



Investigations Policy and Procedures Manual

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Record of Updates

Version	Date	Summary of Update
1	April 15, 2013	Original
2	April 1, 2014	Added information and warning on the use of the VSA Logo and other Official Marks
3	April 1, 2017	Added enforcement actions under <i>Motor Dealer Act</i> .
4	February, 2022	Change in Roles and Responsibilities

VSA OFFICIAL MARKS “LOGO”

The following are the registered Official Marks of the Motor Dealer Council of British Columbia, doing business as the Motor Vehicle Sales Authority of British Columbia (the “VSA”), and may not be used or reproduced in whole or in part, in any combination or individually:

- (a) by motor dealers or salespersons unless authorized or directed to by the Registrar in accordance with the *Motor Dealer Act*, or
- (b) by any other person unless they receive prior written approval from the VSA.

“Motor Vehicle Sales Authority of British Columbia”

“Vehicle Sales Authority”

“VSA”



A. INTRODUCTION

1. Background

1.1 Investigations Objectives

The Registrar has the authority to make inquiries, investigate complaints and inspect registered motor dealers under the *Motor Dealer Act* (the “MDA”), its regulations and the *Business Practices and Consumer Protection Act* (the “BPCPA”) as it pertains to the sale of motor vehicles to the public for personal and family use.

The objectives of the VSA’s Investigation’s activities are to

- ✓ Investigate consumer complaints, dealer complaints and VSA generated files
- ✓ Ensure procedural fairness and the principles of natural justice are applied
- ✓ inform and educate the motor dealers and salespeople on legislative requirements or changes and provide advice on business best practices
- ✓ ensure motor dealers and salespeople are in compliance with the applicable legislation
- ✓ ensure motor dealer locations, motor vehicles for sale and motor dealer records pertaining to the purchase and sale of motor vehicles meet the applicable legislative requirements
- ✓ develop relationships with motor dealers and salespeople and encourage support from all licensees
- ✓ become familiar with the general operations of motor dealers, and
- ✓ take a proactive approach to prevent consumer complaints and follow up on any complaints or concerns.

1.2 Purpose of this Manual

The purpose of the Investigations Policy and Procedures Manual is to document the policy and procedures that support the VSA’s efforts to promote compliance with and enforce the laws regulating the motor vehicle sales industry in BC. It is intended to assist the VSA in maintaining a fair and consistent process for compliance activities and decision-making that meets the requirements of the MDA, the BPCPA, administrative fairness and natural justice.

1.3 How this Manual is Organized

This manual is divided into the following parts:

- ✓ [Part A – Introduction](#). This part provides background about this manual, the authority of the Registrar and the roles and responsibilities of VSA staff in investigations and enforcement activities.

- ✓ [Part B – Dealer Liaison Visits](#). This part provides the policy and procedures regarding a Investigations Officer’s routine liaison contacts with a motor dealer.
- ✓ [Part C – Investigations](#). This part provides the policy and procedures regarding the investigation of motor dealers and salespeople.
- ✓ [Part D – Progressive Enforcement](#). This part provides the policy and procedures for the application of enforcement measures when there has been a contravention by a licensee.
- ✓ [Acronyms and abbreviations](#). This part lists all the acronyms and abbreviations used in this manual.
- ✓ Appendix. This part includes the [Key Messages for Dealers](#), which provides Investigations Officers with points that should be addressed in routine communication with licensees.

1.4 Policy and the Authority of the Registrar

The authority to inspect, investigate and enforce the statutory requirements governing the motor vehicles sales industry is granted to the Registrar under the MDA and the BPCPA. Under the MDA, the Registrar is given the authority to delegate any of its powers to VSA staff or any other person the Registrar deems appropriate to exercise those powers. Those acting with the Registrar’s delegated authority are under the same obligations as the Registrar when exercising that authority.

The role of the Investigations Policy and Procedures is to assist the Registrar and VSA staff in ensuring that Investigation activities and decisions regarding enforcement of statutory requirements are undertaken in an open, structured and consistently fair manner.

The policy and procedures in this manual do not bind the Registrar or otherwise hinder or limit the authority and discretion of the Registrar when making decisions about compliance and enforcement. The principles of natural justice require that the Registrar consider the unique facts and context of each case when making these decisions.

1.5 Use of the term “licence” for motor dealer registration

For convenience, in this manual, the term “licence” is used when referring to motor dealer registration, broker-agent licence, broker-agent representative licence, wholesaler licence, and wholesaler representative. Technically, motor dealers are “registered” under the MDA while licensee refers to a person who holds a licence. The use of the term licence in place of motor dealer registration reflects common usage among industry, VSA staff and the public.

2. Roles and Responsibilities

2.1 Manager of Investigations

The Manager of Investigations has overall responsibility for investigations and enforcement activities.

The role of the Manager of Investigations is to:

- ✓ oversee the Investigations staff conduct of investigations
- ✓ provide advice and direction on the conduct of investigations where required,
- ✓ engage in preliminary dispute resolution procedures, such as undertakings, with licensees where applicable, and
- ✓ determine when an Investigations issue identified by Investigations staff should go to a hearing before the Registrar.

The Manager of Investigations is responsible for

- ✓ providing advice and support to Investigations staff as required,
- ✓ reviewing the results of all consignment application inspections and providing advice on approval of a consignment application to the Manager of Licensing,
- ✓ reviewing an Investigations Officer's plan for a proactive curber (unlicensed dealer) investigation to ensure the safety and legality of the plan,
- ✓ discussing with licensees' early resolution options for non-Investigations, and
- ✓ Vetting of nominees/appointees to the VSA board
- ✓ initiating an investigation by an Investigations Officer where the Manager of Investigations or the Registrar becomes aware of a systemic or wide-ranging Investigation issue.

2.2 Investigations Officer

The role of the Investigations Officer is to

- ✓ Establish and maintain a relationship with motor dealers in their region and be the primary, point of contact on Investigations issues for motor dealers and salespeople in their region;
- ✓ Conduct investigations and liaison visits as required;
- ✓ Ensure procedural fairness in any and all investigations and/or dealings with consumers, dealers etc.; and
- ✓ Refer serious Investigations issues to the Manager of Investigations where required.

The Investigations Officer is responsible for

- ✓ Conducting motor dealer liaison visits;
- ✓ Providing advice on Investigations issues to motor dealers and salespeople;
- ✓ Investigating issues, compensation fund claims and the criminal record or offence history of a licensee or applicant for a licence where required and completing investigation reports; and

- ✓ Referring serious Investigations issues to the Manager of Investigations.

2.3 Compliance Officer

The role of the Compliance Officer is a combination of the roles of Investigations Officer and Industry Standards Officer and has the duties and responsibilities of both roles. The purpose of this role is to take a proactive approach to prevent consumer complaints and follow up on any complaints or concerns.

2.4 Paralegal

The role of the Paralegal is to support the Director of Investigations, Licensing and Legal Services, the Manager of Investigations, and the Manager of Industry Standards in the preparation of enforcement-related documents and by coordinating selected enforcement processes.

The Paralegal is responsible for:

- ✓ Assisting Investigations and Industry Standards Officers with drafting investigation closing letters and warning letters;
- ✓ Assisting Investigations and Industry Standards Officers, the Manager of Investigations and the Manager of Industry Standards with drafting affidavits and hearing processes;
- ✓ Assisting Investigations Officers with drafting Production Orders;
- ✓ Liaising with internal and external legal counsel, court reporters and conducts research for court proceedings; and
- ✓ Coordinating hearings before the Registrar and drafting legal documents required for hearings and court proceedings; and

2.5 Manager of Licensing

The role of the Manager of Licensing is to consult with the Compliance departments on decisions regarding an application for consignment sales privileges and on the investigation of the criminal record or offence history of a licensee or applicant for a licence.

The Manager of Licensing is responsible for forwarding an application for consignment sales privileges to the Manager of Industry Standards for review and inspection

The role of the Licensing Department is to consult with the Industry Standards department as required to address licensing requirements or compliance issues identified in the licensing process.

The Licensing Department is responsible for requesting an inspection or investigation of an applicant or licensee where required as part of a licence application, change or renewal.

2.6 Licensing Officer

The role of the Licensing Officer is to consult with the Investigations department where required to address licensing requirements or Investigations issues identified in the licensing process.

The Licensing Officer is responsible for requesting an inspection or investigation of an applicant or licensee where required as part of a licence application, change or renewal.

2.7 Consumer Services Officer

The role of the Consumer Services Officer is to determine whether the VSA has grounds to investigate a consumer complaint and to forward a consumer complaint to an Investigation Officer for investigation.

The Consumer Services Officer is responsible for:

- ✓ Determining whether the VSA has grounds to investigate a complaint;
- ✓ Preparing an investigation record for a complaint and forwarding the complaint to an Investigation Officer for investigation where required;
- ✓ Assisting the Investigation Officer with the investigation of a complaint as required; and
- ✓ Notifying the Manager of Industry Standards when non-compliant activities deemed a high risk to consumers are reported.

2.8 Compensation Fund Claims Manager

The role of the Compensation Fund Claims Manager is held by the Manager of Consumer Services and its function is to determine when an investigation of a compensation fund claim is required and to be a liaison between the Motor Dealer Customer Compensation Fund Board (the Board) and the Compliance department.

The Compensation Fund Claims Manager is responsible for:

- ✓ Consulting with the Investigations department to determine whether a claim requires investigation;
- ✓ Providing an Investigations Officer who has conducted a claim investigation with the consumer's written response to the investigation; and
- ✓ Informing an Investigations Officer of a request by the Board for further investigation of a claim.

2.9 Advertising Standards Officer

The Advertising Standards Officer is responsible for monitoring industry advertising, including by curbers (unlicensed dealers). The Advertising Standards Officer works proactively to change non-compliant advertising through education and consultation. Where necessary, the Advertising Standards Officer conducts investigations or recommends to the Manager of Investigations that non-compliant advertising be investigated.

2.10 Registrar

The role of the Registrar is to:

- ✓ Provide overall direction to the Director of Investigations, Licensing and Legal Services, Manager of Investigations, the investigations department, Manager of Industry Standards, the industry standards department; and
- ✓ Conduct investigations and consumer complaint hearings as necessary.

The Registrar is responsible for:

- ✓ Delegating authority to VSA staff where required to carry out their duties under these policies and procedures;
- ✓ Ensuring staff properly exercise their delegated authority;
- ✓ Providing advice to the Manager of Investigations and Manager of Industry Standards on compliance issues as required;
- ✓ Directing the investigations department to investigate or industry standards department to conduct an inspection when necessary; and
- ✓ Conducting hearings on compliance matters and consumer complaints where required.

2.11 Director of Consumer Services and Industry Standards

The Director of Consumer Services and Industry Standards has overall responsibility for Consumer Services, and Industry Standards. The responsibilities of the Director of Consumer Services and Industry Standards regarding the Industry Standards are to ensure that the department functions consistent with the VSA's mandate, Regulatory Philosophy and Enforcement Principles, and its Compliance Enforcement Model.

B. DEALER LIAISON VISITS

1. Overview

Investigations Officer should have regular contact with motor dealers to further develop their relationship with the motor dealer outside of the investigations and enforcement context.

The purpose of these motor dealer liaison visits is to help build rapport between the Investigations Officer and the motor dealer and provide an opportunity for a mutually beneficial exchange of information about the motor vehicle sales industry.

1.1 Legislative Authority and Requirements

There is no specific legislative authority or requirements for motor dealer liaison visits.

2. Policy

Purpose of Liaison Visit

- 2.1.1 The purpose of a motor dealer liaison visit is to help build rapport between the Investigations Officer and the licensees and to exchange information with the motor dealer, including
- (a) responding to licensees' questions or complaints;
 - (b) educating licensees about Investigations issues and updating them on current issues that could affect their business, including the [Key Messages for Dealers](#);
 - (c) learning more about the current state of the licensee's business; and
 - (d) gathering information about the motor vehicle sales industry in the Investigations Officer's region.

Type of Contact

- 2.1.2 A motor dealer liaison visit is contact with a motor dealer that is not part of conducting an inspection or investigation.
- 2.1.3 A motor dealer liaison visit may be conducted in person, by telephone, or by email.

Frequency and Documentation

- 2.1.4 Where an Investigations Officer has had no other contact with a motor dealer, the Investigations Officer will conduct at least one motor dealer liaison visit with the motor dealer per year.
- 2.1.5 After completing a liaison visit, the Investigations Officer will add a description of the visit to the motor dealer record in the VSA database.

C. INVESTIGATIONS

1. Overview

1.1 Background

The VSA investigates the activities of a licensed motor dealer, salesperson or other licensees where there is reason to believe that they have failed to comply with statutory requirements or the conditions of their licence. The VSA will also investigate individuals who may be acting as motor dealers, salespersons or other licensees without the appropriate licence.

An investigation may be initiated in any of the following ways:

- ✓ Through a consumer complaint received by Consumer Services or made directly to an Investigations Officer;
- ✓ Through routine monitoring of advertising by the Investigations Support Officer for Advertising;
- ✓ Through an anonymous tip;
- ✓ Through a request from the Licensing department;
- ✓ Through a request or report from an outside agency;
- ✓ Where the Registrar or the Manager of Investigations becomes aware of a systemic or wide-ranging Investigations' issue; and
- ✓ Where an Investigations Officer observes a significant Investigations issue during an inspection or while in the field which requires investigation.

The purpose of an investigation is to:

- ✓ Thoroughly gather and document reliable evidence in keeping with the requirements of procedural fairness and natural justice;
- ✓ Determine, based on the evidence, whether there has been a failure to comply with statutory requirements or terms of licence; and
- ✓ Where there has been a failure to comply, determine an appropriate enforcement action.

1.2 Legislative Authority and Requirements

Authority to Delegate

- 1.2.1 The Registrar of Motor Dealers is defined in the MDA which includes a person authorized in writing by the Registrar to perform the Registrar's duties. Therefore, the Registrar may delegate any of his powers to an Industry Standards Officer, Investigations Officer, Licensing officer, Consumer Services officer or any other person the Registrar deems appropriate to carry out its duties. [MDA – s. 1(1) – definition of Registrar]

Reasons for Investigation

- 1.2.2 The Registrar may make inquiries and require information
- (a) that the Registrar considers appropriate or necessary to decide whether or not to grant, renew, cancel or suspend a licence; [MDA s.7(1)(a)]
 - (b) to determine compliance with legislation, a condition of the licence, a Registrar's compliance order, a property freeze order, an undertaking or a court order; or
 - (c) respecting the business or proposed business of a motor dealer applicant as authorized by the Regulations. [MDA s. 7(1)(b), MDAR s.7, and BPCPA s. 149]
- 1.2.3 The Registrar may, for the purpose of the MDA, review a motor dealer's licence and for the purpose of the review may require any information or material concerning the organization, operating practices and procedures and the financial status of the motor dealer. [MDA Reg s. 7]

Investigating Complaints

- 1.2.4 If the Registrar receives a complaint in respect of a motor dealer, the motor dealer must provide to the Registrar the information respecting the matter complained of that the Registrar requests in writing. [MDA s. 25(1)]
- 1.2.5 The request for information about a complaint must indicate the nature of the complaint. [MDA s. 25(2)]
- 1.2.6 The Registrar or a person designated in writing by the Registrar may, at any reasonable time during normal business hours, enter the business premises of a motor dealer to make an inspection with respect to the complaint. [MDA s. 25(3)]

Requirements for Motor Dealer to Provide Information and Access to Premises

- 1.2.7 It is a condition of registration or renewal of registration that a motor dealer applicant or a licensed motor dealer provides information and documents respecting the business of a motor dealer that the Registrar or another person conducting an inquiry under the MDA requires. [MDA s. 7(2)]
- 1.2.8 A motor dealer must, at a reasonable time during normal business hours, on request of the Registrar or a person authorized in writing by the Registrar, permit the Registrar or authorized person to
- (a) enter the motor dealer's place of business
 - (b) inspect the records (which includes removing records so they can be copied) of the business
 - (c) enter premises in which any motor vehicle owned, possessed, or controlled by the motor dealer for his or her business is kept or stored, and
 - (d) inspect all motor vehicles on the premises. [MDA s. 26]

- 1.2.9 For the purposes of an inspection or investigation under the BPCPA, an Investigations Officer may do any of the following:
- (a) Enter the business premises of a person at any reasonable time;
 - (b) Inquire into any business, affairs, or conduct of a person;
 - (c) Inspect, audit or examine any record, goods or other thing or the provision of services in the premises;
 - (d) Inspect a motor vehicle or vessel that is being used for business purposes;
 - (e) Require any person who has possession or control of any of the records, goods or other things in the premises, motor vehicle or vessel to produce the records, goods or things
 - (f) Make a record, including a record on film, audiotape, videotape or otherwise, of the premises, motor vehicle or vessel and anything in or on the premises, motor vehicle or vessel
 - (g) Remove any record from the premises, motor vehicle or vessel for the purpose of making copies
 - (h) Remove and retain any record, good or other things that may be required as evidence from the premises, motor vehicle or vessel. [BPCPA s. 150(1)]
- 1.2.10 The authority under paragraph [1.2.9](#) must not be used to enter a private dwelling except with the consent of the occupant or with the authority of a [warrant](#) under section 153 of the BPCPA. [BPCPA s. 150(2)]
- 1.2.11 An Investigations Officer must return, within a reasonable time, any record or thing retained by the officer to the person from whom it was taken. [BPCPA s. 153]

Requirement for Licensee to Provide Information and Access to Premises

- 1.2.12 It's a condition of applying for a licence or applying to renew a licence, other than by a motor dealer, that the applicant shall provide the information and any documents or make any declarations that the Registrar or a person authorized by the Registrar requires.
- [BL Reg ss. 4(2) and 13(1); SL Reg s. 3(1); WL Reg s. 4(1)]
- 1.2.13 It is a condition of the licence of a licensee, other than a motor dealer, who comes under investigation to provide the information and any records that the Registrar or a person authorized by the Registrar requires.
- [BL Reg ss. 7(1)(h) and 16(1)(h); SL Reg s. 6(1)(h); WL Reg s. 7(1)(j)]
- 1.2.14 Where a licensee is a business, the Registrar or a person designated in writing by the Registrar may, at any reasonable time during normal business hours, enter the business premises of the licensee to

- (a) enter and inspect the licensee's business premises in British Columbia,
- (b) inspect all motor vehicles kept or stored in or on the licensee's business premises if any of the motor vehicles in or on the premises are owned, possessed, or controlled by the licensee for the licensee's wholesaler business, and
- (c) inspect the licensee's business records.

[BL Reg ss. 7(1)(i) and WL Reg s. 7(1)(k)]

Warrant under BPCPA

- 1.2.15 A justice may issue a warrant authorizing an Investigations Officer to enter on or into a building, receptacle or place and conduct an inspection or investigation if the justice is satisfied by evidence given under oath that entry on or into a building, receptacle or place, including a private dwelling, is necessary for any purpose related to carrying out the inspection or investigation. [BPCPA s. 152(1)]
- 1.2.16 In the warrant, a justice may authorize an Investigations Officer to do one or both of the following:
- (a) enter at a specified time or within a specified period;
 - (b) enter by force, if necessary. [BPCPA s. 152(2)]
- 1.2.17 An Investigations Officer may make an application for a warrant without notice to any other person. [BPCPA s. 152 (3)]

2. Policy and Procedures

2.1 Policy

Standard of Proof

- 2.1.1 The minimum standard of proof as to whether a contravention has occurred is the balance of probabilities; that is, it must be more probable than not that the contravention occurred.

Onus of Proof

- 2.1.2 Where there is an allegation and sufficient evidence that if believed, shows that a licensee committed a deceptive act or practice or an unconscionable act or practice contrary to the BPCPA, the burden of proof is on the licensee to show they did not commit the alleged deceptive act or practice or the alleged unconscionable act or practice.

[BPCPA ss. 5(2) and 9(2)]

- 2.1.3 For all other allegations made against a licensee, the onus of proof is on the person making the allegation whether that be by a complainant, another licensee, the VSA or the Registrar.

[Common law]

- 2.1.4 Where a complainant makes an allegation that they have been harmed by the non-compliance of a licensee, the onus of proof is on the complainant to prove the harm and their entitlement to a remedy.

[Common law]

Conduct of an Investigation

- 2.1.5 At the outset of an investigation, the Investigations Officer will determine

- (a) The specific statutory basis of the suspected contravention; or
- (b) In the case of a compensation fund investigation, the specific grounds for eligibility of the claim.

- 2.1.6 When conducting an investigation, the Investigations Officer will

- (a) Focus on evidence that is pertinent and specific to the suspected contravention or claim;
- (b) Follow and evaluate the evidence in a neutral and unbiased way; and
- (c) Objectively evaluate the evidence to determine the truth about what has occurred.

- 2.1.7 The Investigations Officer's conclusions and recommendation for enforcement action will be based strictly on the evidence documented by the Investigations Officer.

Taking Statements

- 2.1.8 When gathering information from individuals involved in an investigation, an Investigations Officer may obtain a statement in one of the following ways:
- (a) by listening to the individual's verbal statement and taking notes
 - (b) by taping or digitally recording the individual's verbal statement with their consent, or
 - (c) by obtaining a written statement signed by the individual.
- 2.1.9 A Investigations Officer may obtain an individual's statement by way of a telephone interview to avoid unnecessary travel or hardship to the individual.
- 2.1.10 Where the Investigations Officer believes that a matter being investigated is likely to go to a hearing, the officer will obtain a recorded or written statement where it is reasonable to do so in the circumstances.
- 2.1.11 The Investigations Officer will store a recording of an individual's verbal statement in the VSA database.
- 2.1.12 A transcription of a recorded statement generally will not be required and a Investigations Officer will not obtain a transcription unless it has been authorized by the Manager of Investigations.

Role of the Manager of Investigations

- 2.1.13 In general, the Manager of Investigations will not be involved directly in the gathering or evaluation of evidence by the Investigations Officer. However, the Manager of Investigations may take an active role in an investigation where
- (a) an investigation indicates a widespread issue involving many motor dealers, including within a motor dealer group;
 - (b) an investigation is complex and requires the skills and experience of the Manager of Investigations or requires that the Manager of Investigations coordinate the efforts of participating Investigations Officers;
 - (c) a complaint involves unlicensed activity requiring a coordinated effort with other enforcement agencies;
 - (d) a complaint is received during an investigation regarding the conduct of the Investigations Officer conducting the investigation;
 - (e) during an investigation, a licensee indicates a desire to resolve the complaint by way of a voluntary compliance measure such as an undertaking; or
 - (f) directed by the Registrar.
- 2.1.14 The Manager of Investigations will review all investigation files after they have been closed and may direct that an investigation be re-opened where the Manager of Investigations determines a further investigation is required.

Advertising Investigations

- 2.1.15 The Advertising Standards Officer will routinely scan motor dealer advertising for Investigations and
- (a) will address any advertising Investigations issue with the motor dealer responsible, including taking appropriate enforcement action, or
 - (b) where a suspected curber is identified, will refer the matter to the Investigations Officer.
- 2.1.16 Where an Investigations Officer identifies an advertising Investigations issue and no consumer is involved, the Investigations Officer will refer the matter to the Advertising Standards Officer.
- 2.1.17 Where an investigation of a motor dealer's advertising results from a consumer complaint or otherwise involves a consumer, the Investigations Officer will conduct the investigation and the Advertising Standards Officer will support the Investigations Officer's investigation by providing information on motor dealer advertising.

Proactive Curber Investigations

- 2.1.18 An investigation of a curber may include a proactive investigation in which an Investigations Officer poses as a consumer in a transaction with the suspected curber.
- 2.1.19 Prior to conducting a proactive investigation, the Investigations Officer will review the circumstances and determine whether a proactive investigation is feasible and safe in the circumstances.
- 2.1.20 Where the Investigations Officer determines that a proactive investigation can be conducted safely, the Investigations Officer will develop a plan for the proactive investigation and submit it to the Manager of Investigations for review.
- 2.1.21 The Manager of Investigations will review the plan to ensure that it is safe and meets legal requirements.

Investigation Closing Letter

- 2.1.22 At the conclusion of any investigation involving a consumer complaint or loss, the Investigations Officer will send an investigation closing letter to the consumer and a copy to the licensee.
- 2.1.23 The investigation closing letter will summarize the Investigations Officer's findings from the investigation and indicate whether or not the VSA will be taking any enforcement action but will not provide information on the specific nature of any enforcement measures to be imposed.
- 2.1.24 The investigation closing letter will be
- (a) drafted by the Investigations Officer and reviewed by the Paralegal and where necessary, a legal review by the Director of Investigations, Licensing and Legal Services, and
 - (b) signed by the Investigations Officer.

- 2.1.25 An investigation closing letter may be in the form of an email if the complainant has communicated with the VSA by way of an email.

Information Sharing

- 2.1.26 The VSA may share information obtained under any investigations with other enforcement agencies for law enforcement purposes.

[MDA s. 29(1)(e)]

2.2 Procedures

Initiating an Investigation

- 2.2.1 An Investigations Officer begins an investigation where the Investigations Officer
- (a) is notified by a Consumer Services Officer that a consumer complaint investigation has been assigned to the Investigations Officer;
 - (b) determines, in consultation with the Compensation Fund Claims Manager, that a compensation fund claim investigation is required;
 - (c) is informed of a compliance issue that requires investigation by a member of the Licensing department;
 - (d) is instructed to do so by the Manager of Investigations; or
 - (e) becomes aware of an Investigation issue requiring investigation during an inspection or through other sources.
- 2.2.2 If an investigation record has not already been opened in the VSA database, the Investigations Officer opens a record.
- 2.2.3 Where an Investigations Officer becomes aware of an Investigation issue requiring an investigation and opens an investigation record, the Officer notifies the Manager of Investigations.

Record Keeping and Reporting

- 2.2.4 The Investigations Officer records all investigation activities and the time spent on each activity in the VSA database.
- 2.2.5 At the conclusion of an investigation, the Investigations Officer completes a summary report of the investigation and informs the Manager of Investigations that the investigation is completed.
- 2.2.6 The Investigations Officer keeps investigation notes, original documents, photographs and other materials obtained in the investigation, and a copy of the summary report in the investigation file, where a hard copy file is created, and in the VSA database.

Investigation Closing Letter

- 2.2.7 At the conclusion of an investigation involving a consumer complaint or loss, the Investigations Officer drafts an investigation closing letter. The letter is reviewed by the Paralegal and where a legal review is necessary, by the Director of Investigations, Licensing and Legal Services.
- 2.2.8 After the investigation closing letter is reviewed, the Investigation Officer signs the letter and
- (a) sends the letter to the consumer and sends a copy to the licensee
 - (b) uploads the letter to the VSA database, and
 - (c) files a copy of the letter in the investigation file.

Compensation Fund Investigation Report

- 2.2.9 When concluding a compensation fund investigation, the Investigations Officer completes an investigation report using the [Compensation Fund Investigation Report](#) template and submits the report to the Compensation Fund Claims Manager.

Review by Manager of Investigations

- 2.2.10 After being notified of a completed investigation, the Manager of Investigations reviews the investigation record and summary report.
- 2.2.11 Where the Manager of Investigations determines that further investigation is required, the Manager of Investigations directs the Investigations Officer to re-open the investigation.

D. PROGRESSIVE ENFORCEMENT

1. Overview

In addition to the Registrar's authority under the MDA and regulations, the Registrar also has the powers of the "Director" to enforce parts of the BPCPA as they relate to motor dealers and salespeople.

To address non-compliance, the VSA employs a method of progressive enforcement. Progressive enforcement means that the enforcement measures should only become more serious and deterrent in nature if a corrective action by the licensee is not taken at the earliest detection of unlawful behavior. Nonetheless, depending on the nature of the non-compliance, the VSA may proceed as needed to any appropriate enforcement measure. The specific enforcement measure used will always depend on the circumstances of each case with the goal of educating on best practices and deterring future non-compliance.

The following are the general enforcement practices:

- ✓ The Investigations Officer will investigate and submit a report to the Manager of Investigations
- ✓ The Manager of Investigations in consultation with the Director of Investigations, Licensing and Legal Services, and where appropriate with outside legal counsel, will consider what if any enforcement response is appropriate.
- ✓ In selecting any enforcement response, the VSA Regulatory Philosophy and Enforcement Principles and the VSA's Compliance Enforcement Model will be applied.
- ✓ The Manager of Investigations can recommend a licensee voluntarily accept a proposed enforcement response through an undertaking or warning letter. The licensee is free to accept, reject or propose an alternative enforcement response.
- ✓ Ultimately, the Registrar is responsible for approving, or if necessary, ordering all enforcement responses.

The following are the general enforcement measures that may be used:

- ✓ Discussion and advice to allow a licensee to voluntarily come into compliance;
- ✓ A written warning;
- ✓ A condition added to a licence to be met within a certain time period;
- ✓ A violation ticket with a fine;
- ✓ An undertaking (a voluntary agreement to undertake conditions with specified consequences for failing to fulfill the agreement); and
- ✓ a hearing before the Registrar. After a hearing, the Registrar may impose the following enforcement measures
 - conditions added to a licence

- a compliance order (an order issued where there has been a contravention of the MDA and/or BPCPA)
- an administrative penalty (a monetary penalty assessed where there has been a contravention of the MDA and/or BPCPA)
- a suspension of a licence, and
- a cancellation of a licence.

Levels of Authority:

- ✓ Investigator: An investigator investigates if a breach of the legislation has occurred and reports their findings to the Manager of Investigations. An investigator cannot impose enforcement on a licensee and should not be making recommendations regarding enforcement.
- ✓ Manager of Investigations: Reviews investigation reports and in consultation with the Director of Investigations, Licensing and Legal Services and where appropriate with legal counsel, recommends what if any enforcement response is appropriate. The Manager of Investigations engages in discussion with the licensee on the proposed enforcement response.
- ✓ Director of Investigations, Licensing and Legal Services: Oversees the Manager of Investigations and consults with the Manager of Investigations on enforcement response selection.
- ✓ Outside Legal counsel: Provides legal advice on the allegations and enforcement selection as necessary.
- ✓ Registrar: Must formally approve or order all enforcement responses.

If necessary, a compliance order, administrative penalty and an undertaking made under the MDA and/or the BPCPA may be filed in the BC Supreme Court and enforced as a court order.

1.1 Legislative Authority and Requirements

Authority to Delegate

- 1.1.1 The Registrar may lawfully delegate any of his powers to an Investigations Officer, Licensing Officer, Consumer Services Officer or any other person the Registrar deems appropriate to exercise those powers. [MDA – s. 1(1) – definition of Registrar]

Conditions on Licence

- 1.1.2 The Registrar may register or renew a motor dealer registration on terms, conditions or restrictions that the Registrar considers necessary, including a condition requiring an irrevocable letter of credit, in an amount set by the Registrar, as evidence of financial responsibility. [MDA s.4(4) and (5)]
- 1.1.3 The VSA may impose conditions on a licence that the VSA considers necessary. [BL Reg ss. 7 and 16; SL Reg s. 4; and WL Reg s. 7]

- 1.1.4 The Registrar at any time may, by giving written notice to a licensee, add to or alter the terms, conditions, or restrictions of licence. [MDA s. 4(6), BL Reg ss. 7(3) and 16(3), SL Reg s. 4(3), WL Reg s. 7(3)]

Suspension or Cancellation of Licence

- 1.1.5 If in the opinion of the Registrar, the financial responsibility or past conduct of an applicant or registered motor dealer, or its officers or directors, is such that it would not be in the public interest for them to be registered or continue to be registered, the Registrar may
- (a) refuse to register an applicant or refuse to renew a registration, or
 - (b) cancel a registration, or
 - (c) suspend a registration for a period of time and subject to conditions the Registrar considers necessary. [MDA s. 5]
- 1.1.6 If the conduct of an applicant or licensee is, in the opinion of the VSA, such that it would not be in the public interest for the applicant or licensee to be licensed or continue to be licensed, the VSA may
- (a) refuse to issue the licence, or
 - (b) if a person is licensed,
 - (i) cancel the licence, or
 - (ii) suspend the licence for a period of time and subject to conditions the VSA considers necessary.
- [BL Reg ss. 6 and 15, SL Reg s. 5, WL Reg s. 6]
- 1.1.7 If the Registrar proposes to
- (a) refuse to register or renew a motor dealer's registration or to issue or renew a salesperson's licence
 - (b) cancel a registration or licence, or
 - (c) suspend a registration or licence,
- the Registrar must notify the applicant or the licensee that
- (d) they have the right to be heard at a date and place specified in the notice, and
 - (e) if they do not attend at that time and place, the matter may be disposed of in the absence of the applicant or the motor dealer or salesperson.

[MDA s. 6, BL reg s. 11 and 17, SL Reg s. 7, WL Reg s 11]

Court order under *Motor Dealer Act*

- 1.1.8 If it appears to the Registrar that a person is not complying with the MDA, the regulations or an order made under the MDA, even though a penalty may have been or could be imposed in respect of the non-Investigations, the Registrar may apply to the court for an order directing that person to comply, and the court may make an order it considers proper. [MDA s. 31]

Undertaking under the BPCPA and/or MDA

- 1.1.9 If the Registrar has reason to believe that a person is contravening, is about to contravene or has contravened the BPCPA, MDA or the regulations, the Registrar may accept from the person a written undertaking that is in a form and that contains the terms and conditions the Registrar determines are appropriate in the circumstances. An undertaking may include the following terms and conditions:
- (a) an undertaking to comply with the BPCPA, the MDA and their regulations;
 - (b) an undertaking to refrain from engaging in an act or practice;
 - (c) an undertaking to compensate consumers or a class of consumers, including reimbursing any money or returning any other property or thing received from consumers in connection with a consumer transaction;
 - (d) an undertaking to provide a bond in accordance with the *Bonding Act* or other security and the circumstances under which the security may be realized;
 - (e) an undertaking to reimburse to the Registrar the costs of any investigation, including actual legal and hearing costs;
 - (f) an undertaking with respect to the form, content and maintenance of trust accounts, records, contracts, advertisements or other documents; and
 - (g) if two or more persons give the undertaking, all the persons named in the undertaking are jointly and severally responsible for complying with the undertaking and are jointly and severally liable for the payment of any amounts under the undertaking. [BPCPA s. 154(1) and (2) / MDA s. 26.01]
- 1.1.10 The Registrar may terminate an investigation of or proceed against a person on the acceptance of an undertaking from the person. [BPCPA s. 154(3) / MDA s. 26.01(3)]

Investigations Order

- 1.1.11 After giving a person an opportunity to be heard, the Registrar may order the person to comply with the BPCPA, the MDA and their regulations if satisfied that the person is contravening, is about to contravene or has contravened the BPCPA, the MDA or the regulations. [BPCPA s. 155(1) / MDA s. 26.02(1)]
- 1.1.12 An Investigations order must:
- (a) name the person in respect of whom the order is issued;
 - (b) describe the person's act or practice that is contravening, is about to contravene or has contravened the BPCPA, the MDA or the regulations;
 - (c) identify the section of the BPCPA, the MDA or the regulations that is being contravened is about to be contravened or has been contravened;
 - (d) be dated and signed by the Registrar issuing the order; and
 - (e) inform the recipient that the Registrar may file the Investigations order with the Supreme Court and that a filed order is deemed to be an order of the Supreme Court. [BPCPA s. 155(2) / MDA s. 26.02(2)]

- 1.1.13 The Registrar may include one or more of the following orders in an Investigations order:
- (a) that a person stop engaging in or not engage in a specified act or practice;
 - (b) that a person reimburse any money or return any other property or thing received to a consumer or a class of consumers;
 - (c) that a person compensate other persons or a class of persons who have suffered loss or damage as a result of a contravention of the BPCPA, the MDA or the regulations;
 - (d) that a person take specified action to remedy an act or practice by which the person is contravening, is about to contravene or has contravened the BPCPA, the MDA or the regulations; and
 - (e) that a person reimburses to the Registrar all or a portion of the actual costs of any investigation, including actual legal and hearing costs, incurred by the Registrar for the investigation of that person in respect of the contravention referred to in the Investigations order. [BPCPA s. 155(3) and (4) / MDA s. 26.02(4)]
- 1.1.14 The Registrar must serve a copy of the Investigations order on the person named in the order. [BPCPA s. 155(5) / MDA s. 26.02(5)]
- 1.1.15 If an Investigations order is made against two or more persons, all the persons against whom the order is made are jointly and severally responsible for complying with the order and are jointly and severally liable for the payment of any amounts the persons are required to pay under the order. [BPCPA s. 155(6) / MDA s. 26.02(6)]

Filing an Undertaking or Order with the Court

- 1.1.16 The Registrar may file an undertaking, or an Investigations order issued under the BPCPA or the MDA with the Supreme Court, which when filed are deemed to be orders of the Supreme Court for all purposes except an appeal from the undertaking or order, and is enforceable as an order of the court. [BPCPA s. 157 / MDA s. 26.03]

Administrative Penalty

- 1.1.17 After giving the person an opportunity to be heard, the Registrar may impose an administrative penalty on the person if the person contravenes
- (a) a prescribed provision of the BPCPA, the MDA or the regulations;
 - (b) a condition of a licence;
 - (c) a Investigations order;
 - (d) a property freezing order; or
 - (e) an undertaking. [BPCPA s. 164(1) / MDA s. 26.04(1)].
- 1.1.18 Before the Registrar imposes an administrative penalty on a person, the Registrar must consider the following:
- (a) previous enforcement actions for contraventions of a similar nature by the person;
 - (b) the gravity and magnitude of the contravention;

- (c) the extent of the harm to others resulting from the contravention;
- (d) whether the contravention was repeated or continuous;
- (e) whether the contravention was deliberate;
- (f) any economic benefit derived by the person from the contravention; and
- (g) the person's efforts to correct the contravention. [BPCPA s. 164(2) / MDA s. 26.04(2)].

1.1.19 In addition to the factors noted in section 1.1.18, the Registrar must also consider the need for both specific deterrence on the licensee and general deterrence on the industry.

[Common law]

1.1.20 If the Registrar imposes an administrative penalty on a person, a prosecution for an offence under the BPCPA for the same contravention may not be brought against the person. [BPCPA s. 164(3) / MDA s. 26.04(3)]

1.1.21 If a person is convicted of an offence under the BPCPA or the MDA an administrative penalty may not be imposed in respect of the same circumstances that gave rise to the conviction. [BPCPA s. 164(4) / MDA s. 26.04(4)]

1.1.22 If a person can show they exercised due diligence to prevent the contravention

- (a) of provisions referred to in section 189(2), (3) and (4) of the BPCPA,
- (b) of section 189(5) of the BPCPA, and
- (c) of section 164(1)(b) to (f) of the BPCPA

then the Registrar must not impose an administrative penalty or must cancel an administrative penalty for a breach of those provisions of the BPCPA, if one was issued. [BPCPA Reg s. 10]

1.1.23 If a corporation contravenes

- (a) a prescribed provision of the BPCPA, the MDA or the regulations;
- (b) a condition of a licence;
- (c) an Investigations order;
- (d) a property freezing order; or
- (e) an undertaking.

an officer, director or agent of the corporation who authorized, permitted or acquiesced in the contravention is also liable under this section, whether or not an administrative penalty is imposed on the corporation. [BPCPA s. 164 (5) / MDA s. 26.04(5)].

Amount of Penalty

1.1.24 Under the BPCPA, the following are the maximum administrative penalties:

- (a) on an individual - \$5,000.00, and

(b) on a corporation - \$50,000.00. [BPCPA s. 165]

1.1.25 The Registrar may impose administrative penalties on a daily basis for continuing contraventions of the BPCPA [BPCPA Reg s. 9].

1.1.26 Under the MDA, the following are the maximum administrative penalties:

(a) on an individual who is operating as a business and at the time a penalty is imposed was the owner and operator - \$100,000.00

(b) on a corporation - \$100,000.00, and

(c) on an individual - \$50,000.00

[MDA s. 26.05]

Notice of Penalty

1.1.27 If the Registrar imposes an administrative penalty on a person, the Registrar must give to the person a notice imposing the administrative penalty that specifies the following:

(a) the contravention;

(b) the amount of the penalty;

(c) the date by which the penalty must be paid;

(d) the person's right to have this decision reconsidered; and

(e) an address to which a request for a reconsideration may be given. [BPCPA s. 166(1) / MDA s. 26.06]

Due Date of Penalty

1.1.28 The person on whom an administrative penalty is imposed must pay the administrative penalty

(a) within 30 days after the date on which the notice referred to in paragraph [1.2.26](#) is served on the person, or

(b) if the person requests a reconsideration, within 30 days after the date on which the decision of the Registrar respecting the reconsideration is served on the person. [BPCPA s. 167 / MDA s. 26.07]

Enforcement of Penalty

1.1.29 Subject to reconsideration or the expiry of the period in which to request a reconsideration, an administrative penalty constitutes a debt payable by the person on whom the penalty is imposed. [BPCPA s. 168(1) / MDA s. 26.08(1)]

1.1.30 If a person fails to pay an administrative penalty as required, the Registrar may file with the Supreme Court or Provincial Court a certified copy of the notice imposing the administrative penalty and, on being filed, the notice has the same force and effect, and all proceedings may be taken on the notice as if it were a judgment of that court. [BPCPA s. 168 (2) / MDA s. 26.08(2)]

1.1.31 Before filing a notice of penalty under the BPCPA under paragraph 1.2.28, the Registrar must issue a second administrative penalty in an amount equal to 10% of the first unpaid administrative penalty. [BPCPA Reg s. 11]

1.1.32 If a person breaches the BPCPA or fails to pay an administrative penalty, the Registrar may also suspend their licence until they do pay or cancel their licence. [MDA s. 8.1(4)(b)]

Limitation Period for Penalty

1.1.33 The time limit for giving a notice imposing an administrative penalty is 2 years after the date on which the contravention occurred. [BPCPA s. 170 / MDA s. 26.10].

2. General

2.1 Policy

Goals when Applying Enforcement Measures

2.1.1 The overall goals when applying an enforcement measure are to

- (a) change the behaviour of the non-compliant person;
- (b) eliminate any financial gain or benefit due to the non-Investigations;
- (c) be responsive to and appropriate for the particular facts of the non-Investigations;
- (d) be proportionate to the nature of the non-Investigations and any harm caused by the non-Investigations;
- (e) restore or remedy the harm caused by the non-Investigations where possible and allowed by law;
- (f) deter future non-Investigations by the person or within the industry as a whole; and
- (g) provide some assurance of future Investigations and the reduction of the risk of future harm.

2.1.2 To achieve the goals for applying an enforcement measure, it may be necessary to place conditions on a licence and to monitor a person who previously has been non-compliant.

Determining an Appropriate Enforcement Measure

2.1.3 When determining an appropriate enforcement measure, the VSA will consider the [goals of enforcement identified in paragraph 2.1.1](#) and the individual circumstances of each case, including

- (a) the seriousness of the contravention including the harm or risk of harm resulting from the contravention;
- (b) whether the contravention was repeated or systemic, or a one-time occurrence;
- (c) whether there have been any similar Investigations issues in the past including whether the licensee has received a warning for similar contraventions;
- (d) the willingness of the licensee to make changes to address the contravention;
- (e) whether there are any unresolved consumer complaints specific to the investigation;
- (f) the steps the licensee voluntarily has taken to address the contravention; and
- (g) what is in the public interest given all of the circumstances.

2.1.4 Subject to these policies and procedures, Investigations Officers may issue a verbal warning or a violation ticket on their own initiative but must first consult with the Manager of Investigations before taking any other enforcement action.

Court Order to Comply with MDA

2.1.5 The Registrar will consider applying for a court order under s. 31 of the MDA where

- (a) an unlicensed person is not in Investigations with the MDA; or

(b) other enforcement measures have failed to bring a licensee into Investigations.

2.2 Procedures

Applying an Enforcement Measure

- 2.2.1 The Investigations Officer investigates as required to determine the nature and circumstances of the non-compliance if any.
- 2.2.2 The Investigations Officer considers the nature and circumstances of the non-compliance and the policy on progressive enforcement and determines whether to
 - (a) provide a licensee with an opportunity to address the non-compliance and establish a time frame for the issues to be resolved, or
 - (b) issue a verbal warning or a violation ticket.
- 2.2.3 Where the alleged non-compliance is serious and cannot be addressed by voluntary compliance or by a verbal warning, the Investigations Officer provides their investigation report to the Manager of Investigations with any recommendations.
- 2.2.4 The Investigations Officer enters the enforcement measure taken in the VSA database and sends an email to the Manager of Investigations with the file number to report the enforcement action.
- 2.2.5 The Manager of Investigations reviews the enforcement action taken and follows up with the Investigations Officer as required.

3. Written Warning

3.1.1 General Principles

The legal authority to issue a warning letter is the Registrar's authority to issue a compliance order requiring a person to obey the law. If there has been a breach or if there is an expected future breach of the Motor Dealer Act ("MDA") or its regulations, the legislative authority to issue a compliance order is section 26.02 of the MDA. If there has been a breach or if there is an expected future breach of the Business Practices and Consumer Protection Act ("BPCPA") or its regulations, the legislative authority to issue a compliance order is section 155 of the BPCPA. Only the Registrar can issue a compliance order.

As a warning letter (compliance order) is a formal order and may be considered against the licensee in any future compliance issues, procedural fairness must be met before a warning letter is issued. The following minimum requirements must be met and documented in order to ensure a fair process that can be defended in court if challenged:

1. The subject licensee must know the allegations against them,
2. The subject licensee must know the evidentiary basis for the VSA to believe the licensee has breached the legislation,
3. The licensee must be given an opportunity to defend against the allegations and provide their own evidence,
4. The decision to issue a warning letter must be a proportionate response to the contravention with the reasons for issuing the warning letter to be transparent, intelligible (makes sense) and justifiable, and
5. The decision to issue must be clear, follow an intelligible and rationale basis for that decision that is justifiable on the evidence.

3.1.2 Simplified Process – not contested

If during the investigation it becomes apparent a Licensee is willing to accept a warning letter, then the following simplified process can be followed, and meets the minimum fairness requirements noted above:

1. Document the fact that the Licensee was made aware of the allegations and the evidence that supports the allegations. A short letter or email can suffice,
2. Document the fact that the Licensee has had an opportunity to respond to the allegations and provide their own evidence. A short letter or an email from the Licensee can suffice,
3. Confirm with the Manager that a warning letter is appropriate in the circumstances and why it is appropriate. Document this process with a short letter or email will suffice,
4. Document the fact that the Licensee is agreeable to a written warning letter. A short letter or email can suffice,
5. Prepare the warning letter and have the Manager and the Licensee review it and gain their acceptance prior to finalizing the warning letter. Document this process with a short letter or an email will suffice,
6. Present the final warning letter to the Registrar's office for acceptance and signature of the

- Registrar. Document this process with a short letter or an email will suffice,
7. Serve the warning letter on the Licensee and document this process. A short letter or email will suffice, and
 8. Ensure all documentation is properly uploaded to the VSA database.

The above documents should be easily identifiable should they be required for a court challenge.

3.1.3 Detailed Process – contested

Where a Licensee is not agreeable to a warning letter, then the following process should be followed to ensure fairness and properly document the process in case there is a court challenge to the warning letter.

3.1.4 Completing the Investigation Report

1. The investigator completes an investigation report by following their respective department's investigation policies and procedures.
2. The investigator consults with their Manager that the investigation report is complete and no further investigative steps are required. A written record of this discussion must be kept in the investigation file.
3. The investigator provides the licensee/registrant with a copy of the investigation report and supporting evidence and invites the licensee/registrant to comment on the report, the report's supporting evidence and for the licensee/registrant to provide any additional evidence in defence of their position. A written record of this occurring must be kept in the investigation file.
4. The investigator considers the licensee/registrant's comments and any additional evidence and whether to amend their investigation report and where appropriate they do amend their investigation report.
5. The investigator consults with their manager if they amend their investigation report. A written record of this discussion must be kept in the investigation file.
6. The investigator communicates to the licensee/registrant the investigator's views on any new evidence submitted by the licensee/registrant and their decision to amend or not amend their investigation report. A written record of this discussion must be kept in the investigation file.
7. If the investigator has amended their investigation report, they provide a copy to the licensee/complainant. A written record of this discussion must be kept in the investigation file.

Proposed Compliance Selection: Warning Letter

8. Within 10 days of finalizing their investigation report:
 - (a) The investigator considers the VSA's Regulatory Philosophy and Enforcement Principles and the VSA's Compliance Enforcement Model and determines that a written warning is the appropriate compliance enforcement step to take.
 - (b) The investigator communicates with the licensee/registrant in writing that they are recommending a warning letter be issued, why they are making that recommendation and explains that a warning letter is the same as a Registrar's Compliance Order to obey the law. A written record of this communication must be kept in the investigation file.
 - (c) The investigator completes the Warning Letter Checklist and Authorization form. The investigator may enlist the assistance of the legal assistant for this.
 - (d) The investigator prepares a proposed Warning Letter in the approved form. The investigator may enlist the assistance of the legal assistant for this.
 - (e) The investigator presents the proposed Warning Letter and a completed Warning Letter Checklist and Authorization form to their Manager and to the Director.

Approval of Warning Letter

9. Within 10 days of receiving an investigator's Warning Letter Checklist and Authorization and a proposed Warning Letter
 - (a) The Manager and the Director agree with the recommended warning letter or reject the recommendation. If they reject the recommendation, they direct the investigator to take other steps or they consider a different compliance response if any.
 - (b) If the proposed Warning Letter is approved by the Manager and the Director, the legal assistant prepares a Notice of Warning Letter in the approved form for signature by the Director.
 - (c) The Notice of Warning Letter advises the licensee/registrant that the proposed Warning Letter becomes effective 30 days after the Notice of Warning Letter is signed by the Director unless the licensee/registrant files an objection within 21 days of receiving the Notice.
 - (d) The Notice of Warning Letter and proposed Warning Letter are presented to the Office of the Registrar to approve their form before being served on the licensee/registrant.

Notice of Service of Warning Letter

10. If the Notice and the proposed Warning Letter's form is approved by the Registrar's Office,
 - ✓ The Notice of Warning Letter and the proposed Warning Letter are served within 1 day of that approval.
 - (b) Service can be completed in any manner authorized by section 30 of the Motor Dealer Act.
 - (c) A written record of the service must be kept in the investigation file.

Licensee/Registrant Objection to a Warning Letter

11. At any time within 21 days of receiving a Notice of Warning Letter, the licensee/registrant may file an objection in writing providing the required information noted in the Notice of Warning Letter.
A written record of this objection must be kept in the investigation file.
12. Where the licensee/registrant objects to a proposed Warning Letter, the Director or their delegate discusses the objection with the licensee/registrant to try and resolve that objection.
13. If within 30 days of the licensee/registrant filing an objection, the VSA and the licensee/registrant cannot agree on a resolution to the licensee/registrant's objection, a written hearing before the Registrar is scheduled following the Registrar's hearing process.

Licensee/Registrant does not object to a Warning Letter

14. If a licensee/registrant,
 - (a) does not file an objection in the required time, or
 - (b) expressly states that they accept the Warning Letter at any time within the 21 days to object,the Registrar then reviews the circumstances of the case and either agree with issuing the proposed Warning Letter or rejects the proposed Warning Letter.
15. If the Registrar agrees with the proposed Warning Letter, the Registrar signs it and provides a copy to the relevant manager for service on the licensee/registrant. The Warning Letter is to be placed on file

16. If the Registrar rejects the proposed Warning Letter, they advise the relevant manager with written reasons why and directions on next steps to take.

4. Violation Ticket

4.1 Overview

An Investigations Officer may issue a violation ticket to enforce provisions in the MDA and the MDA Regulation where a contravention has been designated as an offence under the Act.

A violation ticket is issued under the Violation Ticket Administration and Fines Regulation (BC Reg. 89/97) of the Offence Act. The amount of the ticket, including an amount added as a victim surcharge is prescribed in Schedule 2 of the regulation. When a violation ticket is paid, the money is collected by ICBC and goes to the BC government.

The VSA will not renew a licence where the licensee has an unpaid violation ticket and the time to challenge the ticket in court has passed.

4.2 Policy

4.2.1 Investigations Officers may issue a violation ticket on their own initiative.

4.2.2 Generally, a violation ticket should not be issued if

- (a) a written warning will be sufficient to achieve the goals of enforcement identified in paragraph [2.1.1](#);
- (b) the matter involves a consumer complaint in which the consumer alleges harm, and the investigation has substantiated actual harm, which has not been remedied by the licensee responsible; and
- (c) the licensee's Investigations history indicates more than 3 incidents of non-Investigations, and the Investigations Officer believes that the licensee's conduct should be reviewed by the Licensing department.

4.3 Procedures

4.3.1 After issuing a violation ticket, the Investigations Officer

- (a) notes that the ticket has been issued in the VSA database and uploads a copy of the ticket;
- (b) puts a copy of the ticket in the investigation file;
- (c) submits the original ticket to the Investigations Support Officer for Advertising for processing to ICBC; and
- (d) advises the designated Licensing officer that a ticket has been issued to the licensee.

5. Undertaking

5.1 Overview

An undertaking is a voluntary acknowledgement of a contravention by a motor dealer or a salesperson. The terms of an undertaking may include one or many terms and conditions, such as a promise to:

- ✓ stop a particular type of conduct
- ✓ repay a consumer for any proven losses
- ✓ pay for the VSA's investigation costs
- ✓ pay an administrative penalty, and
- ✓ abide by the law.

The purpose of the voluntary undertaking is to show that a motor dealer or salesperson has recognized they have made an error and are willing to take reasonable steps to correct that error.

Where the Manager of Investigations determines that a contravention warrants a hearing before the Registrar, the Manager of Investigations may advise the licensee of the opportunity to enter into an undertaking rather than have the matter go to a hearing. Alternatively, the Registrar may accept an undertaking after a hearing on a contravention, but before a formal decision has been made.

Where the contravention relates to the BPCPA, the undertaking is made under section 154 of the BPCPA and where the contravention relates to the MDA the undertaking is made under section 26.01 of the MDA. Where required, a BPCPA and an MDA undertaking may be filed with the BC Supreme Court and enforced as an order of that Court.

Undertakings are published on the VSA website to ensure transparency in the exercise of statutory authority and to support public confidence in the VSA's enforcement regime. Publication also serves to educate the industry regarding Investigations and enforcement issues. [MDA s. 13.2]

5.2 Policy

- 5.2.1 Where the Manager of Investigations determines that a Registrar's hearing is warranted but the allegations may be addressed by way of an undertaking, the Manager of Investigations will advise the licensee of the option to voluntarily enter into an undertaking rather than appearing before the Registrar.
- 5.2.2 The Manager of Investigations will provide the licensee with sample terms for the undertaking, for discussion purposes. A licensee is not required to accept the undertaking provided by the Manager of Investigations and may offer any alternate terms.
- 5.2.3 An undertaking will be published on the VSA website. [MDA s. 13.2]

- 5.2.4 An undertaking will only be filed with the court where the licensee has failed to comply with the terms of the undertaking, and no other option to enforce the undertaking is available or appropriate in the circumstances.

5.3 Procedures

- 5.3.1 Where the Manager of Investigations determines that a hearing before the Registrar is warranted, the hearing notice sent to the licensee includes information about the option to enter into an undertaking with sample terms.
- 5.3.2 Where the licensee indicates an interest in entering into an undertaking, the Manager of Investigations contacts the licensee to review and agree to the terms of the undertaking.
- 5.3.3 After the Manager of Investigations and the licensee agree to the terms of the undertaking, the Manager of Investigations prepares the undertaking for signature by the licensee and then provides it to the Registrar for review and signature.
- 5.3.4 After the undertaking has been approved and signed by the Registrar, the Legal Administrative Assistant
- (a) prepares an invoice in the VSA database where the terms of the undertaking include a payment to the VSA by the licensee;
 - (b) prepares the enforcement documents;
 - (c) uploads a copy of the undertaking to the VSA database;
 - (d) files a copy of the undertaking in the investigation file;
 - (e) sends the documents to the licensee; and
 - (f) arranges for a copy of the undertaking to be published on the VSA website.
- 5.3.5 Where the licensee does not wish to enter into an undertaking or the Manager of Investigations and the licensee cannot agree on the terms of an undertaking, the matter proceeds to a hearing.
- 5.3.6 The registrar is not required to accept an undertaking that the Manager of Investigations has recommended be accepted. The registrar has the discretion to accept or refuse an undertaking [MDA, s. 26.01(1) and BPCPA, s. 154]

6. Registrar's Hearing

6.1 Overview

At a hearing, the Registrar hears evidence presented by the VSA and the licensee and determines whether a contravention has occurred. Where there has been a contravention, the Registrar determines the appropriate enforcement measures.

Where the Registrar determines that a licensee has contravened the MDA and/or the BPCPA or failed to comply with an undertaking or Investigation's order under the MDA and/or the BPCPA, the Registrar may

- ✓ assess an administrative penalty
- ✓ require the licensee to pay a consumer damage or unwind a transaction (if legally applicable)
- ✓ require the licensee to abide by the law or take other steps
- ✓ order the licensee to pay the VSA's investigation and hearing costs, and
- ✓ cancel a motor dealer's registration.

In addition, where the Registrar determines that a licensee has contravened the MDA, the Registrar may cancel, suspend or add conditions to the motor dealer or salesperson licence.

If, at a hearing in respect of a complaint, the Registrar determines that the complaint is frivolous or vexatious, or that the complainant engaged in improper conduct during the course of the complaint, the Registrar can make one or more of the orders in section 25.1 of the MDA.

6.2 Policy and procedures

The policy and procedures for a Registrar's hearing are contained in the [Hearing Policy and Procedures Manual](#).

7. Investigations Order

7.1 Overview

After a hearing in which the Registrar finds that a licensee has contravened the BPCPA and/or the MDA, the Registrar may issue an Investigations order.

An Investigations order contains terms and conditions that the Registrar determines are appropriate. It may include a condition that a licensee reimburses a consumer, compensate other persons who have suffered loss or damage, and reimburse the VSA for investigation and legal costs.

7.2 Policy

7.2.1 The terms and conditions of an Investigations order will be based on the individual circumstances of the licensee and the contravention, and the overall goals for enforcement measures identified in paragraph [2.1.1](#).

7.2.2 A Investigations order will be filed with the BC Supreme Court where the Registrar determines that doing so is necessary

- (a) to enforce the terms and conditions of the order, or
- (b) to facilitate a claim made to the Motor Dealer Customer Compensation Fund.

7.3 Procedures

7.3.1 The Registrar sets out the terms of the Investigations order in the hearing decision.

7.3.2 After the Registrar issues the hearing decision, the Legal Administrative Assistant prepares a draft of the order with the terms and conditions identified in the decision and submits it to the Registrar for approval.

7.3.3 After the Investigations order is approved and signed by the Registrar, the Legal Administrative Assistant

- (a) obtains 3 certified copies of the order;
- (b) uploads a copy of the order to the hearing record in the VSA database; and
- (c) files the signed original order and a certified copy in the hearing file.

7.3.4 The Legal Administrative Assistant

- (a) arranges to serve the licensee with a certified copy of the order, and
- (b) sends a certified copy of the order to the complainant, where applicable.

7.3.5 Where the Registrar determines that it is necessary, the Legal Administrative Assistant prepares and files the Investigations order with the BC Supreme Court.

8. Administrative Penalty

8.1 Overview

An administrative penalty is a monetary penalty that may be imposed after a person has had an opportunity to be heard before the Registrar where a licensee has contravened the BPCPA and/or the MDA.

For a contravention of the BPCPA an administrative penalty of up to \$5,000 may be imposed on an individual licensee and up to \$50,000 on a corporation for each breach of the BPCPA. If the licensee does not pay the administrative penalty within 30 days, the Registrar must impose a second penalty equivalent to 10% of the first penalty. The Registrar may impose an administrative penalty for each day that a breach continues.

For a contravention of the MDA an administrative penalty of up to \$50,000 may be imposed on an individual licensee and up to \$100,000 on an individual operating as a business or on a corporation for each breach of the MDA.

8.2 Policy

8.2.1 When determining whether to impose an administrative penalty, the Registrar will consider

- (a) the individual circumstances of the licensee and the contravention including the factors identified in [paragraph 2.1.3](#); and
- (b) the overall goals for enforcement measures identified in [paragraph 2.1.1](#).

8.2.2 When determining the amount of an administrative penalty, the Registrar will consider

- (a) the requirements in the BPCPA and the MDA;
- (b) past decisions of a similar nature;
- (c) the overall goals for enforcement measures identified in [paragraph 2.1.1](#); and
- (d) the effectiveness of the penalty as a deterrent for both the licensee on whom the penalty will be imposed and for the industry generally.

8.2.3 The Registrar will also consider the Administrative Penalties Framework contained in the Compliance Enforcement Model (2019), Appendix 2.

8.3 Procedures

8.3.1 The Registrar sets out the nature and amount of the administrative penalty in the hearing decision.

8.3.2 After the Registrar issues the hearing decision, the Legal Administrative Assistant prepares a draft notice of administrative penalty as described in the decision and submits it to the Registrar for approval.

- 8.3.3 After the notice of administrative penalty is approved and signed by the Registrar, the Legal Administrative Assistant
- (a) obtains 3 certified copies of the notice of administrative penalty
 - (b) arranges to serve the licensee with a certified copy of the notice of administrative penalty
 - (c) uploads a copy of the notice to the investigation record in the VSA database, and
 - (d) files the signed original notice and a certified copy in the hearing file.
- 8.3.4 Where the Registrar determines that it is necessary, the Legal Administrative Assistant prepares and files the notice of administrative penalty with the BC Supreme Court.

9. Conditions on Licence

9.1 Overview

A condition can be placed on a licence by the Manager of Licensing or the Registrar, with written notice to the licensee.

The Manager of Licensing may add a condition to a licence to ensure that licensing requirements are met or where a licensee presents some risk for non-Investigations that can be mitigated through conditions on licence. Where the Manager of Licensing intends to impose a condition on the licence, the Manager of Licensing first notifies the licensee, who may request a hearing before the Registrar before the conditions are imposed. The Registrar may allow the licensee an opportunity to be heard by means other than a hearing.

The Registrar may impose conditions on a licence as an enforcement measure as the result of a hearing. The purpose of these conditions may be to mitigate the risk of future non-Investigations or may serve other enforcement goals.

9.2 Policy

General

- 9.2.1 A condition may be added to a licence by the Manager of Licensing or the Registrar.
- 9.2.1 When making a decision whether to impose a condition on a licence, the Manager of Licensing or the Registrar will consider the individual circumstances of the licensee and the non-Investigations, and the goals for enforcement measures identified in paragraph 2.1.1.
- 9.2.2 When deciding on the nature of a condition of the licence, the Manager of Licensing or the Registrar will consider
- (a) the length of time that a condition will remain in effect or the terms that must be met in order for the condition to be removed,
 - (b) The public interest and the need to protect the public from harm as identified in the Regulatory Philosophy and Enforcement Principles, and
 - (c) the VSA resources that are required to appropriately monitor the condition.

Conditions imposed by the Manager of Licensing

- 9.2.3 The Manager of Licensing may impose a condition on a licence where the Manager of Licensing has reason to believe that the condition is necessary to mitigate risk of non-Investigations.
- 9.2.4 Where the Manager of Licensing intends to impose a condition on a licence, the licensee may
- (a) make a written submission to the Manager of Licensing as to why the condition should not be imposed, or

(b) request an opportunity to be heard by the Registrar to determine whether the conditions should be imposed.

9.2.5 The licensee may request an opportunity to be heard by the Registrar regardless of whether the licensee has or has not made a written submission to the Manager of Licensing.

9.2.6 Before imposing a condition on a licence, the Manager of Licensing will inform the licensee of the proposed conditions in writing and indicate that the licensee may make written submissions or request an opportunity to be heard by the Registrar.

Conditions imposed by the Registrar

9.2.7 After giving a licensee an opportunity to be heard, the Registrar may impose a condition on a licence where

- (a) the Registrar believes that the condition is necessary to mitigate a risk of non-Investigations, and
- (b) the condition is intended to address the overall goals for enforcement measures identified in paragraph [2.1.1](#).

9.3 Procedures

Conditions imposed by the Manager of Licensing

9.3.1 Where the Manager of Licensing intends to impose a condition on a licence, the Manager of Licensing sends a written notice to the licensee indicating

- (a) the nature of the proposed conditions, including any terms for removing the conditions, and
- (b) if the licensee wishes to dispute the proposed conditions, the licensee may
 - (i) make a written submission to the Manager of Licensing, or
 - (ii) request an opportunity to be heard by the Registrar.

9.3.2 Where the licensee provides a written submission, the Manager of Licensing reviews the submission and

- (a) determines whether to confirm, modify or cancel the proposed conditions, and
- (b) informs the licensee of the decision in writing.

9.3.3 Where the licensee requests an opportunity to be heard by the Registrar, the Registrar determines whether to confirm, modify or cancel the conditions proposed by the Manager of Licensing.

9.3.4 The Manager of Licensing enters the conditions in the VSA database and instructs the Licensing Officer to issue a new licence with the conditions as provided in the [Licensing Policy and Procedures Manual](#).

Conditions imposed by the Registrar

- 9.3.5 The Registrar sets out the terms of the conditions in the hearing decision.

- 9.3.6 The Manager of Licensing instructs the Licensing Officer to enter the conditions in the VSA database and issue a new licence with the conditions as provided in the [Licensing Policy and Procedures Manual](#).

10. Suspension or Cancellation of Licence

10.1 Overview

Suspension and cancellation of a licence are the most serious enforcement measures that may be imposed on a licensee. Only the Registrar may suspend or cancel a licence, and only after giving the licensee an opportunity to be heard.

10.2 Policy

General

10.2.1 A decision to suspend or cancel a licence may only be made by the Registrar after giving the licensee an opportunity to be heard.

10.2.2 When making a decision whether to suspend or cancel a licence, the Registrar will consider the individual circumstances of the licensee and the non-compliance and the goals for enforcement measures identified in paragraph [2.1.1](#).

Suspension

10.2.3 The Registrar may suspend a licence where

- (a) an investigation of a licensee involves allegations that, if true, could lead to a person suffering harm from the licensee's conduct and further investigation is required to substantiate the allegations
- (b) the conduct of a licensee is of such concern that a violation ticket, Investigations order, administrative penalty and imposing conditions on a licence will not be sufficient to achieve the goals for deterrence and the enforcement measures identified in paragraph [2.1.1](#)
- (c) a violation ticket, Investigations order or administrative penalty are not legally available measures to address the non-Investigations, or
- (d) the licensee agrees to the suspension.

Cancelation

10.2.4 The Registrar will cancel a licence where on all the evidence, the Registrar believes on a balance of probabilities that the licensee poses a risk to the public interest because they may cause future harm and no other enforcement action will provide the necessary assurance of future Investigations or sufficiently mitigate the risk of harm.

10.3 Procedures

Suspension

10.3.1 The Registrar sets out the length of a suspension and any other terms in their decision.

10.3.2 After the Registrar has issued the decision, the Legal Administrative Assistant advises the Manager of Licensing and the Manager of Investigations that the licence has been suspended.

- 10.3.3 The Licensing Officer enters the terms of the suspension in the VSA database and processes the suspension as provided in the [Licensing Policy and Procedures Manual](#).
- 10.3.4 The Investigations Officer posts a notice of suspension at the licensee's premises.

Cancellation

- 10.3.5 The Registrar orders the cancellation in a decision and, where necessary, sets out the length of time that must pass before the licensee may re-apply for a licence and any conditions that must be met for re-application.
- 10.3.6 After the Registrar has issued the decision, the Legal Administrative Assistant advises the Manager of Licensing and the Manager of Investigations that the licence has been cancelled.
- 10.3.7 The Licensing officer enters the terms of the cancellation in the VSA database and processes the cancellation as provided in the [Licensing Policy and Procedures Manual](#).
- 10.3.8 Where a motor dealer's licence has been cancelled, the Manager of Investigations arranges for a motor dealer closure inspection and to serve the notice of closure on the motor dealer in question.

ACRONYMS AND ABBREVIATIONS

BL Reg	Broker Licensing Regulation, BC Reg. 201/2017
BPCPA	<i>Business Practices and Consumer Protection Act</i> , SBC 2004, c 2
BPCPA Reg	<i>Business Practices and Consumer Protection Act Regulation</i> , BC Reg. 294/2004
MDA	<i>Motor Dealer Act</i> , RSBC 1996, c 316
MDA Reg	<i>Motor Dealer Act Regulation</i> , BC Reg. 447/78
Manager of Investigations	Manager of Investigations and Investigations
SL Reg	Salesperson Licensing Regulation, BC Reg 241/2004
WL Reg	Wholesaler Licensing Regulation, BC Reg. 203/2017
VSA	Motor Vehicle Sales Authority of British Columbia



APPENDIX

KEY MESSAGES FOR DEALERS

When conducting an inspection or liaising with motor dealers, Investigations Officers should communicate the following key messages:

1. Investigations with legislation is in the motor dealer's best interest.
2. Non-compliance will not be tolerated and will be addressed through the VSA's progressive enforcement measures.
3. It is important that motor dealers exercise due diligence when taking a motor vehicle into inventory and disclose all material facts about a motor vehicle to the consumer.
 - ✓ Note that it is not enough to meet the specific disclosure requirements in s. 23 of the MDA Regulation. Full disclosure of all material facts is required under the BCPA.
4. The statutory disclosures in the MDA and the regulations are legally mandated representations and the manner in which those representations are made must be compliant with the *Business Practices and Consumer Protection Act*.