



Vehicle Sales Authority  
of British Columbia

# SALESPERSON LICENSING COURSE

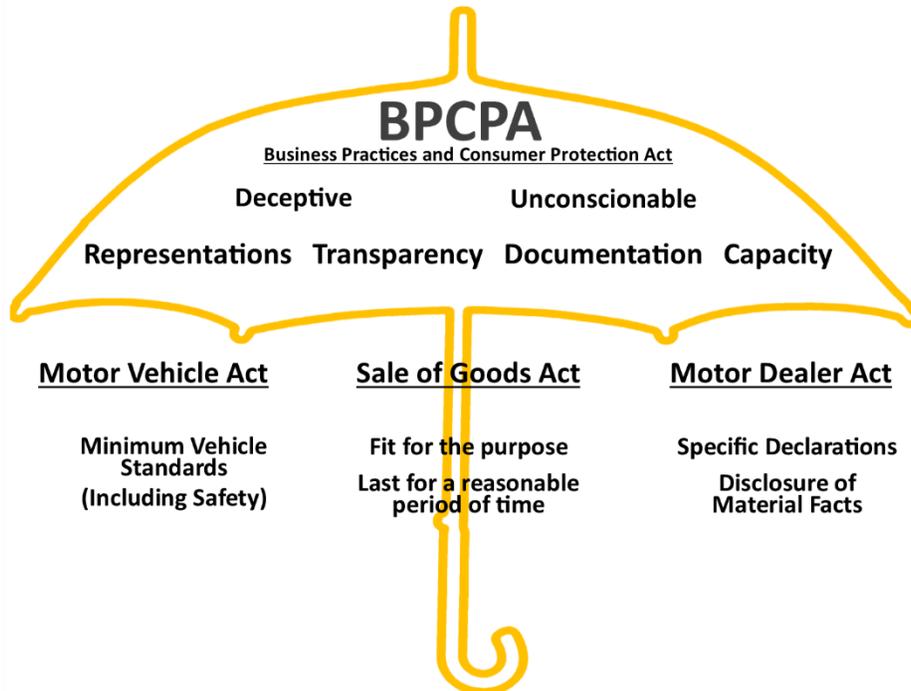
**\*\*IMPORTANT - to save your answers in your workbook:\*\***

1. Prior to entering your answers in the workbook, you must download the workbook and save it to your desktop.
2. Open the workbook in Adobe Reader, enter your answers and click save.

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# 1 Important Terms and VSA Duties

**Best practices** are recommended ways to do certain things. Some best practices are not required by the legislation but will be appreciated by your customers or make it easier to prove you acted professionally if challenged.

**Case studies** are examples selected from the BC Supreme Court, VSA files, or TV to explain key concepts. They have been simplified for the course and may not include all the facts.

**Enforcement** means actions taken by the VSA or others to get compliance with the laws of BC and Canada.

**Government agency to know** is one of many provincial and federal agencies that play an important role in some part of the vehicle sales industry

**Examples** are simple situations from every day selling that show how to apply the legislation.

**Misconceptions** are statements you may hear that are not true. These myths have been around so long that many people insist they are true.

A **Penalty** is what the Registrar or a judge can make a business or individual pay if they decide the law was broken.

A **Remedy** is what the Registrar or a judge can require be done for a consumer if they believe the law was broken. Also called restitution.

## The VSA Duties

- Licensing of dealers, salespeople, broker agents, broker agent representative and wholesalers
- Inspection and investigation of all licensees for compliance with the *Motor Dealer Act*, portions of the *BPCPA*, and other consumer protection laws
- Voluntary mediation of disputes between consumers and licensed businesses
- Impartial formal adjudication of disputes between consumers and licensees
- Consumer education that makes them aware of their rights and responsibilities when purchasing or leasing vehicles
- Industry education initiatives to ensure a fair marketplace, including all licensing requirements and responsibilities
- Administration of the Motor Dealer Customer Compensation Fund

## 932 Overview of the Vehicle Sales Authority

The VSA operates under a *delegation agreement* with the provincial government. The authority of the Registrar and the VSA come from the *Motor Dealer Act* and parts of the *Business Practices and Consumer Protection Act*.

### Primary responsibility of the VSA

The delegation agreement states the primary responsibility of the VSA is to maintain and enhance consumer protection and consumer confidence in the vehicle sales industry.

### Purpose of a regulatory authority

The purpose of regulatory law is to maintain compliance with minimum standards of conduct and care. It is the aim of the VSA to protect the public interest through education and compliance activities. When necessary, fines and administrative penalties are used to prevent improper conduct. Punishment is not the objective of administrative law.

### Structure

The VSA is a registered non-profit organization. It receives no money from government and is 100% self-financing. The agency operates under standard business principles. Revenues and expenses must balance, good customer service is expected and experience in the vehicle sales industry is valued when hiring decisions are made.

### Governance

The VSA is governed by a board of eleven directors. The role of the board is to set policy and establish annual budgets. The board is not involved in day-to-day operations.

Six directors come from the industry. Three directors are nominated by the *New Car Dealers Association*, two by the *Automotive Retailers Association* and one by the *Recreation Vehicle Dealers Association*. Three are chosen from the general public and two are appointed by the provincial government.

*Automotive Retailers Association* (ARA) has eight divisions representing different segments of the industry. The association provides services, products, training, advisory services and benefits to the independent motor dealers that are members.

*New Car Dealers Association* (NCDA) represents a majority of the franchise auto dealerships in the province. It provides services, products, consultants and benefit partnerships to its members.

*Recreation Vehicle Dealers Association* (RVDA) represents RV dealers, service & repair facilities and other companies. The association provides training, advisory and advocacy services and benefits to its members.

### Operations

The President, Registrar and management team supervise the licensing courses, consumer service, financial and compliance activities of the agency.

The *Registrar of Motor Dealers* is independent from the Board of Directors and the President on all regulatory and compliance matters. The Registrar has powers similar to a *Small Claims Court* judge.

### 3 VSA Licences

#### Motor Dealer

Dealers can be a one-person business or a large franchise operation with 150 or more employees. A licensed dealer must have at least one licensed salesperson. A dealer licence permits wholesale activities with notice to the VSA and the identification of designated wholesale staff.

#### Salesperson

Every person who makes representations to a consumer about a vehicle must be a licensed salesperson at a licensed dealership. A salesperson licence does not permit independent sales. Sales that do not include a licensed dealer would be curbing.

#### Misconception

*I'm a greeter not a salesperson, so I don't need to be licensed. This is wrong. Anyone who acts on behalf of a dealer or broker agent and participates in any way in the sale of a vehicle with the expectation of receiving compensation must be licensed.*

#### Broker Agent

A broker agent is a person acting as a business including a sole-proprietor who assists another person to purchase, lease, exchange, or otherwise acquire a motor vehicle for that person's personal use. A licensed broker agent must have at least one licensed representative. Consumer transactions must be with a licensed dealer. A licensed broker agent may collect fees only from a buyer. The acceptance of fees or commissions from a seller is not allowed.

#### Broker Agent Representative

Every person who makes representations to a consumer about a vehicle as a broker must be a licensed representative with a broker agent.

#### Wholesaler

A wholesaler is a person or company that buys vehicles from dealers and auctions and sells the vehicles to other licensed businesses. Licensed wholesalers are not permitted to sell vehicles to consumers. Wholesalers may sell only to businesses. A wholesaler may take this course or the limited Wholesaler Licensing Course.

#### Licensing is a privilege not a right

The Supreme Court of Canada has ruled that licensing is a privilege and not a right. As a delegated authority, the VSA has an obligation to set and maintain professional licensing standards that are in the *public interest*.

#### The public interest must be protected

The VSA must review any conduct that is not in the *public interest*. Conduct that is not in the *public interest* can be grounds for reviewing, placing conditions on or even revoking a licence. Deceptive conduct in a consumer transaction and the selling of unsafe vehicles are examples of conduct that are not in the *public interest*.

## Vehicle Sales Authority - Review

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1. The purpose of regulatory law is to maintain compliance with minimum standards of conduct and care. (T/F)
2. The primary responsibility of the VSA is to get money back for consumers. (T/F)
3. What three associations nominate members to the board of directors?
4. The role of the VSA Board of Directors is to set policy and establish annual budgets. (T/F)
5. Who does the VSA license? List four.
6. Wholesalers may not sell to consumers. (T/F)
7. A broker agent may accept a fee only from the buyer. (T/F)
8. Licensing is a right upheld by the Supreme Court. (T/F)

## 4 Deceptive Practices and Statements

### *Business Practices and Consumer Protection Act*

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#### Overview

The [Business Practices and Consumer Protection Act \(BPCPA\)](#) requires goods to be sold in a *clear and open* manner. A consumer must be able to make an informed decision about their purchase. It also requires the seller to stand behind the *representations* they make about the goods they sell. The consumer has a right to believe and rely on the statements of the seller.

#### The credulous consumer standard

The Supreme Court of Canada has said that sellers must recognize that the average consumer is prepared to trust merchants on the basis of the general impression conveyed to him or her by their advertisements. Consumers are not expected to carefully analyze or doubt statements made by a seller.

#### Deceptive act or practice

The *BPCPA* does not allow a seller to engage in a *deceptive act or practice*. *This law defines a deceptive act or practice as any spoken, written or visual statement or action that could fool or mislead a consumer.* This can be in an advertisement, a sales pitch, a contract or any other communication. It can occur before, during or after closing a deal with a consumer.

The B.C. Supreme Court has defined a deceptive act in this way:

*Any use, in the oral, visual, written or electronic communication of material facts, of a representation that tends to lead a reasonable person into making an error of judgment.*

#### Misrepresentations

In order for a consumer to claim for relief or restitution under the *BPCPA*, a consumer must have relied on the representation to make their decision to buy a vehicle. If a dealer's conduct was deceptive and misleading and caused the consumer to make *an error in judgment*, then the consumer has a claim. The *BPCPA* requires a dealer to provide truthful and accurate representations about their products.

*Relied on* –to have used the information as part of the decision-making process. It does not mean that it was that specific information that made them choose to buy the vehicle

#### What is material to a buyer?

It is deceptive to exaggerate or be unclear on purpose about any information that may be material to a buyer.

*Material* –information important to a consumer's decision about whether or not to agree to a deal

## 5 Burden of Proof, Remedies and Court Rulings

### *Business Practices and Consumer Protection Act*

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#### **Burden of proof**

If a seller is accused of a deceptive act, the seller must prove that they did not use a statement or action of any kind to mislead the consumer. This is known as reverse onus and is permitted in civil actions.

This 2006 addition to the legislation required the adoption of better processes. Well documented steps can help meet the burden of proof under the *BPCPA*.

#### **Remedy for a deceptive practice**

If a seller commits a deceptive act or practice when making a sale, a consumer may be compensated for a proven loss. In a limited number of situations, a consumer may be permitted to return the product or service for a full refund.

#### **Court rulings on the *BPCPA***

- The *BPCPA* gives rights to consumers that stand alone. *A contract cannot take these rights away*
- *Intention to deceive is not necessary*. You can breach the *BPCPA* even if you honestly believe the misleading statements you make are true. The test is whether your conduct was misleading. The test is not whether you intended to mislead the buyer
- *A representation can be intentional, negligent or innocent and still be deceptive*. However, the consumer must have relied on those representations and made an error in judgment as a result
  - Intentional* – done on purpose or deliberately
  - Negligent* – failing to take proper care in doing something
  - Innocent* – not responsible for or not directly involved
- *Statements you make are admissible under the BPCPA* even when the terms of a contract exclude verbal representations. The court will allow verbal evidence that the buyer relied on a *material* misrepresentation by the seller in making a decision to purchase. The credibility of all parties will then be evaluated by the court or the Registrar

#### **Avoid offering legal opinions**

Vehicle sales legislation is complex. Advising a consumer that they have or do not have certain rights may be a deceptive act. Common consumer allegations about salespeople include:

- Misstating when a buyer has entered into a binding contract when they have not
- Overstating the rights of a dealer against a consumer for dealer errors
- Overstating the rights of a dealer against a consumer if they withdraw from a sale
- The power of the VSA to void contracts with other dealers to get a sale
- Misstatements to get a reluctant buyer to complete a sale

## Deceptive Practices - Review

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1. The *BPCPA* requires goods to be sold in a *clear and open* manner. (T/F)
2. The *BPCPA* requires a seller to stand behind the *representations* they make about the goods they sell. (T/F)
3. The credulous consumer standard says the average consumer trusts a merchant based on the general impression of their ads. Who created this standard?
4. A deceptive act is any communication of material facts that tends to lead a reasonable person into making an error of judgment. (T/F)
5. The consumer has the burden of proof if they allege a deceptive act occurred. (T/F)
6. There must be a proven loss if a consumer is to be compensated for a deceptive act. (T/F)
7. A deceptive act can be intentional, negligent or innocent and still be deceptive. (T/F)
8. Incorrect statements about the rights of a buyer or the vehicle they are buying can be a deceptive act. (T/F)

**Video Case Study A** Edmonton trade-in

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Watch this CBC news clip on the VSA Learning Centre website about a dealer and a buyer in Edmonton. Then answer the following questions.

1. Under B.C. law there was a deceptive act regarding the difficulty or cost of fixing her existing vehicle. (T/F)
2. Under B.C. law there was a deceptive act regarding the cost of the transaction and how it would affect her financially. (T/F)
3. Under B.C. law there was a misrepresentation regarding the quality and features of the vehicle she got compared to her first car. (T/F)
4. It appears that the representations made by the dealer in this transaction caused her to “make an error in judgment” and was a deceptive act. (T/F)

## 6 Unconscionable Acts

### *Business Practices and Consumer Protection Act*

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#### Overview

The *BPCPA* also makes it illegal for a seller to engage in an *unconscionable act or practice*.

*Unconscionable* –taking unfair advantage of a consumer’s weakness or ignorance in order to convince or pressure them into making a deal

*Unconscionable* is different than *deceptive*, which is any spoken, written or visual statement or action that could fool or mislead a consumer.

#### Identifying an unconscionable act

- Did the seller apply unfair pressure on a consumer to agree to a deal?
- Did the seller sell a product or service to the consumer at a much higher price than the going rate for that product or service?
- Did the seller know or ought to have known that the terms or conditions were unfairly harsh to the consumer?

#### When deciding if something is *unconscionable*, a court or the Registrar will:

- Consider all of the circumstances, including what the seller knew or what the seller ought to have known at the time
- Consider whether the seller took advantage of a consumer because they were unable to protect their own interest due to a *lack of capacity*
- Consider if the *lack of capacity* was due to a physical or mental illness, ignorance, illiteracy, age, inability to understand the nature or the language of the deal, or any other matter related to the deal

*Capacity* –ability to understand

#### Burden of proof

If a seller is accused of an *unconscionable act or practice*, the seller must prove that they did not take unfair advantage of a consumer’s weakness or ignorance to convince or pressure them into making a deal.

#### Remedy for an unconscionable practice

If a court or the Registrar finds that the seller committed an *unconscionable act* when making a sale, the contract is void and will not be binding on a consumer. The product or service can be returned for a full refund.



## 7 Required Declarations – Motor Dealer Act

### Overview

The [Motor Dealer Act and Regulation \(MDA\)](#) requires information about a vehicle be disclosed to a consumer before it is sold. It states that dealers have a *positive duty to enquire* and dealers must exercise *reasonable care and due diligence* in checking vehicle histories. Dealers also have a statutory *duty to disclose to the best of their knowledge and belief*. This includes required declarations and the disclosure of other *material facts*.

Broker agents and representatives must ensure that all dealer declarations and disclosures are brought to the attention of a buyer. Wholesalers have similar *Motor Dealer Act* duties to enquire and disclose to their wholesale buyers.

### Required declarations

The *MDA Regulation* lists certain information that will always be a *material fact* in the purchase of a vehicle:

- If the vehicle is used, has it had damages requiring repairs costing more than \$2,000?
- Has the vehicle ever been used as a lease or rental vehicle?
- If the vehicle is used, the name of any jurisdiction other than B.C. in which it has been registered
- Does the odometer of the vehicle accurately show the true distance travelled by the motor vehicle?
- Has the vehicle ever been used as a taxi, police or emergency vehicle or in organized racing?
- If the vehicle is new, has it had damage that required repairs costing more than 20% of the asking price of the vehicle?

The required declarations about prior damage and use let buyers know about the possibility of hidden damage. The damage could affect the value of the vehicle. This information must be shown on the sale agreement and the APV9T Transfer document.

### The \$2,000 declaration of damages amount is cumulative

In calculating whether or not damage exceeds \$2,000, the courts have determined:

- It is based on all damages, not just one accident or incident
- Any amount paid by the owner as a *deductible* should be added to the amount paid by an insurer, if known
- Damage is not limited to accident repairs but can include windshield replacements, vandalism and theft

*Cumulative* – the total of all the parts or amounts

**Government agency to know:** [Registrar of Imported Vehicles](#) operates the national program of imported vehicle inspection, certification and registration.

## 8 Required Disclosures – Motor Dealer Act

### Material facts

The *MDA Regulation* requires that all material facts about a vehicle be disclosed to a consumer before it is sold.

*Material fact* – any piece of information that may have a significant effect on a consumer's decision whether to buy a product

- If a consumer tells you something they want or don't want, it's material
- If it would matter to the dealership as a trade-in, during a wholesale purchase or it affects the price, it is material

### What you know and what you can find out must be disclosed

A material fact can be something that the seller already knows about the vehicle. Information available in vehicle history reports, dealer and manufacturer records, or by a comprehensive inspection of the vehicle must also be disclosed.

The APV9T is a transfer document and includes only the *Motor Dealer Act* declarations. All disclosures that are in addition to the required declarations should be included on the purchase agreement.

### Vehicle history reports

Vehicle history reports are one of many tools available for dealers to meet their legal duties to enquire and disclose. Other tools include:

- Physical inspection of the vehicle for safety concerns and prior damage
- Mechanical inspection, including some safety-related items
- Repair and maintenance histories
- Paint depth gauge checking for prior body damage
- Other sources of information available to the dealer or required by the circumstances

### Consumer remedy

A consumer may have a remedy if it is determined that the consumer was not informed of a *material fact* and this lack of disclosure misled the consumer.

The dealer and the broker agent will be jointly responsible for any consumer remedy unless one party can prove they fully met their obligations under the law. Resolving a dispute in a consumer transaction is within the mandate of the VSA.

Any consumer remedy will be the responsibility of the dealer, even if the source of the incorrect information was the wholesaler. The wholesaler may be liable to reimburse the dealer for the money paid to the consumer because of their error. Resolving this business-to-business dispute is outside the mandate of the VSA.

### Misconception

*If I get a vehicle history report and share it, I'm done. This is wrong.* The duty to enquire and disclose goes beyond a vehicle history report. You need to know the vehicles you sell.

*If the report includes "no details", I'm done. This is also wrong.* The duty to enquire and disclose includes asking more questions about "no details" items.

## Required Declarations and Disclosures - Review

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1. Dealers and wholesalers both have a *positive duty* to enquire about the vehicles they sell. (T/F)
2. There are six required *declarations*. No other material facts must be disclosed. (T/F)
3. *Material facts* are important to a consumer. (T/F)
4. What is included to calculate a \$2,000 declaration?
5. The duty to enquire and disclose goes beyond a vehicle history report. Sharing the report with the buyer is not enough. You need to know the vehicles you sell, including asking more questions about *no details* items. (T/F)

## 9 Dealer Operations, Offsite, Event and Consignment Sales

### Dealer defined

Under the law, anyone who sells even one vehicle with the expectation of profiting from the sale is a dealer. With the sale of five or more vehicles in one year, a person is deemed to be a dealer and must prove they are not. The VSA currently licenses approximately 1,500 dealers, including retail auctions, and 8,000 salespeople.

### Regular dealership operations

- A dealer must have a licence for each location where they conduct business
- A dealership must have correctly zoned business premises, a display area, a registered business name, and a sign in the name of the registered motor dealer
- A motor dealer must have a vehicle repair facility or a service contract with a company licensed to do motor vehicle repairs
- Dealers must conduct business only on their licensed business premises unless the Registrar has approved an offsite sale
- In addition to annual licensing fees, dealers must make a \$300 annual contribution to the Motor Dealer Customer Compensation Fund. The Registrar may waive this requirement after a dealer has paid for three consecutive years and there are no concerns about the fund balance

### Offsite sales

- An offsite sale is where inventory and sales staff are at a location other than the dealership
- All sales staff present at the event must be licensed by the VSA
- Each dealer is permitted a maximum of thirty-six offsite sale days during a calendar year
- Events for charitable purposes must still be registered with the VSA
- A vehicle display that is not staffed does not require a permit

### Marketing events

- A dealer hiring temporary sales staff is responsible for the actions of those staff
- Temporary sales staff must be licensed with the VSA
- The VSA must be notified of the licensed sales staff at each event

### Consignment sales

A consignment sale is when a vehicle is provided by a consumer to a dealer for the dealer to sell. A consignment sale must meet the same requirements as the sale of a dealer-owned vehicle. Additional requirements for dealers include:

- Authorization from the VSA to sell motor vehicles on consignment
- Three years or more of financial statements and a revised business plan
- Additional Letter of Credit and inspection provisions
- Maintaining consignment funds in a separate trust account
- Use of an approved consignment agreement

## 10 Wholesaler Licensing Requirements and Duty to Disclose

### Overview

A wholesaler is defined as an individual or company that sells, exchanges or disposes of used vehicles to a dealer or another wholesaler in the course of business. A wholesaler representative is an individual selling vehicles on behalf of the wholesaler.

A wholesaler may sell to businesses and government or through a wholesale auction to eligible buyers. Wholesalers are not permitted to sell to consumers, except by consignment sale through a public auction.

### Business location and records

A wholesaler must have a business location that meets the requirements of the local government. Two years of records must be kept at this location.

### Wholesale agreement

A written agreement must be used, with a copy given to the buyer. The agreement must have accurate contact information for the buyer and the seller, the wholesaler or dealer licence number of the buyer, vehicle and transaction details and all required disclosures.

### Wholesaling activities by licensed dealers and salespeople

A dealer must report to the VSA that they will be wholesaling and identify the employees who will be wholesaler representatives. Fees will be waived if:

- Wholesaling is from the same location as the dealer and is conducted by the same legal entity as the dealer, and
- The wholesaler representatives are licensed salespeople

### New wholesaler representatives

The VSA must be advised within 14 days when a wholesaler representative is added. The wholesaler is responsible for the fees to add a wholesaler representative. The fees cover a background and criminal record check. If the new employee is a licensed salesperson, these fees can be waived.

The VSA may reject a person as a wholesaler representative if they are found to be unsuitable. If a wholesaler employs anyone who is not approved to act as a wholesaler representative, the wholesaler may face a sanction up to and including the cancellation of their licence.

### Wholesaler duties

A wholesaler has a duty to enquire about the history of the vehicles they sell and to disclose this to the buyer. The authority to resolve business-to-business disputes was not granted to the VSA in the *Motor Dealer Amendment Act* but failing to meet disclosure requirements could result in a licensing review.

**Best practice:** To avoid prohibited sales, establish that a sale is to a business and not to a consumer. Common evidence of business status includes incorporation, registration as a company with the Province of B.C., federal and provincial sales tax registration.

## 11 Broker Agent and Broker Agent Representative Licensing

### Definitions

A broker agent can be a corporation, partnership, joint venture, a sole proprietor or any other type of company that assists a person to purchase, lease, exchange, or acquire a vehicle for personal use.

A broker agent representative is an individual who, on behalf of a broker agent, assists another person to acquire a vehicle for personal use. Every broker agent must have at least one licensed broker agent representative or also be licensed as a broker agent representative.

### Licensing

Licensing approval for broker agents and broker agent representatives includes background and criminal record checks. If a broker agent is a corporation, partnership or other type of company, a background check on the partners, officers and directors of the company will also be done.

Broker agent representatives must pass the Salesperson Licensing Course and meet all other course requirements set by the Registrar.

### Identifying employees

A broker agent is required to identify anyone acting as a broker agent representative. If a broker agent employs anyone who is not licensed to act as a broker agent representative, the broker agent may face a sanction up to and including the cancellation of their licence.

A broker agent representative does not have to be an employee of a broker agent. A broker agent representative may be a contractor or part of a single transaction.

### New broker agent representatives

The VSA must be advised within 14 days when a broker agent representative is added. The broker agent representative is responsible for obtaining their licence, including meeting all education requirements.

### Business location and records

A broker agent must have a business location that meets the requirements of the local government. Two years of records must be kept at this location.

### Licensed dealers and salespeople acting as broker agents

The VSA must be notified if a dealer wants to provide broker agent services. If there are no concerns, a licence will be issued at no charge.

The VSA must be notified if a licensed salesperson wants to act as a broker agent representative. Education requirements may be waived, as long as licensing coursework covering the duties and obligations of a broker agent representative was completed. If there are no concerns, a licence will be issued at no charge.

All other conditions must be met, with particular attention given to conflict of interest.

## 12 Broker Agent Duty to Consumers

As a participant in a consumer transaction, licensed broker agents and broker agent representatives are governed by the *BPCPA*, the *Broker Licensing Regulation* and the *Motor Dealer Act*. They must not engage in deceptive or unconscionable practices in a consumer transaction.

A person acting for another under an agency relationship must act in good faith and in the best interest of the other person. They must avoid any conflict of interest. This is a much stricter obligation to the buyer than when acting as a salesperson or dealer.

### Conflict of interest examples

A conflict of interest exists if the broker represents the interests of any person other than the buyer, such as:

- Has an interest in the vehicle or financing being considered by the consumer
- May gain a direct or indirect benefit from another party to the transaction
- Receives compensation from a person other than the consumer

### When a conflict of interest occurs while providing services

Broker agents and representatives must:

- Bring the conflict of interest to the attention of the buyer
- End the agreement to provide services

### Broker agent service agreement

An agreement must be in place before providing services, including that:

- The vehicle title must go from the seller, not the broker agent, to the buyer
- The broker agent is entitled to costs, but not fees, if a conflict of interest arises
- Any money given to the broker agent will be held in a trust account
- Funds held in trust will be used to pay only for the vehicle being acquired and as directed by the consumer

### Prohibited authorities

Broker agents and representatives may not act on behalf of a consumer to:

- Enter into an agreement to acquire or finance a vehicle
- Grant a lease waiver described in the *Motor Dealer Act Regulation*
- Acknowledge receipt of information that is required by law to be disclosed to the consumer for their protection

**Example** A broker agent cannot accept a Cost of Consumer Credit disclosure statement for a consumer. The buyer must receive it and agree to it. Failing to provide a disclosure statement to a buyer, if it was given to the broker, would be a failure to state a *material fact* to the consumer. This would be a deceptive act.

**Best practice:** Acquire all useful documents from the seller, including vehicle history reports, mechanical inspections and repair records, and share them with buyer. Remove any personal information before selling.

## Licensing - Review

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1. An off-site sale that requires all sales staff present must be licensed by the VSA. (T/F)
  
2. What additional requirements do consignment sales have?
  
3. A consignment sale must also meet the same requirements as the sale of a dealer-owned vehicle. (T/F)
  
4. Wholesalers may not sell to consumers. (T/F)
  
5. A broker agent may accept a fee only from the buyer. (T/F)
  
6. Broker agents and broker agent representatives must make sure that all declarations and disclosures have been brought to the attention of the buyer. (T/F)
  
7. Give two examples of a conflict of interest:
  
8. When a conflict of interest is discovered the broker must notify the buyer and end the relationship. (T/F)





**Case Study 3** Damage declarations unclear or incomplete

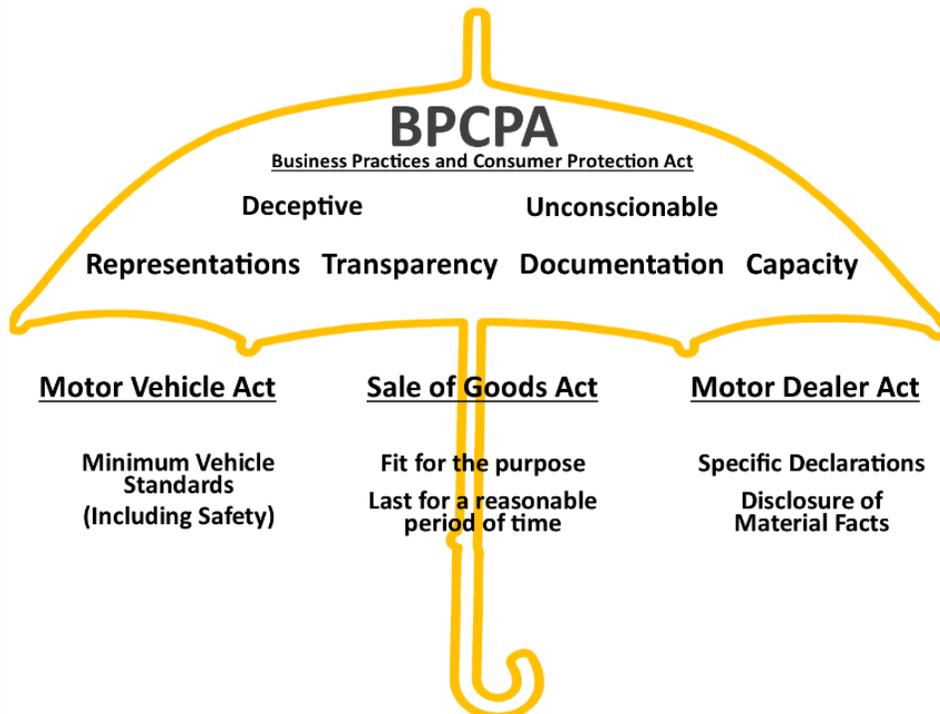
Sales files were reviewed at an Abbotsford independent dealership. The inspection revealed a business practice of selling vehicles with significant damage. Often there were multiple accidents totaling \$8,000 to \$17,000, while the buyer was told only that there was a hit over \$2,000. In one sale, no declarations were made for a repair of \$15,000 in one accident. In every case, the dealership files contained buy-in documentation or vehicle history reports that detailed the damages and costs. The salespeople had access to the damage details and prepared the sale agreements. The dealer had received prior warnings on similar complaints in the past.

1. What laws, if any, were broken in these transactions?
2. Declaring only *damages over \$2,000* satisfies the requirements of the *Motor Dealer Act*. (T/F)
3. When laws are broken, the salespeople involved in the transactions are also responsible. (T/F)
4. The consumers have a right to make a claim for compensation or to return the vehicle due to the *error in judgment* they made in buying their vehicle. (T/F)

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## 13 Minimum Vehicle Requirements – *Motor Vehicle Act*

### Overview

The [Motor Vehicle Act \(MVA\)](#) includes safety rules that apply to all vehicle sales and to any person who owns or operates a motor vehicle in B.C.

### Vehicles on the road must meet Section 219

*No one may operate, or permit someone else to operate, a vehicle or trailer that they own, unless it has all of the required features and they are in compliance.*

### Vehicles for sale must meet Section 222

It is illegal for a person to sell, or offer to sell, a vehicle or trailer *for use* unless it meets the requirements of the Act. This includes all private, auction, wholesale and dealer sales.

*For use* – to be used on a public highway or road as transportation

### Vehicles *unsuitable for transportation* should not be driven

A seller should not let anyone drive a motor vehicle that is *unsuitable for transportation* off the lot. If they do, the seller has *delivered over* to a buyer *for use* a vehicle that is *unsuitable for transportation*.

### How to sell a motor vehicle that is *unsuitable for transportation*

Note on every written representation about the vehicle, including advertisements and purchase agreements, that it is *Not Suitable for Transportation, sold for parts only or purposes other than transportation*. Display on the motor vehicle itself *Not Suitable for Transportation*.

### How to sell a motor vehicle that is intended for repair by the buyer

A statement such as the following is recommended: *This vehicle or these vehicles have not been inspected. They are sold as not suitable for transportation. The vehicles are to be towed or hauled away.*

### Misconception

*It's ok to sell a junk vehicle and let someone drive it off the lot as long as you told them you don't know anything about its condition. This is wrong. To let an unsafe vehicle be driven goes against the purpose of the law, which is to remove the harm that such a vehicle presents.*

### Inspection to verify that a motor vehicle is safe

The only way to ensure that a vehicle is not unsafe is to inspect it in comparison to the *Motor Vehicle Act Regulations* and the Private Vehicle Inspection (PVI) requirements. The PVI requirements are found in the online Vehicle Inspection Manual published by CVSE. If a seller cannot ensure that a vehicle is safe, it should be sold as *unsuitable for transportation*.

## 14 Modified Vehicles – *Motor Vehicle Act*

### Selling vehicles that have been modified

A vehicle with certain modifications must have been submitted for a provincial inspection at a Designated Inspection Facility. The vehicle must have also been subsequently registered as a *modified vehicle* reflecting an *altered* status or brand.

### Why does this matter?

A new vehicle was modified by the selling dealer and it was not inspected as required by the *Motor Vehicle Act*. A fatal accident occurred with this vehicle, prompting an investigation. This resulted in a Coroner's Service requirement that the VSA engage with dealers to improve training on this topic in an effort to avoid future fatalities.

Two very specific concerns identified in the Coroner's Report:

- That all light vehicles, including pick-ups, must have full track width bumpers
- That suspension modifications and oversized tires increase blind spots

### Modifications that require an inspection

Division 25 of the *Motor Vehicle Act Regulations* require an inspection if a vehicle has had one of more of the following components replaced or altered:

- Chassis
- Suspension
- Engine and/or power train
- Fuel type
- Steering or braking mechanical components

Selling a vehicle that does not comply with the *Motor Vehicle Act* or has not been submitted for an inspection and an amendment to its registration violates Section 222 of the *Motor Vehicle Act*, and the *Business Practices and Consumer Protection Act*.

### Inspections

The only way to ensure that a vehicle is not unsafe is to inspect it in comparison to the *Motor Vehicle Act Regulations* and the Private Vehicle Inspection (PVI) requirements. The PVI requirements are found in the online Vehicle Inspection Manual published by CVSE (Commercial Vehicle Safety Enforcement). If a seller cannot ensure that a vehicle is safe, it should be sold as *not suitable for transportation*.

### Misconception

*There are no additional responsibilities when selling a vehicle that has been modified from the original manufacturer specifications. This is wrong. Selling a vehicle that has been modified and not inspected is a violation of the *Motor Vehicle Act* and may place an unsafe vehicle on the road.*

**Government agency to know:** [Ministry of Transportation](#) is the provincial ministry responsible for highways, vehicle safety standards, garage certification, and commercial passenger vehicle licensing.

[Commercial Vehicle Safety & Enforcement \(CVSE\)](#) is a branch of the Ministry and oversees commercial vehicle safety and the *Private Vehicle Inspection* (PVI) program.

## 14 Rebuilt Vehicles and Replacing Odometers – *Motor Vehicle Act*

### Salvage and rebuilt vehicles

- A *salvage* vehicle is most commonly one that is unsafe or unable to be driven. Less often, it is a relatively undamaged vehicle that has been written off by an insurance company, such as a theft recovery
- A *rebuilt* vehicle is one that was declared as salvage, has been repaired, and has passed the two required inspections

### Inspections of rebuilt or modified vehicles

The *Motor Vehicle Act Regulations* make it an offence for anyone to operate a motor vehicle that has been rebuilt or significantly modified unless the vehicle has been inspected and has an approved certificate of mechanical condition.

This applies to vehicles:

- Disposed of as salvage and then rebuilt
- With suspension height changes of more than 10 cm from the original specifications
- Altered to increase the load capacity beyond the original Gross Vehicle Weight Rating
- With design changes not established by the vehicle manufacturer, including an increase in seating capacity

### Legally replacing an odometer

Repairing a damaged odometer is permitted. However, a motor dealer must record the odometer reading before replacing it or making a repair that causes the reading to be changed. The repair must be disclosed on a purchase agreement and in the permanent written records of the dealer.

### Illegal odometer actions

The *Motor Dealer Act* makes it illegal for anyone to disconnect, alter or replace an odometer to mislead a consumer. It is illegal to drive a vehicle with a demonstration license (D-plate) unless the odometer is working properly.

### Enforcement and penalties

Peace officers, including CVSE inspectors, enforce the *Motor Vehicle Act*. They can inspect, impound or require an inspection. Odometer tampering is an offense under the Criminal Code of Canada that can include time in jail.

**Government agency to know** [Insurance Corporation of BC \(ICBC\)](#) provides automobile insurance as well as vehicle licensing and registration services for the provincial government. The provincial vehicle registry is the official record of vehicle descriptions, title status, and ownership.

## Salvage and Rebuilt Vehicle Summary

Irreparable or Dismantle	Salvage	Rebuilt	Altered	Not suitable for transportation
<b>Applicable Legislation</b>				
Motor Vehicle Act and ICBC APV9T	Motor Vehicle Act	Motor Vehicle Act Regulations	Motor Vehicle Act Regulations and ICBC APV9T	Motor Dealer Act
<b>Definition</b>				
Written off by an insurance company and the title transferred for scrap or parts	Unsafe to drive or written off as a total loss by an insurance company (includes stolen and recovered)	A vehicle that has been re-inspected and has passed the required inspections	A vehicle that has passed the required inspections after being modified	May not meet MVA (but has not been declared salvage or dismantle)
<b>Can it be driven?</b>				
No	No	Yes	Yes	No, must be towed to meet the MVA intent to ensure public safety
<b>If not, what is needed?</b>				
Vehicle cannot go back on the road or be more than 50% of a future rebuilt vehicle	Two inspections required: Body Integrity Inspection and a BC Private Vehicle Inspection (at a certified provider)	Obtained both a Body Integrity Inspection and a BC Private Vehicle Inspection (at a certified provider)	The vehicle was inspected to obtain this status	Should remain un- plated until a BC Private Vehicle Inspection is done
<b>Impact on VIN</b>				
Removed	Still in use	Still in use	Still in use	Still in use
<b>APV9T Status</b>				
Dismantle	Salvage	Rebuilt	Altered	No box available for this status
<b>Sale agreement</b>				
Best practice to indicate this on the sale agreement	Best practice to indicate this on the sale agreement	Best practice to indicate this on the sale agreement	Best practice to indicate this on the sale agreement	Must be indicated on the sale agreement
<b>Notes</b>				
ICBC enters into a legal agreement with buyers of these vehicles	A current and valid business license is required to buy salvage from ICBC	Although not listed as a mandatory declaration, this status is a <i>Material Fact</i> to the VSA	Kit vehicles will have this designation; this status is a <i>Material Fact</i> to the VSA	The MVA does not use this specific language, but the intent is clear that an unsafe vehicle cannot be driven

## Minimum Vehicle Requirements - Review

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1. The *Motor Vehicle Act (MVA)* applies only to dealers. (T/F)
  
2. *No one may operate, or permit someone else to operate, a vehicle or trailer unless it meets the requirements of the MVA.* (T/F)
  
3. It is illegal for a person to sell a vehicle *for use* unless it meets the requirements of the *MVA*. (T/F)
  
4. It does not matter if a consumer does not understand what a *rebuilt* vehicle is. (T/F)
  
5. An inspection is needed when which of the following occurs with a vehicle?
  - a. *It is disposed of as salvage and then rebuilt*
  - b. *The suspension is changed more than 10 cm from the original*
  - c. *The load capacity is increased beyond the original GVWR*
  - d. *Design changes not designed by the vehicle manufacturer are made*
  - e. *All of the above*
  
6. An odometer can be legally replaced. (T/F)





## 15 Implied Rights and Obligations – Sale of Goods Act

### Overview

The [Sale of Goods Act](#) requires a seller of goods to stand behind the *physical* quality of their product. This legislation may cause implied terms to be added to a contract. A similar law exists in every province in Canada.

### Implied terms

An *implied term* is a right that automatically applies to a sale. An *implied term* does not need to be discussed, agreed upon or included in a contract. The *Sale of Goods Act* creates rights and obligations when goods are sold to consumers.

### Reasonably fit or safe and serviceable as transportation

When a buyer has a general use in mind, the product must be reasonably fit or safe and serviceable as transportation.

### Specific purpose

If a buyer suggests or says they are buying a vehicle for a specific purpose, the seller has an implied obligation to provide one that is reasonably fit for that specific purpose. A vehicle that did not meet the needs described by a buyer would not be *reasonably fit* as required. Documenting what the buyer asked for will protect the dealership.

### Towing capacity and GVWR

It is illegal to operate a vehicle, or permit a vehicle to be operated, if the gross weight is more than the gross vehicle weight rating (GVWR). Vehicles and trailers usually have their GVWR set by the manufacturer. A vehicle that does not meet the requirements of the *Motor Vehicle Act* would not be *reasonably fit* under the *Sale of Goods Act*.

### Imported vehicles

Any vehicle that was licensed outside British Columbia must have a safety inspection and be certified before it can be registered in BC. A vehicle must meet provincial licensing requirements to be *fit for the ordinary purposes* as required by the *Sale of Goods Act*. If it does not meet the requirements of the *Motor Vehicle Act*, it cannot be displayed for sale until it is compliant.

### Propane safety

Propane in motor vehicles is covered by the *B.C. Safety Act*. An RV or other vehicle with a propane system *being offered for sale* must display a valid inspection certificate. A propane safety check every two years and each time the vehicle changes ownership is recommended. A vehicle that fails to meet propane safety standards would not be *reasonably fit for that specific purpose* as required by the *Sale of Goods Act*.

**Government agency to know** [Technical Safety BC](#) regulates a variety of professions and activities. The Gas Safety Program regulates natural gas and propane vehicles.

## 16 Durability and the Limits of Implied Obligations

### Durability

In any purchase there is also an implied obligation that *a product will last for a reasonable period of time, given the normal use of the product and the circumstances of the sale.*

### Factors the courts identified

The implied rights of a consumer and the obligations of the dealer will be based on the:

- Age of the motor vehicle
- Number of kilometers on the odometer at the time of purchase
- Number of kilometers on the odometer at the time of the *failure*
- Nature of the use by prior owners
- Price paid by the purchaser
- Use made of the vehicle after purchase
- Reason for any defective performance or breakdown
- *Expectations created based on what was said during the sale of the vehicle*

### What you say matters

The extent of any consumer rights and the obligations of the dealer will depend on the statements and actions of the salesperson. Representations made during the transaction may be reviewed under the *BPCPA* and the *Sale of Goods Act*.

The *BPCPA* requires goods to be sold in a clear and open manner. A consumer must be able make an informed decision about their purchase. It requires the seller to stand behind the *representations* made about the goods they sell.

#### Misconception

*A salesperson can say whatever is needed to get a sale. This is wrong. A buyer has a legal right to believe and rely on your advice in making their decision. The *Sale of Goods Act* and the *BPCPA* will protect them.*

### Consumer remedy

A dealer may be required to make repairs if a vehicle needs repairs that were not disclosed at the time of the sale. The dealer may have to fix the vehicle because there is an obligation that it will last for a reasonable period of time. The contract is not broken, but the buyer has rights under the *Sale of Goods Act*.

#### Misconception

*Offering or providing an extended warranty eliminates the requirements of the *Sale of Goods Act*. This is wrong. Offering or providing an extended warranty does not eliminate these requirements.*

### Consumer remedy

If a vehicle is sold as a four-wheel drive, but it is not a four-wheel drive, a fundamental part of the contract has not been met. The buyer may have the legal right to return the vehicle for a full refund. The vehicle is not *reasonably fit*.

## Implied Rights and Implied Obligations - Review

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1. The *Sale of Goods Act* requires a seller of goods to stand behind the *physical* quality of their product. (T/F)
  
2. An *implied term* is a right that automatically applies to a sale. (T/F)
  
3. What is true when a vehicle buyer has a general use in mind:
  
4. When a buyer says they are buying a vehicle for a specific purpose, the seller must provide one that is reasonably fit for that specific purpose. (T/F)
  
5. In any purchase there is also an implied obligation that a *product will last for a reasonable period of time*. (T/F)
  
6. What factors affect the implied obligations of a dealer and the rights of a consumer?

## 17 Misunderstood Concepts

### Buyer beware

*Buyer Beware* is no longer an accurate statement about buying products in Canada. The Supreme Court has said that the *Sale of Goods Act*, the *BPCPA* and other consumer laws have made it *let the seller beware* marketplace.

### Disclosing the quality and condition

All defects and conditions of a vehicle are required to be disclosed to a consumer. They may be *material* to their decision to buy and must be disclosed before negotiations have been completed.

### As is - where is

*As is - where is* should not be part of a standard vehicle sales contract because

- It is not effective in limiting the implied rights of the buyer
- A consumer cannot waive their right to make the seller disclose all *material* defects
- The *BPCPA* gives rights to consumers that cannot be waived by a contract

*As is - where is* does not put a consumer on proper notice that a vehicle may be *unsuitable for transportation*. It is a *material fact* if a vehicle is unsafe. That condition must be disclosed accurately. Using *as is - where is* to avoid disclosing material defects is a deceptive act.

### Implied rights cannot be waived for a new vehicle

A contract might state that the new car warranty represents the entire liability of the manufacturer or seller. However, the purchaser also has rights under the *Sale of Goods Act*. It gives a consumer implied rights with the purchase of any new good for personal use. A statement that fails to recognize these implied rights or attempts to take rights away may be considered deceptive under the *BPCPA*.

### Limiting obligations during the purchase of a used vehicle

- A written waiver must mention the *Sale of Goods Act*
- The buyer must understand the specific rights they are waiving, and
- The waiver must not contradict statements made during the transaction

### Auction sales do not limit dealer liability

Dealers that use auctions as agents to sell vehicles to the general public have the same obligations for disclosure and due diligence under the *Motor Dealer Act* and the *BPCPA* as a sale from their own premises.

A transfer of ownership to the auction is needed to remove these disclosure requirements. Saying a vehicle is sold *as is - where is* at the auction offers no protection from meeting these obligations.

**Example** Selling a vehicle as *not suitable for transportation* is getting a buyer to waive their right to expect a safe vehicle. Letting them drive it off the lot cancels that waiver.



**Case Study 5** Vehicle sold at auction

A consumer contacted the VSA complaining that the vehicle they bought from a public auction would be unsafe because they learned it had been in a major accident. Research revealed that the auction house acted as an agent for a dealer and the name of the dealer was on the transfer document provided to the consumer.

An accident history was obtained from ICBC. Prior damage was extensive, but there were no declarations and disclosures on the bill of sale or the APV9T except *as is – where is*. A Private Vehicle Inspection (PVI) confirmed that the vehicle did not meet the requirements of the *Motor Vehicle Act*.

1. This sale was covered under the *Motor Dealer Act* and the *BPCPA* because it was a public auction. (T/F)
2. The dealership would be solely responsible for both the condition of the vehicle and the missed declarations in this sale. (T/F)
3. What are three problems in using an *as is – where is* statement?
4. The dealer and the auction both had a requirement under the *Motor Vehicle Act* to sell a safe vehicle. (T/F)

## 18 Contract Law – A Meeting of the Minds

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### Introduction

A contract is a promise between two or more people to do a particular thing. The goal is to make the promises between the parties clear. This reduces the chance for conflict. Most problems with contracts occur when conditions are unclear or missing.

### Verbal contracts

Contracts do not need to be in writing. *Oral contracts* are binding, and one party cannot change a contract on their own. However, verbal contracts are harder to prove and *enforce*, even if there are witnesses. It is much better for contracts to be in writing.

*Enforce, enforceable, enforceability* – to make something happen

### Written contracts

The piece of paper is not necessarily the contract. However, the document should provide clear evidence of what the parties agreed to. The parties sign and date a contract to show an understanding and the intention to perform their part. This makes it easier for the courts to *enforce*. Written contract terms generally cannot be changed unless all parties agree in writing.

### Meeting of the minds and intention to perform

All parties to a contract must have a *meeting of the minds*, or a clear understanding of all the terms of the contract. The parties must also have the intention to perform the promises of a contract. A reasonable bystander must see the parties as having the intention to perform the agreement. A contract signed reluctantly or under pressure does not meet this test. It may not be a valid contract.

### Implied contracts

The *Sale of Goods Act* and the *BPCPA* can give rights to consumers in contracts and agreements. These implied conditions do not need to be written into the contract to be enforceable.

### Protections of a written contract

The *Motor Dealer Act* requires that specific declarations and material disclosures are made in vehicle contracts. A written agreement is used not only to record the details of the sale, but to show that these declarations and *material* disclosures were made. This includes the agreement required for wholesale transactions.

## 19 Offer, Consideration and Acceptance

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### The three elements of a contract

Three elements are needed to create a valid contract. All three must be present and all the parties must have participated.

#### Offer

- An offer is a tentative promise by one party, subject to a condition or request, to another party
- An offer can be made *verbally, in writing or be implied by conduct*
- An offer must have all the important terms of the proposed contract, including the consideration
- If the offer does not contain all of the terms, or if some of the terms are unclear, the offer could be void
- If either party changes anything in the offer, it is a counter-offer and the first offer may no longer be valid

#### Consideration or an exchange of value

- Consideration can be money, anything of value, or an exchange of promises between parties. Money is the most common consideration
- In a vehicle sale, consideration may be a combination of items such as a deposit, a trade-in, financing, rebates and cash
- Consideration must have some value in the eyes of the law. If there is no value exchanged by one party, there is no contract

#### Acceptance

- Acceptance of the offer must be clear to both parties
- Unless agreed, acceptance usually needs to be in the same form as the offer
- If the terms are changed in the acceptance it is a counter-offer. It does not create a contract. The first offer is no longer be valid and can be withdrawn
- It is not possible to accept only part of an offer
- There is no contract if important terms are to be added later

#### A binding or enforceable contract

- An offer is *tentative* until there is *acceptance* of the consideration and the terms. Once the offer is accepted it is a binding contract
- Missing terms may be added by the *Sale of Goods Act* even if they were not discussed

**Contract Law Part 1 – Review**

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1. The *Sale of Goods Act* and the *BPCPA* can give rights to consumers in contracts and agreements. (T/F)
  
2. A written agreement is used to show that *Motor Dealer Act* declarations and *material* disclosures were made. (T/F)
  
3. How can a written contract be changed?
  
4. An offer must contain all the important terms of the proposed contract, including the consideration, to be valid. (T/F)
  
5. If either party changes anything in the offer, it is a counter-offer. (T/F)
  
6. What are three important things about *acceptance*?

## 20 Essential Terms – Parties, Property and Price

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### Parties

- The parties must be known and have the capacity to make a contract for it to be valid

*Capacity* – the ability to understand and protect their interests

- Laws protect people with limited capacity due to mental illness, age or the effects of drugs and alcohol. A buyer of limited capacity may *enforce* a contract they make, but the seller cannot hold them to the same contract

*Enforce, enforceable, enforceability* – to make something happen

- The law assumes that every person who is 19 or older is competent. A buyer with limited capacity must show they were unable to protect their interests and that the seller was aware of their condition

**Caution** A minor can *enforce* a contract they make, but the seller cannot hold the minor to the same contract. This is true even if the seller is not aware that the buyer is a minor.

*Minor* – in B.C., the *Infants Act* says this is anyone under the age of 19

### Property

- The property must match the description in the contract
- It must be delivered in the condition it was in at the time the contract was made
- The seller must own the property or have the right to sell it for another party
- It must be delivered free of liens or restrictions, except for those agreed to already

**Caution** The *Sale of Goods Act* states that a buyer has not accepted goods until they have had an opportunity to inspect them to make sure they match the contract.

### Price

- The price must be clear to both parties at the time of the contract. Legislation may require a price to be stated in a particular way. Lease payments with APR and total cost of borrowing is an example
- The consideration must be a fair representation of the market value

**Caution** The courts will not usually decide if a deal is good or bad. However, the contract may not be binding if the consideration by one party is grossly inadequate and evidence points to inequality between the parties. This could be evidence of an *unconscionable act*.

## 21 Enforceability of Contracts

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### **A deposit does not make a contract**

Providing a deposit can show an intention to perform the contract. However, the taking of a deposit by itself does not create a binding contract. If the essential terms of a deal are not clear, or the required steps have not been taken, a deposit will not create a contract.

### **A deposit is not needed**

A deposit is not necessary to form a contract if there is a *meeting of the minds*.

### **Enforceability**

The terms of the contract must be clear enough that a reasonable person could understand their meaning. If the terms are seen as unclear, a contract could be declared void under the *BPCPA* or under common law.

If a dealer has required the use of a standard contract, any unclear terms will usually be interpreted in favour of the buyer. Clarity of the terms is very important.

### **Voiding a contract**

A request to void a contract must be made in a reasonable time and the benefit of the contract must be minimized. For example, a buyer could not drive a long distance and then ask for the contract be voided due to a lack of capacity.



## 22 Deposits and Partial Payments

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### Partial payment or down payment

A payment taken as part of an agreement to purchase a specific vehicle when all the terms and conditions are known may be a *partial payment or down payment*.

A *partial payment or down payment* is a substantial pre-payment of part of the price of a vehicle. This includes a payment made as part of an instalment purchase. The buyer may be able to recover a *partial payment or down payment* even if they fail to complete the contract.

### Deposits

Deposits are usually taken when a sale is not yet complete. An outline of the sale may be written on a purchase agreement with some of the terms still to be completed. This makes the deposit a separate transaction and it should be documented separately (see the sample deposit agreement on the next page).

### Accuracy matters

If there is a written purchase agreement, the *Motor Dealer Act Regulation* requires the terms and conditions when a deposit is refundable and non-refundable to be clear. In certain cases, a deposit may be kept as long as it is not a penalty for not completing the contract.

A simple statement that a deposit is *non-refundable* could be misleading. There are situations when a dealership will not be able to perform the terms of the agreement. For example, the deposit may not be kept if the seller cannot provide the right vehicle or the promised financing.

# Sample Deposit Agreement

Between \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_ the **Dealer** and

\_\_\_\_\_ the **Customer**

It is agreed that the Customer will pay to the Dealer the full sum of \$\_\_\_\_\_

This money is being accepted by the Dealer as a **Deposit**. This money is being paid to

- Hold a vehicle for a period of time
- Bring a vehicle from another dealer
- Order a vehicle from the manufacturer
- Arrange financing for a vehicle
- If other, please describe:

### Terms

1. If the Customer does not perform their part of the agreement by \_\_\_\_\_(date) all these monies are (select one);

**Refundable** \_\_\_\_\_(initial)

**Not refundable** \_\_\_\_\_(initial)

2. If the Dealer does not perform their part of the agreement by \_\_\_\_\_(date) all these monies will be refunded.

3. If the Customer and the Dealer perform their parts of the agreement, the deposit will be applied to the purchase price.

**Customer:** \_\_\_\_\_ **Dealer:** \_\_\_\_\_

**Note:** A partial payment or down payment should be documented as part of a detailed purchase or sale agreement.

### Provide a copy to the buyer

The consumer should be provided with a signed copy of the agreement and any other documents related to the transaction.

## 23 Dealer Fees

### What are dealer fees?

A dealer fee is any fee added by the dealership that is not required by law, such as taxes. This includes any advertised documentation, administration, registration or placement fees. Dealer fees do not include security, etching and other insurance premiums that must be negotiated as a separate *voluntary* purchase in accordance with insurance regulations.

### Dealer fees must be in *total price*

*Total price* is defined under the *BPCPA* as the total obligation or amount that is payable or assumed by a consumer before taxes. The dollar amount of any dealer fees must be explained and disclosed if they are part of the price of a vehicle.

This includes pricing on vehicle stickers, dealership signage and advertising. Dealer fees should be posted so that a consumer can reasonably add the numbers to calculate *total price*. If they are not posted and are added later, this could be deceptive under the *BPCPA*.

If dealer fees are not mentioned after an offer is made, a buyer can assume that the fees were included in the price. When a buyer agrees on a price for a vehicle, fees cannot be added later.

### What is required during the negotiation?

To avoid causing a consumer to make an error in judgment, dealer fees must be clearly disclosed and correctly explained during the negotiation before a final agreement on price is reached. Combining dealer fees with government fees such as the tire levy or improperly describing the reason for dealer fees could be considered a deceptive act.

### Proving that a deceptive act did not occur

Evidence to show that a *deceptive act* did not occur could include proof of the disclosure of an accurate *total price* that includes dealer fees. This would include any advertising, dealership signage and vehicle stickers. Evidence could also include signed worksheets to show when the fees were disclosed and explained.

### Air Conditioning Tax

The Canadian government charges a \$100 tax on every new vehicle with air conditioning. This tax is the responsibility of the manufacturers. Some manufacturers pass this on to the dealers. Many dealers choose to recover this \$100 from consumers.

#### Misconception

*Consumers must pay the \$100 tax. This is wrong.* As with any dealer fee, it is legal if discussed during the negotiation and the fee is accurately described. Calling it a tax is not accurate. It is not a consumer tax. Saying or implying that it is would be considered a deceptive practice.



## 24 Recalls, Added Services and More

### **An uncorrected recall is likely a *material fact***

If the problem is serious enough for a safety recall or limits the use of the vehicle in some way, that problem is likely a *material fact*.

Failing to disclose an uncorrected recall or providing incorrect information about recalls may be a deceptive act. This could include recalls known to the dealer and not yet made public. Allegations of a deceptive act regarding a recall may be within the jurisdiction of the VSA.

### **Selling a vehicle with an outstanding recall**

Dealers may sell a vehicle with an outstanding recall unless a *stop sale* or *stop driving* order applies. Dealers must use due diligence to identify outstanding safety recalls using available resources. Outstanding recalls for serious safety issues are *material facts* that should be disclosed on the sale or lease contract.

### **Personal insurance**

A dealer may not sell any kind of insurance unless that dealer is authorized to sell insurance or is exempt under the *Financial Administration Act*.

If a dealer offers to arrange insurance for a buyer, the dealer must disclose to the buyer in writing, that they are free to purchase the insurance from an insurer and an insurance agent of their choice.

#### **Misconception**

*A credit union, bank or financial institution can make it a condition of a loan to buy life insurance. This is wrong. Stating that life or disability insurance is required would be a deceptive act.*

### **Security, etching and other insurance products**

The authority to sell insurance products is determined by *Insurance Council of B.C.* Dealers are required to have a *Restricted General Insurance Licence* to sell non-exempt insurance products. This includes etching and other similar products.

Security, etching and other insurance premiums must be negotiated as a separate *voluntary* purchase in accordance with insurance regulations. Customers must be advised that etching or other anti-theft insurance is optional.

**Government agency to know:** The [Insurance Council of B.C.](#) licenses insurance agents and determines what insurance products can be sold at motor vehicle dealerships.

## Case Study 7 Vehicle sold without a tire inspection

A consumer purchased a used Nissan 350Z from a Lower Mainland dealership after test driving it on dry pavement. While completing the transaction she noticed that the rear tires were more worn than the front tires. The sales manager stated that the car was just a year old, so the tires should be fine. However, he did not examine the tires and the dealership had not done a vehicle inspection after receiving it from a wholesaler.

Seven days later the buyer was in a single car accident in a summer rain. She suffered neck and back injuries requiring \$40,000 in long term care. Repairs to the car cost \$13,000. The court found through expert testimony and eye witnesses that she was not speeding, and that insufficient tire tread caused the accident. The buyer was awarded damages for her injuries and future care as well as reimbursement for new tires.

1. The dealer sold an unsafe vehicle. (T/F)
2. Selling an unsafe vehicle is prohibited under the *Motor Vehicle Act* and the *Motor Dealer Act*. (T/F)
3. This was alleged to be a deceptive act, so the dealer had the *burden of proof* to show that it was not. The dealer had evidence to show it was not their fault. (T/F)
4. The actions of the manager would be a deceptive act under the *BPCPA*. (T/F)

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## 25 Vehicle Leases

### **Motor Dealer Act Regulation and BPCPA disclosure requirements**

A consumer must be given the following information before they enter into a lease:

- Who is responsible for maintenance
- Who is responsible for the condition of the vehicle at lease end
- What is defined as *normal wear and tear*
- Amount of tax in each payment
- Extended warranty costs at the time the lease is made, if any vehicle warranties
- Insurance coverage the consumer must provide
- Limitations on who may drive or where the vehicle can go

### **Mandatory cooling-off period for motor vehicle leases**

A vehicle leased to a consumer must stay in the possession of the dealer for *one clear day* after a lease agreement is made, unless the consumer agrees in writing to cancel this requirement. During that *one clear day* the consumer may cancel the lease agreement. The dealer is required to reimburse the consumer any deposit or other money paid on the lease.

#### **What is one clear day?**

*One clear day* is the next full day following the transaction. However, Sundays, statutory holidays and days the dealership is normally closed are not included. It is not 24 hours. It could be two days or more.

#### **What if a consumer wants to take the vehicle immediately?**

The purpose of the cooling-off period is to give the consumer time away from the dealership to consider the transaction. Because most consumers prefer to take immediate possession of their leased vehicle and the *one clear day* provision is complex, a waiver is used. However, this must be explained to the consumer and be in writing to protect the dealership.

#### **Misconception**

*If the buyer takes the vehicle they have waived their rights. This is wrong.* If the buyer was not told about their right to a cooling-off period and did not waive this right in writing, the lease may be able to be broken by the buyer.

## 26 Lease-End Buy Outs

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### **A lease-end buy-out is a new sale**

A lease-end buy out is considered a separate motor vehicle transaction. The dealer must declare on the purchase agreement that the vehicle meets the *Motor Vehicle Act* safety requirements or be sold as *unsuitable for transportation*. How a dealer ensures that vehicles meet these requirements is not defined.

### **Meeting the *Motor Vehicle Act* requirements**

If a dealership has serviced the vehicle regularly during the lease, they will likely know the condition of the vehicle. If they have not serviced the vehicle often or at all during the lease, a best practice would be to complete a *Private Vehicle Inspection* or *PVI*. The *excess wear and tear* inspection is not sufficient to meet this requirement.

### **Misconception**

*The VSA requires a lease buy-out inspection so the lessee/purchaser must pay for it. This is wrong.* Dealers must decide how to meet the *Motor Vehicle Act* requirements based on the terms of the lease and the condition of the vehicle. Whether the dealer can charge for an inspection and any repairs must be based on the lease contract. Adding lease-end fees in an improper manner could be a deceptive act under the *BPCPA*.



**Video Case Study D** Lease end return issues

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Watch the CBC news clip on the VSA Learning Centre website about a lease return and the statements of the dealer and salesperson.

1. The salesperson correctly explained the obligations of the consumer when returning the vehicle. (T/F)
  
2. If a dealership charges a consumer for repairs on a lease return vehicle they are required to perform those repairs. (T/F)
  
3. The two statements the salesperson made about the damage were misrepresentations. (T/F)

## 27 PST and Tax Exempt Sales for First Nations

### The provincial sales tax (PST) and motor vehicles

- A general tax rate of 7%
- Used vehicles bought privately are subject to a 12% provincial sales tax
- There are added luxury taxes of 1% to 20% for new and used passenger vehicles priced at \$55,000 or more
- The lease of a motor vehicle is subject to PST

### First Nations tax exemptions

- An individual purchasing or leasing for their personal use and in possession of a Certificate of Indian Status card
- A First Nations Band purchasing or leasing for the use of the Band

It is the responsibility of the person selling or leasing a product to ensure that the consumer qualifies for the exemption and that all of the requirements for the exemption are met.

### Purchases

The item purchased must be on reserve land at the time the sale takes place. Or, title must pass to the purchaser only when the goods have been delivered to a reserve location. This is often documented with pictures.

### Leases are different

To qualify for the tax exemption on a lease, the consumer must reside on reserve land, but the transaction does not need to occur on reserve land. The rules for the purchase of a vehicle must be followed if a vehicle is being bought out at the end of a lease.

**Enforcement** To avoid tax liability and penalties, a dealer should have policies and documentation procedures in place for all tax exempt selling and leasing. Taxation enforcement is done by the provincial government and the Canada Revenue Agency.

The VSA does not oversee tax exempt sales or provide taxation advice. However, the Registrar may suspend, cancel, or put conditions on a licence if proper business practices are not followed.



## 28 Consumer Privacy – *Personal Information Protection Act*

### Purpose of *PIPA*

The provincial [Personal Information Protection Act \(PIPA\)](#) protects *personal information* that describes a person, while giving businesses reasonable rights to collect, use, and share personal information for a *valid or legitimate business purpose*.

*Personal information* – includes a person's name, home address, home phone number, ID number, physical description, blood-type and level of education

### Limitations on personal information

- The person providing their personal information must be told how it will be used and they must agree to provide it for that purpose
- Only the amount and type of personal information that is needed for that purpose may be collected
- The information can be used or given to someone else only for that purpose
- The information must be stored in a secure way
- The information should be kept only as long as it is needed for business or legal reasons

### Business privacy requirements

- Every business must have a privacy officer. A privacy officer is responsible for making sure that the business is following the rules in *PIPA*
- Every business must have written privacy policies and procedures. A copy of the policies and procedures must be given to anyone who asks for it
- Businesses are encouraged to review their procedures to minimize the collection of personal data, including the routine copying of driver licences
- What your business defines as a *valid or legitimate business purpose* can be reviewed by the Office of the Information and Privacy Commissioner for B.C. (OIPC). The VSA cannot make that determination

### Locating private information

Private information is not just what is collected directly. It should be protected or destroyed once the vehicle is in your possession. It can be found in many places:

- On repair receipts in the glove box
- In the GPS or audio systems
- Under seats or in the trunk

## 29 PIPA and Driver's Licences

### Overview

A driver's licence is a way for drivers to show they are authorized to operate a motor vehicle and for authorities to enforce traffic laws. It contains other information such as a photograph, physical descriptions, and a signature. This is more information than is needed for most business purposes.

The driver's licence number is valuable in committing identity crimes. For this reason, these numbers are often the subject of security attacks and misuse. Enhanced licences and CareCard data have increased privacy concerns.

### Recommendations from OIPC for dealerships

- Collect only the information that is needed, even if the customer offers more
- Do not collect driver's licence numbers as a way to protect your business. Examining the card will usually provide the protection you need
- *It is generally considered excessive and unjustified to record the number from the licence, or to swipe, photocopy or otherwise reproduce the card unless there is a valid business purpose.* Recording the licensee's name and the address from the card may be appropriate in some cases
- Do not collect more than you need because personal information must be stored and destroyed securely once it is collected

**Enforcement** If a person believes *PIPA* rules are not being followed, they can make a complaint to the OIPC. They can investigate complaints and can start an investigation. OIPC can issue orders that organizations must follow. If a court finds that a person is guilty, the person may be fined up to \$10,000. If a corporation is found guilty, the maximum fine is \$100,000.

### Canada's Anti-Spam Legislation

Dealers and salespeople in BC are also subject to the requirements of Canada's Anti-Spam Legislation or CASL. It regulates the sending of all commercial electronic messages, including the requirement for consent.

**Enforcement** The VSA does not directly oversee privacy rules. However, the Registrar may suspend, cancel, or put conditions on a licence if proper business practices, including the failure to meet privacy requirements, are not followed.



## 30 Distance Sales

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### Overview

The *BPCPA* defines a distance sale as a contract between a seller and a consumer that is not agreed to in person and in which the consumer has no opportunity to inspect the goods before the contract is entered into. An example of this would be a contract made by email, the phone or by other means.

It is the responsibility of the dealership to have sales documents that accurately show where the transaction occurred, even if the transaction was completed at a distance. If conducted at a B.C. dealership, all provincial laws apply.

### Cancellation

Depending on the situation, distance sales contract rules may give consumers the right to cancel a contract immediately, within 7 days, within 30 days or any time before the product is delivered. And, if a distance sales contract is properly cancelled, other agreements, including credit agreements, will also be cancelled.

The *Sale of Goods Act* states a buyer is deemed to have not accepted goods until they have had an opportunity to inspect them to ensure they conform to the contract.

### Buyer acceptance

The goods are deemed to have been accepted when:

- The buyer tells the seller they accept them
- If the buyer retains the goods and says nothing to the seller
- The conduct of the buyer is inconsistent with ownership still being with the seller

**Example** This could include a buyer registering and insuring a vehicle.



## 31 Agency and Liability

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### Overview

Businesses and their employees are bound together by legal concepts that have been developed by case law over many years. When a business gives an agent or an employee general authority to conduct business on their behalf, they are bound by what that person does in the ordinary course of business. The authority comes from the nature of their normal duties and by the customs of the trade or profession.

### Business liability

A business is *directly liable* when an officer, director or other senior person commits a wrong. This could include instructing an employee or agent to participate in a deceptive act and is true for anyone who can be said to be part of the company's *directing mind*. The wrong can be intentional, negligent or innocent.

### Employee liability

An employee is *directly liable* if they participate in a deceptive act whether it is intentional, negligent or innocent.

*Intentional* – done on purpose or deliberately

*Negligent* – failing to take proper care in doing something

*Innocent* – not responsible for or not directly involved

### Business liability for the conduct of employees

A business is *vicariously liable* for any improper acts of an employee during their normal course of employment. Liability exists whether the actions are intentional, negligent or innocent. An employee is assumed to know everything the business knows.

**Government agency to know:** [Employment Standards Branch](#) administers the *Employment Standards Act and Regulation*. The *Act* and *Regulation* set minimum standards of wages and working conditions in most workplaces, including commission sales.



## 32 Advertising Overview

### VSA Advertising Guidelines

The [VSA Advertising Guidelines](#) are available to explain the sections of the *Motor Dealer Act* and the *Business Practices and Consumer Protection Act* that apply to advertising of motor vehicles. They also provide information about other legislation that applies to vehicle advertising but is not administered by the VSA. Recommended best practices are included. The Advertising Guidelines do not change the law and are not a substitute for independent legal advice.

They are also helpful as they define a number of terms including:

- The types of advertising (dealer, national, etc.)
- The many types of warranties
- Definitions and uses of cash price, credit price, MSRP and total price
- Dealer cost, dealer inventory and dealer fees
- Non-interest finance charges
- Grace and interest-free periods

### What is deceptive or misleading advertising?

The VSA uses a specific definition for deceptive advertising based on a decision of the BC Supreme Court:

*Any use, in the oral, visual, written or electronic communication of material facts, of a representation that tends to lead a reasonable person into making an error of judgment.*

### When is advertising deceptive or misleading?

The standard used by the VSA and the Supreme Court of Canada is based on the expectations of a credulous and inexperienced consumer. A credulous consumer is one who is willing to believe what they read and what they are told without asking questions or inquiring further.

To determine whether advertising is misleading, the VSA will judge the general impression by reading or viewing the ad just once and:

- Considering the words that are used and how they are used
- Considering the general layout of the ad

If the words or layout convey conflicting or confusing messages, the ad is misleading.

### 33 Advertising Examples and Using Fine Print

#### Examples of deceptive advertising about a vehicle or services

- Claims of a particular standard, quality, grade, style or model if they are not
- Claims of a particular prior history or usage that they do not have, including saying they are new if they are not
- Claims they are available if they are not available
- Claims they are available in a stated period of time if the seller knows or ought to know that they will not be available in that time period

#### Examples of misleading statements

- Claims the dealer or salesperson has a sponsorship, approval, status, affiliation or connection that they do not have
- Claims that the offer includes rights, remedies or obligations that are not true
- Claims that the offer does not include rights, remedies or obligations when it does
- Claims about the authority of an employee or agent to negotiate the final terms of a transaction if they do not have that authority
- Claims that use exaggeration, innuendo or ambiguity about a material fact, if the effect is misleading
- Claims that fail to state a material fact, if the effect is misleading

#### Advertising about the total price would be deceptive if:

- A person could reasonably conclude that there is a price benefit when a price benefit does not exist
- The price of a unit or instalment is given in the representation, and the total price of the products or services is not as prominently displayed

#### Use of fine print

Information in fine print that is intended to protect the seller will not protect the seller if it cannot be read. Fine print must be readable and distinct from its background. The VSA recommends that fine print be at least 10-point font in published copy.

#### Fine print should be limited to:

- Declaring that a consumer will be required to pay PST, GST, the tire levy, or other taxes which are in addition to the total price
- Declaring the amount of any additional fees, such as a documentation fee, that are part of the total price
- Declaring that to qualify for credit or a lease, a consumer may be required to purchase insurance, which is extra to the total price
- Declaring that a consumer may be offered optional services or products
- Declaring material facts about a vehicle by using a symbol beside the description of the vehicle that matches the symbol for the material facts

Note: Material facts that are prohibited by law, such as the failure to meet the minimum standards of the *Motor Vehicle Act*, cannot be shown.



## 34 Advertising Price

### Advertising vehicle prices

Whenever the price of a vehicle is included in an ad, it must be the total price of that vehicle. A consumer can expect the advertised price to be the total price, including the amount of any advertised additional fees (such as documentation fees).

**Total price** The total obligation or amount that is payable, given, undertaken or assumed by a consumer under a consumer transaction. If a documentation or other fee is part of the price a dealer wants for the vehicle, the amount of any fee must be included in the ad.

The total price of a vehicle must be prominently displayed in an ad. The total price for a vehicle:

- Must be clearly displayed on the vehicle being offered for sale
- Must be the same total price in every type of active ad for that vehicle, including what is on that specific vehicle
- Must be available to all consumers with no restrictions except for financing

In dealer ads, cooperative national (manufacturer) and dealer ads, or salesperson ads, the advertised price must be total price.

### Incentives and promotional contests

Any costs for receiving a “free gift, trip or other giveaway” incentive, including any fees or taxes, must be included in the total price of any vehicle with the incentive.

A seller must abide by the [Competition Act](#), the *Business Practices and Consumer Protection Act*, the *Gaming Control Act* and the *Criminal Code of Canada* in regard to promotional contests. The VSA recommends that a seller understand these legal requirements and obtain legal advice to ensure that the requirements are met.

## 34 Advertising Price

### Qualifying offers or discounts

BC law requires that advertised vehicle pricing must reflect the price available to all consumers. Qualifying offers and discounts, those that are available only to certain individuals or members of certain groups, do not meet this standard. To comply with the law, offers and discounts must be listed separately from the vehicle pricing and include a comprehensive summary or disclaimer. See the VSA Advertising Guidelines for more information.

### Scrap-It program

A Scrap-It incentive is different than most other qualifying offers. To obtain a Scrap-It incentive:

- A consumer must own a vehicle to scrap that qualifies for the program, and
- The consumer must give legal title of the vehicle to a third party, not the dealer

In addition:

- The true value of the Scrap-It incentive to the consumer decreases in direct proportion to the value of the vehicle being scrapped, and
- The consumer also gives up the value of any sales tax savings that would apply to a trade-in deduction.

It is important to avoid presenting a potential Scrap-It incentive as a savings to the consumer without an adequate disclaimer. The VSA recommends the following disclaimer with any presentation of a Scrap-It incentive dollar value:

*“The Scrap-It incentive is available towards the purchase of a new or used electric (EV) vehicle only if you scrap your qualifying vehicle in exchange for the incentive. See dealer for details. Incentive is not provided by the dealer.”*

## 35 Using MSRP and Dealer Cost in Advertising

### Using MSRP

A seller may advertise the *total price* of a new vehicle by showing the MSRP, plus any dealer additions and deductions from that price for each legitimate price benefit to arrive at the total price for that vehicle.

If the MSRP is used as a starting point in determining price in an ad, the seller must have sold a substantial number of similar vehicles at that MSRP prior to publication.

A national (manufacturer) ad is the only time MSRP can be used as the *total price*.

### Price benefit

A seller must not advertise a price benefit as a reduction from the total price unless the seller can demonstrate the price benefit is real.

### Using dealer cost or factory invoice

A seller may advertise the price of a new vehicle in relation to the dealer cost but, describing the price in relation to dealer cost is not a substitute for the total price. A price may be described as “below dealer cost,” “dealer cost plus \$xxx,” or “\$xxx over factory invoice,” but the total price must still be included in all ads and on the vehicle. The dealer cost or factory invoice amount must be able to be verified by the VSA and the consumer.

### Improper pricing in advertising

- A seller must not show a guaranteed or minimum trade-in value as a deduction in the calculation of total price because the total price that results does not apply to all consumers
- A seller must not compare the total price of vehicles unless the vehicles are exactly the same
- A seller must not compare the total price of used vehicle to the MSRP of a new vehicle or to the MSRP of the used vehicle when it was new
- A seller must not say or imply that GST, PST or another tax is not due. A seller may advertise they will pay the same amount as a tax. That amount must be deducted from the original total price to create a new total price. GST, PST or other taxes would then be calculated on that lower total price

## 36 Advertising Credit and Leasing

### Advertising that credit is available

An ad may indicate that a dealer is offering financing on the purchase of a vehicle by using phrases such as “financing available,” “on approved credit (OAC),” “credit available to qualified buyers,” “credit available at dealer’s or lender’s discretion,” “monthly payments can be arranged” or similar phrases, without providing any further details.

### Credit details required in an ad

When information about the interest rate or the amount of payment is shown, complete credit information must be clearly displayed.

If an ad offers credit on a specific vehicle, the cash price of that vehicle must also be included and clearly displayed.

If an ad offers credit on a specific vehicle for which a financial placement fee or similar payment is required, the following must also be included and prominently displayed:

- The cash price of the vehicle
- The total cost of credit, including any financial placement fee or similar payment

If the cash price of a vehicle in an ad is less than the price of that vehicle under the credit agreement being advertised, then the seller must either:

- Substitute the price of the vehicle under the credit agreement for the cash price, or
- Include and clearly identify both the cash price and the price of that vehicle under the credit agreement

Credit details required in an ad must be displayed with equal prominence and may not be included only in the fine print: [Disclosure of the Cost of Consumer Credit Regulation](#).

If an instalment amount is included in an ad the total price must be displayed as prominently.

### Rules apply for advertising interest-free and grace periods

The Advertising Guidelines include requirements for the seller to explain whether an advertised benefit is an interest-free period or a payment grace period. Failing to correctly advertise a payment grace period can result in the period being deemed to be an interest-free period.

### Advertising leases

Whenever the details of a lease are offered in an ad, the details must be complete. The Advertising Guidelines include the full list that must be included.



## 37 Inventory Requirements

### Requirement to include stock number or VIN

Every vehicle in dealer inventory, being offered for sale or being advertised must be clearly identified by a unique stock number or vehicle identification number (VIN). This number must be on the vehicle and included in any ad for that vehicle.

### Inventory requirements

An ad for a new vehicle that must be ordered from the manufacturer must clearly state that restriction. Any photograph or illustration of the vehicle must be the same year, make, model and trim package as the advertised vehicle. Otherwise, an advertised vehicle must be in the dealer inventory at the time of the ad and must be available at the advertised price.

### Consigned vehicles

The seller must disclose when a vehicle is being sold on consignment in all ads and on the vehicle.

### Advertising demos

A seller must not advertise a vehicle as a demo or any such similar description unless the vehicle was used by the manufacturer or dealer in the normal course of business and the vehicle was acquired by the dealer from the manufacturer when it was new.

### Vehicles that are sold

It is misleading for a seller to advertise a vehicle after it has been sold since it is no longer available to the public. If the advertised vehicle is sold while the ad is in effect, the seller must post the ad in an easily viewed location in their showroom or dealer location with a clear notation that the vehicle has been sold. If the vehicle is still on the lot, it must be marked "Sold."

### Information for new vehicles offered for sale

- The stock number, serial number or vehicle identification number
- An itemized list of each accessory and item of optional equipment that is physically attached to the vehicle
- The current *total price* of the vehicle, including all accessories and optional equipment attached to the vehicle, freight and PDI

### Information for a used vehicle offered for sale

- The stock number, serial number or vehicle identification number
- A statement that it is 'not suitable for transportation' if the vehicle does not meet the safety requirements of the *Motor Vehicle Act*
- The current *total price* of the vehicle

### Other provisions

- The registered name of the dealer offering the vehicle for sale where two or more dealers share the same or adjoining premises
- The statement "Not Ready for Sale" or "Not for Sale" must be on all vehicles not offered for sale

## 38 Other Detailed Advertising Requirements

### Dealer identification

Any ad or website must include the registered name of the dealer and the dealer number. The D# 00000 format can be used for the dealer number.

A dealer or salesperson may use the VSA logo and registered official marks if they have approval from the Registrar: [Request to use the VSA logo](#).

### Advertising fuel consumption

The EnerGuide rate must be used for the advertised vehicle. If a city or highway fuel rate is included in an ad, the overall consumption rate must also be included.

### Advertising warranties

An ad must not lead consumers to believe that an “extended warranty,” “after-market warranty” or “dealer warranty” offers the same coverage as the manufacturer’s warranty. A seller may advertise only warranties they are permitted to sell under the [Financial Institutions Act](#) and the [Insurer Exemption Regulation](#).

### Multiple ads for the same vehicle must match

A seller may have one or more active ads for a single vehicle or multiple vehicles. The information about each unique vehicle and its *total price* must be the same in all current and active ads. This information must match the information on the vehicle.

### Dealer and salesperson responsibility

A seller is responsible for the contents of a published advertisement, not the newspaper, website, TV or radio station, marketing company or advertising firm.

### Correcting errors immediately

When an ad contains incorrect information or *total price*, a corrected ad that corrects the errors in the original ad must be issued immediately. A copy of the correction must be in a prominent location at the dealership and be clearly visible to any consumer.

### Expiry dates

The VSA recommends an expiry date on all offers unless the advertised *total price* and terms do not expire. The font used to print an expiry date should be 12-point or larger.

### Illustrations and photographs

The VSA recommends a photograph or illustration of that specific vehicle be used for a vehicle in dealer inventory. A photograph or illustration of a vehicle that is the same year, make, model and trim package as the vehicle may be used if “Vehicle not exactly as shown” or similar language also appears.

### Enforcement of advertising requirements

Enforcement activities may be started based on the monitoring of dealer and salesperson ads, routine dealer inspections, or as the result of a complaint. Details of the compliance and enforcement process can be found in the [Compliance Policy and Procedures](#) on the VSA website.

## Advertising inventory and detailed requirements – Review

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1. The Advertising Guidelines include information on the following how to advertise demo and consigned vehicles, as well as how to advertise vehicles that do not meet the minimum standards of the MVA. (T/F)
  
2. It is permitted to advertise a vehicle after it has been sold just to get buyers to the dealership. (T/F)
  
3. Only the EnerGuide rate must be used for advertising fuel economy. (T/F)
  
4. It is acceptable if consumers do not understand the differences between warranties. (T/F)
  
5. The publisher of the advertising is responsible for the accuracy of the advertising. (T/F)
  
6. Advertised pricing needs to be the same in all locations. (T/F)

**Noncompliant Advertising Sample**

**Example B**



# Why *horse* around?

**Factory-Authorized Sale!**

## 2017 Colt WX6

*Best-in-class arm rests  
V6, Automatic, Air Conditioning*

**1** Stock numbers are not included. See section 9.5.1

---

**2** Price includes discounts that some consumers will not qualify for. See sections 4.1.3 (c) and 3.3.4 (a)

**1**

3 to choose from

MSRP	\$36,999	<b>2</b>
Discount	- \$7,000	

Only

\$29,999

(604) 111-2222

[www.Jim'sCars.com](http://www.Jim'sCars.com)

Tax and license fees extra. Price net of all rebates. Offer expires 10/31/17

**Jim's Cars**

1122 Main Street,  
Carville

DL# 12345

**Note:** Additional sample ads can be found in the [Advertising Guidelines](#)

# Compliant Advertising Sample

## Example B

# Why *horse* around?



**Factory-Authorized Sale!**

## 2017 Colt WX6

*Best-in-class arm rests  
V6, Automatic, Air Conditioning*



Stk # 000222

1	MSRP	\$36,999
	Manufacturer rebate	- \$3,000

2

You may also qualify for:

Loyalty \$ 1,500  
Student \$ 1,000  
Bulk Store \$ 1,500  
Member

See your dealer for details

Only



(604) 111-2222

[www.JimsCars.com](http://www.JimsCars.com)

\*Tax and license fees extra. Offer expires 10/31/17



1122 Main Street,  
Carville

DL# 12345

- 1** Discount shown in price is available to all consumers. See section 4.1.3 (c)
- 2** It is clear that other discounts may not apply to all consumers. See section 3.3.4 (a)

**Note:** Additional sample ads can be found in the [Advertising Guidelines](#)



## Video Case Study E Referral fees (bird dogging)

Dealerships and salespeople are tempted to offer a reward or fee to current satisfied customers when they refer another buyer to the dealership and a vehicle is purchased as a result. Unfortunately, these programs, including those promoted by some manufacturers, are illegal in B.C.

### Bird dogging fees are against the law in B.C.

Under B.C. law, a salesperson is an individual who acts on behalf of a dealer with the expectation of receiving a *fee, gain, or reward* and who participates in any way in the sale of a vehicle to a consumer. A person does not need to be an employee of a dealership to be recognized as a salesperson under the law.

<b>Sale</b>	Any <i>sale, lease, transfer, or supply</i> of a vehicle to an individual primarily for their personal use
<b>Participate</b>	<i>Soliciting, negotiating or arranging</i> any part of the sale
<b>Soliciting</b>	Asking consumers, in any way, if they are interested in a vehicle
<b>Negotiating</b>	Encouraging consumers, in any way, to discuss the terms of an agreement
<b>Arranging</b>	Planning or preparing a sale, including by referral or locating financing

Based on these definitions, any individual referring consumers to a dealer in the expectation of a *fee, gain or reward* meets the definition of a salesperson. B.C. law will have been broken if they are not licensed as a salesperson.

Watch the video clip on the VSA Learning Centre website that was originally posted on YouTube by a salesperson offering incentives for referring customers. Then answer the following questions.

1. This is a program to offer a reward or fee to current satisfied customers when they refer another buyer to the dealership and a vehicle is purchased as a result. (T/F)
2. Once the VSA is made aware of a program that is against the law the VSA has an obligation to ask that the program be stopped. (T/F)



## Compliance Undertaking – Inaccurate pricing

### Dealer ads and an investigation revealed that:

- Vehicles were advertised for a price that included freight and PDI. When they were purchased, a PDI fee of \$475 was charged which included mud flaps, locking wheel nuts and door edge protectors, which were not advertised
- An additional \$599 documentation fee that was not included in the advertised price was also charged

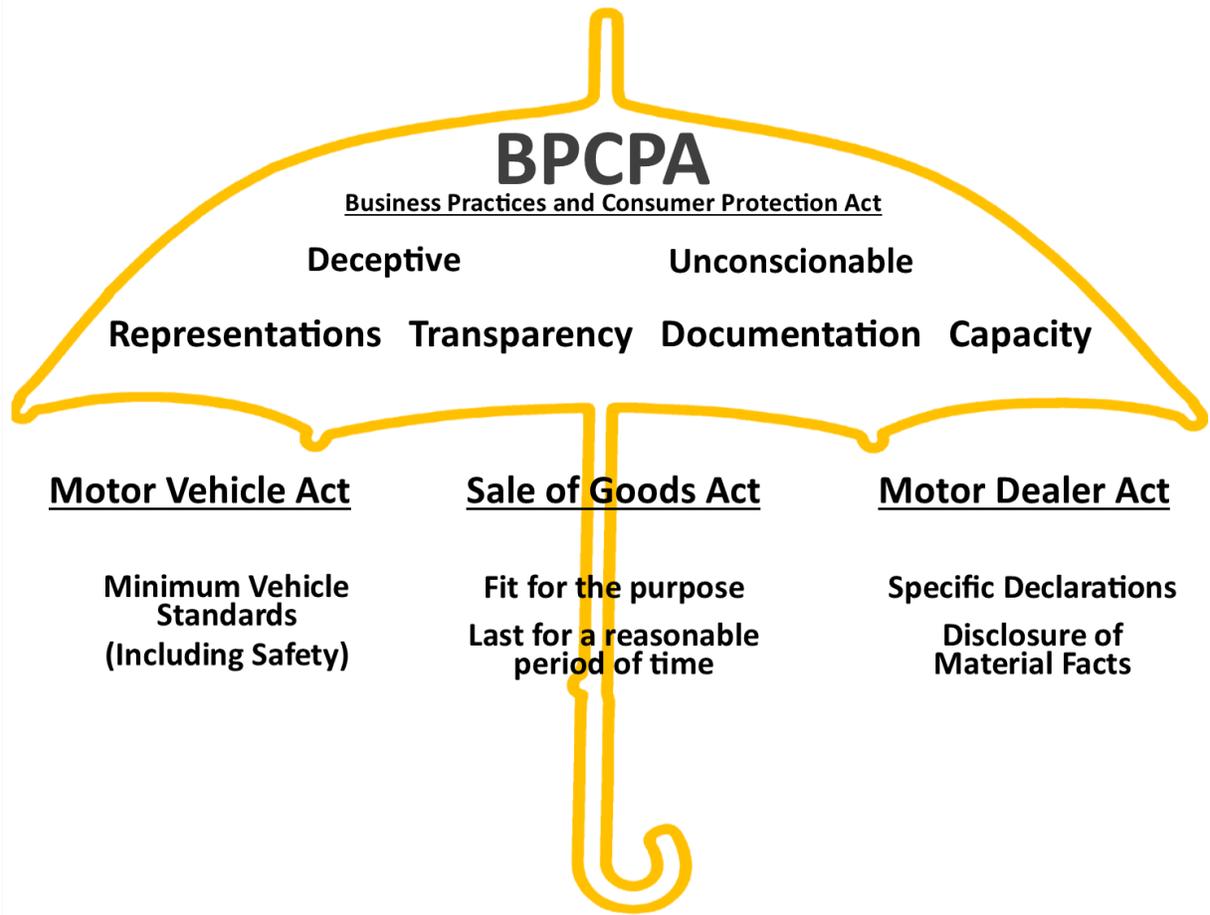
The Registrar determined these actions contravened the *BPCPA*, as they were a representation by a supplier that has the capability, tendency or effect of deceiving or misleading a consumer.

### Dealer agrees with the Registrar and undertakes and acknowledges to:

- Reimburse seven consumers the unadvertised PDI and doc fees they paid
- Review nine months of records and compensate all consumers who were charged fees that were not advertised as required
- Provide a record of these transactions and payments to the Registrar within 45 days of signing the undertaking
- Add additional charges to the vehicle lot pricing, to include the documentation fee and any accessories
- Ensure the advertised total price includes all fees and accessories on the vehicle
- Pay an Administrative Penalty of \$3,000 and the investigation costs of \$808

[File numbers 16-06-233 and 16-07-002](#)

1. These transactions were deceptive under the *BPCPA*, there was a failure to disclose a material fact under the *Motor Dealer Act* and the price in any advertising must be total price. (T/F)
  
2. Once contacted, the VSA has an obligation to investigate and assist the parties in reaching a resolution if it is within the jurisdiction of the VSA. (T/F)



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## 39 Complaints and Reporting Concerns

### Allegations of improper consumer transactions

The VSA receives 3,000 or more enquiries from consumers each year. In a typical year, 600 investigations are opened as a result. The other files are abandoned by the consumer, including many that are resolved without any additional help of the VSA.

A consumer complaint must be about a personal-use vehicle bought at a licensed dealer or through a licensed broker. There must also be reasons for an investigation to be opened, such as an allegation of misrepresentation or evidence of improper practices. To be fair and transparent, the same process is followed with every consumer complaint:

- When a consumer contacts the VSA with a complaint that is within the jurisdiction of the VSA, they are given a complaint form and any [fact sheets](#) that may help them understand their complaint. If no complaint form is received, the enquiry is closed after 30 days
- Once a complaint form is received, it is reviewed for eligibility, grounds to investigate and completeness
- Additional information is obtained, if needed, from ICBC transfer records, vehicle history reports and provincial vehicle inspection records
- The licensed business is sent a copy of the complaint and given 10 days for a response
- The complaint is assigned to a Consumer Services Officer or Compliance Officer for investigation and dispute resolution
- Based on the investigation and dispute resolution, the complaint may be determined to be without merit and closed, resolved and closed, or scheduled for a hearing

Consumer complaints may result in administrative penalties and licensing conditions, as well as consumer restitution authorized by the *BPCPA*.

### Complaints about improper wholesale transactions

A [complaint form](#) is available for alleged improper wholesale transactions by licensed businesses. This includes sales to known curbbers and unlicensed sellers. Any investigation will focus on the failure of a licensed dealer or wholesaler to provide required disclosures or to meet other legal requirements. Complaints regarding improper wholesale transactions may result in administrative penalties and licensing conditions. The determination and settlement of a business loss by the VSA is not authorized by the *Motor Dealer Act*.

### Reporting unlicensed sales and curbing

A [reporting form](#) is available for allegations of unlicensed selling or improper consumer sales by a licensed business. This form allows the reporting party to be anonymous or provide contact information. Any investigation will focus on the failure of an individual or business to be licensed or to meet the legal requirements of their licence. Proven improper sales activity may result in administrative penalties and licensing conditions.

## 40 Consumer Compensation Fund Claims

The primary purpose of the Motor Dealer Customer Compensation Fund (MDCCF) is to investigate and review claims against dealers that have gone out of business. These claims may lead to an investigation for unlawful practices. If compensation is awarded, the dealer is required to repay the fund for any compensation and investigation costs. If this cannot be fully recovered from a Letter of Credit, a liability is recorded that must be repaid before the responsible person can reapply for a dealer licence.

In an effort to reach a voluntary resolution, claims against dealers that are in business usually go through the complaint process first.

### Qualified claims

- The purchase or lease of a new or used vehicle
- The purchase of an extended warranty or service plan
- The sale of a vehicle on consignment

### Qualified losses

Unlawful failure by the dealer to

- Deliver the vehicle contracted for
- Provide clear title to the vehicle
- Return a deposit
- Send a warranty contract and the payment to the warranty company

### Claims not covered

- If 50% or more of the use or intended use is for business
- Claims about the cost, value or quality of a vehicle, such as its mechanical condition
- Claims found to have been filed after the applicable limitation period
- Claims against licensed wholesalers or broker agents
- The compensation limit is \$20,000 per loss

### Claims tribunal

Claims are decided by the Compensation Fund Board. It is an independent administrative tribunal separate from the VSA. It has five members who are appointed by the VSA Board of Directors. Three members of the board represent the public and two represent the vehicle sales industry.

### Adjudication of claims

The board meets every other month by video conference to decide the claims. The board uses policies that require a systematic approach. Claim intake, dispute resolution and step-by-step [adjudication procedures](#) can be found on the VSA website.

The VSA is the fund trustee and is responsible for fund administration and management. This includes collecting dealer contributions and providing operational support to the tribunal. [Fund activity](#) can be found on the VSA website.

## Consumer Complaints and Claims – Review

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1. The steps in the consumer complaint process include:
  - a. *Initial contact*
  - b. *Complaint review and research*
  - c. *Investigation and informal dispute resolution*
  - d. *File resolution and closing*
  - e. *All of the above*
  
2. The dealership is not informed of a consumer complaint. (T/F)
  
  
  
  
  
  
  
  
  
  
3. The statements of the consumer are verified using other documents such as:
  - a. *The dealer response*
  - b. *ICBC transfer records*
  - c. *Vehicle history reports*
  - d. *Provincial vehicle inspection records*
  - e. *All of the above*
  
  
  
  
  
  
  
  
  
  
4. The Motor Dealer Customer Compensation Fund is primarily to assist consumers when the dealer has gone out of business. (T/F)
  
  
  
  
  
  
  
  
  
  
5. What claims qualify for compensation?
  - a. *The purchase or lease of a new or used vehicle*
  - b. *The purchase of an extended warranty or service plan*
  - c. *The sale of a vehicle on consignment*
  - d. *All of the above*

## 41 Inspections and Investigations

### Inspection authority

At a reasonable time during normal business hours the VSA has a right to

- Inspect the records of a licensed business
- Enter any place where a vehicle owned or controlled by a licensee is kept
- Inspect all vehicles owned or controlled by a licensee
- Bring a CVSE inspector if vehicle safety is a concern

### Inspections

The VSA visits each licensed business as often as needed based on an assessment done for every licensee. The assessment includes the value and types of vehicles sold plus the general operating and compliance profile of each business. As a result, 500 or more inspections are done in a typical year. This includes pre-licensing inspections of applicants.

### Investigations

In addition to consumer-initiated investigations, about 200 or so investigations are initiated by the VSA each year as a result of routine inspections and the monitoring of print, internet and broadcast advertising. About 60% of the investigations are in the Lower Mainland. This is roughly the same as the percentage of dealers.

### Ability to freeze and secure assets

If the Registrar believes a licensed person or business may hide money or property:

- The person being investigated can be ordered to not withdraw money and sell or move property without the permission
- Anyone holding money or property that belongs to the person being investigated can be ordered to keep it safe and to not deliver it to the person being investigated
- The Registrar can apply to the courts for the appointment of a receiver

### Wholesale auction exemption

The *Motor Dealer Act* provides an exemption for wholesale auctions if they meet several conditions. The Registrar can remove the exemption if they fail to:

- Offer only *eligible motor vehicles*
- Ensure only *eligible bidders* and *eligible sellers* have access to the auction using visible photo identification
- Control access to the bidding floor and electronic bidding
- Keep *auction records* for at least two years
- Allow the Registrar, or an authorized person, access to the *auction records*
- Allow the Registrar, an authorized person, or a peace officer access to the facility

## 42 Compliance Options

Investigations end in a variety of outcomes based on the level of non-compliance. Results include one or more of the following:

- Education and verbal warning
- A written warning
- An undertaking
- An administrative penalty
- Placing of conditions on a licence
- A compliance order
- A ticket
- A hearing
- Investigation and hearing costs
- Suspension or cancellation of a licence

The options that are chosen must be appropriate for the situation. The principles of administrative fairness and natural justice must be followed at all times.

### Undertakings

An undertaking is a voluntary acknowledgement that the *BPCPA* or *MDA* was violated. It generally indicates that an error was made, and satisfactory steps will be taken to fix the error. The terms of an undertaking may include one or more conditions, such as a promise to:

- Stop a particular type of conduct
- Repay a consumer for proven losses
- Pay for investigation costs
- Pay an administrative penalty
- Abide by the law

### Formal hearings

Hearings before the Registrar are held as needed. Those called to a hearing before the Registrar have usually received one or more prior warnings but continue to violate provisions of the *Motor Dealer Act* or the *BPCPA*.

The legal notice of the hearing is sent with an affidavit that includes the alleged infractions, the available evidence and the names of the complainant and witnesses. The submission of additional evidence is encouraged.

### Formal hearing procedures

Evidence is presented, and witnesses make statements at the hearing. Licensees may present additional evidence and make statements. Clarifications and rebuttals are made as needed. Hearings are held at the VSA office or in a hotel meeting room when convened in another city. All proceedings are recorded by a court reporter.

### Desktop or paper hearings

The Registrar can conduct paper-based hearings for some issues. This means the Registrar can review the alleged infractions, the available evidence and any statements without a formal hearing. This option reduces costs and speeds adjudication for licensees and the public without reducing administrative fairness.

### Compliance orders

To ensure compliance with undertakings and hearing decisions they may be filed in the B.C. Supreme Court. Once filed, the undertaking becomes an order of the court.

## Inspections, Investigations and Compliance Options – Review

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1. Investigations can be started as the result of consumer complaints, advertising review and routine inspections. (T/F)
2. The VSA has the authority to inspect dealers and dealer records, freeze assets if needed and inspect wholesale auctions for compliance. (T/F)
3. In choosing compliance options the principles of administrative fairness and natural justice must be followed at all times. (T/F)
4. An undertaking is a voluntary admission that an error was made. (T/F)

## 43 Penalties – *Motor Dealer Act* and the *BPCPA*

### MDA penalties for improper licensed selling

If a licensed business or person fails to follow the requirements of the *Motor Dealer Act*, the Registrar can issue an *administrative penalty*. An administrative penalty must follow a hearing or be the result of an undertaking. The Registrar may issue penalties up to \$100,000 for a business or corporation and \$50,000 for an individual. These penalties must go to a consumer awareness fund.

### Licensing authority

The Registrar can also cancel, suspend or place conditions on the licence of a dealer, salesperson, broker agent, broker agent representative or wholesaler for violating the *Motor Dealer Act* and *Regulations*. The Registrar also has the authority to remove the exemption for a wholesale auction.

### BPCPA violations

If a business or person fails to follow the requirements of the *BPCPA*, the Registrar can issue an *administrative penalty* following a hearing or an undertaking. The Registrar may issue penalties up to \$50,000 for a corporation and \$5,000 for an individual. These penalties go to a consumer awareness fund.

### Factors required by law to be considered

The Registrar must consider prior compliance actions for similar violations and:

- the seriousness of the current violation
- the extent of the harm to others
- if it was a single incident or one of many violations
- if it was intentional
- the economic benefit derived from the violation
- what effort, if any, was made to correct the violation

### Selling vehicles privately

Licensed businesses and individuals who sell vehicles privately may put their licence at risk. The courts have said that privately selling vehicles owned by a licensed business without disclosing that the seller is licensed is a *material* misrepresentation. As a result, a salesperson or wholesaler representative found selling vehicles owned by a licensed dealership or wholesaler in the private marketplace will put their licence at risk and create liability for the business.

### Penalties for unlicensed selling

The Registrar can also issue compliance orders and administrative penalties to curb and other unlicensed sellers. This includes salespeople who are not licensed as required. Compliance orders and notices of administrative penalties can be filed in court. Once filed, they become orders of the court. The maximum administrative penalties under the *Motor Dealer Act* are \$100,000 for a business and \$50,000 for an individual. These penalties must go to the consumer awareness fund.

## 44 Penalties and Consumer Remedies

### Investigation results

Up to 25% of investigation files end in compliance action, consumer restitution or both. All other complaints are found to be unsupported, lacking reasons for an investigation, closed due to a voluntary resolution or abandoned by the consumer.

### Remedy for a deceptive or unconscionable practice

Under the *BPCPA*, if it is found that the seller committed a deceptive act when making a sale, a consumer may be compensated for a proven loss.

If the Registrar finds that the seller committed an unconscionable act when making a deal, the deal will not be binding, and the vehicle can be returned for a full refund.

Over a million dollars is returned to consumers each year as a result of errors and improper practices.

### Hearing outcomes

If a consumer complaint is dismissed at a hearing, administrative penalties, fines, or licence conditions may still be imposed. The majority of administrative penalties are issued to the business, but there can be smaller penalties issued to an employee.

When an administrative penalty is imposed, investigation and hearing costs are usually assigned as well. Licence conditions also may be added. In serious cases, licences may be suspended or cancelled through the hearing process.

### Frivolous consumer complaints

If it is determined that the allegations were frivolous, vexatious or the complainant engaged in improper conduct, a consumer can be ordered to pay the costs of the VSA and the costs of a licensee brought to the hearing.

### Notice of decision

The Registrar does not usually make a decision at a formal hearing. Decisions from prior hearings, as well as court judgments, are used in the consideration. The written decision will be sent only when this thorough evaluation has been made.

Once a decision has been received, an appeal or reconsideration request can be made within 30 days. Consideration must be given to new information, but a second hearing is not conducted.

Judicial Review by the B.C. Supreme Court can also be requested. Decisions of the Registrar have been reviewed by the court six times. All six petitions to set aside the decision of the Registrar have been dismissed or denied.

### Misconception

*The deal is final once a buyer signs a contract and leaves with the car. This is wrong. B.C. law sets the amount of time a consumer can make a complaint. Right now, a problem must be discovered within 15 years. And, a claim must be made within two years of discovery. Depending on the facts, a shorter time may apply.*

## Hearings, Penalties and Remedies – Review

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1. Significant administrative penalties can be assessed for violations of the *BPCPA* and the *Motor Dealer Act*. (T/F)
  
2. The Registrar can also cancel, suspend or place conditions on a licence for violating the *Motor Dealer Act* and *Regulations*. (T/F)
  
3. The Registrar can issue compliance orders and administrative penalties to curbers and other unlicensed sellers. (T/F)
  
4. The Registrar is legally required to consider the following when setting penalties:
  - a. *The seriousness of the current violation*
  - b. *The extent of the harm to others*
  - c. *If it was a single incident or one of many violations*
  - d. *If it was intentional*
  - e. *All the of the above and more*
  
5. What are possible outcomes from hearings?
  - a. *Consumer restitution*
  - b. *Administrative penalties*
  - c. *Assignment of hearing costs*
  - d. *Allegations dismissed*
  - e. *All of the above and more*
  
6. Once a decision has been received, a reconsideration request can be made within 30 days if there is new information. (T/F)
  
  
  
  
  
  
  
  
  
  
7. In most cases, a problem must be discovered within 15 years and a claim by the consumer must be made within two years of discovery. (T/F)



**Case Study 10 Dealer and wholesaler responsibilities (Part 2)**

The VSA received a complaint from a consumer about a purchase they made from a Victoria dealership. The consumer learned that the vehicle had accident damage they were not told about. During the investigation it was determined the sale was made by a licensed dealer who was provided improper or incomplete information from the wholesaler who sold them the vehicle.

1. Compliance action for the wholesaler could include:
  - a. *Accepting an undertaking*
  - b. *The Registrar issuing administrative penalties*
  - c. *The Registrar adding conditions, suspending or cancelling the licence*
  - d. *All of the above*
  
2. Any compliance action as a result of this sale would be determined by the factors such as:
  - a. *If it was a single incident or one of many violations*
  - b. *The economic benefit derived from the violation*
  - c. *If it was intentional*
  - d. *Any prior compliance actions for similar violations*
  - e. *All the of the above and more*

## 45 Reducing Curbing

### Penalties for curbing

The Registrar can issue compliance orders and administrative penalties to curbers and other unlicensed sellers. Compliance orders and notices of administrative penalties can be filed in court. Once filed, they become orders of the court. The maximum penalties are \$100,000 for a business, including a sole proprietor, and \$50,000 for an individual. These penalties also go to a consumer awareness fund.

### Unlicensed selling

A licensed business or individual who sells vehicles privately will put their licence at risk. A salesperson or wholesaler representative found selling vehicles owned by a licensed dealership or wholesaler in the private marketplace will put their licence at risk and create liability for the business.

### Reporting information to other agencies

- Local police and the RCMP for odometer rollbacks
- Canadian Revenue Agency for income tax evasion
- B.C. Ministry of Finance for unreported provincial taxes
- ICBC – Special Investigations Unit for fraud
- Municipal bylaw officers for zoning and other bylaw violations

### Reducing the supply of vehicles

Restricting wholesale auction sales to *eligible bidders* should reduce the supply of vehicles available to curbers. Dealers should not be selling to curbers. A dealer or wholesaler selling unwanted inventory to an unlicensed wholesaler or a curber would be aiding and abetting the commission of an offence. Compliance action could be taken by the VSA.

### Reducing purchaser demand

The VSA continues to guide consumers by educating them about the advantages of dealing with licensed dealers, salespeople and broker agents. One consumer awareness program is [Walt the Curber](#) for all buyers.





## Case Study 11 Private selling by a dealer

The VSA received a complaint from a consumer about a purchase they made from a Richmond dealership. The consumer learned that the vehicle had accident damage they were not told about and the odometer had been tampered with. During the investigation it was determined the sale was made by a licensed dealer who was selling from his home. Twenty other sales were investigated and were also found to be improper.

1. Compliance action for the dealer could include:
  - a. *Accepting an undertaking*
  - b. *The Registrar issuing administrative penalties*
  - c. *The Registrar adding conditions or suspending the dealer licence*
  - d. *The Registrar cancelling the dealer licence*
  - e. *All of the above*
  
2. The remedy for each consumer should be:
  - a. *A refund to cover the reduced value of their vehicle*
  - b. *The right to return their vehicle for a full refund*
  - c. *A choice of a. or b. based on their preference*
  - d. *No remedy is needed*
  
3. Why would the Registrar choose to cancel the licence of the dealer?
  - a. *The actions of the dealer were intentional*
  - b. *There were many violations*
  - c. *The dealer benefitted financially by misrepresenting the vehicles*
  - d. *All of the above*

## Decision of the Registrar I

---

**File number:** [13-08-001](#)

The Registrar considered allegations of multiple breaches of the BPCPA and found advertising intended to mislead consumers such as:

- Failing to price vehicles on the lot at the same price as in an ad
- Showing an image of a vehicle as a four door when it was a two door
- Misrepresenting to a consumer that a vehicle had a price advantage, being a “really good deal” and a “family deal,” when it did not have a price advantage
- Charging a consumer a \$589 administrative fee on top of the advertised price for a vehicle without advising the consumer that such a fee would be levied
- Advertising a 2012 vehicle as a 2013 model
- Failing to ensure that all salespeople knew the advertised sale pricing in the relevant effective periods of flyers
- Failing to correct flyers to clearly identify which vehicles were no longer available at the beginning of the effective period of the flyers

The Registrar found transactions that were calculated to mislead consumers such as:

- Failing to clearly explain that any negotiations on the purchase of an advertised vehicle would result in the administrative fee being added to the purchase price
- Failing to remove or not include in purchase agreements items which were declined by purchasers

The Registrar found that the VSA failed to prove its case regarding some allegations.

In setting the penalties and the other consequences of the deceptive practices the Registrar reviewed prior decisions of the court and the Registrar.

### Outcome

- Administrative penalties were set at \$44,000 for the dealer and \$3,550 for the individual
- Approximately \$17,000 was returned to six consumers
- 75% of the investigation and hearing costs were awarded to the VSA



## Decision of the Registrar II

---

**File number:** [16-05-005](#)

A hearing was called to review allegations against two dealers and two individuals in relation to the sale of a Ford F350. The dealers were operating a joint venture in this consumer transaction. Prior to the hearing, the consumer received a full refund from one dealer and had addressed its role in an undertaking. The hearing reviewed the allegations against the second dealer and the two individuals.

The Registrar found that the vehicle:

- Was represented as suitable for transportation and compliant with the *Motor Vehicle Act* but was not
- Was advertised as having passed a comprehensive third-party inspection when it had not passed
- Had a track bar relocating bracket fail while the consumer was driving the vehicle
- Had failed a Private Vehicle Inspection (PVI) with 12 violations, even after repairs were completed by the dealer

As to the individuals, the Registrar found that:

- The actions of one individual were innocent and he attempted to assist the consumer the best that he could. No compliance action was necessary
- The actions of the other individual were negligent. The Registrar added a condition to his licence

As to the dealer, the Registrar found that:

- They committed a deceptive act in misrepresenting the quality of the truck
- Their conduct was reckless
- They had ignored past undertakings
- Past administrative penalties had not been a deterrent to improper conduct

### Outcomes

- The Registrar issued a Compliance Order for \$12,033 in hearing costs
- To protect the public interest and consumers from future potential harm, the dealer licence was cancelled by the Registrar



## Industry Code of Conduct

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This is a plain language version of the Code of Conduct for guidance purposes only. Licensees should also review the Regulation as written.

- I will act with honesty and with integrity.
- I will not discriminate against a person because of the person's race, colour, ancestry, place of birth, religious beliefs, marital or family status, physical or mental disabilities, sex, sexual orientation, gender identity or expression, or age.
- I will document in a written agreement all spoken or written representations I have made related to a transaction.
- I will respond promptly and courteously to consumer inquiries.
- I will not make false or misleading representations with respect to any amount charged in respect of a consumer transaction.
- I will not adversely affect the reputation of a motor dealer, a licensee, the Vehicle Sales Authority of British Columbia or the Registrar.
- I will not intimidate a consumer.
- I will safeguard any records of a consumer that I possess or control.
- I will not aid, abet, counsel or cause a person to contravene
  - The *Motor Dealer Act* or any of its regulations
  - The *Business Practices and Consumer Protection Act* or any of its regulations
  - A condition of a licensee's licence or a motor dealer's registration, or
  - Any other law

### Posting

Motor dealers, broker-agents and wholesalers must post the Code of Conduct in a conspicuous place at their business premises. A conspicuous place is where the Code of Conduct will stand out and be easily noticed by consumers.

### Reporting

Anyone may report a perceived violation of this Code of Conduct to a senior manager or the owner of a business. If this is not a practical first step, an alleged violation can be reported to the Vehicle Sales Authority.

### Penalties

The penalties in the *MDA* apply subject to the discretion of the Registrar and the requirements of the *Act*.

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