

Chapter 3

Section 3.04

Ontario Motor Vehicle Industry Council Standing Committee on Public Accounts Follow-Up on Value-for-Money Audit, 2021 Annual Report

On April 6, 2022, the Standing Committee on Public Accounts (Committee) held a public hearing on our 2021 audit of the Ontario Motor Vehicle Industry Council (OMVIC). The Committee tabled a report on this hearing in the Legislature in February 2023. A link to the full report can be found at www.auditor.on.ca/en/content/standingcommittee/standingcommittee.html.

The Committee made 12 recommendations and asked the Ministry of Public and Business Service Delivery (Ministry) to report back by June 2023. The Ministry formally responded to the Committee on June 22, 2023

and OMVIC responded to the Committee on June 21, 2023. A number of the issues raised by the Committee were similar to the audit observations of our 2021 audit, which we followed up on in 2023. The status of each of the Committee's recommended actions is shown in **Figure 1**.

We conducted assurance work between April 2023 and September 2023, and obtained written representation from OMVIC and the Ministry that effective November 20, 2023, it has provided us with a complete update of the status of the recommendations made by the Committee.

Figure 1: Summary Status of Actions Recommended in February 2023 Committee Report

Prepared by the Office of the Auditor General of Ontario

RECOMMENDATION STATUS OVERVIEW						
# of Actions Recommended	Status of Actions Recommended					
	Fully Implemented	In the Process of Being Implemented	Little or No Progress	Will Not Be Implemented	No Longer Applicable	
Recommendation 1	1	1				
Recommendation 2			1			
Recommendation 3	5	2				
Recommendation 4	3					
Recommendation 5			2			
Recommendation 6	3		1			
Recommendation 7	2		1			
Recommendation 8			3			
Recommendation 9	3					
Recommendation 10	2					
Recommendation 11			2			
Recommendation 12	1		1			
Total	33	19	3	11	0	
%	100	58	9	33	0	

Overall Conclusion

As of October 20, 2023, OMVIC had fully implemented 81% of the recommended actions that were directed solely to it. Combined, OMVIC and the Ministry had fully implemented 58% of the Committee's recommended actions, and 9% of the recommended actions were in the process of being implemented. There also has been little or no progress on 33% of the recommended actions. Most of these relate to

recommendations that were directed to or include the Ministry.

Detailed Status of Recommendations

Figure 2 shows the recommendations and status details that are based on responses from OMVIC and the Ministry, and our review of the information provided.

Figure 2: Committee Recommendations and Detailed Status of Actions Taken

Prepared by the Office of the Auditor General of Ontario

Committee Recommendation	Status Details
<p>Recommendation 1</p> <p>The Standing Committee on Public Accounts recommends that the Ontario Motor Vehicle Industry Council should:</p> <ul style="list-style-type: none"> require a letter of credit from each motor vehicle dealer at the time of registration; upon the request of the Council a dealer must provide an updated letter of credit; these letters of credit must be held by the Council past the closure of the dealerships; <p>Status: In the process of being implemented by December 2023.</p> <ul style="list-style-type: none"> ensure staffing levels are sufficient to manage an increased workload. <p>Status: Fully implemented.</p>	<p>OMVIC reviewed the processes of the Vehicle Sales Authority of British Columbia and the Alberta Motor Vehicle Industry Council concerning letters of credit. Based on its research, OMVIC indicated that it was in the process of updating its relevant policy and processes. OMVIC plans to implement its revised letter of credit policy and procedures by December 2023. Once complete, OMVIC plans to communicate changes to applicants, registrants and stakeholders as needed.</p> <p>OMVIC conducted a workload study of its registration department, which concluded OMVIC should add 10 positions in its registration department. These additional positions, included: a new registration manager to oversee OMVIC's senior registration officers; a working team lead to focus on updating applications, templates, policies and procedures, as well as team training; and additional registration officers to process and approve applications. At the time of our follow-up, due to budgetary constraints, eight of the 10 positions had been filled.</p>

Committee Recommendation	Status Details
<p>Recommendation 2</p> <p>The Standing Committee on Public Accounts recommends that the Ministry of Public and Business Service Delivery should work with the Ontario Motor Vehicle Industry Council to implement mandatory continuing education requirements for motor vehicle dealers and salespersons to ensure that they are up to date on relevant legislative and regulatory changes.</p> <p>Status: Little or no progress.</p>	<p>The Ministry has made little progress toward implementing this recommendation. We noted that in October 2022, OMVIC provided a proposal to the Ministry recommending that it implement a requirement for continuing professional development as a condition for renewing registrations for motor vehicle dealers and salespersons.</p> <p>We found that the Ministry was in the process of conducting jurisdictional research, and consulting with other provinces that regulate motor vehicle sales and have continuing education as part of their renewal requirements. The Ministry also collected information on the continuing education programs at other delegated administrative authorities in Ontario, including the Bereavement Authority of Ontario and the Real Estate Council of Ontario. The Ministry told us that once it completed its research, and sought advice from OMVIC, it would finalize policy options for public consultation, and develop proposals for legislative and/or regulatory amendments for the government's consideration.</p>
<p>Recommendation 3</p> <p>The Standing Committee on Public Accounts recommends that the Ontario Motor Vehicle Industry Council should:</p> <ul style="list-style-type: none"> • develop a risk framework and assign an inspection frequency to each level of risk; <p>Status: Fully implemented.</p> <ul style="list-style-type: none"> • 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; <p>Status: In the process of being implemented by December 2023.</p> <ul style="list-style-type: none"> • assess the workload of inspectors and ensure that it has sufficient staff to carry out and complete annually assigned inspections on a timely basis; <p>Status: Fully implemented.</p> <ul style="list-style-type: none"> • implement a process to regularly review inspections completed by its inspectors to ensure they are performed consistently; <p>Status: Fully implemented.</p>	<p>OMVIC developed a risk framework in February 2022 and assigned a specific inspection frequency to each level of risk. OMVIC assesses the risk level of a motor vehicle dealer based on a number of factors including past complaints, the outcome of the last inspection and code of ethics violations. Based on its assessment, OMVIC assigns dealers a risk level of high, medium or low. High-risk dealers are to be inspected annually, and medium- and low-risk dealers are to be inspected once every three and five years, respectively.</p> <p>OMVIC set up a new IT system in May 2023. At the time of our follow-up, it was in the process of developing functionalities for the IT system to determine an appropriate inspection frequency for each motor vehicle dealer, schedule inspections, and reassess the risk level for each dealer on an ongoing basis. OMVIC expects to implement these enhancements to its IT system by December 2023.</p> <p>OMVIC conducted a study to assess the workload of its inspectors, which recommended it should add seven new positions to its Inspections Department. OMVIC told us it had filled five of those positions as of August 2023, and it plans to consider hiring additional staff for the Inspections Department in the future.</p> <p>OMVIC has implemented an inspection oversight process and hired an additional inspection manager. The manager of inspections conducts monthly meetings with each inspector to review a sample of closed and active inspections to identify and address inconsistencies as appropriate.</p>

Committee Recommendation	Status Details
<ul style="list-style-type: none"> ensure that motor vehicle dealers disclose infractions regarding the condition of motor vehicles that could pose a significant safety concern; Status: Fully implemented. use an in-house “mystery shopping” program to monitor compliance with all-in-price advertising and disclosure requirements set out in legislation; and ensure consistent responses to compliance issue discoveries. Status: Fully implemented. 	<p>We found that OMVIC revised its policies in September 2023 to require vehicle purchasers to be notified if during the course of their work, OMVIC staff find that a registrant failed to comply with their disclosure obligations which may or may not pose a safety concern.</p> <p>OMVIC stopped using consumer associations to conduct mystery shopping to help uncover all-in-pricing advertising violations. This decision was made because OMVIC could not take enforcement action for violations found since the mystery shopping was not being conducted by its own investigators. Instead, OMVIC expanded its internal mystery shopping program by hiring a dedicated manager of investigation for mystery shopping. As a result, OMVIC has increased the number of in-house mystery shopping visits and enforcement actions against non-compliant dealers. For example, OMVIC conducted 193 mystery shopping visits at dealers in 2022 and found violations at 68 dealers. OMVIC issued a caution letter to 41 of these dealers, while the other 27 were referred for further disciplinary action.</p>
<p>Recommendation 4</p> <p>The Standing Committee on Public Accounts recommends that the Ontario Motor Vehicle Industry Council should:</p> <ul style="list-style-type: none"> establish benchmarks or guidelines for enforcement action and the timely completion of investigations; implement a process for monitoring whether investigators complete investigations on a timely basis and take appropriate action based on the results of their investigations; Status: Fully implemented. develop guidelines for when OMVIC investigators should refer cases to the OMVIC Discipline Committee. Status: Fully implemented. 	<p>OMVIC developed and implemented benchmarks for the timely completion of investigations. OMVIC now expects low-, medium- and high-complexity investigations to be completed in four, nine and 18 months, respectively. To ensure appropriate enforcement actions are taken, the investigator is required to consult with the manager of investigation to obtain approval on the status of the investigation prior to closing the file. In instances where the benchmarks are not met, or likely not to be met, the manager of investigations is required to conduct a review of the circumstances and take appropriate action where needed.</p> <p>In May 2023, OMVIC developed and implemented guidelines for the Investigations team to assist investigators in making recommendations to the Registrar about regulatory enforcement action, including recommendations for discipline action. These guidelines include factors for investigators to consider when determining whether a recommendation for discipline action is appropriate, such as Code of Ethics violations, history of non-compliance or complaints, and level of consumer harm.</p>

Committee Recommendation

Status Details

Recommendation 6

The Standing Committee on Public Accounts recommends that the Ministry of Public and Business Service Delivery should work with the Ontario Motor Vehicle Industry Council to:

- establish a clear framework with criteria to be used in determining when a complaint against a motor vehicle dealer should be referred for enforcement action;

Status: Fully implemented.

- ensure that all complaint-handling staff apply the framework and criteria consistently to all complaints received and mediated by OMVIC and that staff are resourced to fulfil and execute all their responsibilities and effectively resolve complaints;

Status: Fully implemented.

In November 2022, OMVIC implemented a formal framework and set out criteria for its complaint handlers to follow when determining whether to refer a complaint for enforcement action. The framework outlines specific instances when a complaint should be referred for enforcement action, including for specific breaches of the *Motor Vehicle Dealers Act, 2002*. These include instances when a motor vehicle dealer misrepresents, or fails to make the required disclosures to a consumer about a vehicle, or when a vehicle is sold by a dealer with a safety standards certificate and is subsequently found by a Ministry of Transportation officer to be unsafe to drive. The framework also includes guidelines that complaint handlers must follow when determining whether to refer a complaint for enforcement action. These guidelines indicate the complaint handler should consider certain factors prior to making a referral for enforcement action, such as the seriousness of the breach in terms of risks to consumers and/or other registrants, the number of times the registrant had been previously warned about this type of breach, how long the dealer had been registered without significant administrative concerns, and how cooperative the registrant had been during the complaint handling process. OMVIC also has updated its complaint handling policies and procedures to reflect this framework.

We found that OMVIC had formally trained its complaint handling staff on its new framework and guidelines for referring complaints for further enforcement action. This included explaining to its staff the purpose of the new framework and guidelines, and training them on how to use it appropriately to handle incoming complaints. OMVIC also hired two managers for its complaints handling department—a consumer support manager and a quality assurance manager—to review complaints handled by staff, and to help ensure staff are applying the framework consistently and accurately. As well, OMVIC conducted a workload study of its complaints handling department. The workload study recommended that the complaints department should hire nine additional positions. At the time of our follow-up, six of the nine positions had been filled. OMVIC told us it planned to continue to reassess staff demands to help ensure that the complaints department's needs are met.

Committee Recommendation	Status Details
<ul style="list-style-type: none"> review consumer complaints that were not eligible for a claim against the Compensation Fund in order to develop additional eligibility criteria for accessing the Compensation Fund and thereby increase consumer protection; <p>Status: Fully implemented.</p>	<p>OMVIC completed an internal review of consumer complaints that were not eligible for a claim against the Compensation Fund dating from 2017 to 2021. The types of complaints it identified as not eligible for a claim included non-disclosure of a vehicle having had substantial accidents, non-disclosure of significant repairs made to the vehicle prior to sale, and all-in-price advertising violations. Based on OMVIC's review of the complaints, as well as consultations with stakeholder groups and the Compensation Fund's Board of Trustees, OMVIC identified 10 ways to expand the eligibility criteria for the Compensation Fund, and provided a proposal to the Ministry for its consideration. The proposed additional criteria included:</p> <ul style="list-style-type: none"> Failing to Discharge Lien Registered Against Traded-In Vehicle: The Fund would allow a claim when a trade-in vehicle still has an outstanding lien, and the lien is not removed by the dealer prior to sale of the vehicle to a consumer. Serious Safety Issues Resulting in Impoundment of Vehicle/Seizure of License Plates: The Fund would allow a claim from a consumer who purchased or leased an unsafe vehicle that was then impounded when found to be dangerous/unsafe by the Ministry of Transportation or the police. All-in-Price Advertising Violations: The Fund would allow a claim if there are damages due to a dealer's false representations about pricing or if promised benefits were not delivered to the customer.
<ul style="list-style-type: none"> propose to the Ministry of Public and Business Service Delivery to include in legislation 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 applicable legislation that do not fit into a specific eligibility criterion. <p>Status: Little or no progress.</p>	<p>As noted, OMVIC identified 10 ways to expand the eligibility criteria for the Compensation Fund, and provided a proposal on its findings to the Ministry. OMVIC expected that its proposal to the Ministry would also increase the Board's ability to use discretion for circumstances and violations that were not previously covered.</p> <p>The Ministry indicated it had reviewed OMVIC's proposal to expand the eligibility criteria, and asked OMVIC for additional information, including with respect to the sufficiency of the Compensation Fund, whether registrants were making adequate contributions to the Fund, and how OMVIC decided on the proposed eligibility criteria. In addition, the Ministry indicated that it was in the process of conducting jurisdictional research and consulting with other provinces that regulate motor vehicle sales—including Nova Scotia, Quebec, Saskatchewan, Alberta and British Columbia—about their Compensation Fund eligibility rules to inform potential proposals for amendments to the Act. Once its jurisdictional research and discussions with OMVIC are complete, the Ministry plans to finalize policy options for public consultation, and develop proposals for legislative and/or regulatory amendments for the government's consideration. If a decision is made to move forward, the Ministry estimated that any potential changes would come into effect by July 2025.</p>

Committee Recommendation	Status Details
<ul style="list-style-type: none"> collaborate with the Ministry of Transportation to ensure that the number of vehicle transactions reported by motor vehicle dealers is accurate; <p>Status: Little or no progress.</p> <ul style="list-style-type: none"> together with the Ministry of Public and Business Service Delivery work with their counterparts in the federal government to introduce a requirement for motor vehicle dealers to report large cash transactions to the Financial Transactions and Reports Analysis Centre of Canada. <p>Status: Little or no progress.</p>	<p>OMVIC worked with the Ministry of Transportation (MTO) to obtain sample datasets of motor vehicle registration records. OMVIC reviewed the datasets and informed us that it could not rely upon the MTO data on its own to verify motor vehicle dealers' self-reported transaction volumes. At the time of our follow-up, OMVIC was exploring alternative ways to verify vehicle transaction volumes.</p> <p>We found that the Ministry met with OMVIC, the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) and other provinces to discuss money laundering and requiring motor vehicle dealers to report cash transactions over a certain threshold to FINTRAC. However, at the time of our follow-up, the Ministry had not yet finalized its research on potential options for implementation. The Ministry plans to finalize and present policy options to the Minister's office based on its research and liaise with the federal government as appropriate pending direction by July 2025.</p>
<p>Recommendation 9</p> <p>The Standing Committee on Public Accounts recommends that the Ontario Motor Vehicle Industry Council should annually report on:</p> <ul style="list-style-type: none"> the full results of its consumer surveys (highlighting areas where the surveys indicate improvements are needed); completed inspections and site visits (separately); and time spent reviewing registration applications (including staff time to follow up on missing information). <p>Status: Fully implemented.</p>	<p>OMVIC published on its website the complete results of its consumer surveys conducted for 2022, and highlighted areas of improvement by including their targets for each survey question. OMVIC also reported on the number of completed inspections and site visits for 2022 separately rather than as a combined figure, as well as registration-application processing times including staff time to follow up and collect missing information.</p>
<p>Recommendation 10</p> <p>The Standing Committee on Public Accounts recommends that the Ontario Motor Vehicle Industry Council should work with the Ministry of Public and Business Service Delivery to:</p> <ul style="list-style-type: none"> take steps to diversify the composition of its Board and/or increase representation for individuals with experience in consumer protection; and implement fixed term limits for its Board members in keeping with best practices for similar organizations. <p>Status: Fully implemented.</p>	<p>In April 2023, the Minister of Public and Business Service Delivery issued Minister's Orders that required OMVIC to reduce the number of board members from 12 to nine, and to limit the term of office for elected directors to three years. The Minister's Orders also stated that Board members cannot be re-elected or reappointed if they have served an aggregate of nine or more years. In addition, the Minister's Orders prevent OMVIC from drawing more than 34% of its Board members from the motor vehicle dealership industry. In June 2023, in response to the Minister's Orders, OMVIC updated its bylaws to address the Minister's Orders.</p>

Committee Recommendation	Status Details
<p>Recommendation 11</p> <p>The Standing Committee on Public Accounts recommends that the Ministry of Public and Business Service Delivery should strengthen the independence of the Compensation Fund Board by</p> <ul style="list-style-type: none"> • amending the regulation to disallow the Ontario Motor Vehicle Industry Board from appointing its own Board members to the Compensation Fund’s Board of Trustees; and • clarifying the roles and responsibilities for the Compensation Fund’s Board of Trustees in the administrative agreement with OMVIC to reflect the Compensation Fund’s independent authority. <p>Status: Little or no progress.</p>	<p>The Ministry had not made progress toward implementing these recommended actions. The Ministry informed us that it was still reviewing the recommendations and planned to take steps to implement them by July 2025, if a decision is made to move forward.</p>
<p>Recommendation 12</p> <p>The Standing Committee on Public Accounts recommends that the Ministry of Public and Business Service Delivery should revise the performance indicators it uses to monitor the Ontario Motor Vehicle Industry Council’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.</p> <p>Status: Little or no progress.</p>	<p>The Ministry and OMVIC held preliminary discussions on implementing new performance metrics. Following these discussions, OMVIC began reporting on new performance metrics that are pending Ministry approval in the areas of inspections, registration, consumer complaint handling, the Compensation Fund and educating and informing consumers.</p>