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# ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL (2021 ANNUAL REPORT OF THE AUDITOR GENERAL OF ONTARIO) BACKGROUND MATERIAL FOR HEARINGS *

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Prepared for:

Standing Committee on Public Accounts

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## PREAMBLE

This research package has been prepared by the Legislative Research office with input from the Office of the Auditor General (the Auditor). It provides a brief summary and relevant documents for the Committee's hearings on the Auditor's "Value-for-Money Audit: Ontario Motor Vehicle Industry Council" (2021 *Annual Report of the Auditor General of Ontario*), and proposes possible questions for Members to ask during the hearings.

Note: Please refer to the audit itself (see Appendix item 1) when quoting the Auditor during hearings rather than to the Auditor's PowerPoint briefing as this is a confidential Committee document.

## OVERVIEW

The Ontario Motor Vehicle Industry Council (OMVIC) is a not-for-profit administrative authority which administers and enforces the *Motor Vehicle Dealers Act, 2002* (Act) and also upholds relevant sections of the *Consumer Protection Act, 2002.*

OMVIC's mandate is to maintain a fair and informed marketplace by protecting the rights of consumers, enhancing industry professionalism, and ensuring fair, honest and open competition for registered motor vehicle dealers. The Ministry of Government and Consumer Services (Ministry) is responsible for overseeing OMVIC and monitoring its performance to ensure OMVIC is meeting its mandate.

Under the *Motor Vehicle Dealers Act, 2002*, every Ontario motor vehicle dealer of new and used vehicles and every salesperson they employ must be registered by OMVIC.

OMVIC is responsible for:

- registering motor vehicle dealers and salespersons;
- inspecting and investigating motor vehicle dealers and salespersons, and taking enforcement action against those that have breached legislative requirements;
- improving awareness of consumer rights and available protections when purchasing a vehicle in Ontario;
- acting as a mediator to resolve disputes between a registered motor vehicle dealer and a consumer; and
- supporting the administration of the Compensation Fund so that consumers can make claims when they have suffered financial losses related to a motor vehicle transaction with a registered motor vehicle dealer.

In 2020, 8,195 motor vehicle dealers and 29,537 salespersons were registered with OMVIC. Motor vehicle dealers reported approximately 1.3 million vehicle transactions to OMVIC in 2020. In the same year, OMVIC collected a total of $21.3 million in revenue.[1]

## 2021 Audit Objective and Scope

The objective of the audit was to assess whether OMVIC has effective and efficient processes in place to:

- administer the *Motor Vehicle Dealers Act, 2002* to serve and protect the public when engaging with a motor vehicle dealer in the vehicle trade, including with respect to the purchase, sale, lease or exchange of a motor vehicle; and
- register and regulate motor vehicle dealers and salespersons to ensure that they conduct business with honesty and integrity, in a financially responsible manner, and in accordance with the requirements of the *Motor Vehicle Dealers Act, 2002*.

The audit also assessed whether the Ministry has oversight processes in place to ensure that OMVIC effectively administers the relevant legislation and registers and regulates motor vehicle dealers and salespersons. The audit was conducted between December 2020 and September 2021.

## Audit Conclusions

The audit concluded that OMVIC did not have processes to consistently administer the *Motor Vehicle Dealers Act, 2002* effectively in order to protect the public in their transactions with motor vehicle dealers and salespersons.

In particular, the Auditor noted:

- OMVIC did not always effectively regulate motor vehicle dealers and salespersons to ensure that they conduct business in a financially responsible manner.
- The Ministry of Government and Consumer Services has not sufficiently overseen OMVIC to confirm that OMVIC effectively fulfils its mandate.
- The Ministry did not collect sufficient information to monitor and assess OMVIC's performance and measurable targets had not been established for many of the indicators used to monitor its performance until 2020.
- OMVIC's performance indicators and targets do not monitor performance in several key areas where the audit identified operational issues, including inspection, registration, consumer complaint handling, the

[1] Auditor General of Ontario (AG), "Value-for-Money Audit: Ontario Motor Vehicle Industry Council," *2021 Annual Report*, p. 7.

Compensation Fund, and educating and informing consumers about their rights and protections.

## MAIN POINTS OF 2021 AUDIT

The following provides a high-level brief overview of the Auditor's major findings along with possible questions for Committee Members to ask during the hearings. For more details about the audit findings and recommendations, please consult the full audit report (references to the report are provided in footnotes for Members' convenience).

### Registration of Motor Vehicles

**[Recommendations 1, 2, 3, 4]**

The Auditor reported:

- OMVIC did not fully assess whether applicants for motor vehicle dealer registration had sufficient funding to open and operate their dealerships in 85% of applications reviewed by the Auditor. OMVIC's review focused on determining that an applicant was not obtaining their financing illegally.[2]

- OMVIC can request a letter of credit from the motor vehicle dealers it registers if it determines that there is a financial risk. However, OMVIC rarely requests these letters of credit. It obtained letters from 4% of newly registered motor vehicle dealers from 2016 to 2020.[3]

- There was a financial risk in 40% of approved registration applications reviewed by the Auditor from 2016 to 2020.[4]

- From 2016 to 2020, OMVIC paid out approximately $2.4 million in claims from its Compensation Fund as a result of 60 motor vehicle dealers breaching their obligations under the Acts and causing financial losses for consumers. OMVIC recovered only about $520,000 from some of those dealers.[5]

- OMVIC requires motor vehicle dealers and salespersons to complete an education course as a condition of their initial registration. However, OMVIC does not require registered motor vehicle dealers or salespersons to take continuing education courses as a condition of renewing their registration to keep up with relevant legislative and regulatory changes.[6]

[2] AG, p. 18.
[3] AG, p. 19.
[4] AG, p. 19.
[5] AG, p. 19.
[6] AG, p. 20.

- At the time of the audit, 54% of registered motor vehicle dealers and 24% of registered salespersons had not taken OMVIC's updated education course.[7]

- From 2016 to 2020, OMVIC took more than six weeks to process 76% of the applications for registration, including 23% that took longer than six months to process, exceeding the target of four to six weeks.[8]

- 87% of new motor vehicle dealer applications submitted from 2016 to 2020 were missing key information, resulting in increased staff time to follow up and obtain missing information from applicants.[9]

- OMVIC has not increased its staffing levels, despite a recommendation to do so from a consultant and an increased workload.[10]

### Possible Questions

1. What steps has OMVIC taken to implement a revised registration application review process?

2. Has OMVIC increased how often it requests letters of credit during motor vehicle dealer registration?

3. What progress has OMVIC made to encourage motor vehicle dealers or salespersons to take continuing education courses?

4. How is OMVIC planning to meet its target to process applications within four to six weeks?

5. Does OMVIC have plans to improve the quality of information it collects on motor vehicle dealer applications?

## Inspections of Motor Vehicles

**[Recommendations 5, 6, 7, 8]**

The Auditor reported:

- Approximately 40% of registered motor vehicle dealers have not been inspected in more than three years, including 14% that have not been inspected in more than five years.[11]

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[7] AG, p. 21.
[8] AG, p. 21.
[9] AG, p. 21.
[10] AG, p. 22.
[11] AG, p. 23

- OMVIC does not assign an inspection frequency to its registered motor vehicle dealers based on their assessed risk of non-compliance.[12]

- OMVIC's inspectors identified violations in 25% of the 10,216 motor vehicle dealer inspections it completed between 2016 and 2020, and closed the inspection file for the majority (77%) of these inspections without any enforcement action or confirmation that the violations were addressed.[13]

- Inspection practices varied between inspectors: some inspectors did not evaluate if the dealer complied with all-in-price advertising requirements and inspectors reviewed vastly different proportions of vehicle transaction files in relation to the dealers' total volume of transactions.[14]

- OMVIC does not have a process to periodically review inspections completed by its inspectors to ensure they are performed consistently.[15]

- OMVIC reacts inconsistently to compliance issue discoveries by the mystery shopping program (the program monitors compliance with all-in-price advertising and disclosure requirements set out in legislation) depending on whether the mystery shopping is completed in-house or by a consumer association.[16]

### Possible Questions

6. What has OMVIC done to improve the motor vehicle dealer inspection process?

7. Has OMVIC taken steps to address inconsistencies in inspectors' inspection practices?

8. Has OMVIC implemented a process to regularly review inspectors' inspections?

9. Has OMVIC taken steps to cease contracting consumer associations to conduct mystery shopping at motor vehicle dealers, and has it hired additional staff for its in-house mystery shopping program?

## Lengthy Investigations and Little Enforcement

**[Recommendation 9]**

The Auditor reported:

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[12] AG, p. 23.
[13] AG, p. 26.
[14] AG, p. 25.
[15] AG, p. 25.
[16] AG, p. 28.

- There is no process to monitor whether investigators complete investigations on a timely basis or take appropriate action based on the results of their investigations.[17]

- There are no established benchmarks or guidelines for the timelines of different types of investigations or for the proportion of investigations that may require enforcement.[18]

- OMVIC did not take any enforcement action against dealers in 67% of investigations completed between 2016 and 2020.[19]

- OMVIC investigators are not provided with guidance on when they should refer cases to OMVIC's Discipline Committee. Cases are rarely referred, even though such enforcement action would be much quicker and less costly than laying charges and pursuing the case in the provincial court system.[20]

### Possible Questions

10. Is OMVIC establishing a process to monitor investigators' investigations?

11. What steps has OMVIC taken to establish benchmarks or guidelines for investigations?

12. Has OMVIC clarified the guidelines for when OMVIC investigators should refer cases to the OMVIC Discipline Committee?

## Dispute Resolution Process

**[Recommendations 10, 11, 12, 13, 14]**

The Auditor reported:

- OMVIC was unable to assist consumers in reaching a resolution for 50% of complaints against motor vehicle dealers in the last five years (2016–20). As a result, consumers had no other option but to pursue their disputes in civil court.[21]

- OMVIC's role under the Act is limited to acting as a mediator between the consumer and the motor vehicle dealer. OMVIC cannot compel a dealer to reach a resolution with a consumer.[22]

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[17] AG, p. 28.
[18] AG, p. 28.
[19] AG, p. 29.
[20] AG, p. 29.
[21] AG, p. 30.
[22] AG, p. 30.

- OMVIC does not consistently take enforcement action against motor vehicle dealers when its complaint handlers identify that a dealer has breached one or more provisions in applicable Acts and caused the consumer harm.[23]

- OMVIC has not assessed complaint workloads to determine whether complaint handlers are sufficiently resourced to fulfil and execute all their responsibilities and effectively resolve complaints.[24]

- The number of complaints directed at complaint handlers increased by 20% from 2016 to 2019. The percentage of complaints cases closed without resolution increased from 47% in 2016 to 59% in 2019.[25]

- The OMVIC Compensation Fund only protects consumers in certain circumstances and does not always compensate those who suffer a financial loss as a result of a motor vehicle purchase.[26]

- OMVIC's regulatory responsibility includes investigating and laying charges against unregistered motor vehicle dealers that are operating illegally. However, consumers who purchase a vehicle from such an illegal dealer and suffer a financial loss are not eligible under the *Motor Vehicle Dealers Act, 2002* and its regulations to make a claim to the Compensation Fund.[27]

### Possible Questions

13. Is OMVIC exploring options to improve the dispute resolution process?

14. What steps has OMVIC taken to ensure it acts in a consistent manner when dealers breach legislative requirements?

15. Has OMVIC analyzed its complaint workload to determine if it has the appropriate number of staff?

16. What changes are needed to the OMVIC Compensation Fund to increase consumer protection?

17. Has OMVIC suggested changes to the *Motor Vehicle Dealers Act, 2002* to protect consumers who unknowingly purchase a vehicle from an illegal dealer?

[23] AG, p. 32.
[24] AG, p. 34.
[25] AG, p. 34.
[26] AG, p. 35.
[27] 37

## Consumer Awareness and Protection

**[Recommendations 15, 16, 17, 18]**

The Auditor reported:

- The majority of Ontarians surveyed by OMVIC are unaware of OMVIC and its role.[28]
- Ontarians do not have a cooling-off period when they purchase or lease a vehicle from a registered motor vehicle dealer (a cooling-off period is a period of time following a purchase or lease when a purchaser is allowed to cancel the contract for any reason and receive a refund).[29]
- Consumers may not always get the lowest interest rate available when financing is arranged by dealers because the dealers are not required to show consumers all the financing offers they receive from lenders.[30]
- Some motor vehicle dealers continue to charge consumers more than the price advertised for a vehicle, even though the Act was amended to prohibit this practice more than 10 years ago.[31]
- Consumer awareness of the all-in-price advertising requirement continues to be low, possibly contributing to non-compliance by motor vehicle dealers.[32]

### Possible Questions

18. What has OMVIC done to increase public awareness of its role and/or the rules regarding all-in-price advertising?
19. Has OMVIC explored what changes are required to implement a cooling-off period in Ontario in order to better protect consumers?
20. How is OMVIC improving consumer protection to ensure consumers are provided with all financing offers?
21. What steps has OMVIC taken to prohibit or take corrective action for dealers that charge consumers more than the price advertised?

[28] AG, p. 38.
[29] AG, p. 39.
[30] AG, p. 41.
[31] AG, p. 42.
[32] AG, p. 42.

## OMVIC Operations

**[Recommendations 19, 20, 21, 22]**

The Auditor reported:

- OMVIC has been accumulating large surpluses from its vehicle transaction fee rather than using increased vehicle transaction fees to enhance consumer protection.[33]
- OMVIC's surpluses and reserves increased by 275% between 2015 and 2020. OMVIC does not have the legal authority under the Act to use surplus funds as needed to fund the Compensation Fund.[34]
- In 2018 an actuarial study of the Compensation Fund questioned its ability to sustain itself beyond the next eight years.[35]
- The number of vehicle transactions reported by motor vehicle dealers to OMVIC each year is not always accurate. This results in motor vehicle dealers paying less and OMVIC collecting fewer fees than required.[36]
- Motor vehicle dealers self-report the number of their vehicle transactions to OMVIC (which uses this number to determine the amount of transaction fees owed by each registered motor vehicle dealer to renew their registration).[37] OMVIC does not verify the accuracy of all reported vehicle transactions.[38]
- Motor vehicle dealers are not required to report cash transactions over a certain threshold to the Financial Transactions and Reports Analysis Centre of Canada (a federal agency that monitors money laundering).[39]

### Possible Questions

22. Does OMVIC have plans to spend its large surplus to improve consumer protection? If so, how?
23. Has OMVIC explored necessary legislative changes to allow it to use surplus funds to fund its Compensation Fund? If so, what are they?
24. How is OMVIC ensuring that the number of vehicle transactions reported by motor vehicle dealers is accurate?

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[33] AG, p. 43.
[34] AG, p. 44.
[35] AG, p. 44.
[36] AG, p. 46.
[37] AG, p. 46.
[38] AG, p. 46.
[39] AG, p. 47.

25. Is OMVIC planning to require motor vehicle dealers to report large cash transactions to relevant bodies to prevent money laundering?

## Public Reporting

**[Recommendation 23]**

The Auditor reported:

- OMVIC incorrectly reported that 41% of consumers did not know what a “curbsider” is (an illegal motor vehicle dealer posing as a private seller). The actual figure was 65%.[40]
- OMVIC overstated the number of inspections completed between 2016 and 2020 by 25%.[41]
- The average time to process and approve all new motor vehicle dealer applications was 120 days in 2019, more than five times longer than OMVIC publicly reported.[42]

### Possible Question

26. What steps has OMVIC taken to improve the accuracy of its public reporting?

## Governance

**[Recommendations 24, 25, 26, 27]**

The Auditor reported:

- Nine of OMVIC’s 12 Board members are motor vehicle dealer industry representatives elected to the Board.[43]
- OMVIC did not have term limits for its Board members; some Board members had served on the Board for 14 years or more.[44]
- OMVIC’s Board decided to continue to retain an investment firm to manage both OMVIC’s investments and those of the Compensation Fund, despite concerns raised by a third-party consultant about the investment firm.[45]

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[40] AG, p. 48.
[41] AG, p. 49.
[42] AG, p. 49.
[43] AG, p. 50.
[44] AG, p. 50.
[45] AG, p. 51.

- OMVIC's Board interfered with the independence of the Compensation Fund's Board by inserting three of its own members onto the Compensation Fund Board.[46]

- OMVIC's Board members and its senior management team have purchased alcoholic beverages and expensive meals that have exceeded OMVIC's policy limits.[47]

### Possible Questions

27. Does OMVIC have plans to diversify the composition of its Board or increase representation for individuals with experience in consumer protection?
28. Does OMVIC have plans to implement term limits for its Board members?
29. How will OMVIC strengthen the independence of the Compensation Fund Board?

## Ministry Oversight

**[Recommendations 28, 29, 30]**

The Auditor reported:

- The Ministry did not sufficiently monitor OMVIC to identify that it had fully implemented the actions it outlined in its 2015 business case to double the vehicle transaction fee from $5 to $10.[48]
- Despite receiving several significant complaints about Board governance at OMVIC, the Ministry has never initiated any reviews to address the concerns.[49]
- The Ministry did not collect sufficient performance information from OMVIC to be able to monitor whether OMVIC is effectively meeting its mandate to protect consumers and to regulate motor vehicle dealers and salespersons.[50]

### Possible Questions

30. What steps has the Ministry taken to improve its oversight of OMVIC?
31. Does the Ministry have plans to establish and collect performance metrics to effectively evaluate whether or not OMVIC is meeting its mandate?
32. Has the Ministry initiated a review of OMVIC's Board?

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[46] AG, p. 52.
[47] AG, p. 53.
[48] AG, p. 54.
[49] AG, p. 56.
[50] AG. p. 56.

## ATTACHMENTS

1. Value-for-Money Audit: Ontario Motor Vehicle Industry Council
2. Audit at a Glance: Ontario Motor Vehicle Industry Council
3. News Release: Ontario Motor Vehicle Industry Council
4. SCOPA Summary Status Stable - OMVIC