

Title:	Retail transactions
Guideline topic:	Enforcement
Legislation:	MVDA
Section/subsection(s):	Multiple
Date created:	2023-02-07
Date revised:	2023-08-10

Table of contents

Key highlights	2
Introduction and purpose	2
Definitions	2
Current trends	3
Legislation	3
Disclosures in credit, lease and finance arrangements	5
Vehicle availability	5
Vehicle delivery	5
Motor Vehicle Dealers Compensation Fund	6
About OMVIC and these guidelines	6
Contact	6

Key highlights

- Dealers are reminded about their responsibilities and obligations under the legislation, regulations and Code of Ethics when it comes to retail transactions.
- The guideline spells out in detail the requirements for:
 - Sales contracts for both new and used vehicles
 - Leasing agreements
 - Credit/financing arrangements
 - Extended warranties
 - Service contracts
- The rules regarding advertising and vehicle availability are explained as they apply to retail transactions.
- There's important information about contract cancellations and rescissions and about the options available to consumers when a deal doesn't work out.

Introduction and purpose

Retail transactions are the backbone of most dealerships' business. This guideline, developed in consultation with industry representatives, is designed to clarify the legislative and regulatory requirements, as well as OMVIC's expectations with respect to retail transactions in the automotive sector.

Definitions

There are several areas of the [Motor Vehicle Dealers Act](#) (MVDA) that cover retail transaction requirements. For example, [Sections 39, 40](#) and [41](#) of Ontario Regulation 333/08 speak to what's required in a contract, including the process of negotiating and signing sales contracts for new vehicle, used vehicles and leases, respectively. This information offers some important insights into how the law sees this area, and as such, how OMVIC does, as well. Also important is the definition of trade, which includes buying, selling, leasing, advertising or exchanging an interest in a motor vehicle or negotiating or inducing or attempting to induce the buying, selling, leasing or exchanging of an interest in a motor vehicle.

In all cases, transparency is key to retail transactions. The Act stipulates in many places that the essential elements of these transactions must be – like dealers' vehicle advertising – clear, comprehensible and prominent.

Current trends

In December 2022, OMVIC published a [Dealer Bulletin on Trends in Vehicle Sales](#), which might apply in this context. These trends are related to consumer complaints about the increasingly high costs of motor vehicles in Ontario and the addition of mandatory fees and services. Dealers and salespeople are reminded that they are required to adhere to a [Code of Ethics](#). Certain actions can put dealers and salespersons at risk of breaching the Code of Ethics – for example, engaging in unprofessional, dishonest or other improper behaviour. This could result in enforcement action.

Legislation

Much of the language regarding contracts appears in [Regulation 333/08](#). Specifically:

- [Section 39](#) provides the information, details and conditions that must be met in a contract for a new vehicle, including the stipulation that all sales are final once the contract is signed, unless the dealer has failed to comply with certain legal obligations; and advice for consumers on legal remedies that may be available if a transaction doesn't meet these requirements. One of these remedies is the Motor Vehicle Dealers Compensation Fund, which is described in more detail below. This section also refers to [Section 79 of the Consumer Protection Act](#), which requires additional information and conditions for financing to be included in the contract.
- [Section 40](#) explains in detail the information, details and conditions that must be met in a contract for the sale of a used vehicle. As with contracts for new vehicles, these contracts must include certain disclosures about any financing that's in place; the dealer's registered name; an itemized list of any repairs the vehicle has had or might need, plus the cost of any such needed repairs; whether the vehicle has a valid safety certificate; or, if the vehicle is being sold as-is, a statement to that effect. The way that statement must read appears in sub-section six of the same section.

- [Section 41](#) specifies the disclosures required for a lease, which includes certain provisions of the Consumer Protection Act as well as an itemized list of the requirements with respect to the lease value of the vehicle, among others.
- [Section 42](#) offers additional detailed information that must be disclosed about the status, history, safety equipment, structural integrity, etc., of used vehicles. Of particular interest to many dealers, sub-section 19 makes it clear that dealers must disclose if a vehicle needs more than \$3,000 worth of repairs, or the total cost if known.
- [Section 43](#) speaks to what must be included in the contract when there's a vehicle being traded in as part of the transaction.
- [Section 44](#) talks about the dealer's responsibility to make best efforts to ensure that the terms of the credit agreement between the purchaser and the person providing the financing don't vary from the information that person has provided to the purchaser.
- [Section 47](#) specifies that it's the dealer's responsibility to ensure that an extended warranty is either properly insured or that an irrevocable letter of credit is in place. A letter of credit must be \$100,000 if the seller of the warranty is the dealer or \$500,000 if it's sold through someone else.
- [Section 48](#) spells out the requirements for a service contract sold to a consumer as part of a retail transaction.
- [Section 50](#) covers the conditions under which a contract could be cancelled for non-disclosure of certain types of information, for example, inaccurate odometer readings, or if the vehicle has been used as a daily rental, police or emergency vehicle, or as a taxi or limousine.

There's additional information about [contract cancellations and rescissions](#) available on OMVIC's website. Certain other provisions of both the [Consumer Protection Act](#) (CPA) and the [Consumer Protection Statute Law Amendment Act](#) might also apply. For example, [Section 14 of the CPA](#) explains what constitutes false, misleading or deceptive representation. [Sections 63](#) and [64](#) of [Regulation 17/05 under the CPA](#) talk, respectively about the disclosure requirements for fixed and open credit agreements. [Section 74](#) talks about the disclosure statements for leases.

Disclosures in credit, lease and finance arrangements

[Part VII of the Consumer Protection Act](#) deals with disclosures in credit agreements. Under the CPA, the following information must be disclosed in both lease and finance arrangements:

- The annual percentage rate (APR)
- Monthly payments
- The term
- The cost of borrowing for financing or implicit finance charges for leasing
- The total amount of all payments the borrower or lessee is required to make, and the timing and amount of each payment. This might include:
 - Down payment
 - Deposit
 - Balloon payments
 - Final payments
 - Guaranteed residual values (open-ended leases)
- The cash price of the vehicle.

Vehicle availability

Beyond the rules for contracts, the regulations also provide some insight into other issues that dealers might face. For example, [Section 36, sub-section 12](#) requires dealers to indicate when there is a limited number of vehicles available at the advertised price. OMVIC considers it appropriate – and would urge dealers to do likewise – to display clearly and prominently in advertising when a vehicle is not immediately available in stock. The rules regarding [all-in price advertising](#) – which are covered in the Act – also apply to what's in the contract.

Vehicle delivery

For the purposes of vehicle delivery, a Registrant is permitted to deliver a vehicle to a consumer's home so long as the actual act of trading occurred in accordance with the registrant's terms and conditions. Delivering a motor vehicle to a consumer's home subsequent to a purchase and sale agreement being executed at the Registrant's place of business would not be considered an act of trade.

Motor Vehicle Dealers Compensation Fund

[OMVIC's website](#) offers consumers important information about the way this fund works, how it's funded, who administers the fund, and more about their rights and the protections available when they buy or lease a vehicle. Created in 1986, the fund to date has paid out more than \$6 million in compensation. The Compensation Fund is exclusively for the protection of consumers. About OMVIC and these guidelines The Ontario Motor Vehicle Industry Council (OMVIC) administers and enforces the *Motor Vehicle Dealers Act, 2002* (MVDA), its regulations and code of ethics, as well as relevant sections of the *Consumer Protection Act* (CPA), on behalf of Ontario's Ministry of Public and Business Service Delivery. 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.

As businesses and markets evolve, industries continue to experience trends and changes that require regulators to adapt, in an effort to ensure regulatory expectations are clear and readily available. Consequently, registrants often seek guidance to ensure their businesses are compliant with relevant legislation and consumer protection measures.

Contact

The Dealer Support team is available to assist dealers in achieving and maintaining compliance with the MVDA and Code of Ethics. Registrants who wish to contact Dealer Support can reach the team at the phone number below and leave a message. Messages are returned in priority sequence.

Phone: 1-800-943-6002 ext. 4

Email: dealers@omvic.on.ca