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## About our presenter...

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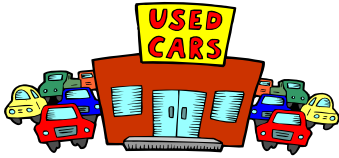
# **Hot Topics in Consumer Protection:**

***Motor Vehicle Dealers Act***

# Webinar Overview

- Who and what is covered under the *Motor Vehicle Dealers Act* (MVDA)?
  - Motor Vehicles, Motor Vehicle Dealers, and “Trading” in Motor Vehicles
  - Curbsiders
- The Ontario Motor Vehicle Industry Council (OMVIC)
- Required Disclosures for Used Motor Vehicles
  - Mileage and Use-Related Information
  - Damage, Condition, and Repair History
  - Make, VIN-related, and Warranty Information
  - Other Disclosures Affecting Decision to Purchase
- Additional Contract Requirements Under the MVDA
  - Dealer, Buyer, and Vehicle Information
  - Statutory Statements
- Consumer Rights under Motor Vehicle Sales Contracts
  - Failure to Disclose: Right to Cancel
  - Unfair Business Practices
- Consumer Options under the MVDA
  - Working with the Dealer
  - Complaint to OMVIC
  - Motor Vehicle Dealers Compensation Fund
  - Small Claims Court
- Other Programs and Legislation





## Coverage under the MVDA

- MVDA, 2002 was extensively revised and expanded effective January 1, 2010.
- The *Act* covers “motor vehicles”: automobiles, trucks, and motorcycles.
- MVDA excludes snowmobiles, motorized or self-propelled farm vehicles, and construction vehicles.
- Only Motor Vehicle Dealers are covered: those who trade in motor vehicles for their own account or someone else’s, or who hold themselves out as someone who trades in motor vehicles.
- “Trade” means: buying, selling, leasing, advertising, or exchanging an interest in a motor vehicle, and negotiating, inducing, or attempting to induce any of the foregoing.
- “Curbsiders” are not covered by the MVDA.



# Ontario Motor Vehicle Industry Council (OMVIC)



- OMVIC: the industry's self-management body, comprised of the 8,800 registered motor vehicle dealers in Ontario.
- Responsible for administering and enforcing the MVDA on behalf of the Ministry of Consumer Services.
- OMVIC's mandate is to promote:
  - Consumer Protection;
  - Increased Consumer Confidence;
  - Consumer Awareness;
  - Dealer Professionalism; and
  - Increased Dealer Accountability.
- Four areas of service intended to protect the public interest:
  - Registration;
  - Inspections;
  - Complaint processing; and
  - Professional standards/public awareness.





# Required Disclosures for Used Motor Vehicles

- The MVDA requires specific disclosures regarding used motor vehicles offered for sale or lease, including:
  - The total distance the vehicle has been driven;
  - If the odometer is faulty, broken, replaced, or possibly rolled back;
  - If the vehicle was used as a daily rental, a police cruiser, a taxi, a limousine or to provide emergency services;
  - Any fire, flood or structural damage sustained by the vehicle;
  - Whether the anti-lock braking system (if any) works, and if any air bags are missing or non-operational;
  - If the vehicle differs from its original or advertised production specs;
  - If two or more adjacent body panels (excluding bumpers) have been replaced;
  - The make, model, trim level, and model year of the vehicle;



# Required Disclosures for Used Motor Vehicles, Cont.

- If the vehicle bears any badge or other indication that relates not to it but rather to a different vehicle;
- If the vehicle has suffered more than \$3,000 worth of damage in a single accident;
- Whether the manufacturer's warranty was ever cancelled for any reason;
- If the vehicle was ever declared to be a total loss by an insurer;
- Whether the vehicle has been classified as irreparable, salvage, or rebuilt under the *Highway Traffic Act*;
- If the vehicle was recovered after having been reported as stolen; and
- Any other fact about the vehicle that affects the structural or mechanical quality or performance of the vehicle, and that, if disclosed, could reasonably be expected to influence the decision of a reasonable purchaser or lessee to buy or lease the vehicle.







# Contract Requirements Under the MVDA

- In addition to the disclosures required under the MVDA, all used motor vehicle sales contracts must include the following information:
  - The name and address of the purchaser;
  - The registered name, legal name, and registration number of the dealer;
  - The business address of the place at which the dealer entered into the contract;
  - The registered name and registration number of any salesperson acting on behalf of the dealer relative to the sale;
  - The date of the sale, and date the vehicle is to be delivered;
  - The colour, vehicle identification number, and body type of the vehicle;
  - The date of the sale, and date the vehicle is to be delivered (or a manner for determining that date);
  - The colour, vehicle identification number, and body type of the vehicle;



# Contract Requirements Under the MVDA, Cont.

- An itemized list of all charges the purchaser is required to pay;
- An itemized list of items or inducements that the dealer has agreed to provide at no extra charge, and the retail value of each of them;
- The total sale price under the contract, any down payment paid, and the balance required to be paid under the contract; and
- An itemized list of all other charges (such as taxes) that will be required to be paid in connection with the vehicle but that are not required under the sales contract.



- The Following Statements prescribed by Statute and Regulation must also be included in the contract:
  - A “Sales Final” statement warning the purchaser that the contract is final and binding once signed;
  - An “Important Information Respecting Motor Vehicle Sales” statement, telling the purchaser about OMVIC and the Motor Vehicle Dealers Compensation Fund; and
  - A statement about the “Canadian Motor Vehicle Arbitration Plan” or that “Canadian Motor Vehicle Arbitration Plan Not Available” (whichever applies).





## Consumer Rights under Motor Vehicle Sales Contracts

- In Ontario, there is no “cooling off” period for consumers after they have signed a contract to purchase or lease a motor vehicle.
- Under the MVDA, a consumer may cancel the contract within 90 days after receiving the vehicle, if any of the following information was applicable and was not properly disclosed:
  - The total distance travelled (for used vehicles);
  - That the vehicle was a daily rental or was previously used as a police cruiser, emergency services vehicle, taxi or limousine;
  - The make, model or model year of the vehicle;
  - That the vehicle was branded as irreparable, salvage or rebuilt;
  - The dealer misstated its ability to determine the total distance driven; or
  - The dealer stated a false distance as the distance driven after a certain date.
- In addition, consumers who have been victims of unfair business practices as defined by the *Consumer Protection Act, 2002* are entitled to request the cancellation of an agreement up to one year after entering the contract.



# Consumer Options under the MVDA

- Work with the Dealer:
  - If the dealer is still in business, send a written notice of the concerns by registered mail or courier, keeping proof of service and copies;
  - have an independent mechanic inspect the vehicle;
  - obtain a Used Vehicle Information Package from the Ministry of Transportation; and
  - try to reach the previous owner(s) of the vehicle for additional information about the vehicle that the dealer may not have disclosed.
- Complain to OMVIC by filing a Complaints Process Acknowledgement Form , and including the following documentation:
  - The Purchase Agreement and/or Bill of Sale for the vehicle;
  - Any repair estimates and/or bills;
  - All correspondence related to the vehicle and the purchase transaction; and
  - Any other documents that the consumer feels are pertinent.
  - OMVIC's role is to facilitate a solution between buyer and dealer; it cannot force a dealer to reach an agreement or to settle with the buyer.





# Consumer Options under the MVDA, Cont.

- The Motor Vehicle Dealers Compensation Fund, financed by Ontario's registered motor vehicle dealers and administered by OMVIC.
- Consumers have two years to submit information for review.
- Criteria for claims arising after January 1, 2010 include:
  - The dealer has:
    - failed to satisfy a court judgment;
    - failed to return a deposit for an undelivered motor vehicle;
    - failed to remit an extended warranty contract or payment for it to the warranty company, has not paid for a repair which would have been covered, or has not refunded the warranty premium paid by the consumer;
    - become bankrupt;
    - been convicted of an offence related to the trade of the motor vehicle;
    - seriously misrepresented the vehicle and the consumer would be eligible for rescission of the contract;
    - had its licence revoked by the Registrar and one of the reasons includes issues related to a consumer's transaction;
    - failed to remit or honour the conditions of a service plan agreement; or
  - The motor vehicle has been seized by law enforcement or lawfully by a creditor (not the consumer's) and the motor vehicle will not be returned.



# Consumer Options under the MVDA, Cont.

- Small Claims Court Action:

- If none of the other dispute resolution processes have been successful, a consumer can sue the dealership in court.
- The Small Claims Court is designed to be accessible to everyone.
- It deals with any action where the amount claimed does not exceed \$25,000.
- If the claim exceeds the \$25,000 Small Claims Court limit, the consumer will need to file suit in a different court and will likely need the services of legal counsel to do so.
- Claimants must pay a fee to file a claim or defence in Small Claims Court and for most other steps in a proceeding.
- A party can ask that the other party be ordered to pay his or her costs, such as court fees. A fee waiver certificate is available for persons who may be denied access to justice because of their financial circumstances.
- Consumers should note that rescission of a contract cannot be granted by the court in a Small Claims Court action.





# Other Programs and Legislation

If a consumer has not been successful in getting redress under any of the programs or alternatives under the MVDA, there are other options:

- Canadian Motor Vehicle Arbitration Program helps consumers, at no cost, to resolve new vehicle quality or warranty disputes with an automobile manufacturer. Most vehicles that are no more than four years old are eligible. Arbitration outcomes are final, and participants waive their right to subsequent civil action.
- The Consumer Protection Act, 2002 provides protections and remedies for consumers who have been the victim of unfair business practices, including persons who purchase a motor vehicle from a registered or from an unregistered dealer. Consumers may be able to request the cancellation of an agreement if they have been victims of such practices.
- The Highway Traffic Act outlines inspection requirements and performance standards for motor vehicles (except motorcycles). If a consumer believes a vehicle inspection was carried out improperly they should have their vehicle re-inspected and request a list of items that do not meet the minimum requirements. If the second inspection indicates that the inspection was not properly conducted, consumers should contact their local Ministry of Transportation enforcement office.



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