



More on Declarations, Disclosures, and Material Facts

Damage declarations are not always black and white. Under BC law, several concepts – including the definition of a material fact – may have an impact on required declarations and on broader disclosure requirements.

If there is less than \$2,000 in cumulative damage repairs, I don't need to declare anything, right?

It depends. The *Motor Dealer Act Regulation (MDA-Reg)* deems or considers damage over \$2,000 to be a *material fact* that must be declared. In some circumstances, damage under \$2,000 could also be a material fact and the *Business Practices and Consumer Protection Act (BPCPA)* requires the disclosure of all material facts even if the \$2000 declaration is not required.

What is a *material fact*?

A *material fact* is any piece of information that may have a significant effect on a consumer's decision whether or not to buy a product. It does not have to be a fact that would make them change their mind.

How am I supposed to know if a fact is material to a consumer?

A *material fact* can be deemed by legislation or by common law (judge made law). For example, in a court case, the judge will consider a fact to be material if it would have altered a reasonable person's decision making process.

How would the courts decide what is material to a consumer?

The courts examine all of the circumstances on a case-by-case basis. What is material to one person may not be for another. However, if a concern is raised by a buyer, such as wanting a pet-free used vehicle, it is likely *material* for that buyer. A court will also likely consider any facts that are important to the industry to know before taking a new or used vehicle into inventory as *material*.

What happens if I don't disclose a *material fact* to a consumer?

Under the *BPCPA*, the BC Supreme Court said it is a deceptive act if, while making any other representations about a vehicle, a seller fails to disclose a material fact during a consumer transaction and the consumer is, in turn, misled.

I didn't know a fact was material to a consumer and didn't say anything. Am I still held accountable?

Yes. A deceptive act or practice does not need to be intentional. It can also be an innocent or negligent error. That being said, the level of compliance taken will be different in all three situations.

What's the point of the \$2,000 declaration rule if I still have to declare everything?

The \$2,000 declaration rule sets a minimum level where you know with certainty that damage history is a *material fact*. Damage under \$2,000 is evaluated on a case-by-case basis.

What does the VSA suggest?

Given the [reverse onus or burden of proof](#) provision in the *BPCPA*, a best practice to reduce business risk and liability is to provide "full disclosure" – disclose and declare everything and provide all available details.

Note: The VSA does not create the law. We are, however, obligated to enforce the law as it is written and interpreted by the courts.

Derived from the test for "materiality" in the Supreme Court of Canada's decision of [Sharbern Holding Inc. v. Vancouver Airport Centre Ltd. 2011 SCC 23](#) and other court decisions.

Annual Compensation Fund Fee Waived

As a result of modified claims procedures that have been in place since 2008 and the small dollar value of claims against the Fund this year, the Motor Dealer Customer Compensation Fund reserves remain high. As a result, Ian Christman, Registrar of Motor Dealers, has announced that the annual \$300 contribution for the year of April 1, 2014 to March 31, 2015 will be waived. **Note:** This does not affect the three-year minimum contribution that is required of all new motor dealers. The legislation does not allow a waiver for new dealers.

Dealer Licensing Fee Adjustment Completed

April 1 is also the start of the first licensing year with no Lower Mainland Fee. Lower Mainland dealers will see another small licensing fee reduction and dealers outside the Lower Mainland will see a small increase. However, when combined with the Compensation Fund Fee Waiver, nearly all dealers will see a decrease in combined fees this year. Details of the three-year fee restructuring can be found in the [February 2012 Bulletin](#).