



Office of the Auditor General of Ontario

Value-for-Money Audit:
Ontario
Motor Vehicle
Industry Council



December 2021

Ontario Motor Vehicle Industry Council

1.0 Summary

The Ontario Motor Vehicle Industry Council (OMVIC) was created by the Government of Ontario as a not-for-profit administrative authority to administer and enforce the *Motor Vehicle Dealers Act, 2002*. OMVIC also upholds relevant sections of the *Consumer Protection Act, 2002*. OMVIC's mandate is to maintain a fair and informed marketplace by protecting the rights of consumers, enhancing industry professionalism, and ensuring fair, honest and open competition for registered motor vehicle dealers. The Ministry of Government and Consumer Services (Ministry) is responsible for overseeing OMVIC and monitoring its performance to ensure OMVIC is meeting its mandate.

Under the *Motor Vehicle Dealers Act, 2002*, every Ontario motor vehicle dealer of new and used vehicles and every salesperson they employ must be registered by OMVIC. OMVIC does not receive any government funding and is funded primarily from the registration fees and a transaction fee that it charges for every vehicle sold and leased by registered motor vehicle dealers. In 2020, there were 29,537 registered salespersons working at 8,195 registered motor vehicle dealers that reported approximately 1.3 million vehicle transactions (sales and leases).

To ensure that motor vehicle dealers and salespersons comply with legislative requirements, OMVIC undertakes activities that include inspections and investigations of motor vehicle dealers and salespersons, and taking enforcement action against those

that have breached legislative requirements. OMVIC also undertakes efforts to improve awareness of consumer rights and available protections when purchasing a vehicle in Ontario.

The *Motor Vehicle Dealers Act, 2002*, also establishes the requirement for the Motor Vehicle Dealers Compensation Fund (Compensation Fund), which is financed by motor vehicle dealers to compensate consumers who suffer eligible financial losses relating to a motor vehicle transaction for personal use. A Board of Trustees (Compensation Fund Board), appointed by OMVIC's Board of Directors and the Ministry, is responsible for reviewing and approving claims to the Fund.

When disputes arise between a registered motor vehicle dealer and a consumer, OMVIC acts as a mediator to resolve the dispute. In the last five years (2016–20), OMVIC has mediated approximately 5,400 disputes. Our audit found that about 50% of the 5,400 complaints against motor vehicle dealers handled by OMVIC between 2016 and 2020 resulted in no resolution for consumers. In these cases, consumers were left with no choice but to pursue their dispute in civil court. We also found that OMVIC does not have the authority to compel a motor vehicle dealer to compensate a consumer, even in instances where OMVIC determines that the dealer has breached the law.

Our audit also found that OMVIC has been accumulating large surpluses instead of using the revenues it generates to enhance and improve consumer protection. In the last five years, OMVIC's accumulated surplus and reserves increased by

275%, from \$6.3 million in 2015 to \$23.6 million in 2020. In 2015, OMVIC doubled its vehicle transaction fee from \$5 to \$10 to invest in improving public awareness, and to increase the resources devoted to its enforcement actions. However, we found that the human resources devoted to its key operating areas including its complaint, inspection and registration departments has remained largely unchanged since the fee increase.

In addition, we found that the number of inspections of dealers to ensure they comply with the requirements of the acts declined from 2,287 in 2016 to 1,980 in 2019—a decrease of 13%. As well, OMVIC did not process about 76% of applications for motor vehicle dealer registration within its target of four to six weeks. We also found that while OMVIC committed to increasing consumer awareness, increasing its spending in this area from \$1.2 million in 2015 to nearly \$2 million in 2019, 73% of Ontarians it surveyed between 2016 and 2020 were not aware of OMVIC and the protections it offered to vehicle purchasers.

We also noted that OMVIC's Board of Directors is heavily represented by motor vehicle dealers even though OMVIC is a consumer protection agency. As well, we found that OMVIC does not have term limits for its Board members. As a result, we found that at the time of our audit, some Board members had served on the Board for 14 years or more. Over their tenure on the Board, these members held key positions such as Chair, Vice-Chair and Secretary-Treasurer. Our concerns about Board governance at OMVIC also included interference with the independent function of the Compensation Fund Board, and approving claims for alcohol and meals at rates in excess of OMVIC's allowable limits.

Other significant concerns identified in our audit included the following:

Registration of Motor Vehicle Dealers and Salespersons

- **OMVIC does not fully assess whether new motor vehicle dealers have sufficient funding to start and operate their business.** Of the

20 applications we reviewed, OMVIC did not fully assess in 17, or 85%, of the applications whether applicants for motor vehicle dealer registration had sufficient funding to open and operate their dealership in order to help gauge whether they would be able to meet all of their financial responsibilities under the *Motor Vehicle Dealers Act, 2002*.

- **OMVIC rarely requires motor vehicle dealers to provide any financial guarantee despite some dealers posing serious risk of financial harm.** In the past five years (2016–20), OMVIC recovered from the responsible motor vehicle dealers just 22% of claims paid to consumers from the Compensation Fund. During this period, OMVIC had letters of credit in place for less than 1% of all registered motor vehicle dealers. Having these financial guarantees would have allowed OMVIC to recover money directly from the motor vehicle dealer for claims paid.
- **Motor vehicle dealers and salespersons are not required to take continuing education courses to renew their registration.** As at March 2021, about 54% of currently registered motor vehicle dealers, and 24% of currently registered salespersons, have not taken OMVIC's updated education course despite significant updates to the *Motor Vehicle Dealers Act, 2002* in 2010. In 2019, OMVIC proposed a regulatory change to the Ministry to include continuing education requirements in the *Motor Vehicle Dealers Act, 2002*. To date, no regulatory changes have been made.

Enforcement Action

- **OMVIC has not inspected 40% of motor vehicle dealers within its target of three years.** OMVIC does not assign an inspection frequency to all of its registered motor vehicle dealers based on their assessed risk of non-compliance. This has resulted in some high-risk dealers not being inspected for several years, with some not being inspected at all.
- **OMVIC infrequently performs follow-up inspections to confirm that violations of the acts identified during inspections are addressed.**

In the last five years, OMVIC's inspections of motor vehicle dealers identified violations of the acts it is responsible to enforce in 2,582, or 25%, of dealer inspections completed. In 77% of these inspections, OMVIC's inspectors closed the inspection file without taking any enforcement action or performing a follow-up inspection to confirm that the violations had been addressed and had ceased.

- **OMVIC's investigations are lengthy, taking on average 220 days to complete.** The length of OMVIC's investigations in the last five years ranged from one to 1,633 days. We found significant differences in the average length of time it takes each of OMVIC's investigators to complete their assigned investigations, ranging from 98 days on average for one investigator to 522 days for another. OMVIC does not have a process to monitor whether investigators complete investigations on a timely basis and to assess whether differences between investigators are reasonable, and to take corrective action when they are not.
- **Most OMVIC investigations do not result in enforcement action.** In 67% of the 1,547 investigations of motor vehicle dealers that OMVIC completed between 2016 and 2020, OMVIC did not take any enforcement action against the dealer. We found significant differences between investigators in taking enforcement action, ranging from action taken in 54%, or 42 of the 78 investigations completed, to only 9%, or 9 out of 98 investigations completed. OMVIC does not have a process to monitor whether investigators take appropriate action based on the results of their investigations, or to determine whether differences between investigators are reasonable, and to take corrective action when they are not. We reviewed a sample of 100 investigations that were closed without any further action and found that in 23 of them, investigators did not conduct a thorough investigation. This included nine investigations where there was evidence the acts had been violated, but the investigator did not provide

a rationale for why no further action was taken before closing the investigation.

Dispute Resolution Process

- **Consumers do not always receive compensation from motor vehicle dealers even when OMVIC finds that dealers breached the law.** Our review of a sample of complaints where OMVIC had been unable to mediate a resolution found that in 50% of these complaints, the dealer appeared to have breached one or more of the provisions in the acts. Still, in these instances the consumer did not receive compensation from the dealer.
- **OMVIC does not have a process to consistently facilitate enforcement action when its review of complaints identifies that dealers have breached the law.** Complaint handlers are not provided with a formal framework or criteria to determine whether a complaint should be referred for enforcement action. In the last five years, OMVIC complaint handlers referred just 7% of complaints for enforcement action. We reviewed a sample of complaints where the dealer appeared to have breached the law, and found that in 80% of these cases, the complaint file was closed without a referral for enforcement action.

Compensation Fund

- **The Compensation Fund is unable to protect consumers in all cases when registered motor vehicle dealers have breached the law—it protects consumers only in certain circumstances.** The criteria specified in the *Motor Vehicle Dealers Act, 2002* do not capture all situations in a vehicle purchase where a provision of the act is breached and harm to consumers can result. Further, the Compensation Fund Board that makes claim decisions does not have the ability to use its discretion to pay out claims that do not fit into the Compensation Fund criteria specified in the *Motor Vehicle Dealers Act, 2002*.
- **Consumers who purchase vehicles from illegal motor vehicle dealers are not protected by the Compensation Fund.** Illegal dealers often pose as private sellers and in some cases, they

sell vehicles that may be stolen, damaged or rebuilt, or where the odometer has been tampered with. If OMVIC investigates and later confirms that consumers were intentionally misled by an illegal dealer, these consumers are still not eligible for compensation.

Consumer Awareness and Protection

- **Most consumers are not aware they have no cooling-off period when purchasing or leasing a vehicle in Ontario.** In Ontario, consumers do not have a cooling-off period—a period of time available following a vehicle lease or purchase to cancel the contract for any reason, and receive a refund. From 2016 to 2020, 18% of complaints mediated by OMVIC related to disputes over contract cancellations. In addition, 89% of consumers surveyed by OMVIC in 2020 who had recently purchased or leased a vehicle were unaware that there was no cooling-off period in Ontario. In contrast, Quebec provides consumers that finance or lease a vehicle with a two-day cooling off period.
- **Consumer awareness of, and motor vehicle dealer compliance with, all-in-price advertising continues to be low, despite the law coming into effect more than 10 years ago.** OMVIC identified that 41% of the motor vehicle dealers visited by OMVIC in 2020 failed to comply with the all-in-price advertising requirement. About 76% of consumers surveyed by OMVIC either had never heard of the all-in-price requirement or did not understand what it means.

OMVIC's Operations and Public Reporting

- **OMVIC does not have legal authority to transfer surplus funds generated from its operations to the Compensation Fund as needed to ensure its continuing financial sustainability.** Although OMVIC increased its accumulated surplus and reserves by 275% between 2015 and 2020, OMVIC does not have the legal authority under the *Motor Vehicle Dealers Act, 2002* to allow it to allocate surplus funds if and when needed to the Compensation Fund, whose sustainability has come into question in recent years.

- **The Compensation Fund has not been actuarially reviewed on a periodic basis.** There is no policy or practice in place to periodically engage a third-party actuarial expert to review the Compensation Fund to assess the Fund's long-term financial exposure and determine whether the financial holdings of the Fund are sufficient to cover future requirements. In the last 10 years, only one actuarial review of the Fund has been completed.
- **Registered motor vehicle dealers do not always report all vehicle sales to OMVIC, resulting in lost revenue for OMVIC.** Of the 670 motor vehicle dealers we reviewed, 25%, or 170, under-reported almost 9,000 vehicle transactions (sales and leases) in 2019. As a result, they paid about \$90,000 less in transaction fees to OMVIC than required. OMVIC does not have an information sharing protocol in place with the Ministry of Transportation (MTO) to compare all reported vehicle transactions to the number of vehicles registered with MTO.
- **OMVIC's public reporting on consumer protection and consumer awareness is not always accurate, and in some instances is misleading.** OMVIC failed to publicly report consumer survey results that showed 86% of Ontarians did not know that Ontario does not have a cooling-off period, and that 70% of Ontarians were not aware that there is a Compensation Fund. OMVIC also overstated the number of motor vehicle dealers inspected between 2016 and 2020 by 25%, and significantly understated the time required to process motor vehicle dealer and salesperson registration applications.

Board Governance

- **OMVIC's Board did not effectively govern the selection of the investment firm used to invest funds held by both OMVIC and the Compensation Fund.** OMVIC's Board continued using an investment firm to manage OMVIC's and the Compensation Fund's investments despite significant concerns raised by a consultant engaged by

the Compensation Fund's Board that the firm was not using an appropriate investment strategy, and despite OMVIC's senior management ranking it as last among six shortlisted investment firms that submitted proposals to manage the investments.

Ministry Oversight

- **The Ministry has not fully investigated governance concerns at OMVIC.** In 2019, three of OMVIC's Compensation Fund Board members resigned in protest as a result of actions taken by OMVIC's Board members. In 2017, the Ministry was notified of the alleged dismissal of a high-ranking senior employee at OMVIC who had made allegations against OMVIC's Board. We found that the Ministry did not thoroughly review any of the concerns raised and limited its efforts to making inquiries to OMVIC's current senior management, and placing sole reliance on their representations.
- **The Ministry did not collect sufficient information to monitor and assess OMVIC's performance in meeting its mandate.** Up until 2020, measurable targets had not been established for many of the performance indicators used to monitor OMVIC's performance, limiting the Ministry's ability to assess OMVIC's performance. In 2020, performance indicators and targets were established that OMVIC would report to the Ministry. However, we found that these indicators do not monitor performance in several key areas where our audit identified operational issues, including inspection, registration, consumer complaint handling, the Compensation Fund, and educating and informing consumers about their rights and protections.

This report contains 30 recommendations, with 70 action items, to address our audit findings.

Overall Conclusion

Our audit concluded that OMVIC did not have processes to consistently administer the *Motor Vehicle*

Dealers Act, 2002 effectively in order to protect the public in their transactions with motor vehicle dealers and salespersons. For example, we found that OMVIC has been unable to mediate a resolution in approximately 50% of the consumer complaints against motor vehicle dealers it handled. In 50% of the complaints that we reviewed, even though the dealer appeared to have breached one or more of the provisions in the acts, the consumer did not receive compensation from the dealer. Consumers who suffer financial harm after purchasing a vehicle from an illegal motor vehicle dealer are not eligible to make a claim to the Compensation Fund. More than 10 years after the law was amended to prohibit motor vehicle dealers from selling a vehicle for a price higher than what is advertised (the all-in-price advertising requirement), in 2020 OMVIC identified that 41% of the dealers it visited still failed to comply with this requirement. Further, OMVIC had not effectively explained the law to consumers, as 76% of those it surveyed in 2020 either had never heard of the all-in-price requirement or did not understand what it meant.

OMVIC did not always effectively regulate motor vehicle dealers and salespersons to ensure that they conduct business in a financially responsible manner. For example, in the vast majority of cases we reviewed, OMVIC did not fully assess whether applicants for motor vehicle dealer registration had sufficient funding to open and operate their dealership and meet all their financial responsibilities under the *Motor Vehicle Dealers Act, 2002*. In addition, OMVIC rarely required dealers to provide a financial guarantee despite some dealers posing serious risk of financial harm. We also found that OMVIC had not inspected 40% of motor vehicle dealers within its target of three years, and when OMVIC's inspections found violations of the acts, it rarely performed follow-up inspections to confirm that the violations had been addressed and had ceased.

Finally, we concluded that the Ministry has not sufficiently overseen OMVIC to confirm that OMVIC effectively fulfils its mandate. The Ministry did not

collect sufficient information to monitor and assess OMVIC's performance, and up until 2020, measurable targets had not been established for many of the indicators used to monitor its performance. We found that performance indicators and targets established in 2020 do not monitor performance in several key areas where our audit identified operational issues, including inspection, registration, consumer complaint handling, the Compensation Fund, and educating and informing consumers about their rights and protections.

OMVIC OVERALL RESPONSE

The Ontario Motor Vehicle Industry Council (OMVIC) appreciates the work done by the Office of the Auditor General of Ontario and the opportunities presented for further improvement.

OMVIC is a Delegated Authority created by the Ontario Provincial Government in 1997, under the concept of industry self-regulation, to administer the *Motor Vehicle Dealers Act, 2002* on their behalf. OMVIC remains committed to being a leader in the regulatory field and acknowledges the importance of fulfilling its mandate and delivering on its legislative requirements with a view to ensuring consumer protection and enhancing industry professionalism.

The Auditor General's report and recommendations will help OMVIC ensure that it remains a modern regulator of motor vehicle sales in Canada. Specifically, the Auditor General's recommendations regarding the registration process, inspection timeframes, and creating a continuing professional development program are particularly important to effectively realizing OMVIC's goals of protecting consumers and effectively regulating motor vehicle dealers and salespersons.

OMVIC also acknowledges and appreciates the oversight of the Ministry of Government and Consumer Services and commits to continue working in a collaborative manner as it begins its work in

implementing the recommendations from the Auditor General of Ontario.

MINISTRY OVERALL RESPONSE

The Ministry of Government and Consumer Services (Ministry) would like to thank the Auditor General and her staff for their work on the audit and for their recommendations. The Ministry welcomes the feedback on how the Ontario Motor Vehicle Industry Council (OMVIC) is performing and recommendations to strengthen OMVIC's operations and the Ministry's oversight of OMVIC.

Many of the recommendations would require the development of potential legislative and regulatory proposals, which would involve consultations with the public and the motor vehicle sector to assess impacts, costs and timing. Options for the government's consideration will be informed by the Auditor General's recommendations as well as by consultations.

The Ministry recognizes the importance of OMVIC fulfilling its responsibilities to administer the *Motor Vehicle Dealers Act, 2002* (Act) in a manner that protects consumers.

OMVIC was created in 1997 to administer the predecessor legislation to the Act, and is now responsible for administering this Act. The Ministry takes its oversight of OMVIC's responsibilities for administering the Act seriously and is committed to examining areas where the Ministry can enhance its oversight processes to provide greater assurances for the people of Ontario that OMVIC is meeting its consumer protection mandate.

The Ministry will work with OMVIC, and engage the Ministry of Transportation and the federal government in its consideration of the recommendations where the Auditor General has recommended OMVIC work with these other areas of the provincial and federal governments. For those recommendations directed to OMVIC, the Ministry will request that OMVIC provide an implementation plan that outlines the

specific steps OMVIC plans to take to implement each recommendation. The Ministry will closely monitor and track OMVIC's progress in addressing the recommendations.

2.0 Background

2.1 Overview of Ontario Motor Vehicle Industry Council

In 1997, the government of Ontario created the Ontario Motor Vehicle Industry Council (OMVIC) to administer and enforce the *Motor Vehicle Dealers Act, 2002*. OMVIC also upholds relevant sections of the *Consumer Protection Act, 2002*. OMVIC's mandate is to maintain a fair and informed marketplace by protecting the rights of consumers, enhancing industry professionalism, and ensuring fair, honest and open competition for registered motor vehicle dealers. Under the *Motor Vehicle Dealers Act, 2002*, every Ontario motor vehicle dealer of new and used vehicles, and every salesperson they employ, must be registered by OMVIC.

OMVIC is a not-for-profit administrative authority that does not receive any government funding. It is funded primarily by the registration and transaction fees that it charges motor vehicle dealers and salespersons. In 2020, 8,195 motor vehicle dealers and 29,537 salespersons were registered with OMVIC. Motor vehicle dealers reported approximately 1.3 million vehicle transactions to OMVIC in 2020. In the same year, OMVIC collected a total of \$21.3 million in revenue.

OMVIC is accountable to the Ministry of Government and Consumer Services (Ministry), which is responsible for overseeing OMVIC. OMVIC's Board of Directors is accountable for OMVIC's performance to the Minister of Government and Consumer Services through the Board Chair.

2.2 Roles and Responsibilities

OMVIC undertakes a number of activities to administer and enforce the *Motor Vehicle Dealers Act, 2002* and uphold relevant sections of the *Consumer Protection Act, 2002*, including:

- registration of motor vehicle dealers and salespersons (described in **Section 2.4**);
- conducting inspections at motor vehicle dealers to determine compliance with legislative requirements (described in **Section 2.5.1**);
- conducting investigations of registered and unregistered (illegal) motor vehicle dealers and salespersons to determine if they have breached legislative provisions (described in **Section 2.5.2**);
- taking enforcement action against motor vehicle dealers and salespersons when its inspections and investigations identify that they have not complied with legislative provisions (described in **Section 2.6**);
- mediating consumer complaints about motor vehicle dealers and salespersons (described in **Section 2.7**);
- supporting the administration of the Compensation Fund to which consumers can make claims when they have suffered financial losses related to a motor vehicle transaction with a registered motor vehicle dealer (described in **Section 2.8**); and
- raising consumer awareness about consumer rights and protections relating to the process of purchasing a vehicle (see **Appendix 1** for a listing of key consumer protections under the acts).

OMVIC employs 118 full-time-equivalent employees. Most of OMVIC's staffing complement is devoted to mediating consumer complaints, registering motor vehicle dealers and salespersons, and conducting inspections and investigations of dealers and salespersons. See **Appendix 2** for an overview of OMVIC's organizational structure. **Figure 1** provides an overview of key statistics from OMVIC's operations.

Figure 1: OMVIC's Operational Statistics, 2016–2020

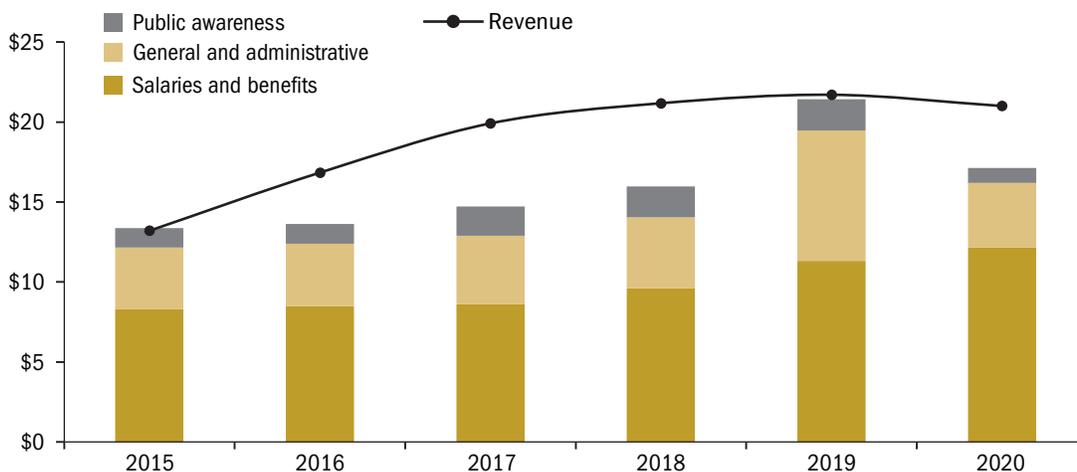
Source of data: The Ontario Motor Vehicle Industry Council

Activity	2016	2017	2018	2019	2020
New motor vehicle dealers registered	453	493	482	546	414
Motor vehicle dealer registration renewals	7,264	7,276	7,299	7,344	7,338
New salespersons registered	3,787	3,937	4,296	4,294	2,641
Salesperson registration renewals	10,622	11,295	11,680	12,091	11,963
Inspections of motor vehicle dealers	2,287	1,954	2,042	1,980	1,953
Consumer calls answered	23,711	27,444	28,377	31,234	26,048
Consumer complaints mediated	967	1,244	1,216	1,165	813
# of claims paid from the Compensation Fund	43	88	49	44	44

Note: Inspection of motor vehicle dealers includes 939 site visits conducted to check if a motor vehicle dealer was operating at its registered site. Such visits do not include a detailed review of a dealer's books and records.

Figure 2: OMVIC Expenses, 2015–2020 (\$ million)

Source of data: The Ontario Motor Vehicle Industry Council



Note: In 2019, OMVIC stopped its long-standing practice of charging an administrative fee to the Compensation Fund to recover salaries, rent and other expenses incurred to manage the Compensation Fund. As a result, OMVIC made a one-time payment of \$3.3 million to the Compensation Fund to refund all administrative costs it had collected from 1998 to 2017.

OMVIC is governed by a 12-member Board of Directors that is composed of nine elected motor vehicle dealers and three individuals appointed by the Minister. **Appendix 3** lists the current OMVIC Board members and their affiliations.

The Ministry is responsible for overseeing OMVIC, monitoring its performance and ensuring that it is meeting its mandate. An accountability agreement between the Minister and OMVIC outlines OMVIC's and the Ministry's responsibilities. This agreement was last updated in 2013.

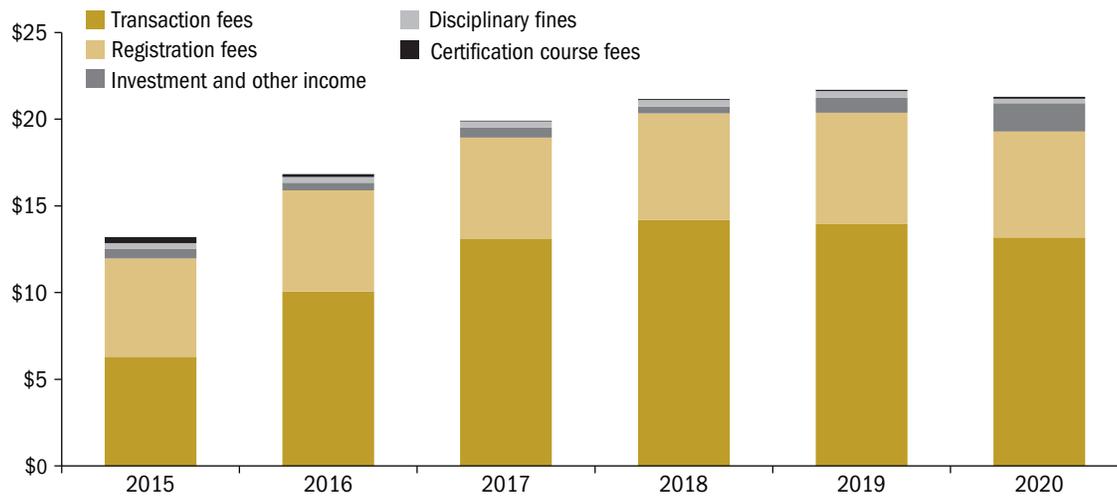
2.3 Revenues and Expenditures

Figure 2 shows OMVIC's key expenditures over the last six years (2015–20). About 60% of OMVIC's expenditures over this period related to the salaries and benefits of its employees. During the same period OMVIC also spent about \$8 million on public awareness initiatives such as television, radio and social media advertisements.

As shown in **Figure 3**, in 2020, OMVIC's revenue totalled \$21.3 million; 91%, or \$19.3 million, of its revenue was from dealer and salesperson registration

Figure 3: OMVIC Revenues, 2015–2020 (\$ million)

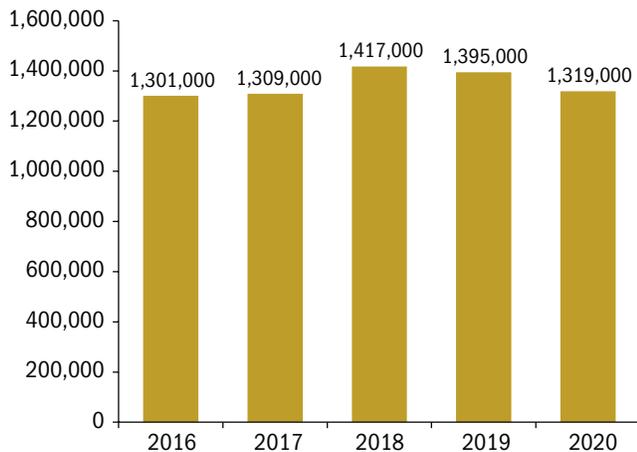
Source of data: The Ontario Motor Vehicle Industry Council



Note: Includes investment income, interest income, amortization of deferred contributions and other revenue.

Figure 4: Vehicle Sale Transactions Reported to OMVIC, 2016–2020

Source of data: The Ontario Motor Vehicle Industry Council



fees, which also includes transaction fees from vehicle sales and leases. OMVIC collects a \$10 transaction fee for each vehicle sold or leased from motor vehicle dealers as part of their annual dealer registration renewal. Dealers are not required to remit a transaction fee to OMVIC when vehicles are sold to another registered motor vehicle dealer. In 2020, vehicle transaction revenues totalled \$13.2 million, or 62%, of OMVIC's total revenue. **Figure 4** shows the number of vehicle transactions reported to OMVIC in the last five years.

2.4 Registration of Motor Vehicle Dealers and Salespersons

The *Motor Vehicle Dealers Act, 2002* requires a person or business who trades (buys, sells, leases, advertises, negotiates, induces, or attempts to induce the purchase, sale, lease or exchange of an interest) in motor vehicles to be registered with OMVIC. A business (motor vehicle dealer) can fall under one of seven classifications, as shown in **Figure 5**. A salesperson is an individual who is employed by a registered motor vehicle dealer to trade in vehicles on a dealer's behalf, and must also be registered with OMVIC.

As of December 2020, there were 8,195 registered motor vehicle dealers and 29,537 registered salespersons in Ontario, about 90% of them classified as general dealers. **Figure 6** classifies motor vehicle dealers by total vehicle transaction volume in 2020.

As part of the initial registration of a motor vehicle dealer, OMVIC requires at least one person in charge of the business (such as an officer or director) to complete OMVIC's Automotive Certification Course—an education course that covers the *Motor Vehicle Dealers Act, 2002* and its regulations, the *Consumer Protection Act, 2002* and the role of OMVIC.

OMVIC also conducts a credit check of all individuals involved in the business and requires applicants

Figure 5: Classes of Motor Vehicle Dealers

Source of data: The Ontario Motor Vehicle Industry Council

Term	Definition
General dealer	Buys, sells and leases new and/or used vehicles
Wholesaler	Sells vehicles exclusively to other registered dealers and acquires vehicles only from registered dealers and wholesale auctions in and outside of Ontario
Exporter	Purchases motor vehicles only for the purpose of export outside of Ontario
Outside Ontario dealer	A motor vehicle dealer registered in a jurisdiction outside Ontario who purchases vehicles from exempt wholesale auctions in Ontario for the purpose of exporting them to the jurisdiction in which the dealer is registered
Broker	Acts on behalf of a consumer to facilitate trade in motor vehicles involving the consumer as a party, where the business has no property interest in the trade, and where the business does not take or handle the funds used to pay for the trade
Lease finance dealer	Leases motor vehicles to a lessee through a general dealer, and the lease is for a term of at least 120 consecutive days
Commercial fleet lessor	Leases motor vehicles to a lessee who is not a consumer within the definition of the <i>Consumer Protection Act, 2002</i>

Figure 6: Motor Vehicle Dealers by Transaction Volume, 2020

Source of data: The Ontario Motor Vehicle Industry Council

Transaction Volume	# of Dealers	% of Dealers
0-10	4,064	50
11-99	2,163	26
100-499	1,143	14
≥500	825	10
Total	8,195	100

to provide a criminal record and judicial matters check that provides information on criminal convictions, outstanding charges, warrants or any court orders. In addition, OMVIC requires the submission of a business plan for the dealership. **Figure 7** shows information that must be included in a business plan. In addition to the business plan, applicants must provide proof of their place of business such as land ownership or a lease agreement.

OMVIC may request additional information to verify the source of start-up funds and information on any outstanding debts. Depending on an applicant's risk level, OMVIC may require them to provide an irrevocable letter of credit as a condition of

Figure 7: Required Information in Business Plan for New Motor Vehicle Dealers

Prepared by the Office of the Auditor General of Ontario

Funding	<ul style="list-style-type: none"> Source of start-up funds and assets (with bank statements or financial institution statements for support) Projected number of vehicles for the start-up of the dealership Specification of the make, model, year and average purchase price of the vehicles
Staffing	Job titles of all planned positions at the dealership

registration. OMVIC can draw upon the letter of credit to recover claims paid to consumers from the Compensation Fund, described in **Section 2.8**.

To become a registered salesperson, an individual must have a sponsoring dealership, complete OMVIC's education course, and undergo a criminal background and credit check. Motor vehicle dealers are required to renew their registration annually, while salespersons are required to renew once every two years. See **Appendix 4** for OMVIC's registration and renewal fees.

2.5 Inspections and Investigations

2.5.1 Inspections of Motor Vehicle Dealers

OMVIC uses its inspection powers to periodically inspect registered motor vehicle dealers to ensure ongoing compliance with the *Motor Vehicle Dealers Act, 2002* and the *Consumer Protection Act, 2002*. OMVIC's inspection team consists of 12 inspectors and one manager, with an average tenure of nine years. The inspectors have unrestricted access to all documents, records (including financial records and past transactions) and bank accounts of all motor vehicle dealers. Inspectors also perform site visits to check if a motor vehicle dealer is operating at its registered site. Inspectors are located across the province and work remotely.

Newly registered motor vehicle dealers are inspected within the first 60 days of operation. The purpose of these inspections is to ensure OMVIC's expectations are understood, to confirm business systems are in place, to build a rapport with dealerships, and to immediately identify and correct any concerns of compliance with the acts.

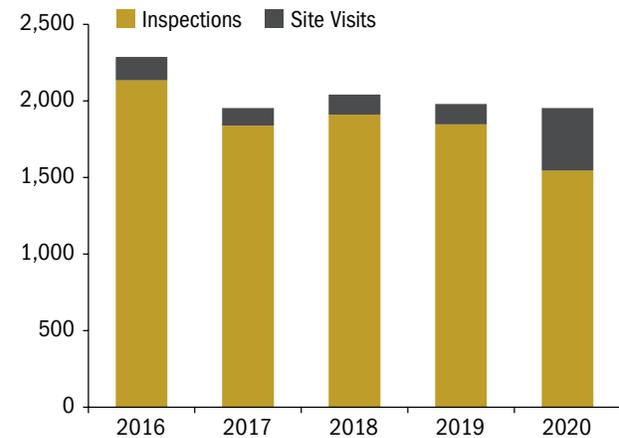
OMVIC initiates periodic inspections of dealers based on factors such as consumer complaints, past inspection and investigation results, and other risks identified by the inspection team. Over the last five years, OMVIC has conducted approximately 10,200 inspections. **Figure 8** lists the number of inspections and site visits that OMVIC has conducted in each of the past five years. See **Appendix 5** for a description of the types of records evaluated during an inspection.

Mystery Shopping at Motor Vehicle Dealers

OMVIC also conducts mystery shopping at motor vehicle dealers to monitor compliance with advertising and disclosure requirements set out in the acts, specifically, the all-in-price advertising requirement, which prohibits motor vehicle dealers from selling a vehicle for a price higher than what was advertised. OMVIC staff will pose as consumers at a selected dealership and assess its compliance.

Figure 8: Number of Compliance Inspections and Site Visits Conducted, 2016–2020

Source of data: The Ontario Motor Vehicle Industry Council



OMVIC also enters into agreements with consumer associations, including Car Help Canada and the Automobile Protection Association, to conduct mystery shopping at motor vehicle dealers and to report any findings to OMVIC.

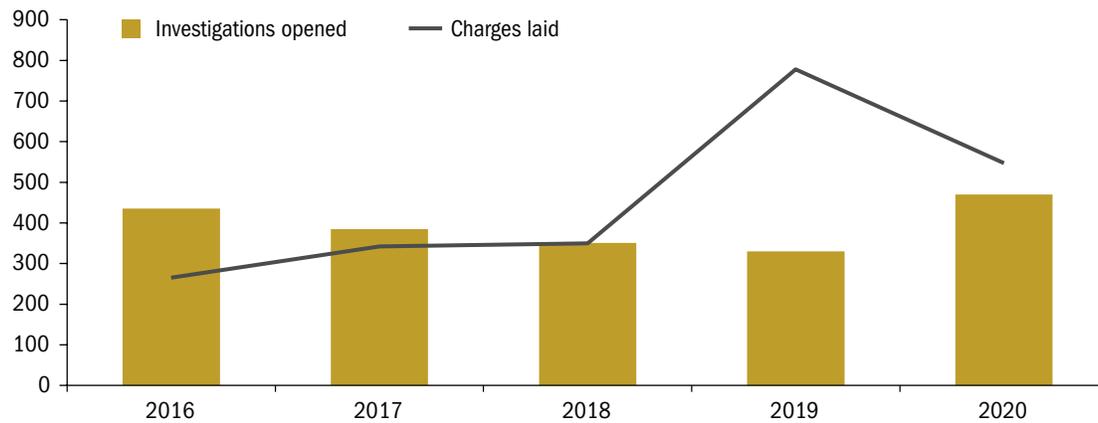
2.5.2 Investigations of Registered and Unregistered Motor Vehicle Dealers and Salespersons

OMVIC can investigate registered and unregistered dealers and salespersons who do not follow the law under the *Motor Vehicle Dealers Act, 2002*, and some parts of the *Consumer Protection Act, 2002*. OMVIC has 18 investigators, including two managers, that are appointed as Provincial Offences Officers under the *Provincial Offences Act*. OMVIC primarily receives leads for investigations from the public, motor vehicle dealers and law enforcement. **Figure 9** summarizes the number of investigations of registered and unregistered dealers and charges laid (discussed in **Section 2.6**) in the last five years.

It is illegal to sell a motor vehicle as a dealer or salesperson without being registered by OMVIC. Although it is legal for an individual to privately sell a vehicle to another individual without registration from OMVIC, it becomes illegal when an

Figure 9: Investigations of Registered and Non-Registered Dealers and Charges Laid, 2016–2020

Source of data: The Ontario Motor Vehicle Industry Council



Note: An individual or a corporation can have multiple charges laid.

individual sells vehicles to generate profit as a business. Illegal motor vehicle dealers or salespersons often pose as private sellers, and some even operate from small automotive businesses, such as repair shops and rental companies. Illegal dealers can at times misrepresent the vehicles they sell, many of which are previous write-offs with undisclosed accident repairs, or have had their odometers tampered with.

2.6 Enforcement and Disciplinary Actions

OMVIC's enforcement actions ultimately relate to a motor vehicle dealer or salesperson's right to operate their business. Enforcement actions that OMVIC can take range from issuing a warning letter to refusing, revoking, suspending or placing terms and conditions on a motor vehicle dealer or salesperson's registration. OMVIC can take enforcement actions if:

- a motor vehicle dealer cannot reasonably be expected to be financially responsible in the conduct of its business;
- past conduct of a dealer's officers or directors is not in accordance with the law and carried out with integrity and honesty; or
- a dealer makes false statements or provides false information to OMVIC.

OMVIC seldom refuses, revokes, suspends or places terms and conditions on a motor vehicle dealer or salesperson's registration. Over the last five years, however, OMVIC has issued 321 warning letters to dealers and salespersons, ranging from a high of 99 in 2016 to just 20 in 2020.

OMVIC can also take disciplinary action to bring a motor vehicle dealer or salesperson into compliance by requiring them to take an education course or imposing a fine up to a maximum of \$25,000. OMVIC has a Discipline Committee that determines the type of disciplinary action that will be imposed on a motor vehicle dealer or salesperson. The committee is comprised of 13 members, nine of which are motor vehicle dealers and salespersons, and four are non-industry representatives with a legal background. **Figure 10** shows the type and number of enforcement actions and **Figure 11** shows the type and number of disciplinary actions taken by OMVIC in the last five years.

Additionally, OMVIC can lay charges and prosecute registered and unregistered dealers and salespersons who violate requirements under the *Motor Vehicle Dealers Act, 2002*, and some parts of the *Consumer Protection Act, 2002*. The maximum penalty issued by a provincial court for an individual is a fine of \$50,000 and/or imprisonment for up to two years less a day. The maximum fine for a corporation is

Figure 10: Enforcement Actions Taken by OMVIC, 2016–2020

Source of data: The Ontario Motor Vehicle Industry Council

	2016	2017	2018	2019	2020	Total
Registration revocations	11	9	14	26	14	74
Registration suspensions	2	6	5	10	9	32
Warning letters issued	99	78	53	71	20	321

Figure 11: Disciplinary Actions Taken by OMVIC, 2016–2020

Source of data: The Ontario Motor Vehicle Industry Council

	2016	2017	2018	2019	2020	Total
Educational courses	21	3	23	17	30	94
# of fines imposed by the Discipline Committee	28	8	26	24	32	118
\$ value of fines imposed by the Discipline Committee	118,400	20,350	90,500	58,900	141,250	429,400

\$250,000. For an individual acting as a motor vehicle dealer without registration, the minimum penalty is \$2,500.

2.7 Dispute Resolution

Consumers at any time can submit a complaint involving the purchase of a new or used vehicle to OMVIC's dispute handling department. **Appendix 6** shows steps in the dispute resolution process.

When handling a complaint, the *Motor Vehicle Dealers Act, 2002* allows OMVIC to attempt to negotiate a settlement to reach a resolution. OMVIC acts as a neutral third party that does not represent either the dealer or the complainant, and handles complaints at no cost. An OMVIC complaint handler will work with both parties to try to reach a settlement. **Figure 12** summarizes the nature of the complaints mediated by OMVIC in the last five years.

OMVIC cannot provide legal advice to either party or compel a motor vehicle dealer to cancel a sales contract, return money or carry out repairs, as only the courts of law have such authority should a settlement not be achieved.

If the consumer and motor vehicle dealer cannot reach an agreement, OMVIC may refer the

complainant to make a claim to the Compensation Fund for further eligibility review. If the consumer does not meet the eligibility criteria of the Compensation Fund, OMVIC will advise the complainant to pursue the matter further in a court of law.

In the last five years, OMVIC has mediated about 5,400 disputes between consumers and motor vehicle dealers resulting in about \$6.1 million in restitution to consumers. **Figures 13** and **Figure 14** show the number of complaints handled and the amounts returned to consumers each year.

In addition, OMVIC determines whether the motor vehicle dealer has breached the law and whether enforcement action should be taken.

2.8 Compensation Fund

The *Motor Vehicle Dealers Act, 2002*, establishes the requirement for a fund, financed by motor vehicle dealers to compensate consumers who suffer eligible financial losses relating to a motor vehicle transaction for personal use. Consumers can claim up to \$45,000 from this Compensation Fund if the dealer refuses or is unable to pay.

A nine-member Board of Trustees (Compensation Fund Board), which is separate from OMVIC's

Figure 12: Consumer Complaints Against Dealers Mediated by OMVIC, 2016–2020

Prepared by the Office of the Auditor General of Ontario

Complaint Type	% of Total Complaints	# of Complaints	Description
Vehicle condition	37	1,983	A consumer purchases a vehicle from a dealer and later finds significant mechanical issues that were not disclosed on the bill of sale and will require significant repair costs. Examples are oil leaks, broken parts, engine light on, etc.
Liquidated damages	15	826	A consumer wishes to terminate a contract with a dealer, usually due to buyer's remorse, and cannot as a result of there being no cooling-off period in Ontario for motor vehicle transactions. In many cases, the consumer likely gave a deposit on a vehicle they signed a contract for, and wishes to back out of the contract and get their deposit back, but cannot.
Misrepresentation	13	719	A motor vehicle dealer materially misrepresents a vehicle to a consumer, and does not disclose all the necessary information to the consumer about the history and condition of the vehicle. For example, a dealer fails to disclose on the vehicle's bill of sale an insured collision or other significant accident history.
Contract dispute	10	537	A consumer claims that a dealer verbally agreed to something but it is not reflected in the contract signed by the consumer. In other cases, a consumer may later find additional items in the contract they were not aware of, or the motor vehicle dealer did not explain clearly. E.g., including additional charges and packages on the vehicle's contract that were not verbally agreed to, and financing rates and amounts, and warranties and service agreements, that differ from what was negotiated.
Improper vehicle safety	5	283	A motor vehicle dealer fails to ensure that a vehicle meets the minimum safety requirements to be driven for normal use. E.g., a consumer purchases a vehicle that a dealer claims is safe to be driven for normal use, and provides their own safety certificate. However, after delivery of the vehicle, the consumer conducts their own inspection of the vehicle through their mechanic and finds several safety issues that were not disclosed.
Outstanding liens on vehicles	3	167	A consumer trades in their vehicle with an outstanding lien that a motor vehicle dealer agrees to pay off but does not. As a result, the consumer is now required to continue to pay interest payments on the outstanding lien. If the motor vehicle dealer sells a vehicle with an outstanding lien to another consumer, the vehicle is at risk of being repossessed.

Note: Complaints described in this figure make up 83% of consumer complaints mediated by OMVIC from 2016 to 2020. Examples of other complaints include not returning deposits, not delivering vehicle after purchase, faulty repair work and false advertising.

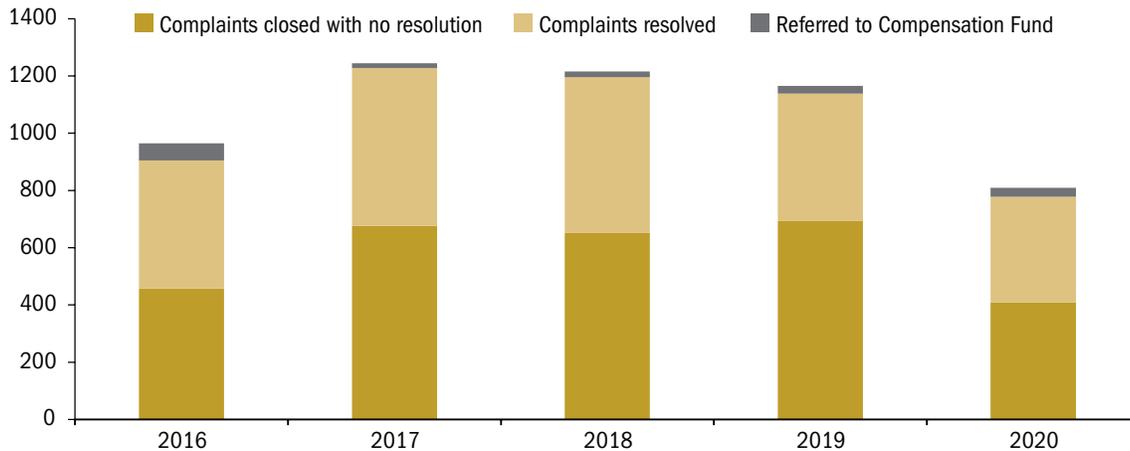
Board and has its own independent decision-making authority, governs the Compensation Fund (Fund) and approves or rejects claims made by consumers. The Compensation Fund Board is composed of six members appointed by OMVIC's Board of Directors and three members appointed by the Minister. The Compensation Fund Board is composed of motor vehicle dealers, salespersons and public representatives. **Appendix 7** lists the members of the Compensation Fund Board and their affiliations.

The Compensation Fund Board maintains its own audited financial statements, separate from those of OMVIC. A one-time \$300 fee plus HST charged to motor vehicle dealers at initial registration funds the Compensation Fund. In 2020, the value of the Fund totalled \$9.7 million.

The Compensation Fund Board meets at least six times a year to review and decide on claims. Approved claims are paid out shortly after a final decision is

Figure 13: Consumer Complaints Handled by OMVIC, 2016–2020

Source of data: The Ontario Motor Vehicle Industry Council

**Figure 14: Complaints Resolved by OMVIC, 2016–2020**

Source of data: The Ontario Motor Vehicle Industry Council

	2016	2017	2018	2019	2020	Total
# of complaints resolved	447	552	545	445	369	2,358
\$ value of restitutions made ¹	966,066	881,568	965,540	1,769,754	1,526,279	6,109,207
Average turnaround time (days) ²	44	28	21	28	45	33

1. Restitutions include monies returned to consumers as well as the dollar value of agreed-upon vehicle repair costs.

2. Average turnaround time for handling of all complaints.

Figure 15: Compensation Claims and Value of Compensation Fund, 2016–2020

Source of data: The Ontario Motor Vehicle Industry Council

	2016	2017	2018	2019	2020
# of claims received	43	88	49	44	44
# of claims denied	0	1	2	2	3
# of claims approved	37	69	39	20	26
\$ value of claims paid	219,920	1,111,673	401,746	258,152	400,038
\$ value of Compensation Fund at year-end	7,063,018	6,329,362	6,142,487	6,196,984	9,666,827

Note: The number of claims received does not add up to the number of claims approved and denied because a number of claims were deferred by the Compensation Fund Board to the following year or were resolved by OMVIC prior to going to the Compensation Fund Board for eligibility review.

made. **Figure 15** provides information on claims assessed over the last five years and the value of the Fund over this time.

Consumers are entitled to payments from the Fund if a registered motor vehicle dealer refuses to pay for financial losses they have incurred from a motor vehicle transaction. For example, if a dealer fails to

honour a warranty or service plan agreement, and a consumer suffers a financial loss as a result, the consumer will be entitled to payment from the Fund. Ontario Regulation 333/08 (General) under the *Motor Vehicle Dealers Act, 2002* sets the eligibility criteria for the Compensation Fund. **Figure 16** outlines the Fund's eligibility criteria.

3.0 Audit Objective and Scope

The objective of our audit was to assess whether the Ontario Motor Vehicle Industry Council (OMVIC) has effective and efficient processes in place to:

- administer the *Motor Vehicle Dealers Act, 2002* to serve and protect the public when engaging with a motor vehicle dealer in the vehicle trade, including with respect to the purchase, sale, lease or exchange of a motor vehicle; and
- register and regulate motor vehicle dealers and salespersons to ensure that they conduct business with honesty and integrity, in a financially responsible manner, and in accordance with the requirements of the *Motor Vehicle Dealers Act, 2002*.

In addition, our audit assessed whether the Ministry of Government and Consumer Services (Ministry) has oversight processes in place to ensure that OMVIC effectively administers the Act and registers and regulates motor vehicle dealers and salespersons.

Before starting our work, we identified the audit criteria we would use to address our audit objectives. These criteria were established based on a review of applicable legislation, policies and procedures. Senior management at OMVIC and the Ministry of Government and Consumer Services reviewed and agreed with our objectives and associated criteria as listed in **Appendix 8**.

We conducted our audit between December 2020 and September 2021. We obtained written representation from OMVIC management and the Ministry

Figure 16: Compensation Fund's Eligibility Criteria

Source of data: Ontario Regulation 333/08 (General) under the *Motor Vehicle Dealers Act, 2002*

Eligibility Criteria	Maximum Amount Payable
1. Failure to return a deposit to a consumer on an undelivered motor vehicle.	\$45,000 ¹
2. Failure to honour an extended warranty contract, or to refund a warranty premium paid by the consumer. ²	
3. Failure to remit or honour the conditions of a service plan agreement.	
4. Failure to return money to a consumer who legally returns a vehicle due to serious misrepresentation (e.g., incorrect disclosure of mileage and non-disclosure of previous use, such as use as a taxi).	
5. The vehicle has been lawfully seized by law enforcement (e.g., a customer bought a stolen vehicle unknowingly) and the vehicle will not be returned to the purchaser.	
6. The vehicle has been lawfully seized by a creditor due to a lien obligation left on the vehicle, and the consumer is not at fault.	
7. Failure to satisfy a court judgment against a motor vehicle dealer after the judgment has become final.	
8. Dealer's registration is revoked by Ontario Motor Vehicle Industry Council, where one of the reasons for revocation includes issues related to a motor vehicle transaction.	
9. Failure to pay any amount owed to a consumer for losses suffered, where the motor vehicle dealer either becomes bankrupt, a receiver has been appointed, or a winding-up order has been made on the dealer.	
10. The motor vehicle dealer has been convicted of an offence related to the trade of the motor vehicle.	
11. The dealer has refused to remedy a deficiency that the consumer indicated was material to their choosing to make the motor vehicle purchase.	

1. In some cases, the Compensation Fund can pay out an amount in addition to the maximum, if costs and interest are awarded by the courts.

2. This warranty refers to the extended warranty offered by the motor vehicle dealers, not the vehicle manufacturer's warranty for defects. Disputes involving a vehicle manufacturer's warranty are dealt with by the Canadian Motor Vehicle Arbitration Program, a federal not-for-profit organization.

that, effective November 16, 2021, they had provided us with all the information they were aware of that could significantly affect the findings or the conclusion of this report.

Our audit work at OMVIC was conducted remotely and focused on the period of January 2016 to June 2021. However, in some areas we analyzed data going back as far as 10 years. The focus of our audit was on examining OMVIC's five main areas of responsibility:

- dispute resolution process to help resolve consumer complaints;
- registration of motor vehicle dealers and salespersons;
- compliance inspections of motor vehicle dealers;
- investigating and prosecuting motor vehicle dealers in breach of the *Motor Vehicle Dealers Act, 2002* and the *Consumer Protection Act, 2002*, or those operating without being registered; and
- supporting the administration of the Compensation Fund, which is governed by a Board of Trustees (Compensation Fund Board).

In conducting our work, we interviewed staff at OMVIC responsible for issuing and renewing registrations to motor vehicle dealers and salespersons, and conducted walkthroughs of the registration process. We also interviewed OMVIC staff responsible for handling disputes and complaints against motor vehicle dealers, and conducted walkthroughs of the dispute resolution process. We reviewed past handling of disputes, including case documents, evidence gathered and settlement agreements. In addition, we listened to 10 live calls from consumers contacting OMVIC for assistance in handling a dispute with a motor vehicle dealer to enhance our understanding of how complaints are handled.

To aid in our understanding of OMVIC's enforcement actions, we interviewed all inspection staff and reviewed past inspection records, investigation reports, warning letters and notices of discipline on a sample basis. To observe how OMVIC conducts its inspections, between March and September 2021 we accompanied OMVIC inspectors on inspections of seven motor vehicle dealerships. Further, in September

2021, to assess the potential risk of money laundering, we conducted mystery shopping at 15 motor vehicle dealers to determine whether dealers were willing to accept cash (in the form of physical bills) in amounts larger than \$10,000 to sell a vehicle.

We also obtained information from the Ministry of Transportation on vehicle registration records to determine whether registered motor vehicle dealers were accurately reporting the number of vehicle transactions in a year.

In addition, we collected and analyzed data from OMVIC's information systems (using remote access) on Compensation Fund claims, assessment results, registered motor vehicle dealers and prosecution cases against dealers.

To evaluate OMVIC's governance structure, we engaged in discussions with past and current members of OMVIC's Board of Directors and its committees. We also reviewed meeting minutes, Board materials and Board backgrounds, including member appointment records.

We also had discussions with past and current members of the Board of Trustees of the Compensation Fund. In addition, we examined the process to review, approve and deny claims to the Compensation Fund, including policies and procedures.

We engaged in discussions with representatives of the primary stakeholder groups, including:

- Used Car Dealers Association of Ontario;
- Trillium Automobile Dealers Association;
- Car Help Canada;
- Automobile Protection Association; and
- Consumers Council of Canada.

Lastly, we conducted jurisdictional scans to identify best practices in other jurisdictions in Canada, including British Columbia, Saskatchewan, Alberta and Quebec.

The audit also evaluated the Ministry of Government and Consumers Services' oversight function of OMVIC's operations and performance through a review of past communications, evaluations and reports. In addition, we engaged in discussions with key personnel from the Ministry who regularly interact with OMVIC.

4.0 Detailed Audit Observations

4.1 Registration of Motor Vehicle Dealers

4.1.1 In Most Cases, OMVIC Does Not Fully Assess Whether New Dealers Have Adequate Funding to Start and Operate Their Business

We found that OMVIC does not, as required under the *Motor Vehicle Dealers Act, 2002*, fully assess whether applicants for motor vehicle dealer registration have sufficient funding to open and operate their dealerships in order to confirm that they are sufficiently positioned to meet all their financial responsibilities under the *Motor Vehicle Dealers Act, 2002*.

The *Motor Vehicle Dealers Act, 2002* requires that OMVIC assess, based on the applicant's financial position, whether the applicant can reasonably be expected to be financially responsible and act with honesty and integrity in the conduct of their business. We found that OMVIC's review of financial information to make this assessment is focused on verifying where an applicant is obtaining their financing and start-up funds, to ensure funds are not obtained illegally. However, we found that OMVIC does not require its staff to assess whether the amount of funding an applicant has is sufficient to start and operate a motor vehicle dealership.

We noted that OMVIC collected information on the projected number and price range of vehicles to be sold, start-up capital, and planned vehicle inventory. However, OMVIC does not require applicants to provide the type and amount of expected expenditures, such as lease or mortgage payments for their place of business, advertising costs, insurance for vehicles, salaries of employees and vehicle repair costs for selling used vehicles. Without this information, it is not clear how OMVIC is able to confirm whether an applicant had sufficient funds to open a motor vehicle dealership. In our review of a sample of 20 registration applications from 2016 to 2020, we found that in 17, or 85%, of these applications, OMVIC did not fully assess whether applicants for motor vehicle dealer registration had sufficient funding to

open and operate their dealership in order to help gauge whether they would be able to meet all of their financial responsibilities under the *Motor Vehicle Dealers Act, 2002*.

In contrast, the Vehicle Sales Authority of British Columbia requires that all motor vehicle dealers provide financial forecasts including, for example, cash flow projections for the first three years of operation. This information is used to determine whether an applicant has sufficient funding to start and operate a motor vehicle dealership.

RECOMMENDATION 1

To confirm that applicants seeking to register as motor vehicle dealers can be expected to be financially responsible in the conduct of their business, as required by the *Motor Vehicle Dealers Act, 2002*, we recommend that the Ontario Motor Vehicle Industry Council (OMVIC):

- implement a revised registration application review process, which includes assessing whether motor vehicle dealers have adequate start-up funding to operate their business; and
- train its registration staff on its future updated application review process so that it is consistently applied by all registration staff when reviewing new motor vehicle dealer applications.

OMVIC RESPONSE

OMVIC agrees with the Auditor General's recommendation about the need to review the application process and develop guidelines to fully assess the new dealer applicants' financial strength to ensure they have sufficient funds to operate their business.

OMVIC will require new dealer applicants to provide a business plan regardless of their dealer class. The business plan includes their start-up capital, all expected expenditures such as lease or mortgage payments for their place of business, advertising costs, insurance for vehicles, salaries of employees, and repair/recondition costs for used vehicles.

The new dealer application procedure will be updated based on the Auditor General's recommendation. The process may differ for each dealer class due to capital requirements and operational expenses.

OMVIC will use this information to determine whether a new dealer applicant has sufficient funding to start a motor vehicle dealer business.

OMVIC will also ensure that staff are trained on these added guidelines, with a view to applying them in a consistent manner when reviewing new dealer applications.

4.1.2 OMVIC Rarely Requires Dealers to Provide Any Financial Guarantee Despite Some Dealers Posing Serious Risk of Financial Harm

As part of the registration process and in accordance with the *Motor Vehicle Dealers Act, 2002*, OMVIC can request a letter of credit from the motor vehicle dealers it registers if it determines that there is a risk that a dealer may not be able to compensate consumers if the dealer fails to meet its obligations under the *Motor Vehicle Dealers Act, 2002*. The letter of credit, issued by a financial institution, guarantees payment to the Compensation Fund in the event the dealer fails to pay money owed to the Compensation Fund. However, we found that OMVIC rarely requests these letters of credit, and in 2019, OMVIC's Chief Executive Officer (CEO) instructed its staff to further reduce requests for letters of credit.

We reviewed a sample of 20 approved registration applications from 2016 to 2020 and identified financial risks in 40% of them. These risks included

past bankruptcy filings and past allegations of fraud investigated for illegally selling vehicles without being registered. However, despite having this information at its disposal, OMVIC only required one of these applicants to provide a letter of credit for registration.

We also found that overall, the number of instances where OMVIC requests letters of credit for new registrants has fallen from a high of 36 in 2018 to just three in 2020, as shown in **Figure 17**.

Overall, as shown in **Figure 17**, from 2016 to 2020 OMVIC obtained letters of credit from just 4% of newly registered motor vehicle dealers. In contrast, the Vehicle Sales Authority of British Columbia requires that all motor vehicle dealers provide a letter of credit to be registered. We also found that OMVIC's policy is to hold a letter of credit in place for a minimum of two years. After two years, the motor vehicle dealer can request removal of the letter of credit. The Vehicle Sales Authority of British Columbia holds letters of credit from all licensed motor vehicle dealers for a minimum of six months after the closure of their dealership.

OMVIC's Failure to Obtain Letters of Credit from Dealers Contributed to Unrecovered Losses to Its Compensation Fund

We noted that in the past five years (2016–20), OMVIC has paid out approximately \$2.4 million in claims from its Compensation Fund (described in **Section 2.8**) as a result of 60 motor vehicle dealers breaching their obligations under the acts and causing financial losses for consumers. Over the same period, we found that OMVIC recovered only about \$520,000 from some of these 60 motor vehicle

Figure 17: Newly Registered Motor Vehicle Dealers Required to Provide a Letter of Credit, 2016–2020

Source of data: The Ontario Motor Vehicle Industry Council

	2016	2017	2018	2019	2020	Total
# of letters of credit required	16	25	36	6	3	86
# of new motor vehicle dealers registered	453	393	482	546	414	2,288
% of new motor vehicle dealers required to provide letter of credit	4	6	7	1	1	4

dealers, or just 22% of the claims it paid. We also found that OMVIC had a letter of credit in place for less than 1% of all motor vehicle dealers registered at the time, including those that were the cause of claims to the Compensation Fund. A letter of credit would have allowed OMVIC to recover additional money directly from motor vehicle dealers for claims paid from the Compensation Fund. At the time of our audit, just six of the 60 motor vehicle dealers who had been responsible for claims to the Compensation Fund in the last five years (2016–20) continued to be registered by OMVIC. Although these six dealers had reimbursed the Fund, none of the six dealers were later required by OMVIC to provide a letter of credit as a condition of continuing their registration.

We questioned why OMVIC does not generally request that motor vehicle dealers provide it with letters of credit and why in the last two years it had reduced its already limited requests for these guarantees even further. OMVIC's management told us that OMVIC Board members, which are also members of the Used Car Dealers Association of Ontario, raised concerns about the requirement, citing that it places a financial burden on businesses. OMVIC told us that dealers have to commit \$10,000 to \$40,000 to provide a letter of credit that may otherwise be used as start-up funds to start their business, which may pose a barrier to entry into the industry. In response, OMVIC's CEO communicated to OMVIC staff that they should seek fewer letters of credit. We also found that, at the time of our audit, the Used Car Dealers Association of Ontario put forward to the Ministry a regulatory proposal to discontinue OMVIC's requirement that dealers provide a letter of credit.

RECOMMENDATION 2

To enhance consumer protection, and increase recoveries to the Compensation Fund, we recommend that the Ontario Motor Vehicle Industry Council:

- update its registration policies to require a letter of credit from every motor vehicle dealer at the time of registration; and

- extend the time frame that it holds a letter of credit past the closure of the dealership.

OMVIC RESPONSE

OMVIC agrees with the Auditor General's recommendation regarding the requirement for increased use of letters of credit. Accordingly, OMVIC, in consultation with the Compensation Fund's Board of Trustees, will review and amend the current letters of credit policy as required. The revised policy would apply to motor vehicle dealers (new applicants) whose dealer class permits them to interact with consumers.

OMVIC, in consultation with the Compensation Fund's Board of Trustees, will review and consider the appropriate time frame required to maintain a letter of credit with OMVIC.

4.1.3 Dealers and Salespersons Not Required to Take Continuing Education Courses to Renew Their Registration

OMVIC requires motor vehicle dealers and salespersons to complete an education course as a condition of their initial registration. However, OMVIC does not require registered motor vehicle dealers or salespersons to take continuing education courses as a condition of renewing their registration to keep up with relevant legislative and regulatory changes.

In 2010, significant changes were made to the *Motor Vehicle Dealers Act, 2002* that affected how vehicles could be sold. For example, new requirements were introduced that prohibit motor vehicle dealers from selling vehicles for a price higher than what is advertised. The changes also allowed car purchasers to return their vehicle within 90 days if the motor vehicle dealer failed to make disclosures about the vehicle's condition. Although OMVIC updated its education course to reflect these revisions, OMVIC did not require registered motor vehicle dealers and salespersons to take this course and update their knowledge.

As a result, we determined that 54%, or approximately 4,400 out of 8,200 currently registered motor vehicle dealers, and 24%, or 7,200 out of 29,500 currently registered salespersons, have not taken OMVIC's updated education course. As prior to 1999 there were no educational requirements to operate a registered dealership or to sell vehicles in Ontario, we found that approximately 2,600 motor vehicle dealers and 3,200 salespersons have no record of taking any educational courses.

In comparison, the Vehicle Sales Authority of British Columbia requires all salespersons to annually complete an online education course that covers current laws and emerging trends in order to maintain their registration.

OMVIC told us that it does not have the authority to order motor vehicle dealers and salespersons to complete continuing education courses as a condition of renewing their registration because it is not currently a requirement in the *Motor Vehicle Dealers Act, 2002*. In 2019, OMVIC proposed a regulatory change to the Ministry to include continuing education requirements in the Act. To date, no regulatory changes have been made.

RECOMMENDATION 3

To enforce consumer protection in the motor vehicle industry, and to ensure that motor vehicle dealers and salespersons are up to date on changes to the *Motor Vehicle Dealers Act, 2002*, we recommend that the Ministry of Government and Consumer Services introduce mandatory continuing education requirements for motor vehicle dealers and salespersons.

OMVIC RESPONSE

OMVIC agrees and supports the Auditor General's recommendation. OMVIC welcomes the opportunity to collaborate with the Ministry of Government and Consumer Services to develop options for the government's consideration relating to mandatory completion of continuing education for all registrants.

MINISTRY RESPONSE

The Ministry of Government and Consumer Services will collaborate with the Ontario Motor Vehicle Industry Council (OMVIC) to develop options related to mandatory completion of continuing education for all registrants, and undertake appropriate consultations in respect of those options.

This recommendation would require developing potential regulatory proposals for the government's consideration. Should the government choose to move forward with this recommendation, changes would be implemented accordingly.

4.1.4 OMVIC Not Meeting Its Target to Process Motor Vehicle Dealer Registration Applications within Four to Six Weeks

OMVIC has a target to process applications for motor vehicle dealer registration within four to six weeks. However, we found that over the last five years, 76% of the applications for registration processed by OMVIC took longer than six weeks to process, including 23% that took longer than six months.

Processing applications for registration on a timely basis is important, as delays can be costly to applicants. Applicants may enter into agreements to buy or lease space to operate their business, and in some cases, they could have already obtained vehicles that are ready to sell. We found several factors that contributed to these delays in processing registrations, as outlined in the sections that follow.

Almost 90% of New Motor Vehicle Dealer Registration Applications Are Sent Incomplete

In the last five years, 87%, or 2,998 out of 3,448, new motor vehicle dealer applications submitted to OMVIC were missing key information required to process the application. This resulted in increased staff time for OMVIC to follow up and obtain missing information from applicants. From 2016 to 2020, about 75% of incomplete applications received took seven weeks or longer to process, including almost 25% that took six months or longer. **Figure 18** shows the number

of new registration applications received that were incomplete and the average time to process them.

The *Motor Vehicle Dealers Act, 2002* requires OMVIC to review financial information to ensure that the applicant and persons involved in the business can be expected to be financially responsible. We reviewed a sample of 10 incomplete applications and found that none of the applicants provided sufficient supporting documentation for financial information. In some, for example, information on the source and verification of start-up funds to open the dealership was not included. Through this process OMVIC attempts to verify the source of funds used to open a dealership to ensure funds were obtained legally. Applications were also missing information on any debts owed to outside parties, proof of payment arrangements made to pay off any outstanding debts, and bank statements to verify the net worth of applicants. This information is key for OMVIC to assess the financial capabilities of the person(s) in charge of the dealership.

We found that the key reason applications were incomplete is that OMVIC's application form is not specific in asking for all the information, including supporting documentation, that OMVIC needs to review and approve an applicant for registration. For example, the application form does not request proof of any debts owed to outside parties or proof of payment arrangements made to pay off existing loans, even though OMVIC's processes require its staff to review this documentation for all applicants. In addition, all applications for new motor vehicle dealers are paper-based and cannot be submitted electronically. As a result, no controls are in place to

prevent an applicant from submitting an application form with incomplete information.

Despite Increases to the Volume of Motor Vehicle Dealer Registration Applications Received, OMVIC's Staffing Has Remained Constant

Although the volume of new applications for motor vehicle dealer registration increased by 24% between 2016 and 2019, and in the majority of cases OMVIC has not been meeting its target to complete registration applications within six weeks, OMVIC's level of staff dedicated to reviewing these applications has remained unchanged. **Figure 19** shows the number of new applications for motor vehicle dealer registration received each year compared to OMVIC's full-time-equivalent staffing level.

The average number of applications each OMVIC staff member was responsible for reviewing annually increased from 81 in 2016 to 100 in 2019. We also found that in March 2018, OMVIC engaged a third-party consultant that reviewed its registration department and identified that the department was understaffed. The consultant recommended that OMVIC increase its complement of registration staff. Although this recommendation was made in 2018, OMVIC has still not increased its staffing level.

RECOMMENDATION 4

So that the Ontario Motor Vehicle Industry Council (OMVIC) can meet its target to process applications for new motor vehicle dealer registrations in a timely manner, we recommend that OMVIC:

Figure 18: Incomplete Motor Vehicle Registration Applications and Their Processing Time, 2016–2020

Source of data: The Ontario Motor Vehicle Industry Council

	2016	2017	2018	2019	2020	Total
# of new applications received	646	610	711	802	679	3,448
# of incomplete applications received	580	557	642	691	528	2,998
% of incomplete applications	90	91	90	86	78	87
Average time needed to process incomplete applications (weeks)	20	23	19	17	14	19

Figure 19: Volume of New Registration Applications Compared to Staffing Level, 2016–2019

Source of data: The Ontario Motor Vehicle Industry Council

	2016	2017	2018	2019	% Change
# of new applications for motor vehicle dealer registration received	646	610	711	802	24
# of dedicated staff to process new applications	8	9	8	8	0

- work with motor vehicle stakeholder groups to review and revise its application and application process so that it is clear to applicants what specific supporting documents they are required to provide with their application;
- perform a cost-benefit analysis of implementing an electronic version of the application process with built-in controls to prevent incomplete applications from being submitted; and
- after completing these steps, perform a workload study to determine appropriate staffing levels to process applications within its targeted time frame.

OMVIC RESPONSE

OMVIC agrees with the Auditor General’s recommendation and will leverage relationships with stakeholder groups to solicit their feedback in respect to a revision of the application for new registrants to simplify and clarify the process, including clarifying the specific supporting documents that are required to be provided. This will include engagement with the Used Car Dealers Association of Ontario (UCDA) and Trillium Automobile Dealers Association (TADA).

In addition, OMVIC is developing a new system that will include built-in controls to prevent incomplete applications from being submitted. The system is scheduled to be launched by early 2022.

OMVIC believes that the implementation of its new system will result in greater efficiency in the processing of applications while decreasing the follow-ups required for incomplete applications. Upon implementation of the new

system, OMVIC will conduct a workload study to determine appropriate staffing levels to ensure the processing of applications within the targeted time frame.

4.2 Inspections of Motor Vehicle Dealers

4.2.1 OMVIC Has Not Inspected 40% of Dealers within Its Target of Three Years

Although OMVIC has set a target to inspect motor vehicle dealers at least once every three years to confirm that they are complying with the provisions of the *Motor Vehicle Dealers Act, 2002* and the *Consumer Protection Act, 2002*, we found that approximately 40% of registered motor vehicle dealers have not been inspected in more than three years, including 14% that have not been inspected in more than five years.

One reason why OMVIC does not inspect some dealers for many years is because it does not assign an inspection frequency to its registered motor vehicle dealers based on their assessed risk of non-compliance. Instead, we found that OMVIC generates a list for each of its 12 inspectors for the dealers in the geographic area they are responsible for, based on factors that are intended to identify risk such as past complaints and past enforcement actions. However, these lists do not assign a risk rating (such as high, medium or low) to each dealer. Each inspector is expected to inspect all dealers on the list by the end of the year, manually determining the order with which they are inspected. However, we found that inspectors do not inspect all of the dealers on this list—dealers that are not inspected are rolled over on to the list generated for the following year. As a result, the

highest-risk dealers are not prioritized for inspection—in some cases, they were not inspected at all—and between 2011 and 2020, the annual list of dealers to be inspected increased by 73%, from 2,286 in 2011 to 3,948 in 2020.

OMVIC's inspectors all indicated that additional inspectors were required to complete all the inspections they are assigned. We noted that, at the time of our audit, one of the inspector positions in the Niagara region has remained vacant since 2015. As a result, the Niagara region had the highest number of dealerships that had not been inspected for more than three years.

In addition, we reviewed OMVIC's annual inspection lists and noted that some dealers had more risk factors than others, yet many of these dealers were not inspected, and some dealers that seemed to have significant risk factors were carried over for inspection to a future year. In some cases, they were not inspected at all.

In comparison, the Technical Standards and Safety Authority (TSSA), a delegated authority, which among other things is responsible for inspecting elevators in Ontario, established a process to inspect every elevator at least once every five years. Every elevator is automatically assigned an inspection frequency between six months and five years. TSSA has a programmed computer system to automatically determine how often the elevator should be inspected based on its risk factors. The computer program automatically schedules the inspections when an elevator becomes due for an inspection.

RECOMMENDATION 5

So that the Ontario Motor Vehicle Industry Council (OMVIC) can meet its target to inspect all registered motor vehicle dealers within the required time frame, and so that dealers are inspected based on their risk of non-compliance, we recommend that OMVIC:

- develop a risk framework (for example, high, medium and low) and assign an inspection frequency to each level of risk;

- determine and assign a risk level and inspection frequency to each motor vehicle dealer;
- put in place systems to ensure that each dealer is scheduled for and receives an inspection based on its assigned risk level;
- put in place systems to reassess each dealer's risk level on an ongoing basis;
- perform a cost-benefit analysis on implementing an information system that can continually assess the risk of each dealer and assign an appropriate inspection frequency based on the dealer's risk level; and
- assess the workload of inspectors and ensure that OMVIC has sufficient staff to carry out and complete annually assigned inspections on a timely basis.

OMVIC RESPONSE

OMVIC agrees with the Auditor General's recommendation regarding the need to inspect dealers based on their risk of non-compliance.

OMVIC is developing a new risk assessment methodology that will see dealers assigned a risk level of low, medium or high. Under this new methodology, low-risk dealers will be inspected once every four to five years, while high-risk dealers will be inspected every one to two years. The new methodology will include criteria to determine/assess the level of risk. The risk assessment methodology, inspection frequency and scheduling functionalities will be built into OMVIC's new system. The new system will also reassess each dealer's risk level on an ongoing basis. Inspectors will access this information to schedule their inspections, and management will monitor to ensure inspections are taking place on time. Appropriate controls will be developed and included in new operational policies and/or procedures.

OMVIC is currently reviewing the workload of the inspection team, and will continue to do so, in light of the Auditor General's

recommendation. Preliminary findings suggest the need for an additional manager and additional inspectors. Further workload analysis will be undertaken to determine where, in addition to the Niagara Region, additional inspectors may be required. The addition of a second inspections manager will increase the level of accountability and oversight of front-line inspections staff, which is specifically intended to help address the types of concerns identified during the audit.

4.2.2 OMVIC's Motor Vehicle Dealer Inspection Practices Were Inconsistent

We reviewed inspection results of 10 OMVIC inspectors who had each performed more than 500 inspections between 2016 and 2020, and found that on average, in 20% of the inspections they collectively completed, they had identified violations of the acts. However, we noted the proportion of inspections where violations were found differed significantly between inspectors, ranging from just 7% of inspections in the case of one inspector to as many as 47% in the case of another.

We randomly selected and reviewed 30 inspections conducted by OMVIC's inspectors in 2020, and identified that inspection practices varied between inspectors. For instance, in seven of the 30 inspections we reviewed, the inspector did not evaluate whether the dealer complied with the all-in-price advertising requirement. We also found that different inspectors reviewed vastly different proportions of vehicle transaction files in relation to the dealers' total volume of transactions. For example, in one case, an inspector reviewed 25 transactions from a dealership that sold about 50 vehicles a year. Another inspector reviewed 23 transactions, even though the motor vehicle dealer sold over 900 vehicles per year. As well, we noted that some inspection reports did not even specify the number of transactions reviewed during the inspection.

OMVIC Does Not Have a Quality Assurance Process in Place to Ensure Motor Vehicle Dealer Inspections Are Conducted Consistently

OMVIC provides its inspectors with checklists to guide their inspections of motor vehicle dealers. However, we found that OMVIC does not have a process in place to periodically review the inspections completed by its inspectors to ensure they are checking everything they are expected to check and that inspections are performed consistently. See **Appendix 5** for an overview of the key areas inspectors review at a motor vehicle dealer.

In an effort to evaluate the quality of inspections, in 2019 OMVIC's inspection manager started to accompany every inspector each year on one inspection to observe how the inspector conducts the inspection. However, we noted that this process had limited value in assessing whether inspectors carry out inspections effectively and consistently, because:

- inspectors were provided advance notice about when their manager would accompany them on an inspection;
- inspector efforts in executing an inspection may differ in the absence of direct oversight;
- the value of attending a single inspection to assess the consistency and effectiveness of an inspector's work is limited, considering that each inspector completes approximately 200 inspections each year; and
- the manager's observations were not formally documented and were instead communicated to inspectors informally.

OMVIC could strengthen its oversight of inspectors by also reviewing a sample of their completed inspection files. This review would enable OMVIC to evaluate the overall quality of its inspections and ensure that they are being conducted in accordance with OMVIC's inspection checklists. This would also allow OMVIC to identify key trends and weaknesses in its inspection function.

We also noted that OMVIC does not periodically rotate its inspectors to ensure they maintain independence from motor vehicle dealers. When we inquired about rotation, OMVIC told us that

inspectors are hired based on where they live. The area they reside in becomes the territory they oversee, as well as their home office. OMVIC noted that rotating inspectors would not be cost-effective due to the increased travel and relocation costs that would be associated with it. Nevertheless, we noted that 40% of registered motor vehicle dealers are located in the Greater Toronto Area, and an opportunity may exist to rotate inspectors within this area. Given that OMVIC does not periodically rotate inspectors, implementing a file review process can assist OMVIC to oversee the work of its inspectors and ensure that they are maintaining their independence.

RECOMMENDATION 6

So that the Ontario Motor Vehicle Industry Council's (OMVIC's) inspectors carry out inspections of motor vehicle dealers consistently and effectively, we recommend that OMVIC:

- develop and implement an inspection oversight process that includes an inspection file review and documented assessment of whether inspections are carried out effectively and consistently;
- where inconsistencies are identified, take steps to facilitate corrective action; and
- periodically rotate inspectors in geographic areas when it is feasible to do so.

OMVIC RESPONSE

OMVIC agrees with the Auditor General's recommendation regarding the need to carry out dealer inspections in an effective, efficient and consistent manner.

In the fall of 2020, OMVIC conducted a comprehensive review of the current inspection process and identified a series of issues that needed to be addressed, including inspection scope, frequency/volume of inspections, lack of consistency, lack of oversight/review processes, and the need for operational policies and/or procedures.

Early in 2021, OMVIC initiated a process to address these issues through the formation of various project teams intended to raise the overall quality and consistency of our inspections through the development of new policies and/or procedures. Included in this work is the development of a quality assurance process, including increased management review and possibly peer review processes. OMVIC's intention is to develop better controls to achieve a more consistent outcome and hire an additional manager to help oversee this geographically dispersed team. OMVIC will undertake to rotate inspectors in geographic areas (such as the Greater Toronto Area) where it is feasible to do so.

4.2.3 OMVIC Infrequently Performs Follow-Up Inspections of Motor Vehicle Dealers to Confirm That Violations of the Acts Identified During Inspections Are Addressed

In the last five years (2016–20), OMVIC completed 10,216 inspections of motor vehicle dealers. We reviewed the results of these inspections and found that OMVIC's inspectors identified violations of the *Motor Vehicle Dealers Act, 2002* and/or the relevant sections of the *Consumer Protection Act, 2002* in 2,582, or 25%, of the inspections. We noted that in 77% of these 2,582 inspections where violations were identified, OMVIC's inspectors closed the inspection file without taking any enforcement action or following up to confirm that the violations were addressed and had ceased. Instead, OMVIC relied on dealers to correct the identified violations. OMVIC does not provide instructions to guide its inspectors on the types of violations that warrant a follow-up inspection. We noted that the most commonly identified violation of the acts in these 2,582 dealer inspections was failing to disclose a material fact to a consumer, such as accident damage—accounting for 32% of all the violations found over the last five years.

Failure to disclose material facts is critical because vehicle buyers rely on this information

to make purchasing decisions. The *Motor Vehicle Dealers Act, 2002* has 22 explicit requirements for disclosure, including the vehicle's past use, vehicle condition, collision history, condition of air bags and total distance driven.

We also reviewed OMVIC's complaints and found that OMVIC had received multiple complaints relating to misrepresentation of facts for 194, or 8%, of the 2,582 dealers that OMVIC inspected and found had violated the *Motor Vehicle Dealers Act, 2002*. This included one dealer that OMVIC inspected in 2020 where it identified consumer disclosure violations, but did not conduct a follow-up inspection to confirm that the identified violations were addressed and had ceased to occur. In this case, our review of complaints identified that between 2016 and 2020, OMVIC had received 16 complaints against this dealer about misrepresentation of facts, including 12 in 2019—just one year before OMVIC conducted its inspection of the dealer—suggesting this was not an uncommon occurrence at this dealer. However, OMVIC did not subsequently conduct a follow-up inspection.

Our review also identified that complaints about misrepresentation of facts to consumers accounted for 13% of the 5,400 total complaints OMVIC had received over the last five years.

RECOMMENDATION 7

So that violations of the *Motor Vehicle Dealers Act, 2002* and the relevant sections of the *Consumer Protection Act, 2002* are corrected by motor vehicle dealers on a timely basis, we recommend that the Ontario Motor Vehicle Industry Council:

- develop and implement a framework with appropriate time frames that provides guidance to inspectors on the types of violations of the acts that should be reviewed with a follow-up inspection; and
- ensure that follow-up inspections are performed in accordance with this framework.

OMVIC RESPONSE

OMVIC agrees with the Auditor General's recommendation regarding the importance of follow-up inspections of dealers when non-compliance is detected.

In July 2021, OMVIC put in place a Dealer Support Team that is intended to be the point of contact for dealers when they have compliance-related inquiries. The team will work closely with OMVIC's Inspections Team to address non-compliance issues from an advisory/collaborative approach.

OMVIC is also in the process of establishing a new Policy Team, which will be responsible for developing compliance-related guidance documents and tools to better support the dealer community in achieving compliance. This team will work closely with the Inspections and Dealer Support teams by conducting research and analysis, developing new compliance-related tools, and providing compliance-related advice and guidance.

OMVIC will develop a new process, supported by appropriate policies and/or procedures, to set out how inspection follow-ups will take place. This new process will set out the circumstances or conditions when a follow-up inspection will occur, or whether it is more appropriate to refer the matter to the Dealer Support Team for outreach, advice or guidance. This new process will help inspectors understand the circumstances when their follow-up is required, or whether it is more appropriate for the Dealer Support Team to take up the matter. In addition, controls will be put in place to ensure that follow-up inspections are performed in accordance with this new process to facilitate a more consistent inspections outcome.

4.2.4 OMVIC Does Not Take Enforcement Action to Address Violations of All-in-Price Advertising Identified by the Consumer Associations It Funds

We found that when OMVIC identifies dealers that have violated the *Motor Vehicle Dealers Act, 2002* requirement for all-in-price advertising during its in-house mystery shopping program (described in **Section 2.5.1**), OMVIC takes enforcement action against these dealers. However, when the consumer associations it funds to also perform mystery shopping at dealers find such violations, OMVIC does not use their observations to take enforcement actions, such as issuing a warning letter or investigating the dealer.

Between 2016 and 2020, OMVIC visited 165 dealers as part of its in-house mystery shopping program and took enforcement action against 52 of these dealers that it found did not comply with the *Motor Vehicle Dealers Act, 2002* requirement for all-in-price advertising.

In contrast, between 2016 and 2020, OMVIC paid Car Help Canada and the Automobile Protection Association a total of approximately \$1 million to conduct mystery shopping at 397 motor vehicle dealers. The associations identified that 167 of the 397 dealers they visited attempted to charge fees in excess of a vehicle's advertised price—violating the all-in-price advertising requirement. However, we found that OMVIC had not taken enforcement action against any of these dealers.

RECOMMENDATION 8

To improve motor vehicle dealer compliance with the all-in-price advertising requirement, we recommend that the Ontario Motor Vehicle Industry Council utilize information gathered by consumer associations to take appropriate enforcement action against motor vehicle dealers that do not comply with the *Motor Vehicle Dealers Act, 2002*.

OMVIC RESPONSE

OMVIC understands the Auditor General's recommendation regarding the use of information

gathered by consumer associations. OMVIC will be ceasing its practice of utilizing consumer associations to conduct mystery shopping of dealers for all-in-pricing advertising. Instead, OMVIC will reallocate funding to its Enforcement Team to hire additional staff who will be dedicated to the mystery shopping program. OMVIC also plans to expand the mystery shopping program to cover more dealerships on an annual basis.

4.3 Investigations of Motor Vehicle Dealers

4.3.1 OMVIC Does Not Monitor or Review Whether Its Investigations Are Effective and Completed on a Timely Basis

We found that OMVIC does not have a process in place to monitor whether investigators complete investigations on a timely basis, and to take appropriate action based on the results of their investigations. In the absence of such a process, we identified a number of concerns related to both the timeliness of investigations and the actions taken after completing investigations, as we outline in the following sections.

OMVIC's Investigations Are Lengthy, Taking on Average of 220 Days to Complete

We found that OMVIC has not established benchmarks or guidelines for how long different types of investigations should take to complete. We analyzed 1,547 investigations that OMVIC had completed between 2016 and 2020, and found that the length of investigations ranged from one to 1,633 days. On average, OMVIC's investigations took 220 days to complete.

We also found significant differences in the average length of time it takes each of OMVIC's investigators to complete their assigned investigations, ranging from as low as 98 days on average in the case of one investigator, to as high as 522 days in the case of another.

While differences in investigations preclude establishing definitive timelines for their completion, establishing guidelines for their length, based on type and complexity of an investigation, can help investigators know whether they are progressing efficiently. Such guidelines can also assist management to monitor and compare the length of investigations to identify trends and performance concerns related to an individual investigator that require follow-up. For example, we noted one investigation of a consumer complaint into an unregistered motor vehicle dealer that had remained open for nearly four and a half years. In this instance, the investigation file was closed without charges being brought, even though there appeared to be sufficient evidence to do so.

As of March 2021, we found that OMVIC had 310 open investigations; 144, or 46% of these investigations, had been open for more than 220 days, including some that had been open since 2018.

The Majority of OMVIC's Investigations Do Not Result in Enforcement Action

We found that OMVIC had not established benchmarks or targets for the proportion of investigations that could likely result in enforcement action. We analyzed the 1,547 investigations of motor vehicle dealers that OMVIC had completed between 2016 and 2020, and found that in 67% of these investigations, OMVIC did not take any enforcement action against the dealer—including 68 investigations, or 4%, where no reason was even provided for closing the investigation. Only 16% of OMVIC's investigations during this period resulted in charges being laid, and a further 17% of investigations resulted in OMVIC issuing warning letters.

We also compared OMVIC's investigators and found significant differences between them in the proportion of cases where they take enforcement action. For example, while one investigator took enforcement action in 54%, or 42 of the 78 investigations they had completed, another investigator had taken enforcement action in only 9%, or 9 out of the 98 investigations they had completed.

These differences were concerning as we also found that OMVIC does not have a process in place to periodically review the investigation files that its investigators complete. We also found that OMVIC does not have key operational policies and procedures that describe how to undertake certain basic investigative activities, such as how to initiate and close investigations, prepare a prosecution brief and disclosure documents, and obtain a search warrant.

We reviewed a sample of 100 investigations that were closed without any further action and found that in 23 of these investigations, investigators did not conduct a thorough investigation. For example, our review found:

- two investigations where charges or briefs were not filed with the courts by the investigator even after a decision was made to prosecute;
- nine investigation files had evidence of violations of the *Motor Vehicle Dealers Act, 2002* and the *Consumer Protection Act, 2002*, but the investigators did not provide a rationale for why no further action was taken before closing the investigation; and
- 12 investigations were not fully completed and were closed without any action or notes, so that it was unclear what work was conducted to investigate the allegations.

OMVIC's Disciplinary Process Is Underutilized by Its Investigations Department

OMVIC has not developed and provided guidance to its investigators on when they should refer cases to OMVIC's Discipline Committee. We found that OMVIC's investigation department rarely refers cases to OMVIC's Discipline Committee to address violations found during its investigations, even though such enforcement action would be much quicker and less costly than laying charges and pursuing a case in the provincial court system. Between 2016 and 2020, only two completed investigations were referred to OMVIC's Discipline Committee. The 13-member Discipline Committee can impose a fine up to a maximum of \$25,000, and require that dealers and salespersons take additional

education courses, or pay the costs of fixing a vehicle. Decisions made by the Discipline Committee are also made public on OMVIC's website. In the last five years (2016–20), 254 investigations have resulted in prosecution.

RECOMMENDATION 9

So that investigations of registered and unregistered motor vehicle dealers and salespersons are completed effectively and on a timely basis, and that appropriate enforcement action is taken where justified, we recommend that the Ontario Motor Vehicle Industry Council:

- establish reasonable guidelines or benchmarks for enforcement action and the timely completion of investigations;
- monitor investigations against these guidelines or benchmarks to identify and follow up where significant differences are found;
- establish a process to periodically review investigation files to determine if they are complete and result in appropriate enforcement action, and to take corrective action where necessary; and
- develop policies and procedures on key aspects of investigations to help guide the work of its investigators.

OMVIC RESPONSE

OMVIC agrees with the Auditor General's recommendation regarding the need for investigations to be carried out in an effective, efficient and timely manner.

OMVIC launched a new initiative to develop operational policies and procedures for the Investigations Team. By the end of 2021, OMVIC will have in place policies and procedures to cover topics such as initiation and closure of investigations, prioritization of investigations, multi-jurisdictional investigations and related charges, and search warrants. In addition, functionality will be built into OMVIC's new system to better manage

open investigations through regular reporting. The goal is to have a comprehensive set of controls to guide our investigations, and cover such topics as timeliness, review and processes to facilitate corrective action.

OMVIC is also working on an initiative to improve the overall quality of the Investigation Teams' court briefs.

4.4 Dispute Resolution Process

4.4.1 About 50% of Complaints against Dealers Handled by OMVIC Resulted in No Resolution for Consumers

We found that in about 50%, or 2,600 out of 5,400 complaints against motor vehicle dealers handled by OMVIC in the last five years (2016–20), OMVIC was unable to assist consumers to reach a resolution. In these cases, consumers were left with no choice but to pursue their dispute in civil court. The *Motor Vehicle Dealers Act, 2002* allows OMVIC to attempt to mediate or resolve a complaint. The role given by the *Motor Vehicle Dealers Act, 2002* to OMVIC is limited to OMVIC acting as a mediator between the consumer and the motor vehicle dealer. OMVIC cannot compel a dealer to reach a resolution with a consumer.

In instances where an OMVIC complaint handler determines that a consumer complaint may involve a breach of the *Motor Vehicle Dealers Act, 2002* or the *Consumer Protection Act, 2002*, the complaint handler will collect information relevant to the complaint, and will attempt to negotiate a settlement between the consumer and the dealer.

Although we were told that, in the course of mediating complaints, OMVIC complaint handlers informally share their views with dealers and consumers on whether the dealer has breached applicable laws, complaint handlers do not generally make a formal determination on whether a dealer has breached applicable laws, or record such a determination in OMVIC's systems—in part because, as

described in **Section 2.7**, OMVIC cannot enforce a binding resolution. As a result, OMVIC's dispute resolution process is, in many cases, ineffective in helping consumers.

4.4.2 Consumers Do Not Always Receive Compensation from Dealers Even When OMVIC Finds That Dealers Breached the Law

Although OMVIC attempts to mediate and resolve consumer complaints, OMVIC does not have the authority to compel a motor vehicle dealer to reach a fair resolution to a complaint or to provide compensation to a consumer, even if OMVIC informally determines that the dealer has breached one or more of the provisions of the acts.

We reviewed a sample of 100 complaints where OMVIC had been unable to mediate a resolution, and found that in 50 of these complaints, the dealer appeared to have breached one or more of the provisions in the acts. Nevertheless, in these instances the consumer did not receive compensation from the dealer. **Figure 20** provides summary examples of these complaints.

In the complaints outlined in **Figure 20**, the only recourse consumers had was to pursue their case in civil court, which can be a costly and time-consuming process. OMVIC does not know how many consumers go on to pursue their dispute in court or are successful in receiving a favourable judgment.

In comparison, the Tarion Warranty Corporation (Tarion), an administrative authority responsible for ensuring that home builders honour their warranties

Figure 20: Examples of Consumer Complaints That Resulted in No Financial Compensation

Prepared by the Office of the Auditor General of Ontario

Description of Complaint	
Consumer #1	Motor vehicle dealer failed to disclose \$19,000 in accident damage.
Consumer #2	Motor vehicle dealer underreported extent of accident damage to vehicle by \$7,000.
Consumer #3	Motor vehicle dealer failed to disclose \$23,000 accident damage, and failed to pay outstanding lien payments on vehicle prior to sale.
Consumer #4	Motor vehicle dealer sold vehicle with safety certificate when vehicle was actually sold in "as is" condition, which indicates that it is not roadworthy.
Consumer #5	Motor vehicle dealer refused to return a \$6,000 deposit to the consumer even though the consumer never signed a contract for the vehicle.
Consumer #6	Motor vehicle dealer sold a vehicle in "as is" condition and not as roadworthy, but failed to include mandatory disclosures about the vehicle in the contract, including required repairs for the engine, electrical systems and air conditioning.
Consumer #7	Motor vehicle dealer misrepresented the model of the vehicle, and delivered a vehicle of lesser value to the consumer.
Consumer #8	The vehicle was sold to the consumer by an unregistered salesperson working on behalf of the motor vehicle dealer.
Consumer #9	Motor vehicle dealer failed to provide a vehicle history report to the consumer, and did not disclose to the consumer that the vehicle did not have any airbags and that the vehicle sold was a salvage vehicle.
Consumer #10	Motor vehicle dealer failed to disclose to the consumer that the vehicle they purchased had previously incurred structural damage and had an outstanding recall due to transmission issues, and delivered a vehicle without safety certification.

Note: In all cases, although the motor vehicle dealer appeared to breach the *Motor Vehicle Dealers Act, 2002*, OMVIC was unable to mediate a resolution between the consumer and the motor vehicle dealer.

on new homes, works with consumers to resolve their disputes with builders, and can issue a notice of decision—which is a determination of whether an item should be covered under a builder’s warranty. This requires builders to resolve consumers’ disputes against them.

RECOMMENDATION 10

To provide consumer protection, and strengthen the Ontario Motor Vehicle Industry Council’s (OMVIC’s) effectiveness in both mediating and resolving disputes between consumers and motor vehicle dealers, we recommend that OMVIC:

- record in its systems its assessment of whether a motor vehicle dealer has breached one or more provisions of the *Motor Vehicle Dealers Act, 2002* or the *Consumer Protection Act, 2002* for each complaint it reviews; and
- work with the Ministry of Government and Consumer Services to reassess the current limitations of the *Motor Vehicle Dealers Act, 2002* that prevent OMVIC from compelling motor vehicle dealers to provide restitution to consumers when they have breached the law.

OMVIC RESPONSE

OMVIC agrees with the Auditor General’s recommendation. OMVIC will develop a method to record in its systems an initial assessment of any potential compliance issues for each complaint that is escalated and forwarded for review.

OMVIC will conduct a review of the *Motor Vehicle Dealers Act, 2002* to identify what amendments can be made to the legislation that would compel motor vehicle dealers to provide restitution to consumers upon a breach of the act. Proposed amendments will be submitted to the Ministry of Government and Consumer Services for consideration.

MINISTRY RESPONSE

Providing a regulator, such as the Ontario Motor Vehicle Industry Council (OMVIC), with the ability to compel registrants to provide restitution to consumers would represent a significant change from its current role. It would require OMVIC to become an adjudicator of civil disputes.

This recommendation would require developing potential legislative and regulatory proposals for the government’s consideration, which would involve consultations with the public and motor vehicle sector to assess impacts, costs and timing.

The Ministry of Government and Consumer Services will develop proposals for the government’s consideration, which will be informed by the Auditor General’s recommendations. Should the government choose to move forward with this recommendation, changes would be implemented accordingly.

4.4.3 OMVIC Does Not Have a Process to Consistently Facilitate Enforcement Action When Its Review of Complaints Identifies That Dealers May Have Breached the Law

We found that OMVIC does not consistently take enforcement action against motor vehicle dealers when its complaint handlers identify that a dealer has breached one or more provisions in the acts and caused the consumer harm.

Although OMVIC’s complaint handlers cannot compel a motor vehicle dealer to resolve a consumer complaint or to provide compensation to a consumer, if a complaint handler determines that the dealer may have breached one or more of the acts’ provisions, the handler can refer the matter for further review to assess if enforcement action against the motor vehicle dealer is warranted. Enforcement action can range from issuing a warning letter to a dealer to revoking the dealer’s registration to operate in Ontario.

However, we found that complaint handlers are not provided with a formal framework or criteria to determine whether a complaint should be referred for enforcement action. Instead, the decision to refer a complaint for enforcement action is left to the discretion of each individual OMVIC complaint handler based on their assessment of the conduct that resulted in the complaint and the registrant's previous conduct history.

We found that in the last five years, OMVIC complaint handlers referred 7% of complaints for enforcement action (see **Figure 21**). We were told that more complaints could be referred for enforcement action, but the process for doing so is time-consuming, making additional referrals difficult given complaint handlers' current workload.

As discussed in **Section 4.4.2**, we reviewed 100 consumer complaint files where OMVIC had been unable to mediate a resolution, and found that in 50 of these complaints the dealer appeared to have breached one or more of the provisions in the acts. Nevertheless, we found that in 40, or 80%, of these 50 complaints, the file was closed without referral for enforcement action. We also found that 38 out of 40 of these motor vehicle dealers had a history of similar consumer complaints in the past. For example, in one complaint, a dealer sold a consumer a vehicle with significant problems that were not disclosed and required over \$4,000 in repairs. This same dealer had a history of numerous OMVIC-mediated complaints relating to vehicle condition and improper safety. In the absence of a formal framework and criteria for referring complaints for enforcement

action, the OMVIC complaint handler responsible chose not to escalate this complaint for enforcement action.

RECOMMENDATION 11

To improve motor vehicle dealer compliance with the requirements of the *Motor Vehicle Dealers Act, 2002*, and to ensure that complaints that warrant enforcement action against motor vehicle dealers are consistently escalated for enforcement action, we recommend that the Ontario Motor Vehicle Industry Council (OMVIC):

- create a clear and specific framework and criteria to be used to determine when a complaint involving a motor vehicle dealer is to be referred for enforcement action; and
- train all complaint handling staff to consistently and accurately apply this framework and criteria to all complaints received and mediated by OMVIC.

OMVIC RESPONSE

OMVIC agrees with the Auditor General's recommendation.

In early 2021, the Consumer Support management team, which handles complaints, recognized that this was an area of weakness and began reviewing the way in which Consumer Support Team members referred files for administrative review. Management is working with team members to create a framework and criteria for referring files for further review. This is an

Figure 21: Complaints Referred for Enforcement Action, 2016–2020

Source of data: The Ontario Motor Vehicle Industry Council

	2016	2017	2018	2019	2020	Total
# of complaints referred for enforcement action	99	71	67	98	50	385
# of complaints handled	967	1,244	1,216	1,165	813	5,405
% of complaints referred for enforcement action	10	6	6	8	6	7

ongoing process that forms a portion of both management's and the team's annual performance goals, and is expected to be completed in the coming months.

In developing the framework, the Consumer Support Team will consider criteria such as the nature of the complaint, any documentation or other evidence in support of the complaint, any possible contraventions of all applicable legislation, as well as the complaint and enforcement history of the dealership.

OMVIC's Consumer Support Team will be directly involved in the development of the framework, which will enhance their understanding of what is expected of them when deciding whether to refer a complaint file for further review. In addition to this, once the framework is completed the team will meet to review the implementation plan. Team management will provide team members with materials such as guidelines for file referrals. Management will also perform internal reviews to ensure the criteria and framework are being applied appropriately and consistently.

4.4.4 OMVIC Has Not Assessed Whether the Resources It Devotes to Consumer Complaints Are Sufficient to Resolve Them

We noted that the number of complaints that OMVIC's complaint handlers are responsible for increased by 20% from 967 in 2016 to 1,165 in 2019. Over this same period, the percentage of complaints that were closed without resolution increased from 47% in 2016 to 59% in 2019. Discussions with complaint handlers identified that the time required to mediate complaints had increased over the last decade, in part due to an increase in the complexity of complaints. We were informed that in 2008, the number of activities undertaken by a complaint handler to mediate a complaint averaged 11—including telephone calls, emails, gathering evidence and preparing letters. Average activities per complaint increased to 45 in 2020. Additional time was spent

undertaking reports such as ownership transfer reports from the Ministry of Transportation and vehicle history reports, and collecting more evidence from the parties involved. Also, as noted in **Section 4.4.3**, complaint handlers we spoke to advised us that the demands of their mediation workload limit the number of complaints they are able to escalate for enforcement action.

Despite these concerns, we noted that OMVIC has not assessed complaint workloads to determine whether complaint handlers are sufficiently resourced to fulfill and execute all their responsibilities and effectively resolve complaints.

RECOMMENDATION 12

So that consumer complaints are effectively mediated and that complaints that warrant enforcement action against motor vehicle dealers are escalated for enforcement, we recommend that the Ontario Motor Vehicle Industry Council (OMVIC):

- conduct a workload study for its complaint handling staff; and
- use the results of this study to ensure that OMVIC's consumer support team is sufficiently staffed.

OMVIC RESPONSE

OMVIC agrees with the Auditor General's recommendation.

OMVIC's Consumer Support Team, which is responsible for handling complaints, will review the current workload for all its team members. Currently there is no manager for the department that handles complaints; OMVIC will consider putting a manager in place to increase efficiency, effectiveness and accountability. It is expected that additional front-line staff will be required. The workload review will examine the work completed by the different team members along with the increased complexity of the work to determine how many staff members may be

required to support the work of the Consumer Support Team in order to implement the Auditor General's recommendations.

4.5 Compensation Fund

4.5.1 The Compensation Fund Does Not Always Protect Consumers When Registered Motor Vehicle Dealers Breach the Law

We found that the Compensation Fund protects consumers only in certain circumstances and does not always compensate vehicle buyers who suffer a financial loss as a result of a motor vehicle purchase, even if the registered motor vehicle dealer they purchased the vehicle from has breached one or more provisions in the *Motor Vehicle Dealers Act, 2002*.

We noted that to be eligible to receive compensation from the Compensation Fund, consumers who suffer financial losses must meet one of 11 specific criteria set out in the *Motor Vehicle Dealers Act, 2002* (see **Section 2.8, Figure 16**).

However, we found that the criteria specified in the *Motor Vehicle Dealers Act, 2002* do not capture all possible breaches of the acts in a vehicle purchase that can result in harm to consumers. We also noted that the Board of Trustees that manages the Fund and makes claim decisions does not have the ability to use its discretion to pay out claims that do not fit the specific criteria specified in the *Motor Vehicle Dealers Act, 2002*. Therefore, consumers who have suffered losses that do not meet the Fund's specific criteria are often advised by OMVIC to seek compensation through the provincial courts.

Figure 22 provides examples of circumstances where motor vehicle dealers have breached provisions under the acts that do not meet the Compensation Fund's eligibility criteria.

RECOMMENDATION 13

To protect consumers who purchase a motor vehicle from a registered motor vehicle dealer that does not meet all its obligations under the *Motor Vehicle Dealers Act, 2002* or relevant sections of the *Consumer Protection Act, 2002*, we recommend that the Ontario Motor Vehicle Industry Council (OMVIC) work with the Compensation Fund's Board of Trustees to:

- review consumer complaints that were not eligible for a claim against the Compensation Fund to develop additional eligibility criteria; and
- propose to the Ministry of Government and Consumer Services to include in the *Motor Vehicle Dealers Act, 2002* additional criteria for eligibility for compensation, and to also allow the Compensation Fund's Board of Trustees to use their discretion to compensate consumers for claims involving the violation of the acts that do not fit into a specific eligibility criterion.

OMVIC RESPONSE

OMVIC agrees with the Auditor General's recommendation. OMVIC will review the consumer complaints that were identified as ineligible for compensation and will consider whether additional eligibility criteria are required, in consultation with the Compensation Fund's Board of Trustees. Upon completion of the review, OMVIC, in consultation with the Ministry of Government and Consumer Services, will assess additional criteria for eligibility for compensation, including a discretionary provision to ensure more complete eligibility.

MINISTRY RESPONSE

The Ministry of Government and Consumer Services (Ministry) will collaborate with the Ontario

Figure 22: Examples of Violations That Are Not Eligible for the Compensation Fund

Prepared by the Office of the Auditor General of Ontario

Violation	Description
Dealer charges more than the advertised price	Under the current <i>Motor Vehicle Dealers Act, 2002 (Act)</i> , motor vehicle dealers cannot charge more than the advertised price for both used and new vehicles. The advertised price must include all fees and charges the dealer intends to collect, except for licensing fees and HST. However, if a consumer is charged more than the advertised price by a dealer, the consumer is not eligible to make a claim for the difference to the Compensation Fund. For example, in 2019, OMVIC received a consumer complaint about a dealership that charged the consumer \$610 over and above the advertised selling price of \$27,990 for a 2015 passenger vehicle. OMVIC issued a warning letter to the motor vehicle dealer after it investigated the complaint. However, the consumer was still not eligible to receive compensation from the Compensation Fund.
Dealer fails to disclose vehicle has been written off by an insurance company	Under the Act, motor vehicle dealers are required to disclose whether or not a vehicle they sell was previously written off by the insurance company. Even though dealers are obligated to disclose this information by law, consumers are not eligible to make a claim to the Compensation Fund when dealers fail to do so.
Dealer fails to disclose a substantial accident	If a motor vehicle dealer does not disclose an accident, consumers cannot automatically make a claim to the Compensation Fund. Consumers can only make such a claim to the Compensation Fund in cases where OMVIC has revoked the particular dealer's registration, or where the consumer has first obtained a judgement against the motor vehicle dealer for their loss in a court of law. For example, in one case, a consumer received compensation in December 2019 for a complaint that they made in August 2017, because the consumer's claim was only eligible for compensation after the dealer's registration had been revoked for reasons related to the incident. Although OMVIC had obtained evidence shortly after receiving the complaint that the dealer had failed to disclose extensive damages to the vehicle stemming from an accident, they could not compensate the consumer until December 2019. The vehicle was sold for \$5,650 but the damages from the accident totalled \$7,923.
Dealer fails to pay off existing loan balances on a trade-in vehicle	It is common for consumers to trade in their previous vehicle to a motor vehicle dealer when they purchase a new vehicle from the dealer. Often, the traded vehicle carries a loan balance. Typically, motor vehicle dealers agree to pay off the outstanding loan balance on the traded vehicle, and include that payment as part of the loan amount on the new vehicle. However, we found that when motor vehicle dealers fail to pay off the outstanding loan balances on traded vehicles, the payments remain on consumers' credit history and they are responsible for making these payments. In this situation, a consumer cannot make a claim to the Compensation Fund to recover unpaid amounts by the motor vehicle dealer on an outstanding loan balance on a vehicle. As such, the consumer is often left with making payments to both the new vehicle, and the traded vehicle that they no longer possess. The only time the consumer can make a claim to the Compensation Fund is if OMVIC revokes the registration of the motor vehicle dealer for not making the loan payment or after obtaining a court order that states they are eligible for compensation. In either case, a consumer would have to wait months to resolve their issue.
Dealer fails to disclose need for significant vehicle repairs	Under the Act, a motor vehicle dealer has to disclose at the time of sale if any of the key components of the vehicle such as the engine, transmission, electrical system or fuel operating system are in need of repair. If a motor vehicle dealer does not disclose this and later it is found that the motor vehicle dealer knew that the repairs were required, the consumer has no recourse through the Compensation Fund. This is of significant importance when purchasing a used vehicle since many used vehicles do not carry any manufacturer warranty. As soon as the vehicle is driven off of a dealership's lot, the motor vehicle dealer is not liable for any repair costs.

Motor Vehicle Industry Council (OMVIC) to develop options for expanding eligibility under the Motor Vehicle Dealers Compensation Fund (the Fund).

This recommendation would require developing potential regulatory proposals for the government's consideration, which would involve consultations with the public and the motor vehicle sector to assess impacts.

The Ministry will develop proposals for the government's consideration, which will be informed by the Auditor General's recommendations. Should the government choose to move forward with this recommendation, changes would be implemented accordingly.

4.5.2 Consumers Who Purchase Vehicles from Illegal Dealers Are Not Protected by the Compensation Fund

Although OMVIC's regulatory responsibility includes investigating and laying charges against unregistered motor vehicle dealers that are operating illegally, consumers who purchase a vehicle from such an illegal dealer and suffer a financial loss are not eligible under the *Motor Vehicle Dealers Act, 2002* and its regulations to make a claim to the Compensation Fund. Illegal dealers often pose as private sellers. In some cases, they sell vehicles that may be stolen, damaged, rebuilt, odometer-tampered or have liens against them.

We also found that even if OMVIC investigates and later confirms that consumers were intentionally misled by an illegal dealer, the consumers are still not eligible for compensation. For example, in 2017 a consumer submitted a claim for approximately \$1,500 to the Compensation Fund relating to the repair of a non-functioning airbag on a vehicle they had bought from a motor vehicle dealer that they were unaware was not registered by OMVIC. The Compensation Fund Board denied the claim even though OMVIC's own investigation confirmed that the person who sold the vehicle had a history of illegally selling many

vehicles, including vehicles with missing airbags. In fact, OMVIC later successfully prosecuted the illegal dealer on 36 counts of illegally selling vehicles, many without airbags. This person was also fined \$40,000 and sentenced to two years of probation by Ontario's courts. Nevertheless, the affected consumers were not eligible to claim compensation from the Compensation Fund.

In comparison, Tarion, an administrative authority responsible for ensuring home builders honour their warranties on new homes, compensates new home buyers when builders fail to fulfill their mandatory warranty obligations even if the builder was an illegal builder. It is illegal to build and sell a home in Ontario unless the builder is licensed by the Home Construction Regulatory Authority (HCRA) and the home has been enrolled with Tarion.

RECOMMENDATION 14

To protect consumers who purchase a motor vehicle from an illegal motor vehicle dealer, we recommend that the Ontario Motor Vehicle Industry Council (OMVIC) work with the Compensation Fund's Board of Trustees and the Ministry of Government and Consumer Services to allow these consumers to make a claim to the Compensation Fund where OMVIC's own investigation confirms that consumers were intentionally misled by an illegal motor vehicle dealer.

OMVIC RESPONSE

OMVIC appreciates the Auditor General's recommendation. OMVIC will work with the Compensation Fund's Board of Trustees and the Ministry of Government and Consumer Services to consider and review the implications of such a change to the operation of the Compensation Fund, to OMVIC, to registrants and to consumers in Ontario. As legislative and regulatory changes are required, OMVIC will support the Ministry of Government and Consumer Services as it develops options for the government's consideration.

MINISTRY RESPONSE

The Ministry of Government and Consumer Services (Ministry) will collaborate with the Ontario Motor Vehicle Industry Council (OMVIC) to develop options for expanding eligibility under the Motor Vehicle Dealers Compensation Fund (the Fund).

This recommendation would require developing potential legislative and regulatory proposals for the government's consideration, which would involve consultations with the public and the motor vehicle sector, including current registrants, to assess impacts.

The Ministry will develop proposals for the government's consideration, which will be informed by the Auditor General's recommendations. Should the government choose to move forward with this recommendation, changes would be implemented accordingly.

4.6 Consumer Awareness and Protection

4.6.1 Over 70% of Ontarians Surveyed Were Not Aware of OMVIC and Its Role

Although OMVIC has increased its annual consumer awareness spending by over 60% in the past five years, most Ontarians OMVIC has surveyed still indicate that they are not aware of OMVIC or OMVIC's role in regulating motor vehicle dealers and salespersons and protecting consumers in Ontario.

In 2015, OMVIC decided to increase its spending on consumer awareness to better inform Ontarians about its role, available consumer protections such as all-in-price advertising, and protections that are not available to consumers such as the lack of a cooling-off period for vehicle purchases. Since then, OMVIC has increased annual spending by over 60% from \$1.2 million in 2015 to nearly \$2 million in 2019. However, OMVIC's consumer surveys (which include an even split between individuals who have recently purchased a vehicle and those who have not)

since 2015 indicate that consumer awareness still remains a challenge. For example, for surveys done between 2016 and 2020:

- 73% of Ontarians surveyed indicated that they were not aware of OMVIC and the protections it offered to vehicle purchasers;
- 85% of Ontarians surveyed did not know that there is no cooling-off period when purchasing a vehicle; and
- 60% of Ontarians surveyed did not know that motor vehicle dealers should not charge more than the advertised price for a vehicle.

We found the majority of OMVIC's consumer awareness spending was on the risks of illegal motor vehicle dealers and all-in-price advertising laws. There were almost no targeted campaigns about the lack of a cooling-off period when purchasing a vehicle and educating consumers on protections available to them such as the Compensation Fund and OMVIC's complaint handling service. In addition, OMVIC has done little to reach prospective buyers who visit car dealerships and are therefore most likely to need and use OMVIC's services. OMVIC's complaint data shows that only 14% of consumers who have contacted OMVIC's consumer support team had heard of OMVIC through their car dealership.

In comparison, the Tarion Warranty Corporation (Tarion), a delegated authority that backstops builder warranties on new construction homes, reaches homebuyers directly by requiring all licensed builders to provide homebuyers with an information package that details a builder's warranty obligations and the services Tarion has available for homebuyers if the builder does not honour their warranty at the time the purchase and sale agreement is signed. Tarion asks homeowners if they were provided with the information package by their builder when they register online with Tarion.

RECOMMENDATION 15

So that prospective motor vehicle buyers are aware of the Ontario Motor Vehicle Industry

Council's (OMVIC's) role and the services it provides to protect consumers, we recommend that OMVIC work with the Ministry of Government and Consumer Services to:

- develop an information package for vehicle purchasers that outlines OMVIC's role and consumer protections available to them which can be distributed to motor vehicle dealers;
- require motor vehicle dealers to provide vehicle purchasers with the information package at the time of purchasing a vehicle; and
- develop, implement and monitor the success of a marketing plan to increase consumer awareness about consumer protection rights in place under the *Motor Vehicle Dealers Act, 2002* and the *Consumer Protection Act, 2002*, as well as OMVIC's role and its services available to the public.

OMVIC RESPONSE

OMVIC accepts this recommendation and will work with the Ministry of Government and Consumer Services to propose regulatory changes for the government's consideration to require an information package to be provided to consumers by motor vehicle dealers.

In collaboration with its contracted marketing agency, OMVIC launched a new campaign in September 2021 that utilizes a fresh and more targeted approach to engaging consumers across new media. In addition, as of July 2021, OMVIC has been working on the development of a marketing plan that will complement OMVIC's annual consumer awareness campaigns. It includes new strategies to guide the efforts of OMVIC employees to enhance awareness of car-buying rights that are still not generally known, as well as OMVIC's role and its services available to the public. The marketing plan will include a focus on identified high-risk issues for consumers and areas of high non-compliance among dealers. It will also include key performance indicators to track and trend our progress toward our marketing objectives.

MINISTRY RESPONSE

The Ministry of Government and Consumer Services (Ministry) agrees that consumer awareness is important and that prospective consumers of motor vehicles would benefit from more information about the Ontario Motor Vehicle Industry Council (OMVIC) and the protections for consumers under the *Motor Vehicle Dealers Act, 2002*. The Ministry will collaborate with OMVIC as it develops an information package for motor vehicle purchasers.

The Ministry will develop options for requiring dealers to provide the information package to consumers. This recommendation would require developing potential legislative or regulatory proposals for the government's consideration, which would involve consultations with the public and the motor vehicle sector to assess impacts. Should the government choose to move forward with this recommendation, changes would be implemented accordingly.

4.6.2 Most Consumers Are Not Aware They Have No Cooling-Off Period When Purchasing or Leasing a Vehicle in Ontario

In Ontario, consumers do not have a cooling-off period when they purchase or lease a vehicle from a registered motor vehicle dealer. A cooling-off period is a period of time following a purchase or lease when a purchaser is allowed to cancel the contract for any reason and receive a refund.

Vehicle purchases and leases are often large financial commitments for consumers. Without a cooling-off period, a consumer is at risk of entering into a financial commitment that they cannot afford or may not understand. In contrast, under the *Condominium Act, 1998*, purchasers of condominiums have a 10-day cooling-off period in which they may rescind their agreement of purchase and sale. In Ontario, the vehicle purchase or lease contract becomes final once signed, and cannot be cancelled at will without financial consequences. The only time consumers

are permitted to cancel a vehicle purchase contract without any financial penalties is when a motor vehicle dealer misrepresents the vehicle at the time of sale.

Misrepresentation can include inaccurate representation of the odometer reading, make, model, year and previous use of the vehicle. We found that even when a motor vehicle dealer misrepresents a vehicle at the time of sale, consumers only have 90 days from the date of receiving the motor vehicle to cancel the contract. If a consumer finds evidence of misrepresentation after 90 days from the date of delivery of the vehicle, there is no recourse under the *Motor Vehicle Dealers Act, 2002*. Consumers may have additional recourse under the *Consumer Protection Act, 2002* if a motor vehicle dealer misrepresents a vehicle. When a motor vehicle dealer makes a false, misleading or deceptive representation about a vehicle at the time of sale, consumers have only one year from the date of entering the contract to cancel the contract.

According to OMVIC's 2020 survey of consumers, 89% of consumers surveyed who had recently purchased or leased a vehicle were unaware that there was no cooling-off period in Ontario. In addition, we found that nearly 1,000, or 18%, of the approximately 5,400 complaints mediated by OMVIC in the last five years (2016–20) related to disputes consumers had with motor vehicle dealers over contract cancellations. Our review of complaints (described in **Section 4.4.1**) included a number of such instances. In one instance, we found that a consumer called the dealership within one hour of leaving the dealership to cancel his lease contract because a job offer was cancelled due to the extension of the COVID-19 measures. The dealership refused to cancel the contract and to return the deposit of \$1,500.

In our review of practices in other Canadian provinces, we found that Quebec allows consumers who finance or lease a vehicle a two-day cooling off period during which they can cancel their financed or leased vehicle and receive a refund. Similarly, British Columbia provides consumers who have leased a vehicle with a one-day cooling-off period during which they

can cancel their lease and receive a refund for any fees paid.

We noted that in December 2018, OMVIC made a recommendation to the Ministry to revise regulations under the *Motor Vehicle Dealers Act, 2002* to allow for a cooling-off period for consumers who have purchased a vehicle online. To date no regulatory changes have been made to introduce such a cooling-off period.

RECOMMENDATION 16

So that consumers in Ontario have a reasonable amount of time to reflect on their vehicle purchase or lease, and be able to cancel their vehicle transaction agreement without penalty, we recommend that the Ministry of Government and Consumer Services make regulatory changes to put in place a cooling-off period for all vehicle transactions in Ontario, citing best-practice consumer protections in place in other Canadian provinces.

OMVIC RESPONSE

OMVIC agrees with the Auditor General's recommendation. OMVIC agrees to work with the Ministry of Government and Consumer Services as required on options for the government's consideration to implement a cooling-off period for all vehicle transactions in Ontario between consumers and dealers.

MINISTRY RESPONSE

The Ministry of Government and Consumer Services (Ministry) will review best practices in other jurisdictions and develop options for the government's consideration. This recommendation would require developing potential legislative or regulatory proposals, which would involve consultations with the public and motor vehicle sector to assess impacts.

The Ministry will develop proposals for the government's consideration, which will be informed by the Auditor General's recommendations.

Should the government choose to move forward with this recommendation, changes would be implemented accordingly.

4.6.3 Consumers May Not Get the Lowest Interest Rate When Financing Is Arranged by Dealers

The majority of consumers who purchase a vehicle borrow money to make the purchase, and the financing arrangement is almost always done through the dealer that the vehicle is purchased from.

When a consumer requires financing to purchase a vehicle, motor vehicle dealers may submit the consumer's loan application to multiple financial institutions and receive multiple offers with different interest rates. Motor vehicle dealers are paid a fee by the lending financial institution for arranging the financing. However, motor vehicle dealers are not required to show consumers all the financing offers they receive from lenders.

We found that the current law in Ontario allows motor vehicle dealers to arrange vehicle financing with an interest rate as high as 60% annually. Further, we also noted that the interest rate can vary depending on the dealership. Some dealerships may work with only one or a limited number of financial institutions, and therefore the dealer would have access only to interest rates offered by those lenders.

We found that OMVIC has done little to educate consumers that motor vehicle dealers may not always arrange financing from the lender that provides the lowest interest rate and that the onus is on the consumer to shop around for the lowest rate.

RECOMMENDATION 17

So that consumers potentially receive a more competitive interest rate based on their credit score, we recommend that the Ontario Motor Vehicle Industry Council (OMVIC):

- take steps to increase public and consumer awareness regarding dealer responsibilities

and consumer risks with regard to interest rates;

- include a step in its compliance inspections to verify whether motor vehicle dealers are disclosing to the consumer all the financing offers received; and
- propose regulatory changes to the Ministry of Government and Consumer Services that would require motor vehicle dealers to disclose to consumers all the financing options the dealer has received in response to the consumer's credit application.

OMVIC RESPONSE

OMVIC agrees with the Auditor General's recommendation and will ensure that this issue is incorporated in the annual marketing plan on an ongoing basis to ensure an increased awareness of dealer responsibilities and consumer risks regarding interest rates. The marketing plan will include key performance indicators to track and trend our progress toward marketing objectives.

OMVIC will prepare a submission for proposed regulatory changes for consideration by the Ministry of Government and Consumer Services that will require dealers to disclose to consumers all the financing options received by the dealer for the consumer.

If regulatory changes are implemented that require dealers to disclose all financing options to consumers, OMVIC would incorporate a new step into its inspection process to verify dealer disclosure of all financing offers. In addition, the Dealer Support Team would work with the Communications Team to expand efforts to better educate consumers about vehicle financing.

MINISTRY RESPONSE

The Ministry of Government and Consumer Services (Ministry) agrees that consumers of motor vehicles would benefit from greater awareness of the financing options available when buying or leasing a motor vehicle. The Ministry will

collaborate with the Ontario Motor Vehicle Industry Council (OMVIC) to develop options to require motor vehicle dealers to disclose to consumers all the financing options the dealer has received in response to the consumer's credit application.

This recommendation would require developing potential regulatory proposals for the government's consideration, which would involve consultations with the public and the motor vehicle sector to assess impacts.

The Ministry will develop proposals for the government's consideration, which will be informed by the Auditor General's recommendations. Should the government choose to move forward with this recommendation, changes would be implemented accordingly.

4.6.4 Consumer Awareness and Dealer Compliance with All-in-Price Advertising Continues to Be Low More than 10 Years After Law Was Amended

We found that some motor vehicle dealers continue to charge consumers more than the price advertised for a vehicle, even though the *Motor Vehicle Dealers Act, 2002* was amended to prohibit such practices more than 10 years ago. We also found that consumer awareness of the all-in-price advertising requirement continues to be low, possibly contributing to non-compliance by motor vehicle dealers.

We noted that OMVIC's mystery shopper program (described in **Section 2.5.1**) identified that 41%, or 25 of 61, of the motor vehicle dealers visited in 2020 failed to comply with the all-in-price advertising requirement and attempted to charge more than the advertised price when OMVIC staff posed as consumers. This included an instance where a dealer attempted to charge a \$505 administration fee in addition to the advertised selling price of \$12,500 for a used vehicle.

Changes to the *Motor Vehicle Dealers Act, 2002* came into effect in 2010 that required the advertised price of both new and used vehicles to include all fees

Figure 23: Examples of Costs Required by Law to Be Included in a Vehicle's Advertised Price

Prepared by the Office of the Auditor General of Ontario

- ✓ Freight costs
- ✓ Pre-delivery inspection costs
- ✓ Administration fees
- ✓ OMVIC fee
- ✓ Government levies (e.g., air tax)
- ✓ Safety test costs
- ✓ Products and services pre-installed on a vehicle (e.g., security or theft deterrent products, nitrogen/tire protection)

and charges that the dealer intends to collect, except for HST and licensing (the cost incurred to register the vehicle and obtain the licence plate from the Ministry of Transportation). According to the *Motor Vehicle Dealers Act, 2002*, a consumer should never be charged more than the dealer-advertised price. **Figure 23** summarizes the typical costs that an advertised vehicle price should include by law in Ontario.

OMVIC's 2020 survey of consumers found that 76% of 2,000 Ontarians surveyed indicated that they either had never heard of the all-in-price requirement or had heard of it but did not understand what it means.

RECOMMENDATION 18

So that motor vehicle dealers comply with the requirements of the *Motor Vehicle Dealers Act, 2002* to include all the fees and charges in the advertised price of a vehicle, we recommend that the Ontario Motor Vehicle Industry Council:

- take progressive enforcement action against motor vehicle dealers who do not comply with the requirement; and
- increase its efforts to educate consumers about the all-in-price advertising requirement in Ontario.

OMVIC RESPONSE

OMVIC agrees with the Auditor General's recommendation and supports the need for progressive enforcement action in relation to all-in-price advertising.

OMVIC's plan is to expand the mystery shopping program to cover more dealerships on an annual basis. OMVIC will take appropriate/progressive enforcement action when non-compliance is observed and will send "pass" letters when dealers are found to be compliant. OMVIC will consider the feasibility of implementing a new process to identify dealers for inclusion in the mystery shopping program through the complaints process. OMVIC will review the scope of its dealer inspection program and incorporate a new step to examine all-in-price advertising. OMVIC will also develop better educational supports for dealers about all-in-pricing advertising requirements.

Educating consumers about the all-in-price advertising requirement will also be incorporated into OMVIC's annual marketing plan on an ongoing basis to enhance our existing efforts. The marketing plan will include key performance indicators to track and trend our progress toward our marketing objectives.

4.7 OMVIC Operations

4.7.1 OMVIC Has Been Accumulating Large Surpluses Rather than Using Increased Vehicle Transaction Fees to Enhance Consumer Protection as It Proposed to the Ministry in 2015

In 2015, OMVIC provided a business case to the Ministry indicating its intent to double its vehicle transaction fee from \$5 to \$10 in order use the new funds to improve public awareness and increase the resources devoted to its operations, to enhance their effectiveness and increase enforcement actions.

As a result of fee increases introduced in 2015, OMVIC's total revenues rose substantially from

\$13.2 million in 2015 to \$21.3 million in 2020—an increase of over 60%. During this time, total operating expenditures increased by just 28%, resulting in OMVIC accumulating surpluses each year since the increase was introduced. By 2020, OMVIC had accumulated \$23.6 million in surpluses and reserves compared to just \$6.3 million in 2015—a 275% increase. The administrative agreement with the Minister requires that OMVIC set fees to operate on a cost-recovery basis. Although the increase to the vehicle transaction fee was introduced to improve public awareness, increase the resources devoted to its operations and increase enforcement, we found that the human resources devoted to its operations and enforcement work had not increased significantly. We also found that:

- Although the number of complaint handlers OMVIC employed remained relatively constant, the number of complaints they received with existing resources increased by 24% in the last five years.
- The number of inspections of motor vehicle dealers to confirm whether they are complying with requirements in the acts declined from 2,287 in 2016 to 1,980 in 2019—a decrease of 13%.
- The number of new motor vehicle dealer applications for registration increased from 646 in 2016 to 802 in 2019—an increase of 24%. Over this same period, there was no increase in staff devoted to processing these applications, and 76% of applications were not processed within OMVIC's target of four to six weeks.
- 73% of Ontarians surveyed by OMVIC between 2016 and 2020 continued to indicate that they were not aware of OMVIC and the protections it offers to vehicle purchasers.

We found that OMVIC's complaint, inspection and registration departments have made requests to senior management to increase their staffing levels that were not approved. In the meantime, budget surpluses have continued to accumulate while operational weaknesses have persisted.

RECOMMENDATION 19

To improve the effectiveness of the Ontario Motor Vehicle Industry Council's (OMVIC's) operations in order to provide better protection to consumers and increase OMVIC's responsiveness in processing dealer registrations and taking enforcement action, we recommend that OMVIC:

- review the workload of its key operating departments; and
- put in place a plan to improve operations in the areas of consumer protection and responsiveness to consumers and dealer registrations and enforcement action.

OMVIC RESPONSE

OMVIC agrees with the Auditor General's recommendation regarding improvements to its consumer protection operations in the areas of enforcement, consumer support and registration. OMVIC will complete a workload study in 2022 for the Inspection Team.

OMVIC will also undertake workload studies of the Registration Department and the Consumer Support Department, which handles complaints, to determine the optimum staffing levels for these departments to address dealer registration and consumer complaints in a timely manner.

OMVIC will also develop a strategy to increase the effectiveness and efficiency of its enforcement, consumer support and registration departments. The strategy will include the development of operational policies and procedures, new functionality in OMVIC's new information system to better manage workflow, increased oversight and accountability mechanisms, improved reporting structures, and additional training for front-line staff.

Overall, the aim of the strategy will be to develop better controls to achieve a more consistent outcome from the operational teams. These measures are intended to address the types of concerns identified during this audit and improve OMVIC's ability to protect consumers.

4.7.2 OMVIC Does Not Have the Legal Authority to Transfer Surplus Funds to its Compensation Fund as Needed to Address the Compensation Fund's Continuing Financial Sustainability

Although OMVIC has seen its accumulated surplus and reserves increase by 275% between 2015 and 2020 (described in **Section 4.7.1**), OMVIC does not have the legal authority under the *Motor Vehicle Dealers Act, 2002* to allow it to use surplus funds as needed to fund the Compensation Fund, whose sustainability has come into question in recent years.

In 2018, the Compensation Fund Board engaged a third party to conduct an actuarial study of the Fund. The study questioned the Fund's ability to sustain itself beyond the next eight years. In response, OMVIC ended its long-standing practice of charging an administrative fee to the Fund to recover salaries, rent and other expenses incurred to manage the Fund. OMVIC also made a one-time payment of \$3.3 million to the Fund in 2019 to refund all administrative costs it had collected in the past (1998–2017). **Figure 24** shows the value of the Fund and illustrates the impact of this one-time payment on the Fund's balance.

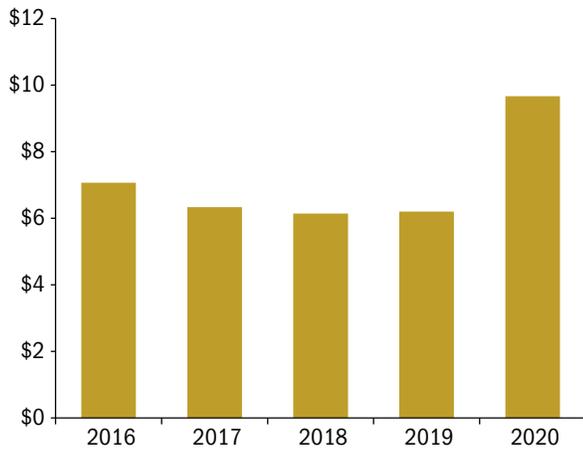
Although this change temporarily addressed the actuary's concerns, we noted that OMVIC does not have the legal authority to transfer money from its accumulated surplus and reserves, which have increased by 275% since 2015, to the Fund.

Regulations under the *Motor Vehicle Dealers Act, 2002* allow the Compensation Fund Board to cover a shortfall of the Fund if the Fund's balance is expected to drop below \$3 million. However, to do so, the regulations under the *Motor Vehicle Dealers Act, 2002* require the Compensation Fund Board to increase the fee that it currently charges registered motor vehicle dealers. Since the Fund's inception in 1986, it has been funded through the one-time fee paid by motor vehicle dealers at the time of their initial registration.

We found that there is no policy or practice to periodically engage a third-party actuarial expert to review the Compensation Fund to determine future

Figure 24: Value of Compensation Fund, 2016–2020 (\$ million)

Source of data: The Ontario Motor Vehicle Industry Council



financial exposure and if the Fund is sufficient to cover future requirements. In the last 10 years, only one actuarial review of the Fund has been completed—the one conducted in 2018.

In comparison, Tarion, an administrative authority responsible for ensuring home builders honour their warranties on new homes, engages an actuarial expert on an annual basis to review a fund it maintains to provide financial compensation to homeowners whose builders fail to honour their warranty. The requirement for this annual review is also specified in the accountability agreement between the Ministry of Government and Consumer Services and Tarion.

We also noted that, at Tarion, excess revenues over expenses after any capital investments are automatically transferred into its fund at the end of each fiscal year.

RECOMMENDATION 20

So that the Ontario Motor Vehicle Industry Council (OMVIC) can contribute directly to the Compensation Fund (Fund) to cover future consumer claims, if needed, we recommend that OMVIC, in co-ordination with the Compensation Fund's Board of Trustees:

- work with the Ministry of Government and Consumer Services to propose an update to the government on regulations under the *Motor Vehicle Dealers Act, 2002* that would permit OMVIC to transfer funding from its general surplus to the Fund; and
- establish a policy to periodically review the continuing financial sufficiency of the Fund.

OMVIC RESPONSE

OMVIC agrees with the Auditor General's recommendation. In collaboration with the Compensation Fund's Board of Trustees, OMVIC agrees to review the existing regulations and will develop a regulatory change proposal for consideration by the Ministry of Government and Consumer Services to permit OMVIC to transfer funding from its general surplus to the Compensation Fund.

Further, OMVIC will work with the Compensation Fund's Board of Trustees and the OMVIC Board of Directors to develop a policy to engage actuarial services every three years (or as needed), to ensure the continuing financial sustainability of the Compensation Fund.

MINISTRY RESPONSE

The administrative authority model is based on the principle of cost recovery, and issues respecting fiscal surpluses must be carefully considered within this context. The Ministry of Government and Consumer Services (Ministry) will need to assess the feasibility of an option allowing the Ontario Motor Vehicle Industry Council (OMVIC) to transfer surplus funds to the Motor Vehicle Dealers Compensation Fund (Fund). The assessment will include compliance with the funding principles applicable to OMVIC and the Fund.

Based on this assessment, the Ministry may need to develop potential legislative and regulatory amendments for the government's consideration, which would involve consultations

with the public and the motor vehicle sector to assess impacts. The Ministry will develop proposals for the government's consideration, which will be informed by the Auditor General's recommendations.

The Ministry will also work with OMVIC to update the administrative agreement between the Minister and OMVIC. Through the agreement, the Ministry would establish a future requirement for OMVIC to implement a policy to conduct actuarial studies at regular time intervals, and to share the results with the Ministry.

4.7.3 Registered Dealers Do Not Always Report All Vehicle Transactions to OMVIC, Resulting in Lost Revenue for OMVIC

We found that the number of vehicle transactions reported by motor vehicle dealers to OMVIC each year is not always accurate and results in motor vehicle dealers paying less, and OMVIC collecting fewer fees than required. Registered motor vehicle dealers are required to remit a \$10 transaction fee to OMVIC for every vehicle sold, leased or exported to consumers. This transaction fee is often charged to vehicle purchasers. Each year, motor vehicle dealers self-report the number of their vehicle transactions to OMVIC, which uses this number to determine the amount of transaction fees owed by each registered motor vehicle dealer to renew their registration.

However, we found that OMVIC does not verify the accuracy of all reported vehicle transactions; instead, it relies primarily on self-reported numbers from dealers. For example, OMVIC does not have an information-sharing protocol in place with the Ministry of Transportation (MTO) to compare all reported vehicle transactions to the number of vehicles registered with MTO. When a vehicle is sold or leased, the *Ontario Highway Traffic Act* requires that a motor vehicle dealer register the vehicle with MTO.

We reviewed MTO vehicle registration records for a sample of 670 motor vehicle dealers and compared the number of vehicles registered with MTO that were sold or leased to consumers with the number of vehicle transactions reported to OMVIC. We found that

25%, or 170 of the dealers in our sample, underreported almost 9,000 vehicle transactions in 2019, and as a result paid about \$90,000 less in transaction fees to OMVIC than required.

At the time of a compliance inspection (described in **Section 2.5.1**), OMVIC has access to dealers' financial records. However, we found that OMVIC's inspection process does not include checking whether reported transactions agree with a dealer's financial records. As well, OMVIC does not check whether information it collects matches MTO registration information.

RECOMMENDATION 21

To confirm that motor vehicle dealers remit complete fees for each motor vehicle transaction to the Ontario Motor Vehicle Industry Council (OMVIC), and that OMVIC collects those complete fees, we recommend that OMVIC:

- work with the Ministry of Government and Consumer Services to put in place an information-sharing agreement with the Ministry of Transportation (MTO) to obtain motor vehicle registration records;
- use the data obtained from MTO to verify the accuracy of vehicle transactions reported by individual motor vehicle dealers;
- include a step in its motor vehicle dealer inspection process to compare the number of vehicle transactions self-reported by a dealer to the dealer's financial records; and
- take steps to collect unpaid fees from motor vehicle dealers found to have underreported vehicle transactions.

OMVIC RESPONSE

OMVIC agrees with the Auditor General's recommendation. OMVIC will work with the Ministry of Government and Consumer Services to facilitate the development and execution of an information-sharing agreement with the Ministry of Transportation in order to obtain motor vehicle records related to dealer transactions.

If an information-sharing agreement with MTO is developed, OMVIC will create a plan to ensure the accuracy of vehicle transactions reported by individual motor vehicle dealers.

OMVIC will review the scope of its dealer inspection program and incorporate a new step to compare the number of vehicle transactions self-reported by a dealer to the dealer's financial records.

OMVIC will also take steps to collect unpaid fees from motor vehicle dealers that have under-reported vehicle transactions.

MINISTRY RESPONSE

The Ministry of Government and Consumer Services welcomes the opportunity to facilitate a dialogue on a potential information-sharing agreement between the Ministry of Transportation and the Ontario Motor Vehicle Industry Council.

MINISTRY OF TRANSPORTATION RESPONSE

The Ministry of Transportation will work collaboratively with the Ministry of Government and Consumer Services and the Ontario Motor Vehicle Industry Council to explore a potential data sharing agreement.

4.7.4 Dealers Are Not Required to Report Large Cash Transactions to the Federal Agency That Monitors for Money Laundering

A 2018 report commissioned by the Attorney General of British Columbia identified that organized crime uses the automobile market to launder money in the province, at times making use of motor vehicle dealerships.

The report noted that individuals can bring large amounts of cash to a motor vehicle dealer to purchase vehicles and that vehicles can act as a high-value

alternative to cash. In addition, the report noted that vehicles can be exchanged between dealers and across borders to pay for contraband. Motor vehicle dealers are not required to report cash transactions over a certain threshold to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). In contrast, entities such as casinos, financial institutions, life insurance companies, money service businesses and others are required to report cash transactions or suspicious transactions exceeding \$10,000 to FINTRAC, a federal agency that analyzes financial transactions reported to it to determine whether there are reasonable grounds to suspect that the information is relevant to the investigation or prosecution of money laundering or terrorist financing.

To determine whether motor vehicle dealers in Ontario are willing to accept cash (in the form of physical bills) in amounts larger than \$10,000 for a vehicle, we visited 15 motor vehicle dealerships including franchise dealerships, used car dealerships and luxury car dealerships as customers. We found that 10 of the 15 motor vehicle dealers we visited were willing to accept cash exceeding \$10,000 as a form of payment. These 10 dealers were willing to accept cash payments in amounts ranging from \$15,000 to as high as \$45,000.

In our review of OMVIC Board minutes, we found that money laundering through motor vehicle dealers has not been an area of discussion in the last five years. OMVIC told us that it does not consider investigating suspicions of money laundering as part of its mandate or authority, and would refer these matters, if brought to its attention, to law enforcement agencies. In addition, we noted that the scope of OMVIC's inspections of motor vehicle dealers is limited to verifying compliance with the *Motor Vehicle Dealers Act, 2002* and the *Consumer Protection Act, 2002*, which do not specifically identify money laundering.

RECOMMENDATION 22

To identify and reduce the risk of money laundering activity through motor vehicle dealers, we recommend that the Ontario Motor Vehicle Industry Council and the Ministry of Government and Consumer Services work with their counterparts in the federal government to introduce a requirement for motor vehicle dealers to report cash transactions over a certain threshold to the Financial Transactions and Reports Analysis Centre of Canada.

OMVIC RESPONSE

OMVIC agrees with the Auditor General’s recommendation about identifying/reducing the risk of money laundering through dealers, and will collaborate with the Ministry of Government and Consumer Services to work with the federal government to introduce a requirement for dealers to report cash transactions over a certain threshold to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). If implemented, OMVIC will work with FINTRAC to establish appropriate verification/inspection processes.

MINISTRY RESPONSE

The Ministry of Government and Consumer Services will collaborate with the Ontario Motor Vehicle Industry Council to engage with the federal government on the possibility of the federal government requiring registered motor vehicle dealers to report cash transactions over \$10,000 to the Financial Transactions and Reports Analysis Centre of Canada.

4.8 Public Reporting

4.8.1 OMVIC’s Public Reporting on Consumer Protection and Consumer Awareness Is Not Always Accurate, and Is in Some Instances Misleading

OMVIC Publicly Reported Vehicle Purchasers Were Better Informed than Its Own Consumer Survey Results Showed

We found that over the last eight years, OMVIC inaccurately reported that on average only 41% of consumers did not know what a “curbsider” is—an illegal motor vehicle dealer posing as a private seller. However, when we reviewed the results of OMVIC’s surveys related to this period we found that 65% of people surveyed did not know what a curbsider is. OMVIC told us that this was a reporting error and agreed that it should have reported 65%.

Each year, OMVIC surveys members of the public to measure consumer awareness of OMVIC, its role and car buying information. However, we found that OMVIC selectively reports on survey questions that show favourable results rather than on questions that indicate consumer awareness has not improved or has declined. For example, OMVIC did not publicly report on survey results between 2014 and 2020 that indicated that:

- 86% of Ontarians did not know that Ontario does not have a cooling-off period, a time after signing a vehicle transaction contract during which a purchaser can cancel the contract and receive a refund; and
- 70% of Ontarians were not aware that there is a Compensation Fund to which consumers can make a claim if they suffer financial losses from a vehicle transaction.

We found that the provisions of the administrative agreement between the Minister and OMVIC may be contributing to these decisions. In particular, we noted that under this agreement OMVIC is only required to publicly report a synopsis of consumer survey results, giving OMVIC discretion on the results that it chooses to report publicly.

OMVIC Significantly Overstated the Number of Inspections Performed

OMVIC publicly reported in its annual report that it conducted 12,274 inspections between 2016 and 2020. However, based on our review of inspection data, we found that the number of inspections OMVIC completed was overstated by 3,004, or 25%. Specifically, we found that:

- 17%, or 2,065 of the 12,274 inspections, were scheduled but did not actually take place. In these cases, the motor vehicle dealer was either not available, or books and records were not ready for inspection when the inspector arrived at the dealership.
- 8%, or 939 of the 12,274 inspections, were not in fact inspections. Instead, these were simply site visits conducted to check if a motor vehicle dealer is operating at its registered site. Such visits do not include a detailed review of a dealer's books and records.

OMVIC Understated the Total Time from Receiving, to Processing, to Approving New Dealer and Salesperson Registration Applications

In 2019, OMVIC reported that, on average, it had processed and approved complete applications for new motor vehicle dealer registration in 23 business days, meeting its 20–30 business day target. However, the applications processed within OMVIC's target time frame account for only 13% of total applications received. We found that, in practice, the vast majority of applications are received incomplete. For example, as noted in **Section 4.1.4**, over the last five years, approximately 90% of the motor vehicle dealer applications that OMVIC received for registration were submitted incomplete, in large part because OMVIC's application form does not specify the supporting documentation required. As a result, we found that the average time to process and approve all applications was 120 days—more than five times longer than OMVIC publicly reported.

Similarly, in 2019 OMVIC also reported that on average, it processed and approved applications

for salesperson registration in 2.5 days, meeting its 2–3 business day target. However, this accounts for only 30% of salesperson applications received. The average time to process and approve all applications was 23 days—more than nine times longer than OMVIC publicly reported. We found that a key reason for these vast discrepancies is that OMVIC omits from its calculation the time its staff spends following up on missing information from applicants.

RECOMMENDATION 23

So that the information that the Ontario Motor Vehicle Industry Council (OMVIC) reports to the public is accurate, complete and consistent, we recommend that OMVIC annually report on:

- the complete results of the consumer surveys it conducts and highlight areas where improvements are needed;
- completed inspections and site visits separately; and
- time spent to review registration applications, including staff time to follow up and collect missing information.

OMVIC RESPONSE

OMVIC agrees with the Auditor General's recommendation and will make all results from the annual consumer awareness survey publicly available on our website and highlight areas for improvement. The results of our annual survey will also inform the development of objectives for the annual marketing plan to ensure we are addressing areas of low consumer awareness.

OMVIC also agrees that public reporting must be accurate, complete and consistent. Therefore, we will ensure that terms such as completed inspections and site visits are defined clearly in our policies and procedures, and we will ensure these activities are reported separately.

Finally, OMVIC will develop a strategy to identify, capture and report on staff time spent on reviewing registration applications, including

performing necessary follow-ups and collecting missing information.

4.9 Governance

4.9.1 Although OMVIC's Role Is to Protect Consumers, Its Board Is Dominated by Motor Vehicle Dealers, Some of Whom Serve Lengthy Terms

Although OMVIC was established by the Ontario government to protect the interests of consumers, we found that nine of OMVIC's 12 Board members are motor vehicle dealer industry representatives elected to the Board. The current composition of OMVIC's Board and the board election process criteria were developed at the discretion of the Board and are included in the Board's by laws. In comparison, another delegated authority, the Tarion Warranty Corporation, which has a mandate to protect new homebuyers, is governed by a 12-member Board of Directors that can include only up to four industry representatives (new home builders).

Although best practices on corporate governance indicate that board member terms should be limited to a maximum of 10 years, we found that OMVIC did not have term limits for its Board members. As a result, we found that at the time of our audit, some Board members had served on the Board for 14 years or more. Over their tenure on the Board, these members held key positions such as Chair, Vice-Chair and Secretary-Treasurer. For example, the previous Board Chair had been on the Board for more than 19 years. After initially serving on the Board between 1999 and 2004, the previous Chair has served on the Board without interruption since 2007. Similarly, the previous Vice-Chair and the previous Secretary-Treasurer have been on the Board since 2007.

We met with consumer groups that informed us that it has been difficult to advance consumer concerns with OMVIC. They told us that in most cases, consumer issues are discussed over and over without making any real progress. In our review of

minutes from OMVIC's Consumer Protection Advisory Committee, which includes OMVIC's Board members and representatives from three consumer associations, we found the same consumer issues being raised in meetings for years with no progress toward resolution.

The most common consumer issues raised over the last five years (2016–20) with no meaningful change include concerns similar to some issues we discussed earlier in this report, such as no cooling-off period for vehicle purchasers, dealers' continued non-compliance with all-in-price advertising laws, and motor vehicle dealers' ability to sell vehicles in "as-is condition" that pose harm to consumers.

RECOMMENDATION 24

So that the Ontario Motor Vehicle Industry Council's (OMVIC's) Board of Directors effectively executes its responsibilities to oversee motor vehicle dealers and protect consumers by bringing new perspectives to OMVIC, we recommend that OMVIC's Board of Directors, work with the Ministry of Government and Consumer Services to:

- establish fixed term limits for its Board members that are in line with best practices of existing authorities and other organizations similar to OMVIC;
- reassess the proportion of industry representatives on OMVIC's Board and compare it to the proportions in other delegated authorities; and
- revise selection criteria for Board members to highlight qualifications that best serve consumer interests.

OMVIC RESPONSE

OMVIC's by laws establish the composition, terms of office and qualifications for elected Board members. Therefore, any amendment regarding term limits, representation or selection criteria would require approval by the membership (motor vehicle dealer registrants) at a properly constituted meeting. The administrative agreement between OMVIC and the Minister also requires

that OMVIC obtain the Minister's prior agreement to any changes to the bylaws or resolutions respecting Board composition, selection criteria and process and term of office of its members.

In consultation with the Ministry of Government and Consumer Services, OMVIC agrees to reassess term limits, the proportion of industry representatives and its selection criteria in comparison to other delegated authorities, and to recommend to its membership that it approve any amendments agreed upon.

MINISTRY RESPONSE

The Ministry of Government and Consumer Services (Ministry) agrees that good governance is important and should be based on best practices. The Ministry appreciates the response from the Ontario Motor Vehicle Industry Council (OMVIC) to this recommendation and will work with OMVIC to ensure this recommendation is addressed. As required under the administrative agreement, the Ministry will review the proposals it receives from OMVIC for changes to its bylaws and develop options as necessary to address the recommendation.

Currently, under the *Safety and Consumer Statutes Administration Act, 1996*, the Minister may establish competency criteria for members of the Board of Directors and establish rules about the nomination of board members, the appointment or election process, the length of their terms and whether they may be reappointed or re-elected.

4.9.2 Rationale for Investment Decisions by OMVIC's Board Was Unclear

We found that OMVIC's Board decided to continue to retain an investment firm to manage both OMVIC's investments and those of the Compensation Fund despite concerns raised by a third-party consultant engaged by the Compensation Fund Board about the investment firm, and OMVIC's management ranking

the firm's proposal last among six proposals finalized for OMVIC's investments.

In 2019, the Compensation Fund Board retained a third-party consultant to review the investment firm that the Compensation Fund was using to manage its investments. The consultant raised a number of concerns about the investment firm and its investment strategy and concluded that the current investment firm was not appropriate for the Compensation Fund. The consultant recommended that the investment firm be replaced and that the Compensation Fund should be investing in lower-risk investments. The consultant also noted that rates of return earned on the portion of funds invested in equities were below market benchmarks, that some investments lacked liquidity—prohibiting the Compensation Fund from divesting immediately to access cash if needed, that some fees charged by the firm were high, and that holding investment in private equities is not typical for government organizations.

Based on the consultant's review, in July 2019 the Compensation Fund's Board initiated a process to replace the investment firm. In December 2019, OMVIC's Board formed a committee to administer a request for proposals process to choose a new investment firm for OMVIC and the Compensation Fund.

OMVIC's Chief Administrative Officer and its Director of Finance shortlisted six of the 12 proposals OMVIC received to replace its investment firm, and scored the existing investment firm's proposal as last among these six. Nevertheless, we noted that the committee made a recommendation to OMVIC's Board to award the contract to the existing investment firm without providing an adequate explanation as to why it disagreed with management's scoring of the proposals. OMVIC's Board accepted this recommendation, and continued to use the existing investment firm for both its own investments and those of the Compensation Fund.

We also confirmed that three past Board members and one current board member had declared to OMVIC's Board that they had a conflict of interest with the investment firm. One current OMVIC Board

member participated in initial committee meetings related to the request for proposals process to choose a new investment firm.

RECOMMENDATION 25

So that the Ontario Motor Vehicle Industry Council (OMVIC) is effectively and transparently governed, we recommend that OMVIC's Board of Directors and the Compensation Fund's Board of Trustees:

- establish and follow a protocol to ensure procurement of third-party services are well documented, transparent, free from any biases, and best suit the needs of OMVIC and its Compensation Fund; and
- establish clear policies that address actual, potential and perceived conflicts of interest.

OMVIC RESPONSE

The Ontario Motor Vehicle Industry Council (OMVIC) and the Compensation Fund's Board of Trustees agree to establish and follow protocols to ensure that the procurement of third-party services is transparent and best suits the needs of OMVIC and the Compensation Fund.

OMVIC and the Compensation Fund's Board of Trustees also agree to review and revise their Codes of Conduct and Conflict of Interest Policies and guidelines to ensure that they are clear and effectively address requirements in the event of actual and perceived conflicts of interest.

4.9.3 OMVIC's Board Interfered with the Independent Function of the Compensation Fund Board

We found that OMVIC's Board interfered with the independence of the Compensation Fund's Board by inserting three of its own members onto the Compensation Fund Board.

In 2019, the Compensation Fund Board raised concerns about the investment firm that was being

used to manage the Compensation Fund's investments and sought to replace the firm (as described in **Section 4.9.2**). Shortly after this, the OMVIC Board took the unusual step of inserting three of its own members to fill vacant positions on the Compensation Fund Board, even though the Compensation Fund Board had already interviewed and selected candidates that it had proposed to OMVIC's Board to fill these positions. Although OMVIC's Board is responsible for appointing the members of the Compensation Fund Board, its actions were unusual, because in the past, the recruitment of Board members for the Compensation Fund had been completed by the Compensation Fund's Board.

With the appointment of these three OMVIC Board members to the Compensation Fund Board, five out of nine members of the Compensation Fund Board were also OMVIC Board members. In response to these appointments by OMVIC's Board, three of the Compensation Fund's Board members, including the Chair, resigned, citing interference by the OMVIC Board.

We noted that the *Motor Vehicle Dealers Act, 2002* provides for the independent exercise of authority by the Compensation Fund Board. However, we found that OMVIC's administrative agreement with the Minister does not make reference to the roles and responsibilities of the Compensation Fund Board.

RECOMMENDATION 26

So that the Compensation Fund's Board of Trustees can exercise its independent authority to manage and administer the Compensation Fund, we recommend that the Ministry of Government and Consumer Services:

- amend the regulation to disallow the Ontario Motor Vehicle Industry Council (OMVIC) Board from appointing its own Board Members onto the Compensation Fund's Board of Trustees; and
- clarify the roles and responsibilities of the Compensation Fund's Board of Trustees in the administrative agreement with OMVIC to

reflect its independent authority with respect to the Compensation Fund.

MINISTRY RESPONSE

The Ministry of Government and Consumer Services (Ministry) agrees that the Board of Trustees' independence in managing the Motor Vehicle Dealer Compensation Fund is important.

The Ministry will work with the Ontario Motor Vehicle Industry Council (OMVIC) to update the administrative agreement and will examine how the Board of Trustees' role could be clarified within the administrative agreement.

The Ministry will develop options for potential regulatory amendments with respect to appointments to the Board of Trustees for the government's consideration, which will be informed by the Auditor General's recommendations. Should the government choose to move forward with this recommendation, changes would be implemented accordingly.

4.9.4 Board Members and Senior Management Claimed Meals That Exceeded OMVIC's Allowable Limits

We found that OMVIC's Board members and its senior management team have purchased alcoholic beverages and expensive meals at upscale venues at OMVIC's expense, exceeding OMVIC's already high policy limits.

In the last five years (2016–20), OMVIC incurred approximately \$523,000 in meal expenses. We selected a sample of 60 payments (including the 11 largest payments) made for 129 meal claims that OMVIC reimbursed between 2016 and 2020. We found that for 30% of these claims (39 out of 129), the meal reimbursement rates allowed by OMVIC's own policy were exceeded despite OMVIC's allowable meal reimbursement rates already being substantially higher than those of the Ontario government. According to OMVIC's administrative agreement with the Minister, OMVIC's

reimbursement policy must be “in keeping with the spirit of the most recent Ontario Public Service Directive.” **Figure 25** provides a comparison of OMVIC's reimbursement rates for meals with the Ontario government's Travel, Meal and Hospitality Expenses Directive. We noted that most of the claims we reviewed that exceeded OMVIC's reimbursement rates were claimed by OMVIC's senior management staff and its Board members. We also found that some of these claims related to claims for Board and Board Committee meetings that OMVIC held at expensive hotels. We found that OMVIC hosted many of the Board and Board Committee meetings at hotel venues despite the availability of a boardroom at OMVIC's head office that can accommodate more than 20 people. Board dinner receipts that we reviewed showed that OMVIC Board members and senior management were also consuming alcoholic beverages at OMVIC's expense. For example, in October 2018, following a Board meeting, 11 Board members and five OMVIC employees had dinner at a winery located in the Niagara region. Alcoholic beverages accounted for more than 39% of their total bill of approximately \$2,700, including gratuity and taxes, that was reimbursed by OMVIC. In contrast, OMVIC's meal reimbursement rates would have allowed for a total of just \$936 to be reimbursed.

Although OMVIC's meal reimbursement policy does not permit the consumption of alcoholic beverages at OMVIC's expense, we found that the Board's policy does allow the Board Chair to approve both

Figure 25: OMVIC Meal Reimbursement Rates Compared to Ontario Public Sector Rates

Sources of data: Treasury Board Secretariat and the Ontario Motor Vehicle Industry Council

	OMVIC's Policy (\$)	Ontario Public Sector Rates (\$)	Amount Exceeded (\$)
Breakfast	20	10	10
Lunch	25	12.50	12.50
Dinner	45	22.50	22.50

Note: The Ontario Public Sector rates include taxes and gratuities. In contrast, OMVIC's rates do not include taxes and gratuities.

alcoholic beverages and meals exceeding OMVIC's policy limits at his or her discretion.

RECOMMENDATION 27

So that the Ontario Motor Vehicle Industry Council's (OMVIC's) resources are used more economically, we recommend that OMVIC and its Board of Directors:

- more closely align its reimbursement policy with the Ontario government's Travel, Meal and Hospitality Expenses Directive;
- disallow any reimbursement of alcoholic beverages;
- remove the Board Chair's ability to override the meal rates established in the expense policy; and
- utilize OMVIC's boardroom to minimize the costs of Board and Board committee meetings.

OMVIC RESPONSE

OMVIC understands the recommendation of the Auditor General regarding alignment with the Ontario Travel, Meal and Hospitality Expenses Directive. OMVIC will conduct a review of its existing Travel, Meal and Hospitality Policy relative to the Ontario government's Travel, Meal and Hospitality Expenses Directive. This analysis will allow OMVIC to determine the appropriate reimbursable meal rates, and ensure that such rates are also in alignment with OMVIC's responsibilities under its administrative agreement with the Minister of Government and Consumer Services.

OMVIC agrees that, in accordance with its Administrative Agreement, its Travel and Meal Expense Policy must adhere to the spirit of the Ontario Public Service Travel, Meal and Hospitality Expenses Directive. OMVIC will review its policy with the Ministry of Government and Consumer Services, including the reimbursement of alcoholic beverages and discretion on meal rates, and update it to ensure it aligns with the spirit of the Ontario Public Service Directive.

OMVIC agrees with the Auditor General's recommendation and will endeavour to use OMVIC's boardroom for Board of Director, committee and Compensation Fund's Board of Trustee meetings, when it is appropriate to do so. Beginning in 2019, OMVIC changed many of its traditional in-person committee and Board meetings to virtual meetings, and since March 2020 with the onset of the COVID-19 pandemic, all meetings have been held virtually. The adoption of virtual meeting formats has resulted in savings. Some in-person meetings may involve audiences of greater than 20 people and may therefore require an external venue to allow for appropriate physical distancing and participant engagement.

4.10 Ministry Oversight

4.10.1 The Ministry Does Not Confirm That OMVIC Uses Its Fee Increase to Protect Consumers as Presented by OMVIC in Its Justification of the Fee Increase

In 2015, OMVIC provided the Ministry with a business case (discussed in **Section 4.7.1**) indicating it was doubling its vehicle transaction fee from \$5 to \$10 in order to improve consumer awareness and increase enforcement efforts. However, we found that the Ministry did not sufficiently monitor OMVIC to identify that it had fully implemented the actions it outlined in its business case. In addition, the Ministry has not taken action to ensure that OMVIC operates on a cost-recovery basis as required under OMVIC's administrative agreement with the Minister. As a result, between 2015 and 2020, OMVIC's accumulated surplus and reserves grew by 275%.

OMVIC's Board has the authority to change the fees it charges without the Ministry's approval. However, the administrative agreement between the Minister and OMVIC requires that OMVIC provide the Ministry with a business case that identifies OMVIC's rationale for the fee change or a fee change in excess of inflation. In addition, the administrative agreement

requires that OMVIC set its fees so that it operates on a cost-recovery basis.

In 2015, OMVIC provided the Ministry with a business case and identified its intent to double the transaction fee that motor vehicle dealers have to remit to OMVIC for every vehicle they sell or lease—a fee they generally pass on to consumers—it indicated in its business case that it needed to raise revenues to spend more on consumer awareness. The reasons it gave were that consumers were not well informed about their rights when purchasing a vehicle, and many were not aware of the existence of OMVIC. In addition, OMVIC indicated in its business case that it needed to put more resources into enforcement activities.

We found that the Ministry has not required OMVIC to report back on how it has used the additional revenue it has collected since 2015. In addition, we found that the Ministry has not monitored OMVIC to ensure that the additional fees OMVIC has collected have been used for the purposes identified in its 2015 business case. While OMVIC has increased its spending on consumer awareness (as discussed in **Section 4.6.1**), we found that the human resources devoted to OMVIC's operations and enforcement work have not increased significantly, as we detail in **Section 4.7.1**. As a result, rather than operating on a cost-recovery basis, OMVIC has seen its accumulated surpluses and reserves grow by 275%, from \$6.3 million in 2015 to \$23.6 million in 2020.

Ministry staff told us that they regularly assess OMVIC's financial position and activities through quarterly meetings with OMVIC staff and review of OMVIC's draft annual report, draft business plan and audited financial statements. However, discussions of OMVIC's surplus were often limited to OMVIC's explanations for why the surplus was increasing year-over-year; the discussions did not include OMVIC's plans for using the funds to execute the aims of its 2015 business case. The Ministry also did not set a deadline for OMVIC to bring its operations into compliance with the administrative agreement to operate on a cost-recovery basis.

RECOMMENDATION 28

So that the Ministry of Government and Consumer Services (Ministry) fulfills its responsibility to effectively oversee that the Ontario Motor Vehicle Industry Council (OMVIC) meets its mandate and operates in compliance with applicable requirements, we recommend that the Ministry:

- require that OMVIC periodically report to the Ministry on its progress in using the additional revenues it is collecting to meet the objectives of its 2015 business case;
- set a reasonable deadline for OMVIC to comply with its administrative agreement with the Minister to operate on a cost-recovery basis; and
- monitor and take corrective action to ensure that OMVIC complies.

MINISTRY RESPONSE

The Ministry of Government and Consumer Services (Ministry) agrees that it can improve in its oversight function of the Ontario Motor Vehicle Industry Council (OMVIC). Approaches for improving the Ministry's oversight function will be informed by the Auditor General's recommendations.

In addition, the Ministry will work with OMVIC to update the administrative agreement and will examine incorporating into the administrative agreement a report back on fee changes made by OMVIC.

4.10.2 The Ministry Did Not Fully Investigate Governance Concerns at OMVIC Prior to Our Audit

The administrative agreement between the Minister and OMVIC indicates that the Minister can conduct performance, governance, accountability and financial reviews of OMVIC at any time. However, we found that even though the Ministry has received several significant complaints about Board governance at

OMVIC, the Ministry has never initiated any reviews of OMVIC to address those concerns. Instead, the Ministry's efforts to address these concerns were limited to making inquiries to OMVIC's senior management, and placing sole reliance on their verbal and written representations.

We found a number of indicators that should have triggered the Ministry to review OMVIC's governance practices prior to our audit. For instance, in 2019, three of OMVIC's Compensation Fund Board members resigned in protest as a result of actions taken by OMVIC's Board members. These former Compensation Fund Board members wrote letters to the Ministry outlining concerns with OMVIC's Board including that a number of OMVIC Board members had served lengthy terms on the Board, and that OMVIC Board's interfered with the independence of the Compensation Fund Board and its activities. We found that the Ministry did not thoroughly review any of the concerns raised, and it limited its inquiries to discussions with OMVIC's senior management team—the Ministry did not follow up with any of the Compensation Fund Board members.

In 2017, the Ministry was also notified of the alleged dismissal of a high-ranking employee at OMVIC who had alleged that OMVIC's Board was interfering with the employee's independent decision-making authority to execute OMVIC's consumer protection mandate under the administrative agreement with the Minister. The agreement states that OMVIC's Board should not interfere with the independent exercise of the duties of an OMVIC employee. Even though the employee brought these concerns to the Ministry's attention, the Ministry did not take steps to investigate the allegations.

We also noted that in March 2021 the Minister removed a ministerial appointee from OMVIC's Board based on a complaint received from other OMVIC Board members. In this case, the Ministry did not conduct a thorough review to validate the concerns raised before the Board member was removed. Unlike most members of OMVIC's Board who represent motor vehicle dealer interests, this Board member had

been appointed to the Board by the Minister and did not represent motor vehicle dealer interests.

RECOMMENDATION 29

So that serious concerns raised about the Ontario Motor Vehicle Industry Council (OMVIC) are appropriately addressed, we recommend that the Ministry of Government and Consumer Services (Ministry) establish a protocol to exercise its authority under the administrative agreement between the Minister and OMVIC to conduct a review when serious complaints arise.

MINISTRY RESPONSE

The Ministry of Government and Consumer Services (Ministry) will work with the Ontario Motor Vehicle Industry Council to update the administrative agreement. The Ministry will examine how a protocol to exercise its authority to conduct a review when serious complaints arise can be incorporated within the administrative agreement.

4.10.3 The Ministry Did Not Collect Sufficient Information to Monitor and Assess OMVIC's Performance in Meeting Its Mandate

We found that the Ministry did not collect sufficient performance information from OMVIC to be able to monitor whether OMVIC is effectively meeting its mandate to protect consumers and to regulate motor vehicle dealers and salespersons.

Under the administrative agreement between the Minister and OMVIC, to evaluate OMVIC's performance, the Ministry must agree upon performance indicators with OMVIC and collect results on these indicators from OMVIC on a quarterly basis. However, we found that up until 2020, measurable targets had not been established for many of the performance indicators in place, limiting the Ministry's ability to assess OMVIC's performance.

In 2020, performance indicators and targets were established that OMVIC would report on to the

Ministry. However, we found that many key aspects of OMVIC's operations were not covered by these performance indicators. For example, there was no indicator in place to report on OMVIC's success in recovering money from dealers for claims paid out from the Compensation Fund. As we describe in **Section 4.1.2**, between 2016 and 2020, OMVIC's recovery rate has been on average just 22%.

We also found that no specific indicators were set to monitor the sufficiency of the Compensation Fund even though the financial sustainability of the Fund came into question in 2018, as discussed in **Section 4.7.2**. Furthermore, we found that performance indicators had not been established, or were insufficient or inadequate to monitor OMVIC's operational performance in several other key areas where our audit identified operational issues. For example, indicators were not in place, or were insufficient or inadequate to monitor whether:

- OMVIC inspected registered motor vehicle dealers at least once every three years;
- new dealer and salesperson applications for registration were processed within OMVIC's targeted time frame;
- recourse was given to consumers for complaints brought to OMVIC where the dealers had breached the law;
- consumer complaints that involved a motor vehicle dealer breaking the law resulted in appropriate enforcement and disciplinary action; and
- OMVIC was successful in educating consumers about their rights in purchasing a car, and what protections OMVIC can enforce.

RECOMMENDATION 30

So that the Ministry of Government and Consumer Services (Ministry) can effectively monitor and address the Ontario Motor Vehicle Industry Council's (OMVIC's) performance in protecting consumers and regulating motor vehicle dealers, we recommend that the Ministry revise the performance indicators it uses to monitor OMVIC's performance

to include indicators that more closely monitor OMVIC's operations, including in the areas of inspection, registration, consumer complaint handling, the Compensation Fund, and educating and informing consumers about their rights and protections in purchasing a car.

MINISTRY RESPONSE

The Ministry of Government and Consumer Services (Ministry) agrees with this recommendation and will work with the Ontario Motor Vehicle Industry Council (OMVIC) to revise the indicators the Ministry uses to monitor OMVIC's performance.

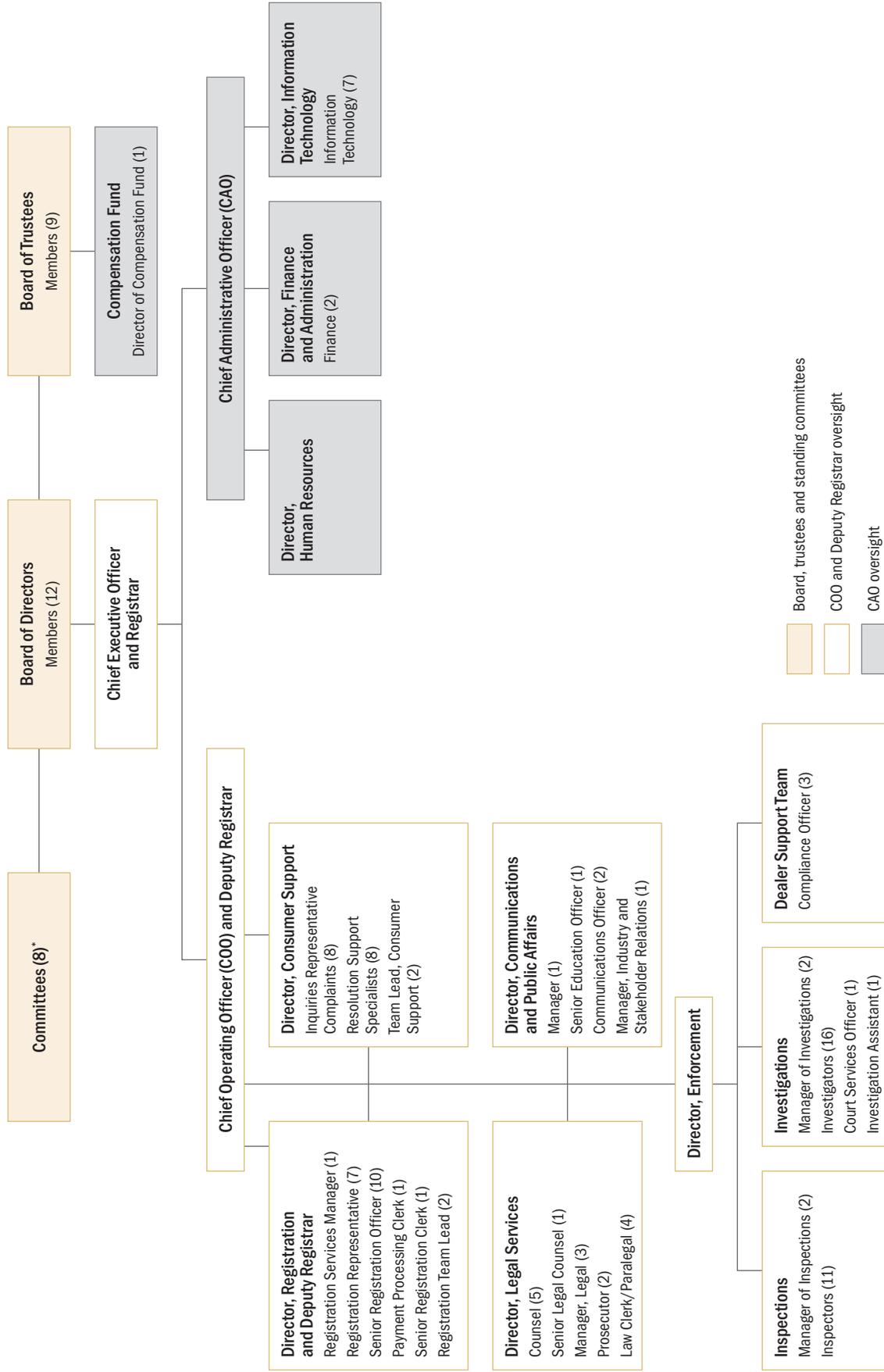
Appendix 1: Key Legislative Consumer Protections

Source of Data: *Motor Vehicle Dealers Act, 2002* and *Consumer Protection Act, 2002*

<i>Motor Vehicle Dealers Act, 2002</i>	
All-in-price advertising	In any form of advertising or posting of a price for a vehicle, a motor vehicle dealer must include all fees and charges that it intends to collect. There can be no hidden fees. HST and licensing are not required to be included in the price, but the advertisement must clearly indicate they are not included.
Disclosure	Motor vehicle dealers must disclose in writing certain information (including any material facts) about a vehicle's past use, history and condition.
Cancellation rights	The purchaser of a vehicle may cancel a contract within 90 days of delivery and have all monies refunded if a motor vehicle dealer fails to provide proper disclosure of the following: <ul style="list-style-type: none"> • a vehicle's previous use (such as taxi, limousine, police cruiser, emergency service vehicle or daily rental); • vehicle was deemed irreparable, salvaged or rebuilt; • vehicle's make, model and model year; and • true distance a vehicle was driven.
Compensation fund	Consumers who suffer a financial loss as a result of a transaction with a registered motor vehicle dealer are entitled to compensation of up to \$45,000 per valid claim. See Section 2.8, Figure 16 for claim eligibility criteria.
<i>Consumer Protection Act, 2002</i>	
Unfair Practice	No person shall engage in unfair practice. OMVIC uses this provision to deal mostly with non-disclosure issues, such as. <ul style="list-style-type: none"> • a motor vehicle dealer falsifies the vehicle's kilometres driven, using an odometer roll-back device; and • a motor vehicle dealer sells a warranty to a consumer that is not available or that it does not intend to fulfill.
Agreements	Agreements with consumers must disclose all material facts and not include ambiguous statements.

Appendix 2: OMOVIC's Organizational Structure, as of July 2021

Prepared by the Office of the Auditor General of Ontario



* Board Standing Committees include Appeals Committee; Audit, Finance and Risk Committee; Communications Committee; Consumer Protection Advisory Committee; Executive Committee; Governance Committee; Nominating Committee; and Regulatory Affairs Committee.

Appendix 3: OMVIC's Board of Directors, as of July 2021

Prepared by the Office of the Auditor General of Ontario

The composition of the Board, the selection criteria and process, and terms of office of its members, other than Ministry appointees, is in the discretion of the Board and is established either by laws, that is with the approval of the membership, or by the resolution of the Board alone. The Minister of Government and Consumer Services (Minister) reviews and approves any changes to by laws affecting board composition or the selection criteria. The current composition of the Board is as follows:

- two directors who are members of the Used Car Dealers Association (UCDA);
- two directors who are members of Trillium Automobile Dealers Association (TADA);
- three directors who are members of both the UCDA and TADA;
- one director who is an independent dealer, who may or may not be a member of the UCDA;
- one director who is a franchise dealer, who may or may not be a member of TADA; and
- three directors appointed by the Minister.

Members of OMVIC's Board of Directors

Kevin Bavelaar Motor Vehicle Dealer Representative <i>Auto Showplace</i>	Cliff Pilon* Motor Vehicle Dealer Representative <i>Gold Fleet Subaru/Suzuki</i>	Chris Gauthier Motor Vehicle Dealer Representative <i>Roadsport Chrysler Dodge Jeep RAM Ltd.</i>
Robert McMillan Motor Vehicle Dealer Representative <i>Volvo of Mississauga</i> Board Vice Chair	Glen Fenwick Motor Vehicle Dealer Representative <i>Glen Fenwick Subaru/Hyundai</i>	Rob Leggat Motor Vehicle Dealer Representative <i>Team Honda Powerhouse of Milton</i>
Matt Rispin* Motor Vehicle Dealer Representative <i>North Toronto Auction</i> Board Secretary-Treasurer	Sohail Ahmed Motor Vehicle Dealer Representative <i>Momo Cars Inc.</i>	Tony Del Gobbo Motor Vehicle Dealer Representative <i>Newmarket Hyundai</i>
Rod Jackson Ministerial Appointee	Patricia Perkins Ministerial Appointee	Virginia West Ministerial Appointee President and Chair of the Board

* Individual is also serving as a member of the Compensation Fund Board (see Appendix 7).

Appendix 4: OMVIC's Registration Fee Schedule

Source of data: The Ontario Motor Vehicle Industry Council

	Initial Fee (\$)	Renewal Fee (\$)	Frequency of Renewal
Salesperson registration	250	175	Every 2 years
Outside Ontario salesperson registration	175	175	Every 2 years
Dealer registration ¹	500	250	Annually
Outside Ontario dealer registration	250	250	Annually
Branch application ²	250	250	Annually
Outside Ontario branch application	250	250	Annually
Compensation fund fee		300	One-time fee
Transaction fee		10 per each vehicle sold	Annually
Transfer fee ³		75	-

1. This fee is applicable to all dealer classifications.

2. A branch application fee is charged for each additional branch opened by the dealer except for lease finance.

3. OMVIC charges the salesperson a \$75 fee when they transfer their employment and/or add their employment to a different dealer.

Appendix 5: Key Areas Reviewed During an OMVIC Compliance Inspection

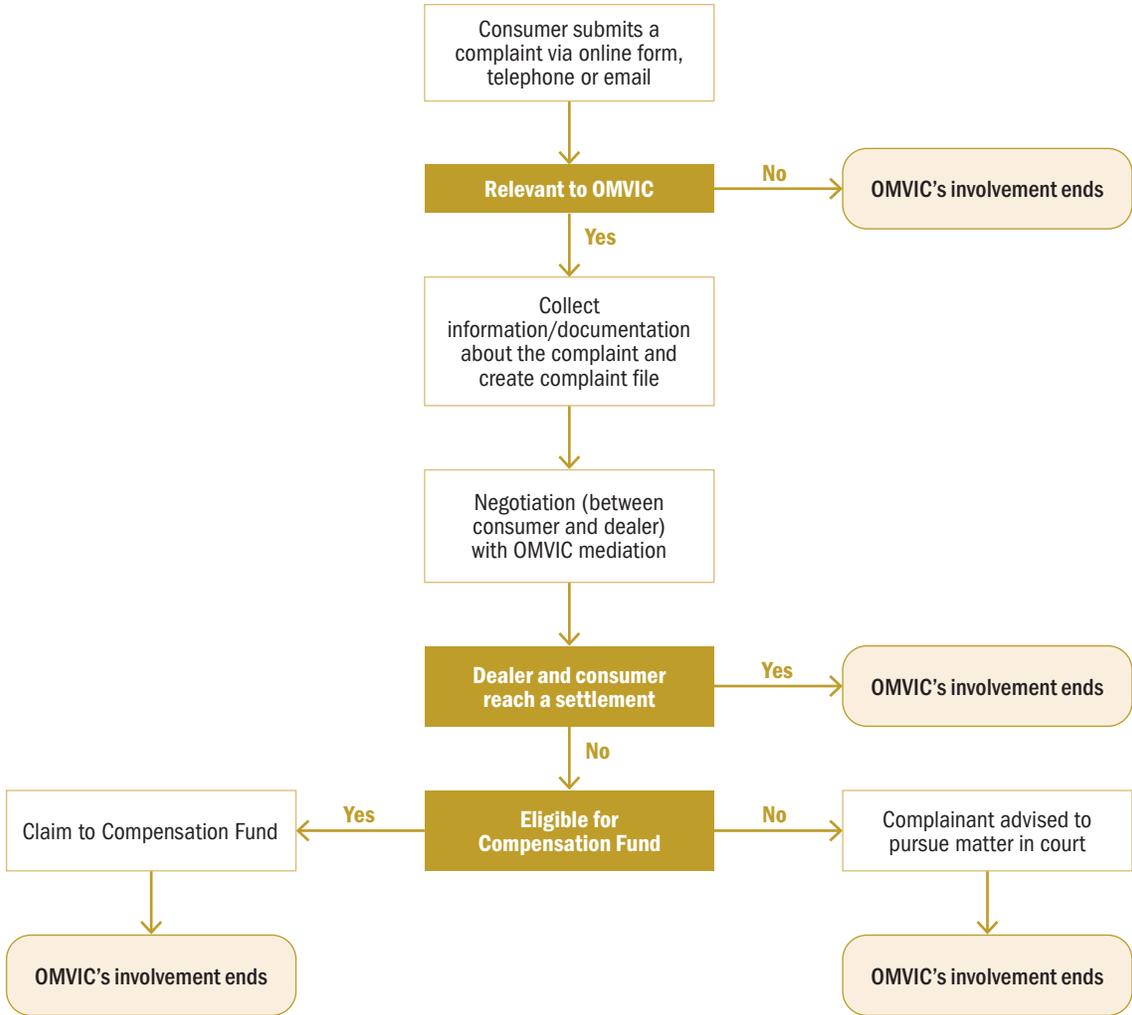
Source of data: The Ontario Motor Vehicle Industry Council

Area Reviewed	Items Looked at by OMVIC
General records and business premises	<ul style="list-style-type: none"> Books and records are organized and easily accessible, and stored at the dealership or a location approved by OMVIC. Bills of sale and lease agreements are filed together with relevant documents, including invoices, safety certificates, financing documents and history reports. Garage register, where vehicle sales records are stored, is compliant with the <i>Motor Vehicle Dealers Act, 2002</i> (Act), ensuring it is current and up to date. Vehicles are easily identifiable on the dealer's lot.
Disclosures on bills of sale	<ul style="list-style-type: none"> All mandatory disclosures about the vehicle are included in the dealer's bills of sale. Disclosures include the vehicle's prior use, accident disclosures, disclosures found after physical inspections, disclosures noted in vehicle history reports and others.
Financial records, bank accounts and sources of financing	<ul style="list-style-type: none"> Business bank account is under the dealer's name, and all funds related to vehicle transactions are deposited in, and withdrawn from, the business account. Monthly bank balances, to determine financial health of dealership. HST documents, to determine revenue reported and outstanding amounts owed by dealership. Non-traditional sources of financing (e.g., loans from family member), with written agreements from parties, financing availability and repayment arrangements.
Staff records	<ul style="list-style-type: none"> Detailed employee records are maintained, including payroll, positions and dates of employment. All employees trading vehicles, and managers at the dealership, are registered with OMVIC.
Advertising	<ul style="list-style-type: none"> Vehicle advertisements comply with all-in pricing requirements. All required disclosures are included in advertisements, including vehicle history and condition, as well as interest rates, terms, cash value and cost of borrowing for finance offers. Vehicles advertised are available at the dealership.
Trade-in vehicles and liens	<ul style="list-style-type: none"> Outstanding loans and liens related to trade-in vehicles are immediately removed, and vehicles are sold clear without liens.
Finance and lease agreements	<ul style="list-style-type: none"> Complete and accurate terms of financing are included on bill of sale, and are consistent with finance documents. Finance disclosure requirements comply with the Act (e.g., disclosure of adjustments made to annual percentage rates to account for extra fees a cash customer would not otherwise pay).

Note: Vehicle transactions and advertisements are reviewed by OMVIC on a sample basis.

Appendix 6: OMVIC's Dispute Resolution Process

Source of data: The Ontario Motor Vehicle Industry Council



Appendix 7: The Compensation Fund Board, as of July 2021

Prepared by the Office of the Auditor General of Ontario

The Compensation Fund Board consists of nine members. Three members of the Compensation Fund Board are appointed by the Minister of Government and Consumer Services. The remaining six members are appointed by the OMVIC Board of Directors. The OMVIC Board takes into consideration recommendations from the current Compensation Fund Board members when filling vacant positions.

Members of the Compensation Fund Board (Board of Trustees)

<p>Matt Rispin* Motor Vehicle Dealer Representative <i>North Toronto Auction</i> Board Vice-Chair</p>	<p>Cliff Pilon* Motor Vehicle Dealer Representative <i>Gold Fleet Subaru/Suzuki</i></p>	<p>Guy Vigilatore Motor Vehicle Dealer Representative <i>Scarboro Subaru</i></p>
<p>Nazreen Ali Public Representative <i>Senior Advisor, Riavera Corporation</i> Board Chair</p>	<p>John Raymond Public Representative <i>Dealer Solutions Mergers and Acquisitions</i></p>	<p>Wennie Lee Public Representative <i>Immigration Lawyer, Lee & Company</i></p>
<p>Mary Ann Lamb Ministerial Appointee Board Secretary-Treasurer</p>	<p>Julius Suraski Ministerial Appointee</p>	<p>Vacant Ministerial Appointee</p>

*Individual is also serving as a member of OMVIC's Board of Directors (see Appendix 3).

Appendix 8: Audit Criteria

Prepared by the Office of the Auditor General of Ontario

1. OMVIC's governance structure and processes in place result in effective oversight of the fulfillment of its mandated responsibilities.
2. Timely and effective processes are in place to address complaints by consumers against motor vehicle dealers.
3. Effective processes are in place to ensure motor vehicle dealers and salespersons have the competence and financial capacity to operate and run the dealership in accordance with the *Motor Vehicle Dealers Act, 2002*.
4. OMVIC's processes to administer claims to the Compensation Fund are effective and result in a timely resolution.
5. Effective and timely inspection processes are in place to ensure motor vehicle dealers and salespersons comply with the *Motor Vehicle Dealers Act, 2002*.
6. Effective processes are in place to identify, investigate and prosecute motor vehicle dealers and salespersons, including dealers operating unlawfully, for non-compliance with the *Motor Vehicle Dealers Act, 2002*.
7. Systems and processes permit the collection and use of timely and complete information to allow OMVIC to carry out and publicly report on its mandated responsibilities.
8. OMVIC's management of human and financial resources, including the Compensation Fund, ensures that resources are used efficiently and effectively to fulfill OMVIC's mandated responsibilities.
9. The Ministry has effective processes to monitor and address OMVIC's performance in protecting consumers and regulating motor vehicle dealers and salespersons.



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