

WE WON'T PLAY THIS GAME

We've known for some time that CarProof™ representatives who call on dealers often make a presentation comparing vehicle information reports on selected VINs in an attempt to show that a CarProof™ report contains more or better information than a Carfax™ report or a UCDA Auto Check™ report.

WOW! ... what a revelation and yes, we could run searches on selected VINs and show the opposite ... but we won't.

To play that game, might suggest to our members that **any** of these reports are not only better, but have **all** the data necessary to comply with the *Motor Vehicle Dealers Act, 2002 (MVDA)*.

Let's be clear ... placing complete reliance on **any** vehicle information report available in the marketplace to give you **all** the information you need is like relying on an umbrella with holes in it to keep you dry in the rain.

We have reminded our members over and over again that none of these reports ... **none of them** ... have all of the data you need to be compliant with the MVDA and we will continue to do so. **All vehicles need a complete inspection and a completed disclosure statement.**

The UCDA has conducted hundreds of compliance audits on members, and unfortunately, far too often we've heard that "we pull a _____ report and if it's clean, that's all we need". The fines levied by OMVIC have proven that that process is a fool's game.

Without question, a vehicle information report is a good tool to assist you in appraising a vehicle's value and gathering information about its past history. We encourage members to make use of one or more reports. However, you may be surprised to see how much information that you need will **not** show up on any report.

The insert in this issue shows the mandatory MVDA disclosures and whether these reports will contain data to satisfy your disclosure obligations.

You'll see that 17 specific MVDA required disclosures are not reported at all, or are reported partially at best. It's a good idea to give a copy of this chart to each of your salespeople to remind them.

No wonder all reports come with a warning that the reporting company accepts no responsibility for the accuracy or completeness of the data.

And this is also why **NO** report could ever be chosen by OMVIC as the report that provides "all due diligence" to comply with the MVDA.

Don't lose sight of what you're buying when taking a trade-in or purchasing a vehicle. And don't lose sight of what you're buying when you purchase a vehicle information report. Of course, request a report, but please be sure to **TAKE A GOOD LOOK AT THE VEHICLE TOO!**

2015 Spring Consumer Awareness Campaign

By now you've probably seen or heard the message of our annual Spring Consumer Awareness campaign which began Easter Monday. It runs until Victoria Day, Monday May 18.

The ad features the "Saturday Morning Couple" viewers have become familiar with. It promotes the benefits of buying from a UCDA member and searching Carpages.ca to find UCDA member vehicles.

The TV focus is on CITY TV's popular weekday Breakfast Television show and on the 6 pm and 11 or 11:30 pm local newscasts on CHCH Hamilton, CKWS Kingston and all CTV outlets across the province. The emphasis on morning and evening programming balances the viewership and increases the consumer reach.

Because we live in a digital world and the internet is becoming a more common source for news, ten second ad clips will also appear as a "pre-roll" ahead of video news stories on ctvnews.ca and chch.com. This will deliver a million impressions (views) in Ontario. Banner ads will also be on theweathernet.com.

And since there's no better place to reach potential car buyers to brand the benefits of UCDA members and Carpages.ca than in their car, the UCDA is once again sponsoring 680 NEWS GTA traffic reports for the same 8 week period. UCDA sponsored traffic reports will also run in Ottawa on CFRA NEWS TALK 580 and NEWS 1310.

Be sure your potential customers, who see or hear the campaign, know you're a member. If it's not already on your web site and in your ads, download the UCDA logo at ucda.org/dealerinfo/ucdalogs.aspx. If buyers don't know you're a member ... you won't benefit from the awareness campaign ... while your fellow members ... and competition ... will!

Exporting to the United States

With the Canadian dollar settled in around 80¢ against the U.S. greenback, some sellers have decided the sweet spot again exists to sell into the U.S. market.

Dealers have also noticed more dealers and consumers from the U.S. interested in buying here.

Of course those same U.S. buyers are also interested in NOT paying HST, which they have to do if the vehicle is delivered to the buyer here.

If you don't collect HST, because you take the position the vehicle is exported to the U.S. on the sale, the Canada Revenue Agency ("CRA") can be expected to carefully scrutinize your file.

Here are some things to keep in mind:

Vehicles Sold for Export

- If the buyer takes delivery of the vehicle from the dealer in Canada, HST must be charged by the dealer
- Even if proof of export is later obtained, the dealer is expected to remit the HST up front
- Buyer must not use the vehicle in Canada prior to export and the vehicle must not be modified by the buyer before being exported
- Dealer must have documentation to prove export:
 - i) dealer should arrange for the vehicle to be delivered to a shipper and obtain a bill of lading from the shipper, showing the foreign destination as proof of export and the dealer as consignor
 - ii) the dealer should obtain an embossed copy of U.S. Entry Summary (Form 7501) or other valid U.S. Customs entry documentation

We are also asked regularly whether a buyer can recover HST if they have paid it to the dealer, the answer, we think, is "No".

There is no guarantee that CRA will be satisfied with your proof of export and that's why collecting and remitting the HST is always the best bet for dealers. However, if the dealer must do the deal as an export, following the above steps may help on any future audit.

New Service Ontario Office for Hamilton

Service Ontario has opened a new licence office in Hamilton.

The new office is located at 1439 Upper Ottawa Street, Units 14-15 (in the old Auto Trader offices).

The phone number is (905) 387-2800.

Office hours are:

Monday-Wednesday	9:00 am	-	5:00 pm
Thursday	9:00 am	-	7:00 pm
Friday	9:00 a.m.	-	5:00 p.m.
Saturday	9:00 a.m.	-	1:00 p.m.

Services include a dealer-only wicket.

Capacity To Contract

How does the Ontario government deal with property purchased by someone found to lack mental capacity? Read on ... you might be very surprised!

A dealer sold a brand new vehicle to a consumer in 2014. The buyer would have been about 29 years old ... not elderly. The deal was financed, the dealer was paid and all was well.

Until, that is, the dealer found the vehicle abandoned on its lot early in 2015. It was left there by the Office of the Public Guardian and Trustee of the Ontario Ministry of the Attorney General.

Why did the Public Guardian take this unusual step without even talking to the dealer?

It seems not long after the vehicle purchase, the consumer was hospitalized and, about a month after the vehicle was sold, the consumer was found by a doctor to be "financially incapable", to use the words of the Public Guardian. It appears the consumer may have been placed under some kind of "guardianship".

This status of legal "incapacity" triggers a clause in an Ontario law called the *Substitute Decisions Act, 1992*, which means what its name suggests: it sets out the conditions under which other people might make decisions for adults.

One of the sections in that Act says this:

Onus of proof, contracts and gifts

2 (4) In a proceeding in respect of a contract entered into or a gift made by a person while his or her property is under guardianship, or within one year before the creation of the guardianship, the onus of proof that the other person who entered into the contract or received the gift did not have reasonable grounds to believe the person incapable is on that other person. 1992, c. 30, s. 2 (4).

The Act allows contracts entered into up to a year before the "guardianship" to be held up to scrutiny, and voided, if a lack of capacity is found to have existed when the contract was created. Scrutiny by whom? Why a judge in a court of law of course!

In this case, the Public Guardian said in a letter sent to the dealer where they dropped off the car, "[i]t is the PGT's position that this is not a valid contract as [name removed] lacked the requisite mental capacity ...". The Public Guardian made this decision all by itself, i.e. without a judge! The letter goes on to say, basically, here's the car back, send us a cheque for the refund!

Apparently, this position was taken based on a doctor's assessment as to a lack of "financial" capacity, whatever that means, and without a court order or judicial review.

If you read the section in the Act referred to above it clearly requires a "**proceeding in respect of a contract**" which means a court action would be held in which it would be up to the dealer to argue or prove they did not have reasonable grounds to believe the person was incapable. The Public Guardian should have brought such an action to have the contract declared void.

The arbitrary actions of the Public Guardian in this case don't seem right to us ... and may not even be legal.

Unfortunately, the Public Guardian refuses to talk to anyone. They have ignored calls and letters from the dealer, the dealer's lawyer and the UCDA.

There are other problems as well, such as:

- Who is insuring this vehicle?
- This vehicle was financed which means, of course, the selling dealer has long since been paid, and yet it does not appear that the Public Guardian bothered to talk to the bank who actually loaned the money to buy this vehicle!
- Neither the bank nor the dealer have been given the opportunity to be heard by a judge to tell their side in this story ... the chance to succeed on the onus of proving they had reasonable grounds, if they did, to believe the buyer had capacity.
- Is the dealer going to be paid storage by the Ontario government which has taken over responsibility for the property of this consumer?
- If the dealer ends up with the vehicle back, it is a used vehicle now, not new, who pays that loss or the loss from half a year of use?
- Is this Ontario government policy now?

It's nowhere near as simple as the Public Guardian seems to think. We will continue to seek answers to this bizarre situation.

Annual General Meeting

The UCDA Annual General Meeting will be held on May 21, 2015 at 4:00 p.m. at the Travelodge Toronto Airport Hotel, 925 Dixon Road, Toronto.

The Agenda will include a review of the Association's activities, the election of a new director and appointment of the association's auditors.

Anti-Spam Enforcement

Effective July 1, 2014 Canada's Anti-Spam Legislation applies to all commercial electronic messaging by text, email or social media.

It seems the Canadian Radio-Television and Telecommunications Commission (CRTC), charged with enforcing our new anti-spam law, is not letting the grass grow under its feet.

The CRTC has issued what is called an administrative monetary penalty (a kind of fast-tracked fine) of \$1.1 million against a company called Compu-Finder, a professional training and consulting services firm.

In its press release, the CRTC explained it issued a Notice of Violation to Compu-Finder on March 5, 2015, for 4 counts of breaking Canada's anti-spam law. Compu-Finder has 30 days to submit written representations to the CRTC or pay the penalty. It also has the option of requesting an undertaking with the CRTC on this matter.

It's interesting to note, this action relates to emails from this business to other businesses who did not consent to receive them. This complaint did not involve consumers.

Coming so early in the life of the anti-spam law, while it is well under the \$10 million dollar maximum fine limit for corporations (\$1 million for individuals), it is a sign of the seriousness with which the CRTC plans to enforce these provisions ... already among the toughest in the world.

The CRTC has signaled other significant anti-spam investigations are underway, so we may hear more!

Remember

ANY electronic message sent for a commercial purpose (this includes offers or coupons, alerts to a business opportunity or sales) MUST have the consent of the recipient. This applies to business to business communication as well as business to consumer.

Consent Can Be Obtained In Two Ways

1. **Implied** - if your company has a prior business relationship with the recipient in the previous 2 years
2. **Express** - you have obtained written consent from the recipient to include them on your mailing list

Note: Every outgoing message MUST include an "unsubscribe" option to give all recipients a chance to change their minds at any time in the future.

Exceptions: Warranty recall, safety or security information for the vehicle the customer owns, but those communications are restricted to those issues

ONLY and dealers should not use this as a means to include sales or marketing messages.

Sample Templates

We have designed legally compliant sample templates which can be used to obtain express consent from your customers either on-line, by electronic message (i.e. email) or in-person.

Note: It is unlikely that the privacy "consent boxes" most dealers have on their bills of sale will satisfy the express consent requirements of the new law.

For more information a dealer-focused "Preparedness Guide" has been designed and can be viewed at http://www.ucda.org/DealerInfo/PDF_files/AntiSpamPreparednessGuide.pdf. This document is used with the kind permission of SCI MarketView, NortonRose and Canadian Auto Dealer.

There is more information on all of this available from SCI at <http://scimarketview.ca/casl-compliance-toolkit/> or call 888.919.8084.

The CRTC, which is tasked with enforcing the new law, also has a useful website with more information at <http://www.crtc.gc.ca/eng/casl-lcap.htm>.

Credit Card Processing Costs Being Lowered For Members

If you're with Desjardins for your credit card processing you will be seeing a reduction in your processing fees.

This is happening because the government has made major credit card companies reduce processing fees and Desjardins is passing the savings on to UCDA members.

If you aren't with Desjardins you should be!

Starting May 1st, the new "actual" rates, are:

- Visa 1.70%
- MasterCard 1.867%; and
- \$.057 per transaction for debit cards.

Desjardins does not pass on surcharges for customers using high end "points cards". There are no "Effective Merchant Discount Rates" (EMDR) ... Desjardins rates are REAL. Members who want a demonstration of how much of a difference Desjardins can make can sign up for a 3 month trial period with no termination fee.

Members who are already signed up with Desjardins have reported thousands of dollars in savings compared to their previous processor.

For more information about how Desjardins can save you money, call them at 1-877-864-4096.

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MVDA 2002 MANDATORY USED VEHICLE DISCLOSURES



DISCLOSURE	AVAILABLE DATA	ADDITIONAL COMMENTS
Make, Model, Trim Level and Model Year	ALL REPORTS HAVE DATA	
Incident or Accident Damage over \$3,000 dollars	PARTIAL DATA	<ul style="list-style-type: none"> No report has all vehicle damage data, e.g. rentals, owner repaired
Previous Daily Rental	PARTIAL DATA	<ul style="list-style-type: none"> Vehicle Owner History will show names of past registered owners with the dates of ownership, which may indicate a past daily rental
Out-of-Province Registration	ALL REPORTS HAVE DATA	
Taxi, Limo, Police or Emergency Services Vehicle	PARTIAL DATA	<ul style="list-style-type: none"> Vehicle Owner History will show the previous owner name which may help identify this type of vehicle
Does this Vehicle Require Repairs to: Engine, Suspension, Sub-Frame Transmission, Fuel System, Power Train Computer, Electrical System, Air Conditioning Structural Parts Damaged or Repaired	NO DATA	<ul style="list-style-type: none"> Some reports will show limited maintenance records but not repairs needed
Odometer Faulty, Broken or Rolled Back	PARTIAL DATA	<ul style="list-style-type: none"> Many reports will show "odometer inconsistencies" that are often administrative or clerical errors
Vehicle Registration Branding	ALL REPORTS HAVE DATA	
Fire Damage	PARTIAL DATA	<ul style="list-style-type: none"> Some reports may indicate "Fire Damage"
Water Damage	PARTIAL DATA	<ul style="list-style-type: none"> Some reports may indicate "Water Damage"
Declared Total Loss by Insurance Company and Not Branded	PARTIAL DATA	<ul style="list-style-type: none"> Vehicle Owner History will show insurance company as owner Some reports may indicate if vehicle declared "Total Loss"
Structural Damage	PARTIAL DATA	<ul style="list-style-type: none"> Some reports will show auction declaration of structural damage, without details
Structural Parts Repaired, Replaced or Altered	NO DATA	
Have Manufacturer's Badges been Changed or are they Missing	NO DATA	
Have Original Production Specifications been Changed	NO DATA	
Anti-Lock Brakes Inoperable	NO DATA	
Air Bags Missing or Inoperable	NO DATA	<ul style="list-style-type: none"> Some reports may indicate if airbag has been deployed
Manufacturer's Warranty Cancelled	PARTIAL DATA	<ul style="list-style-type: none"> Some reports may have information from some manufacturers
Two Adjacent Body Panels Changed	NO DATA	
Theft Recovered	PARTIAL DATA	<ul style="list-style-type: none"> Some reports may indicate "Theft" if insurance claim is paid

17 SPECIFIC MVDA DISCLOSURES

DO NOT REPORT DATA AT ALL OR REPORT PARTIAL DATA ONLY

**ALL REPORTS HAVE A WARNING THAT THE REPORTING COMPANY
ACCEPTS NO RESPONSIBILITY FOR THE ACCURACY OR COMPLETENESS OF THE DATA**

No report could ever be chosen as the one report that provides "All Due Diligence" to comply with the MVDA