

THE COMMON LAWYER

How to Protect Your Dealership Against Buyer's Remorse & Tricky Customers



By Justin M. Jakubiak

CUSTOMERS ARE THE LIFEblood OF YOUR DEALERSHIP. Most are fantastic – they come to you for assistance with their transportation and credit needs, often excited about your product and the thrill of a new vehicle.

That said, and I can say this because I am not a dealer or a salesperson, some customers are anything but fantastic – some are downright horrible! I refer to these customers as tricky customers; tricky customers will often be quick to



identify flaws in your staff, be less than truthful about their trade-in vehicle and will often be upset that their 'new to them' 2015 vehicle isn't in showroom new condition.

Tricky customers are, in a sense, your most important customers. If you turn a tricky customer into a happy customer, the rewards are often significant. Alternatively, an unhappy, tricky customer can wreak havoc on your staff, their morale and your dealership's reputation – especially online.

Furthermore, tricky customers can damage your reputation with OMVIC. OMVIC monitors the volume of complaints dealers receive, and may use this information to determine whether an audit or other action against a dealership is warranted. In some instances, unresolved (and in some rare cases even resolved!) conflicts with customers can lead to OMVIC issuing a Notice of Discipline against a dealership, one of its salespersons and/or the dealer principal. This means either you, your staff or your dealership will have to go through OMVIC's disciplinary process and potentially be subject to a hefty fine or a further education requirement. In terms of reputation, it is important to remember that ALL discipline decisions are made public by OMVIC.

OMVIC's discipline process is not fun. It's time consuming and (for most registrants) can be quite stressful. You can certainly challenge OMVIC's findings, and you should always seek advice from the UCDA or a qualified lawyer (like myself) before you make a resolution

with OMVIC, or even respond to a Notice of Discipline. It is very important that you know your rights before you resolve any matter – not only for peace of mind, but to ensure that the resolution is within the boundaries of OMVIC's jurisdiction as provided for by the *Motor Vehicle Dealers Act (MVDA)*.

The purpose of this article is to provide some reminders about the rules applicable to vehicle sales and leases, and to help you and your staff deal with tricky customers before they become a real pain in the...

Are customers entitled to cancel the agreement?

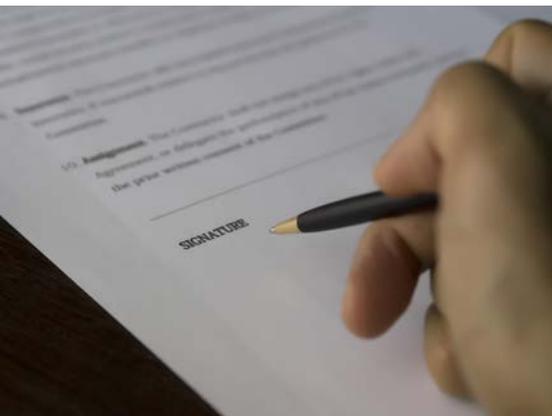
Lots of customers feel buyer's remorse, especially after they make a large purchase like a car. Most of the time it has nothing to do with anything the dealership or the salesperson has done. Customers simply change their mind.

Unlike many consumer transactions, where customers are entitled to a "cooling-off period", which allows a signed contract to be cancelled within a short period of time, there is no cooling-off period for motor vehicle contracts in Ontario. However, if inadequate or inaccurate disclosure is made to the customer, a customer may be entitled to cancel the agreement.

90-Day Cancellation

The MVDA allows customers up to 90 days to cancel a contract if the dealer does not disclose certain information in the bill of sale or lease agreement, such as:

- The distance the vehicle has travelled
- Whether the vehicle has been used as a police or emergency vehicle
- Whether the vehicle has been used as a taxi or limo
- Whether the vehicle was used as a daily rental (unless the vehicle has subsequently been owned by someone other than a dealer)
- The make, model and year of the vehicle
- If the vehicle has been classified as irreparable, salvage or rebuilt, and how it was last classified



The legislation is drafted in a way which is very favourable to the customer – it states that "a person may cancel a contract... even if the registered motor vehicle dealer did not know the information that the dealer was required to disclose... or honestly believed it to be accurate, regardless of the steps taken by the dealer to ascertain or verify the information."

It is often difficult to accurately assess the distance the vehicle has traveled down to the specific kilometer. Fortunately, the MVDA allows for a margin of error. A dealer needs to disclose the distance the vehicle has traveled, accurate to within the lesser of 5% or 1,000 kilometers of the actual distance the vehicle has traveled.

1-Year Cancellation

Another important act for dealers to consider is the Ontario *Consumer Protection Act*, which allows customers to request that an agreement be cancelled if they have been subject to false, misleading, deceptive or unconscionable representations. These types of representations could include a false safety certificate, or a statement that the vehicle is a certain model or of a certain quality or condition that the customer later finds out to be false. In such cases, customers can request cancellation up to one year after their initial purchase.

The cancellation rights that exist under both the MVDA and the *Consumer Protection Act* highlight the importance of regular staff training to ensure that everyone in your dealership is on the same page and understands the importance of making appropriate, fulsome and accurate disclosure.

Voluntary Refunds

No dealers enjoy providing refunds or otherwise unwinding transactions. That said, dealers that are confident in their brand, their product and their processes will often not hesitate to cancel an agreement knowing that the customer will likely come back in the future, or refer another potential purchaser as a result of the great customer service received.

A customer may not always have a valid reason to cancel a contract. However, avoiding a potential bad review online, or bad word of mouth, is often incentive enough to cancel one.



On the positive side, since there is no "cooling off" period in Ontario, a dealer is entitled to claim "liquidated damages" and retain part or all of the deposit.

Liquidated damages can include a variety of costs, such as:

- Vehicle preparation costs
- Advertising
- Freight and administrative costs
- Cost for the loss of profit from the cancellation

What Should Dealers Do?

I strongly suggest that all dealers and dealer principals take time this spring to clean out some of the bad sales habits that may have developed over time, and to refresh everyone on the requirements of the MVDA.

Regular internal newsletters and intimate training seminars are a great way to keep your obligations as a dealer and a salesperson top of mind. Additionally, there are many great individuals and groups that are skilled at providing up to date training, and who can even be hired to conduct compliance reviews. The benefits of these services far exceed the relatively minor up-front cost.

Don't let a tricky customer get the best of you, your sales team or your dealership. In the event that you are dealing with a particularly difficult one, I highly recommend that you seek outside assistance to ensure that a potential big problem is resolved quickly and comprehensively.

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