they're buried in your inventory, paperwork and some of the zombies you may have hired.

From improperly branded vehicles to unpaid liens and curbsided acquisitions, legal risks are lurking in plain sight. These aren't just compliance issues,

they're potential lawsuits, fines, and reputational nightmares waiting to rise from the grave. What is even more spooky, is that the Grim Reaper of Ontario's auto industry doesn't carry a scythe; he carries a clipboard and he works for OMVIC.

He doesn't knock. He mystery shops. He doesn't whisper. He audits. If your dealership's disclosures are incomplete, if your contracts are misleading, or your staff are cutting corners, he's not coming for your soul - he's coming for your license.

OMVIC's mystery shop program is the industry's version of a ghost hunt: you won't know they were there until the report lands. And their compliance audits? Think of them as the Reaper's annual check-up, except instead of checking your pulse, they're checking your paperwork.

So, who you gonna call?

Fear not: with the right tools, legal counsel, training, and attention to detail, dealers can become their own ghostbusters - zapping away the risks before they materialize into fines, license suspensions, or worse.

Let's unearth the most common legal "ghosts" haunting Ontario dealerships and discuss how to exorcise them before they cause real damage.

### The Branding Phantom

#### IMPROPERLY BRANDED VEHICLES

Ontario's Mandatory Vehicle Branding Program is designed to protect consumers from unsafe vehicles. But for dealers, it's a minefield. Vehicles branded as Irreparable or Salvage must meet strict criteria before being sold, and only those branded None or Rebuilt are roadworthy in Ontario.

Failing to disclose a vehicle's brand, or misrepresenting it, can lead to serious consequences under the MVDA and the Consumer Protection Act.

**DEALER TIP:** Always verify branding through the Ministry of Transportation and ensure your sales team understands what each brand means. Look at your permit. A "Rebuilt" vehicle without proper documentation is a lawsuit waiting to happen.

### The Lien Zombie

#### UNPAID OR HIDDEN LIENS

Liens are the undead of the automotive world - invisible, persistent, and potentially devastating. Selling a vehicle with an active lien can result in financial liability for the dealership and a breach of consumer protection laws.

**DEALER TIP:** Use comprehensive vehicle history reports and conduct PPSA searches across multiple provinces. Don't rely solely on seller representations - independently verify everything - especially when buying vehicles from new sources.

I expect it is a byproduct of a spooky economy, but I am seeing a massive





uptick in dealers discovering, sometimes months later, that a selling dealer has not paid out a lien. This results in massive headaches, a frustrated customer and often a scary demand from OMVIC.

### THE CURBSIDER'S CURSE: UNREGISTERED SALES

Curbsiding, the illegal sale of vehicles by unregistered individuals and corporations, doesn't just impact consumers buying a vehicle of off Facebook Marketplace. It is a growing problem that is affecting more and more dealers. What's worse, is that dealers who acquire inventory from curbsiders may be seen by OMVIC as complicit, even if they acted unknowingly.

OMVIC's enforcement teams regularly investigate and prosecute curbsiding operations and are targeting dealers who buy vehicles from people and businesses that they know, or ought to know, are acting as unlicensed dealers. A good example is the rise in prosecutions of individuals (nominee purchasers) and

dealers who work together to buy a new vehicle from a franchise dealer for the purpose of resale or export. Dealers caught sourcing vehicles from curbsiders risk fines, license suspension, and public disciplinary action.

**DEALER TIP:** Always verify the seller's registration status. If a deal seems "too good," it might be cursed.

### The Contract Poltergeist

#### MISSING OR MISLEADING DISCLOSURES

Under the MVDA, dealers must disclose everything from odometer discrepancies to prior use and accident history. Failure to do so isn't just unethical, it's illegal. Misrepresentation can lead to litigation, compensation fund claims, and OMVIC disciplinary proceedings.

Recent enforcement actions have shown that even large dealerships aren't immune. In one case, employees at a Toronto dealership were charged in a \$2M stolen car scam involving fake VINs and altered Carfax reports.

**DEALER TIP:** Train your staff to treat disclosure as a legal obligation, not a sales obstacle. Transparency protects your business. Self audit regularly and look for deals that seem a bit off, are a bit smelly or are not smelly enough.

### DON'T LET THE SKELETONS WIN

Legal risks in your lot aren't seasonal - they're year-round threats. But with vigilance, training, and proper compliance, you can keep your inventory clean and your reputation intact.

And, if you are ever stuck, don't hesitate to contact your favourite Ghost Buster... my team is always ready to find the skeletons before OMVIC does, and is ready to guide you if the Grim Reaper has already paid you a visit. Now go drink some egg nog!

Justin is a Partner with Fogler, Rubinoff LLP and is recognized by the Law Society of Ontario as a Specialist in Civil Litigation. Most importantly, Justin loves cars and the automotive industry, representing auto clients throughout Canada.

This article is intended for general information purposes only and should not be relied upon as legal advice. Views and opinions are Justin's alone and do not necessarily represent the views and opinions of the UCDA or Fogler, Rubinoff LLP. ■



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130 Industry St., Unit 36, North York, ON M6M 5G3  
Tel: 416-534-7278 or 1-877-414-7278 • Email: info@laservision.ca

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