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1 Overview of the Vehicle Sales Authority

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

Primary responsibility of the VSA

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

Purpose of a regulatory authority

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

Structure

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

Governance

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

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

Operations

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

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

2 VSA Licences

Motor Dealer

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

Salesperson

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

Broker Agent

A broker agent can be one person or a large operation. A licensed broker agent must have at least one licensed representative. Consumer transactions must be with a licensed dealer. A licensed broker agent may collect fees only from a buyer. The acceptance of fees or commissions from a seller is not allowed.

Broker Agent Representative

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

Wholesaler

A wholesaler can be one person or a large operation. Licensed wholesalers are not permitted to sell vehicles to consumers. Wholesalers may sell only to businesses. A wholesaler may take this course or the limited Wholesaler Licensing Course.

Licensing is a privilege not a right

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

The public interest must be protected

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

Vehicle Sales Authority – Review

1. The purpose of regulatory law is to maintain compliance with minimum standards of conduct and care. (True/False)
2. The role of the VSA Board of Directors is to set policy and establish annual budgets. (True/False)
3. What businesses and individuals does the VSA license?
4. Wholesalers may not sell to consumers. (True/False)
5. Licensing is a right upheld by the Supreme Court. (True/False)

Important terms

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

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

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

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

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

3 Wholesaler Licensing Requirements and Duty to Disclose

Overview

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

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

Business location, records and sale agreement

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

A written agreement that includes all the required information about the seller, the buyer and the vehicle must be used. A copy must be given to the buyer.

Wholesaling by licensed dealers

A dealer must report to the VSA if they will be selling to wholesalers and other dealers. They must identify the employees who will be wholesaler representatives. Licence fees will be waived if:

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

New wholesaler representatives

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

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

Wholesaler duties

A wholesaler has a duty to enquire about the history of the vehicles they sell and to disclose this to the buyer. A wholesaler may be liable to reimburse a dealer for money paid to a consumer because of their error. The authority to resolve business-to-business disputes was not granted to the VSA in the *Motor Dealer Amendment Act*, but failing to meet disclosure requirements could result in a licensing review.

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

4 Required Declarations

Motor Dealer Act

Overview

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

Wholesalers have similar *Motor Dealer Act* duties to enquire and disclose to their wholesale buyers.

Required declarations

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

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

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

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

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

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

Cumulative – the total of all the parts or amounts

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

5 Required Disclosures

Motor Dealer Act

Material facts

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

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

Wholesalers have similar *Motor Dealer Act* duties to enquire and disclose to their wholesale buyers.

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

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

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

Vehicle history reports

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

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

Document and record sharing

Sellers should provide all useful documents to the buyer, including vehicle history reports, mechanical inspections and repair records. Failing to share material facts with a buyer would likely be a violation of the sales contract and a licensing concern to the VSA.

Buyers should request and acquire all useful documents from the seller, including vehicle history reports, mechanical inspections and repair records.

Personal information should be removed before sharing documents and records.

Consumer Remedy

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

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

6 Recalls

An uncorrected recall is likely a *material fact*

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

Failing to disclose an uncorrected recall or providing incorrect information about recalls to a consumer may also be a deceptive act. This could include recalls known to the dealer and not yet made public. Allegations of a deceptive act regarding a recall may be within the jurisdiction of the VSA. See Topic 7.

Selling a vehicle with an outstanding recall

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



Required Declarations and Disclosures – Review

1. Dealers and wholesalers both have a *positive duty* to enquire about the vehicles they sell. (True/False)

2. There are six required *declarations*. Nothing else must be disclosed by a dealer to a consumer. (True/False)

3. What added costs are used to calculate the \$2,000 declaration amount?

7 Deceptive Practices and Statements

Business Practices and Consumer Protection Act

Overview

While wholesalers are not bound by the *Business Practices and Consumer Protection Act*, because business-to-business sales are exempt, it is important to understand the obligations your dealer customers must meet.

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

Deceptive act or practice

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

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

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

Misrepresentations

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

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

What is material to a buyer?

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

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

Deceptive Practices – Review

1. The BPCPA requires a seller to stand behind the *representations* they make to a consumer about the goods they sell. (True/False)

2. A deceptive act is any communication of material facts that tends to lead a reasonable person into making an error of judgment. (True/False)

3. The consumer has the *burden of proof* if they allege a deceptive act occurred. (True/False)

4. A deceptive act can be intentional, negligent or innocent and still be deceptive. (True/False)

Case Study 1 Dealer and Wholesaler Responsibilities (Part One)

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

1. A remedy is available to the consumer if the declaration was missing. (True/False)

2. A remedy may be available to the dealer if the sale to the dealer by the wholesaler was made as alleged. (True/False)

8 Minimum Vehicle Requirements

Motor Vehicle Act

Overview

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

Vehicles on the road must meet Section 219

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

Vehicles for sale must meet Section 222

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

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

Vehicles *unsuitable for transportation* should not be driven

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

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

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

Misconception

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

Inspection to verify that a motor vehicle is safe

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

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

9 Rebuilt Vehicles and Replacing Odometers

Motor Vehicle Act

Salvage and rebuilt vehicles

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

Inspections of rebuilt or modified vehicles

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

This applies to vehicles:

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

Legally replacing an odometer

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

Illegal odometer actions

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

Enforcement and penalties

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

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

Salvage and Rebuilt Vehicle Summary

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

Minimum Vehicle Requirements – Review

1. The *Motor Vehicle Act (MVA)* applies only to dealers. (True/False)

2. *No one may operate, or permit someone else to operate,* a vehicle or trailer unless it meets the requirements of the *MVA*. (True/False)

3. It is illegal for a person to sell a vehicle *for use* on the road unless it meets the requirements of the *MVA*. (True/False)

4. List four things that can happen that require an inspection of a vehicle to be done:

5. An odometer can be legally replaced. (True/False)

10 Misunderstood Concepts

Sale of Goods Act and the BPCPA

While wholesalers are not generally bound by the *Sale of Goods Act*, it is important to understand the obligations your dealer customers must meet.

Buyer beware

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

As Is - Where Is

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

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

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

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

Implied rights cannot be waived for a new vehicle

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

Limiting obligations during the sale of a used vehicle to a consumer

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

Auction sales do not limit dealer liability

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

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

11 Contract Law – A Meeting of the Minds

Introduction

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

Verbal contracts

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

Enforce, enforceable, enforceability – to make something happen

Written contracts

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

Meeting of the minds and intention to perform

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

Implied contracts

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

Protections of a written contract

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

12 Offer, Consideration and Acceptance

The three elements of a contract

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

Offer

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

Consideration or an exchange of value

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

Acceptance

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

A binding or enforceable contract

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

Contract Law Part 1 – Review

1. The *Sale of Goods Act* and the *BPCPA* give rights to consumers in contracts and agreements. (True/False)

2. A written agreement is used to show that *Motor Dealer Act* declarations and *material* disclosures were made. (True/False)

3. How can a written contract be changed?

4. An offer must contain all the important terms of the proposed contract, including the consideration, to be valid? (True/False)

5. If either party changes anything in the offer, it is a counter-offer. (True/False)

6. What is true about *acceptance*?

13 Essential Terms – Parties, Property and Price

Parties

- The parties must be known and have the capacity to make a contract for it to be valid
Capacity – the ability to understand and protect their interests
- Laws protect people with limited capacity due to mental illness, age or the effects of drugs and alcohol. A buyer of limited capacity may *enforce* a contract they make, but the seller cannot hold them to the same contract

Enforce, enforceable, enforceability – to make something happen

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

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

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

Property

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

Price

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

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14 PST and Tax Exempt Sales for First Nations

The provincial sales tax or PST and motor vehicles

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

First Nations tax exemptions

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

It is the responsibility of the seller to ensure that the buyer qualifies for the exemption and that all of the requirements for the exemption are met.

Purchases

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

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

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

15 Protecting Consumer Privacy

Personal Information Protection Act

Purpose of PIPA

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

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

Limitations on personal information

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

Business privacy requirements

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

Locating private information

Private information is not just what is collected directly. It should be protected or destroyed once the vehicle is in your possession. It may be found on repair receipts in the glove box, in GPS or audio systems and on documents under seats or in the trunk of the vehicles you purchase.

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

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

16 Agency and Liability

Overview

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

Business liability

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

Employee liability

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

Intentional – done on purpose or deliberately

Negligent – failing to take proper care in doing something

Innocent – not responsible for or not directly involved

Business liability for the conduct of employees

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

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

17 VSA Duties

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



18 Complaints and Reporting Concerns

Allegations of improper consumer transactions

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

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

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

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

Complaints about improper wholesale transactions

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

Reporting unlicensed sales and curbing

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

19 Inspections and Investigations

Inspection authority

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

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

Inspections

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

Investigations

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

Ability to freeze and secure assets

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

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



20 Wholesale Auctions

Wholesale auction exemption

The *Motor Dealer Act* provides an exemption for wholesale auctions if they meet several conditions.

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

Eligible Bidders

- A registrant (motor dealer)
- A licensed wholesaler
- ICBC or an insurer insured under the Insurance Act

Eligible Sellers

- A registrant (motor dealer) or licensed wholesaler
- ICBC or insurer insured under the Insurance Act
- The Province
- A liquidator
- A person disposing under a Repairer's Lien
- A manufacturer, exporter, etc.
- A bailiff, lender of money, etc.

Eligible Motor Vehicles

- Used and offered for sale on behalf of eligible seller
- The auction and its officers, directors, or employees have no property interest in the motor vehicle
- The seller has made a written declaration available to bidders, including the standard declarations and whether it is "not suitable for transportation"

21 Compliance Options

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

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

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

Undertakings

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

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

Formal hearings

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

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

Formal hearing procedures

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

Desktop or paper hearings

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

Compliance orders

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

22 Penalties

Motor Dealer Act and the BPCPA

Administrative penalties

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

Licensing authority

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

BPCPA violations

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

Factors required by law to be considered

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

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

Selling vehicles privately when you are licensed

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

Penalties for unlicensed selling

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

23 Penalties and Consumer Remedies

Investigation results

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

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

Hearing outcomes

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

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

Frivolous consumer complaints

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

Notice of decision

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

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

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

Statute of limitations

BC law sets the amount of time a consumer can make a complaint. Right now, a problem must be discovered within 15 years. And, a claim must be made within two years of discovery. Depending on the facts, a shorter time may apply.

Hearings, Penalties and Remedies – Review

1. Significant administrative penalties can be assessed for violations of the *BPCPA* and the *Motor Dealer Act*. (True/False)
2. The Registrar can also cancel, suspend or place conditions on a licence for violating the *Motor Dealer Act* and *Regulations*. (True/False)
3. The Registrar can issue compliance orders and administrative penalties to curb and other unlicensed sellers. (True/False)
4. List four things the Registrar is legally required to consider when setting penalties:
5. List three possible outcomes from a hearing:
6. Once a decision has been received, a reconsideration request can be made within 30 days if there is new information. (True/False)
7. *In most cases a problem must be discovered within 15 years and a claim by the consumer must be made within two years of discovery.* (True/False)

24 Reducing Curbing

Penalties for curbing

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

Desktop or paper hearings

The Registrar can conduct paper-based hearings for issues like unlicensed selling or curbing. This option reduces costs and speeds adjudication without reducing administrative fairness.

Reporting information to other agencies

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

Reducing the supply of vehicles

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

Reducing purchaser demand

The VSA continues to guide consumers by educating them about the advantages of dealing with licensed dealers, salespeople and broker agents.

Reducing Curbing – Review

1. The Registrar can issue compliance orders and administrative penalties to curbers and other unlicensed sellers. (True/False)

2. Dealers and wholesalers should not be selling to curbers. (True/False)

3. The VSA continues to guide consumers by educating them about the advantages of dealing with licensed dealers, salespeople and broker agents. There are two consumer awareness programs now. (True/False)

Case Study 5 Private Selling by a Wholesaler

The VSA received a complaint from a consumer about a purchase they made from a private individual. The consumer learned that the vehicle had accident damage they were not told about and the odometer had been tampered with. During the investigation it was determined the sale was made by a licensed wholesaler who was selling from his home. Using the ICBC registry, other sales by the same wholesaler were found.

1. List three compliance outcomes that could result for the wholesaler?

2. If the wholesaler provided a remedy for every buyer the Registrar would have to consider that effort in setting any penalties. (True/False)

3. What are two reasons the Registrar would likely mention if the licence of the wholesaler was canceled?

Compliance Undertaking Example

IN THE MATTER OF THE *MOTOR DEALER ACT* R.S.B.C. 1996 c. 316 and the *BUSINESS PRACTICES AND CONSUMER PROTECTION ACT* S.B.C. 2004, c. 2

THIS UNDERTAKING is made with an effective date of April 5, 2018
between
(Unlicensed individual)
and
The Registrar, Vehicle Sales Authority of B.C.

WHEREAS:

1. Section 1(1) of the *Motor Dealer Act* R.S.B.C. 1996 c. 316 ("MDA") sets forth the following definitions:

"**motor dealer**" means a person who, in the course of business,
(a) engages in the sale, exchange or other disposition of a motor vehicle, whether for that person's own account or for the account of another person, to another person for purposes that are primarily personal, family or household,
(b) holds himself, herself or itself out as engaging in the disposition of motor vehicles under paragraph (a), or
(c) solicits, offers, advertises or promotes with respect to the disposition of motor vehicles under paragraph (a),
but does not include a person exempted by regulation or an individual referred to in paragraph (a) of the definition of "salesperson";

"**salesperson**" means
(a) an individual, other than a motor dealer, who, on behalf of a motor dealer and for or in the expectation of a fee, gain or reward,
(i) solicits, negotiates or arranges for the sale of a motor vehicle to a person, or
(ii) in any way participates in the soliciting, negotiating or arranging for the sale of a motor vehicle to a person, or
(b) an individual who is a motor dealer and who
(i) solicits, negotiates or arranges for the sale of a motor vehicle to a person, or
(ii) in any way participates in the soliciting, negotiating or arranging for the sale of a motor vehicle to a person...
2. The "Registrar of Motor Dealers" ("Registrar") is responsible for the administration and enforcement of the Act, its regulations, and prescribed provisions of the *Business Practices and Consumer Protection Act* S.B.C. 2004 c. 2 ("BPCPA").

Compliance Undertaking (continued)

- 3. The Registrar has received information about and investigated the activities of (the individual) indicating that:
 - (a) They engaged in activities on multiple occasions that deem him to be a motor dealer and salesperson, within the meaning of the MDA; and
 - (b) They are not registered as a motor dealer or licensed as a sales person.
- 4. Their actions contravene the MDA.

NOW THEREFORE (The individual) undertakes, acknowledges, and agrees with the Registrar:

- 5. To comply with the MDA and the regulations made thereunder;
- 6. Specifically, to immediately cease and desist all activity that would be construed as that of a motor dealer or salesperson, as defined by the MDA, unless and until (the individual) is registered as a motor dealer or licensed as a salesperson, as the case may be.
- 7. To pay an Administrative Penalty in the amount of \$2,000.00 in relation to the subject matter of this Undertaking within thirty (30) days of the execution of this Undertaking;
- 8. To reimburse the Registrar a total of \$158.92 representing 100% of the investigation and legal costs incurred to date in relation to the subject matter of this Undertaking within thirty (30) days of the execution of this Undertaking;
- 9. That this Undertaking is binding until such time as it is either terminated in writing by the Registrar or terminated by Order of the Supreme Court of British Columbia.
- 10. That in addition to rendering (the individual) liable to further penalties and proceedings as provided for under the MDA, this Undertaking may be filed in the B.C. Supreme Court and once filed is deemed a court order and may be enforced as a court order.
- 11. That the Registrar, may upon breach of any part of this undertaking by (the individual) declare the Undertaking to be at an end and may institute such proceedings and take such action under the MDA as considered necessary.
- 12. (The individual) acknowledges and warrants that they have had an opportunity to seek legal advice as to the terms of this Undertaking.

Signature: Original Signed

DATED this 5th day of April, 2018

ACCEPTED by: Original Signed
Ian Christman
Registrar of Motor Dealers

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