



Hearing Policy and Procedures Manual

Web Version 1
Effective June 12, 2013



Record of Updates

Version	Date	Summary of Update
1	June 12, 2013	Original

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1. INTRODUCTION

1.1. Background

The Registrar of Motor Dealers (Registrar) has the authority to hear matters under the *Motor Dealer Act*, (MDA) and the *Business Practices and Consumer Protection Act* (BPCPA) as it pertains to the sale of motor vehicles to the public for family and personal use.

A hearing before the Registrar (Hearing) may be conducted by the Registrar or by a Deputy Registrar of Motor Dealers (Deputy Registrar) acting as the Registrar's delegate.

1.2. Purpose of this Manual

The purpose of the Hearing Policy and Procedures Manual is to document the policies and procedures that apply to preparing for, conducting and processing the outcome of a Hearing. It is intended to assist VSA staff and the Registrar in ensuring that all parties to a Hearing are treated fairly and that the Registrar has all of the information required to make an informed and impartial decision.

1.3. How this Manual is Organized

This manual is divided into 4 parts:

- Part 1 – Introduction.
- Part 2 – Policy.
- Part 3 – Procedures.
- Part 4 – Forms.

1.4. Abbreviations used in this Manual

Abbreviation	Meaning
BPCPA	Business Practices and Consumer Protection Act, S.B.C. 2004, c. 2
CO	Compliance Officer
Coordinator	Hearing Coordinator
Dealer	Registered Motor Dealer as defined in the MDA
Fund	The Motor Dealer Customer Compensation Fund

Salesperson	Salesperson as defined in the MDA
LO	Licensing Officer
MDA	Motor Dealer Act R.S.B.C.1996 c. 316
MDA-R	Motor Dealer Act Regulation B.C. Reg. 447/78
SL-R	Salesperson Licensing Regulation B.C. Reg. 241/2004
Registrar	Registrar of Motor Dealers
VSA	Motor Dealer Council of B.C. dba the Motor Vehicle Sales Authority of B.C.

1.5. Web Version

This Web Version Manual is available to all persons online. To view a complete version, please make an access request under the *Freedom of Information and Protection of Privacy Act* (FIPPA). Please see our website on how to make such a request www.vsabc.ca.

2. POLICY

2.1. Legislative Authority and Requirements

- 2.1.1. Motor Dealer Act Delegated Administrative Authority Agreement March 24, 2004.
- 2.1.2. Section 6 of the *Motor Dealer Act*, R.S.B.C. 1996, c. 316 (MDA), and section 7 of the Salesperson Licensing Regulation, B.C. Reg. 241/04 (SL-R), which require that the Registrar hold a Hearing when the Registrar proposes to
 - (a) refuse to register or renew a registration or license, or
 - (b) suspend or cancel a registration or licence.
- 2.1.3. Section 30 of the MDA.
- 2.1.4. Section 8.1 of the MDA and section 29 of the Motor Dealer Act Regulation, B.C. Reg. 447/78 (MDA-R), which authorize the Registrar to exercise specific powers under the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 (BPCPA).
- 2.1.5. Part 2 – Unfair Practices – Sections 4 to 10 of the BPCPA.
- 2.1.6. Part 10 – Inspections and Enforcement – Sections 149 to 155 and Administrative Penalties – sections 164 to 170 of the BPCPA.
- 2.1.7. Part 12 – Reconsideration – sections 180 to 182 of the BPCPA.
- 2.1.8. Part 2, Section 11 – of the Business Practices and Consumer Protection Regulation, B.C. Reg. 294/04, which requires an additional administrative penalty for failure to pay an administrative penalty.
- 2.1.9. Delegated Administrative Agreement dated March 24, 2004 between the VSA and the B.C. Crown and in law a Ministerial Order.

2.2. When a Hearing will be Held

- 2.2.1. In order to ensure uniform and continued compliance, VSA staff may direct issues involving motor dealers, salespeople and complainants to a Hearing where
 - (a) there has been a violation of the MDA or BPCPA or their regulations,

- (b) there is a concern that the past or present conduct of a dealer or salesperson may be harmful to the public interest,
 - (c) the conduct of a dealer or salesperson may diminish or bring into disrepute the professionalism of the motor vehicle sales industry, or
 - (d) a claim has been paid out of the Fund involving a motor dealer.
- 2.2.2. The Hearing Coordinator, (Coordinator) in consultation with the Compliance and Investigation or Licensing departments, will arrange a Hearing for a dealer, salesperson, or applicant where the Registrar proposes to
- (a) refuse to register or renew a registration or license,
 - (b) issue a compliance order of administrative penalty, or
 - (c) suspend or cancel a registration or licence.

2.3. Service of Documents

- 2.3.1. Under the MDA, a Hearing Notice must be either
- (a) personally delivered, or
 - (b) sent by registered mail to the person's address.
- 2.3.2. Under the MDA, when a document must be delivered to or served on a dealer or salesperson by registered mail, the delivery or service is considered to be complete on the 3rd day after the day it was mailed, except as provided in paragraph 2.3.3.
- 2.3.3. Delivery or service under paragraph 2.3.2 will not be considered complete on the 3rd day after the day it was mailed only if the recipient can establish that they, while acting in good faith, did not receive the document until some later date because of
- (a) absence,
 - (b) accident,
 - (c) illness, or
 - (d) another cause beyond their control.
- 2.3.4. Under the BPCPA, a document that must be delivered to or served on a dealer or salesperson must be delivered or served by
- (a) leaving a copy with the person,
 - (b) leaving a copy with an agent of the person,
 - (c) sending a copy by ordinary mail to the address at which the person carries on business,

- (d) sending a copy by electronic mail,
- (e) leaving a copy in a mail box or mail slot at the address at which a person carries on business,
- (f) attaching a copy to a door or other conspicuous place at the address at which the person carries on business, or
- (g) transmitting a copy to a facsimile number that the person has provided as an address for service.

2.3.5. Delivery or service under paragraph 2.3.4 is considered to be complete on

- (a) the 3rd day after it has been
 - (i) sent by electronic mail,
 - (ii) left in a mail box or mail slot,
 - (iii) attached to a door or other conspicuous place, or
 - (iv) transmitted by facsimile, or
- (b) the 5th day after the document has been sent by ordinary or registered mail.

2.4. Summons to a Witness under the BPCPA

2.4.1. The Registrar may issue a Summons to a Witness to compel a person to attend a Hearing, including matters under the MDA and MDA-R and bring with them any documents in their possession that relate to the matters in question.

2.5. Reconsideration under the BPCPA

2.5.1. Reconsideration of a Registrar's Decision is available only to a dealer or salesperson that has been issued a Compliance Order or Notice of Penalty under the BPCPA.

2.5.2. A dealer or salesperson must submit a request for Reconsideration within 30 days of receiving the Compliance Order or Notice of Penalty, except in special circumstances as identified in the BPCPA.

2.5.3. A consumer whose complaint has been dismissed by the Registrar does not have a right to Reconsideration.

2.5.4. Reconsideration itself may not be reconsidered.

2.6. Enforcement of a Decision

- 2.6.1. Where a decision is to be reconsidered, the original decision will not be enforced until after the Reconsideration decision has been made.
- 2.6.2. If a dealer or salesperson has not paid an administrative penalty within 30 days of receiving the Notice of Penalty, or where the decision was reconsidered within 30 days of receiving the Reconsideration decision, then an additional penalty equal to 10% of the unpaid administrative penalty will be applied.
- 2.6.3. If a dealer or salesperson fails to comply with the requirements of
 - (a) an Undertaking
 - (b) a Compliance Order, or
 - (c) a Notice of Penalty,the VSA may file the document in the Supreme Court of BC and obtain a court order to enforce the document.

2.7. Judicial Review

- 2.7.1. A Hearing decision and a Reconsideration decision may be subject to judicial review by the Supreme Court of BC.

3. PROCEDURES

3.1. Conduct of a Hearing

General

- 3.1.1. The Coordinator attends all Hearings in Surrey and is responsible for preparing the Hearing room.
- 3.1.2. At a Hearing, VSA employees wear business attire and address the Registrar as Mister or Madam Registrar, or Registrar and their last name.
- 3.1.3. Hearings are open to the public as required by the open court doctrine. However, only persons required to be at the Hearing are allowed into the Hearing room without the approval of the Registrar. This is to aid the Registrar in controlling the hearing process which is often in a small enclosed room.
- 3.1.4. Witnesses may be excluded during the Hearing.

Hearing process

- 3.1.5. At a Hearing, the following procedures apply
 - (a) the Registrar makes opening comments
 - (b) the manager responsible introduces all parties
 - (c) the manager enters the Hearing Notice
 - (d) the Registrar asks the dealer or salesperson if they admit or deny the allegations. If the dealer or salesperson admits the allegation, the manager provides details of the allegation to which the dealer or salesperson is offered an opportunity to respond. If the dealer or salesperson denies the allegation proceed to (e to l).
 - (e) the manager may make an opening statement
 - (f) the manager presents the VSA's evidence and witnesses
 - (g) the Registrar invites questions of the VSA staff and witnesses
 - (h) the applicant, dealer or salesperson, or their counsel may make an opening statement
 - (i) the applicant, dealer or salesperson, or their counsel presents their evidence and witnesses

- (j) the Registrar invites questions of the applicant, dealer or salesperson and witnesses
 - (k) the applicant, dealer or salesperson, or their counsel and VSA staff make closing comments
 - (l) the Registrar may conclude the Hearing by
 - (v) making an oral decision,
 - (vi) informing the parties that a written decision will be rendered, or
 - (vii) adjourning the Hearing to another date or sine die if the Authority and the dealer/salesperson arrive at a mutually agreed alternative that is agreeable to the Registrar.
- 3.1.6. During the hearing, the Registrar may ask questions and may modify this hearing process where necessary to ensure fairness and an efficient process.
- 3.1.7. If a Hearing is adjourned, at a subsequent Hearing the manager will present the reasons for the adjournment and a summary of the evidence presented at the previous Hearing.

3.2. Post Hearing Procedures

Registrar's Decision

- 3.2.1. The Registrar may issue an oral or written decision.
- 3.2.2. Where required by the Registrar for preparing reasons, the Coordinator orders a Hearing transcript from the court reporter.
- 3.2.3. Where the Registrar chooses to render a written decision, the Registrar will try to complete the decision within 90 days of the Hearing and, when completed, provides the decision to the Coordinator.

Notification of the parties

- 3.2.4. If the Registrar provided an oral decision, the manager responsible sends a letter to the parties documenting the Registrar's decision.
- 3.2.5. Where an oral decision has been rendered, the Coordinator will request a transcript of the oral decision from the court reporter.
- 3.2.6. Where the Registrar has rendered a written decision, the Coordinator prepares a cover letter for signature, by the Coordinator or the

manager responsible, advising the parties of the outcome of the Hearing and attaches a certified copy of

- (a) the Registrar's written decision, and
- (b) where applicable, a certified copy of
 - (i) Notice of Suspension,
 - (ii) Notice of Cancellation,
 - (iii) Undertaking,
 - (iv) Compliance Order,
 - (v) Notice of Penalty, or
 - (vi) Hearing Invoice.

3.2.7. Where a written decision includes one or more documents noted in paragraph 3.2.6 (b)(i) and (ii), a CO personally serves such documents and the cover letter on the dealer or salesperson and completes the Notice of Service on the letter.

3.2.8. Where a written decision does not include a document noted in paragraph 3.2.6 (b), the Coordinator sends a copy of the cover letter and a certified copy of the decision to the parties by registered mail.

3.2.9. Where applicable, the letter accompanying a decision will include the date by which a request for Reconsideration under the BPCPA must be received by the VSA if the dealer or salesperson affected wishes to have the decision reconsidered.

3.3. Reconsideration under the BPCPA

3.3.1. A request for Reconsideration received by the VSA is directed to the Manager of Compliance and Investigations.

3.3.2. The Manager of Compliance and Investigations

- (a) reviews the request against the requirements for reconsideration in the BPCPA, and
- (b) forwards the request and the results of the review to the Registrar.

3.3.3. The Registrar decides whether

- (a) a Reconsideration will be conducted, and
- (b) a Hearing is required to evaluate new evidence.

- 3.3.4. The Registrar determines whether or not the decision will be reconsidered and provides reasons to the Manager of Compliance and Investigation for transmittal to the parties. The Registrar will also determine if it is necessary for a deputy registrar to conduct the reconsideration hearing.
- 3.3.5. After Reconsideration is completed, notice of the Reconsideration decision is sent to the parties using the same procedures as for a written Hearing decision.
- 3.3.6. Where the Registrar or deputy registrar chooses to render a written Reconsideration decision, they will try to complete the decision within 90 days of the Hearing, and when completed, provides the decision to the Coordinator.
- 3.3.7. The Coordinator distributes the Registrar's Reconsideration decision (see 3.2.4 to 3.2.9).

3.4. Application for Judicial Review

- 3.4.1. Where an application for judicial review has been filed, the Registrar, in consultation with VSA's legal counsel, decides whether to proceed with enforcement of the decision or postpone enforcement until after the judicial review is complete.
- 3.4.2. The Registrar and the VSA's legal counsel prepare any documents required by the court.
- 3.4.3. The VSA's legal counsel represents the VSA at any court hearings for the judicial review.

3.5. Monitoring Compliance with a Hearing Decision

Post-hearing Inspection

- 3.5.1. Within 60 days of the date of the Registrar's decision of a Hearing or Reconsideration, or when otherwise directed by the Registrar, a CO conducts an inspection to ensure that the requirements and conditions of a Hearing or Reconsideration decision have been met by the dealer or salesperson.
- 3.5.2. Where a dealer registration or salesperson licence was suspended or cancelled as a result of a decision, the CO inspects the dealer location

to ensure the dealer is closed or the salesperson is not working as required by the decision.

- 3.5.3. Where a decision found that a vehicle did not meet the requirements of the MDA, the CO inspects to ensure that the vehicle has been repaired to meet the requirements, has been removed from the dealer's inventory, or is being offered for sale or already sold and declared as "not suitable for transportation".
- 3.5.4. If any of the requirements or conditions identified in a decision has not been met, the CO advises the Manager of Compliance and Investigations or his delegate.

3.6. Compliance with a Hearing Decision

Licence renewal

- 3.6.1. Except as provided in 3.6.2, a dealer registration or salesperson licence will not be renewed unless the dealer or salesperson has complied with all the conditions or directions of the Registrar including paying any fee, penalty or costs.
- 3.6.2. Where a dealer or salesperson has not paid an Administrative Penalty and costs ordered by the Registrar, their registration or licence may be renewed if
 - (a) the Manager of Compliance and Investigations, in consultation with the Manager of Licensing, has agreed to a payment schedule for the outstanding amount over the remaining licensing period but not to exceed a 12-month period, and
 - (b) the dealer or salesperson is not in arrears in making payments.
- 3.6.3. If the Manager of Compliance and Investigations enters into an agreement described in 3.6.2(a), he informs the Manager of Licensing, the Coordinator and the Accounting department.

Court order

- 3.6.4. Where the VSA decides to obtain a court order to enforce a
 - (a) Undertaking,
 - (b) Compliance Order, or
 - (c) Notice of Penalty,

the Registrar certifies a true copy of the document and sends it to the VSA's legal counsel with instructions to file the documents to become court orders.

- 3.6.5. The VSA's legal counsel files the document received from the Registrar in the Supreme Court of BC. and returns the filed orders to the Registrar.
- 3.6.6. The Registrar will provide any filed court orders to the coordinator who will:
 - (a) upload the court orders in Driver for the dealer or salesperson in the appropriate hearing and investigation file,
 - (b) advise the Manager of Licensing that the orders are uploaded, and
 - (c) advise the Manager of Compliance and Investigations that the orders are uploaded.
- 3.6.7. The Registrar will determine what, if any, further action will be taken to enforce the court orders and provide instructions to outside legal counsel.
- 3.6.8. A motor dealer registration or a salesperson licence will not be renewed where there is an outstanding unsatisfied court order.