

CHAPTER 2

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2.01 Learning objectives

After completing this chapter, you will understand:

- OMVIC’s registration process for dealers and salespeople
- Why registration may be refused
- Who OMVIC considers an ‘interested person’
- OMVIC’s reapplication process
- Responsibility to display certificates of registration and/or have them available
- Registration revocation or refusal and the role of the Licence Appeal Tribunal
- People or organizations that don’t have to register with OMVIC
- Classes of dealers (and definitions)
- Responsibility to tell OMVIC about changes to registration information

Registration of dealers and salespeople

2.02 Introduction

All motor vehicle dealers and salespeople in Ontario must register with OMVIC. Registration is valid for two years for salespeople and one year for dealers and then they must renew.

OMVIC does a number of background checks on applicants and screens them to be sure they meet the requirements of the MVDA. New applicants must also give OMVIC Canada-wide criminal record search results and complete the Automotive Certification Course. Applicants must give OMVIC complete and true information on their application forms. It can delay the process if OMVIC has to ask for more details or clarifications.

These steps help make sure everyone entering the industry will follow the law and will act with honesty, integrity and in a financially responsible way – all of which are requirements of the MVDA.

If a new applicant doesn't meet the requirements of the MVDA, OMVIC isn't allowed to register them. The OMVIC Registrar can refuse the application without further explanation. If the Registrar wants to refuse an application for any other reason, they must give the applicant a written explanation.

If a registered dealer or salesperson doesn't follow the requirements of the MVDA, they may face charges, disciplinary action or have their registration revoked (cancelled).

2.03 Dealer registration

To apply for or renew an application as a dealer, the person must:

- Pay the required fee
- Be 18 or older
- Not be in default of retail sales tax
- Not owe money to the Motor Vehicle Dealers Compensation Fund
- Have completed the Automotive Certification Course

Other conditions of dealer registration

If the applicant is registered as a dealer in another province or country, they will be registered as an Outside Ontario Dealer.

If a dealer has more than one location, their registration will list all their authorized places of business.

To register, a dealer must name a "person in charge" of the dealership. If a dealer is renewing their registration and the previously listed person in charge has left, they have to name a new person in charge in order to renew.

2.04 Who must take the Automotive Certification Course?

The person in charge of the dealership must have completed the Automotive Certification Course.

Depending on how the business is registered, different people must take the course. If the dealership is registered as:

- **Sole proprietorship** – the sole proprietor must complete the course
- **Partnership** – one partner must complete the course
- **Corporation** – at least one officer or director must complete the course
- **All dealerships** – any other person in charge of the business on a day-to-day basis must complete the course

In all these situations, if the person in charge has been in charge of the day-to-day operations of a dealership for at least two years since January 1, 2007, they don't have to complete the course (they are exempt), although it is highly recommended.

Note: Lease Finance Dealers and Fleet Lessors are exempt from taking the course.

2.05 Salesperson registration

Before starting any discussion or negotiation with a possible buyer, seller or lessee of a vehicle, a salesperson must be registered with OMVIC – even if the salesperson isn't signing the deal.

Salespeople register by completing an Individual Application form, available from dealers and from OMVIC. Both the salesperson and the dealer they work for are responsible for making sure the salesperson is registered.

To apply for or renew an application as a salesperson, the person must:

- Pay the required fee
- Have completed the Automotive Certification Course
- Be employed as a salesperson by a registered dealer

A salesperson who completed the course in the past but has been out of the industry for two years may have to take the course again.

Other conditions of salesperson registration

A salesperson can work for more than one dealer, as long as each dealer gives their written permission to OMVIC.

If a salesperson stops working for a dealer, both the salesperson and dealer have to tell OMVIC and explain why the salesperson left. The salesperson's registration expires when their employment ends.

If the salesperson goes to work for a different dealer before the expiration date on their certificate of registration, they can submit a Salesperson Change Application to OMVIC. If OMVIC approves, then the salesperson's registration expiry stays the same as shown on the certificate.

Who else has to be registered as a salesperson?

Anyone who signs a motor vehicle sale or lease agreement on behalf of a dealer must be registered.

Business managers, finance managers, insurance managers and anyone who buys vehicles at auction must be registered.

An officer or director of a corporate dealership, or a partner in a registered dealership, must be separately registered as a salesperson to sell or lease vehicles on behalf of the dealer.

FAST FACTS

- The minimum fine for an unregistered dealer or salesperson (also called a curbsider) is \$5,000.
- When they register, a dealer has to name a person in charge of the dealership.
- Depending on how the dealership is registered as a business, different people are required to take this course.
- A person has to be employed by a dealer to register with OMVIC as a salesperson.

Registration of dealers and salespeople

2.06 Unregistered salespeople

Dealers are responsible for making sure all their salespeople are registered with OMVIC. The most common reasons OMVIC finds unregistered salespeople at dealers are:

- Salesperson has told the dealer they are registered when they aren't
- Application has been completed but not sent in to OMVIC (either by the dealer or the salesperson)
- Dealer hasn't checked if the application was approved before letting the salesperson work

A dealer should put a responsible person in charge of making sure all salespeople are registered. This person should complete the Automotive Certification Course. The best choice would be someone in charge of the sales staff who is involved in making hiring decisions. Their responsibilities should include:

- Checking with OMVIC that salespeople are registered. This can be done on OMVIC's website
- Submitting a Salesperson Change Notice to OMVIC, if they hire a salesperson who is already registered
- Submitting a Salesperson Change Notice if a salesperson leaves the dealership, and telling OMVIC if the salesperson is leaving because of issues that might mean they would not qualify for registration
- Making sure an Individual Application is submitted to OMVIC for unregistered salespeople
- Signing all applications and notices related to salespeople on behalf of the dealer. OMVIC will send information about applications and notices to the person who signed them
- Making sure salespeople get their registration certificates and following up with OMVIC if not. A copy of the certificates must be kept in the dealer's records
- Keeping track of registration expiry dates and making sure renewal applications are submitted on time

- Making sure no one acts as a salesperson until the dealer has confirmation of registration from OMVIC

A dealer should know a salesperson's history before deciding to sponsor them for registration. To make sure they know all the information on the application, it's a good idea for someone other than the salesperson to submit a registration application to OMVIC.

2.07 Certificate of registration

Dealers

Dealers must post their certificate of registration where the public can see it in each of their registered business locations. They must carry a copy when doing dealer activities and show it to anyone who asks.

This doesn't apply to an Outside Ontario Dealer, a Lease Finance Dealer or Fleet Lessor. They must keep their certificate in their place of business and show it to anyone who asks.

Salespeople

Dealers must keep a copy of each salesperson's registration certificate at the business location where the salesperson works and show it to anyone who asks.

When doing dealer duties, a salesperson must carry their certificate and show it to anyone who asks.

2.08 Refusal of registration

OMVIC's Registrar can refuse a registration application if they believe a dealer or salesperson:

- Won't do business in a financially responsible way
- Has done things in the past that show they aren't likely to follow the law or do business with integrity and honesty
- Has put false information on their application
- Hasn't met the terms and conditions of registration

OMVIC can refuse a corporation's registration if the Registrar believes:

- The corporation won't do business in a financially responsible way, based on:
 - Its financial position, or
 - The financial position of its officers/directors
- The corporation's officers/directors have done things in the past that show they aren't likely to follow the law or do business with integrity and honesty
- An officer/director of the corporation has put false information on an application
- The corporation hasn't met the terms and conditions of registration

2.09 "Interested and associated persons"

OMVIC can also refuse, revoke or suspend the registration of a dealer, salesperson or corporation if the financial responsibility or past actions of an "interested person in respect of the applicant/registrant" gives reasonable grounds for it.

Interested persons

OMVIC considers someone an "interested person" if, in OMVIC's opinion, the person:

- Benefits from or may benefit from the business
- Has or may have control (directly or indirectly) over the dealer or salesperson
- Has given or may have given financing (directly or indirectly) to the business

An "interested person" would include an "associated person," as described below.

Associated persons

One person is associated with another person in any of the following situations:

- One party is a corporation of which the other person is an officer/director. Officer/director includes anyone who carries out the duties normally done by an officer/director
- One person is in a partnership of which the other person is a partner
- Both people are partners of the same partnership
- One party is a corporation that the other party controls directly or indirectly

FAST FACTS

- Dealers have to make sure all their salespeople are registered.
- Certificates of registration for both dealers and salespeople have to be available for customers to see.
- OMVIC can also suspend a registration if the dealer or salesperson has done something that's prohibited by the MVDA and puts the public at risk. OMVIC can revoke (cancel) a registration after investigating the reason for the suspension, or for another serious reason.
- OMVIC can refuse a registration if the Registrar believes someone associated with the dealer, salesperson or corporation is not financially responsible.

Registration of dealers and salespeople

- Both parties are corporations, and one corporation is controlled directly or indirectly by the same person who controls the other corporation directly or indirectly
- Both people are members of the same voting trust relating to shares of a corporation
- Both people are associated with the same person in one of the ways described above. Officer/director includes anyone who carries out the duties normally done by an officer/director

2.10 Appeal process

In order to refuse, revoke or refuse to renew a registration, OMVIC must first issue a “proposal.” The proposal is a written notice that says OMVIC intends to refuse or revoke a registration and explains why.

When a dealer, salesperson or other person receives a proposal to revoke or refuse their registration, they can appeal it to the Licence Appeal Tribunal within 15 days.

Licence Appeal Tribunal

The Licence Appeal Tribunal (LAT) is completely independent from OMVIC. Its purpose is to review proposals from OMVIC.

Someone who receives a proposal has 15 days to appeal it – that is, ask the LAT to have a second look at it. If the person doesn’t appeal, the proposal is carried out and the registration is refused or revoked.

If the person does appeal, the LAT will hold a hearing to listen to evidence (proof of facts) and testimony (statements from the people involved) about the proposal and then will give their decision in writing. Their decision may tell the OMVIC Registrar to go ahead with revoking or refusing the registration, to make changes to the proposal or to set it aside entirely.

Sometimes, the LAT may put conditions on a registration. For example, they may say a salesperson can’t be an officer of the dealer’s business, or that a dealer has to do what a government ministry has asked them.

Temporary suspension

If the Registrar thinks it’s in the public interest, they can order a temporary suspension that takes effect right away, instead of issuing a proposal. The person whose registration is suspended can appeal to the LAT. The suspension expires 15 days after the LAT gets a written request for a hearing (a chance to be heard), but if the LAT starts the hearing before the suspension expires, they can choose to extend it.

2.11 Reapplying for registration

A dealer or salesperson whose registration was revoked or suspended can reapply for registration if they meet both these conditions:

- It’s been two years since the registration was refused or revoked
- New information shows the circumstances have changed

2.12 Who doesn’t have to register with OMVIC?

Some people or businesses are exempt from registration (don’t have to register with OMVIC), such as wholesale auctions, wreckers and car rental agencies. See section 2.17 Definitions for a list of exemptions.

2.13 Renewing registration online

Dealers and salespeople can renew registration and pay all fees, including transaction fees, online or by mail.

Dealers and salespeople can register for an online account by clicking Registrant Login on the OMVIC website, and entering their registration number, name, date of birth and the email address OMVIC has on file.

Online accounts for dealerships

Dealerships must name a dealer administrator (DA) to manage their online account. This can be the dealer or another staff member (e.g. controller, office manager, payroll manager) and the DA doesn't have to be registered with OMVIC.

Naming a dealer administrator

The person who is naming a DA must be on file with OMVIC as having one of the following roles at the dealership:

- Person in charge
- Officer
- Director
- Owner
- Partner
- General manager

After activating an online account, the person naming the DA can log in, go to the Dealer Management tab and enter the following information about the DA:

- First and last name as it appears on their driver's licence
- Date of birth
- Personal email address

If the DA is someone other than the person who created the online account, they'll get an email asking them to confirm and activate their own account.

What can a dealer administrator do?

A DA can use the online account to:

- File the dealership's registration renewal
- Pay renewal fees and transaction fees
- Review registration renewal requests submitted online by salespeople
- Review transaction and renewal request history
- Subscribe to notifications for both the dealer and salespeople (e.g. application is approved, registration has expired)

Even if a salesperson doesn't register for OMVIC's online services, the DA can still get notifications about the salesperson's registration.

FAST FACTS

- Someone who receives a proposal to revoke or refuse their registration can appeal to the Licence Appeal Tribunal.
- There are a number of people and businesses that are exempt from registering with OMVIC.
- Dealers and salespeople can manage their registrations and notifications through the OMVIC website.
- Officers, directors, owners and partners of the dealership have access to file **all** applications and notices online.

Registration of dealers and salespeople

The DA can't:

- Submit a renewal application on behalf of a salesperson
- Act as a dealer or salesperson, unless they are registered
- See or submit any of the following applications:
 - Business Deactivation Notice
 - Business Change Notices (amalgamation, legal/business name change, address change and add/remove individuals)
 - Other applications that can only be submitted by an officer, director, owner or partner of the dealership (e.g. class change application, branch application, etc.)

2.14 Classes of dealers

Dealers can register in the following classes and subclasses:

- General Dealer in the following subclasses
 - New and Used motor vehicles
 - Used motor vehicles
- Broker
- Wholesaler
- Exporter
- Outside Ontario Dealer
- Lease Finance Dealer
- Fleet Lessor
 - Commercial Lessor subclass
 - Short-term Lessor subclass

A General Dealer, Broker and Outside Ontario Dealer can only register in one class. All other dealers can register in more than one class.

Descriptions of classes

General Dealer (New and Used subclass): Buys, sells or trades in both new and used vehicles. If the dealer isn't a member of the Motor Vehicle Retailers

of Ontario (MVRO), they must show a copy of the sales and service agreement in order to be assigned to this class.

General Dealer (Used subclass): Buys, sells or trades in only used vehicles. Generally applies to any dealer who isn't a new car dealer and doesn't fit any other category.

Broker: Arranges to buy, sell or trade in a vehicle on behalf of someone who isn't a dealer. The broker doesn't own or take possession of the vehicle, and doesn't handle the money to pay for it.

Outside Ontario Dealer: Registered outside Ontario and buys vehicles from exempt wholesale auctions to export them to the place where the dealer is registered.

Wholesaler: Buys, sells or trades in vehicles only with other registered dealers, which can include dealers registered outside Ontario.

Exporter: Only buys vehicles to export them outside Ontario.

Lease Finance Dealer: Can't be associated with a General Dealer, unless the reason that they're associated is that the Lease Finance Dealer and General Dealer are both associated with the same other person who is exempt from the MVDA.

A Lease Finance Dealer can only:

- Buy motor vehicles
- Lease a vehicle to a lessee if:
 - The lease is made through a General Dealer, and
 - The lease is for 120 consecutive days or more
- Sell a previously leased vehicle:
 - Directly to the lessee or their partner (if the lessee is a partnership)
 - Through a General Dealer to the lessee and person who drove the vehicle during the lease term or the lessee's partner (if the lessee is a partnership)
 - To a registered dealer

- At an auction where:
 - The person who holds the auction is exempt from the MVDA, and
 - The buyer is located and registered as a dealer in another jurisdiction (province or country)
- Sell a vehicle they repossessed to or through a registered dealer or at an auction where:
 - The person who holds the auction is exempt from the MVDA, and
 - The sale is made to someone located and registered as a dealer in another jurisdiction
- Trade in a vehicle with a General Dealer or person who is exempt from the MVDA
- Trade in a vehicle with the buyer if:
 - The vehicle is part of a conditional sales contract originally made between the buyer and General Dealer and
 - The General Dealer has assigned their interest under the contract to the Lease Finance Dealer
- Advertise any of the activities above

Fleet Lessor (Commercial Lessor subclass)

Doesn't act as a dealer, except to:

- Buy or lease vehicles as a lessee
- Lease a vehicle to a lessee who is not a consumer
- Sell a previously leased vehicle to:
 - The lessee
 - The person who drove the vehicle during the lease term
 - An officer or director of the lessee (if the lessee is a corporation)
 - The partner of the lessee (if the lessee is a partnership)
 - A registered dealer
 - At an auction where:
 - The person who holds the auction is exempt from the MVDA, and
 - The buyer is located and registered as a dealer in another jurisdiction
- Advertise any of the activities above

Fleet Lessor (Short-term Lessor subclass)

Can only:

- Buy vehicles or lease vehicles as a lessee
- Lease a vehicle to a lessee who is not a consumer

FAST FACTS

- There are many different categories or classes of registered dealers. Some dealers can register in more than one class.

Registration of dealers and salespeople

- Lease a vehicle to a consumer for a fixed term of less than four months, except if the lease renews automatically
- Sell a vehicle the Fleet Lessor leased to a lessee who is not a consumer, and:
 - To a registered dealer, or
 - At an auction where:
 - The person who holds the auction is exempt from the MVDA, and
 - The sale is made to someone located and registered as a dealer (or equivalent) in another jurisdiction
- Advertise any of the activities above

2.15 Notifying OMVIC of changes

Registered dealers and salespeople must notify OMVIC of any change that affects their registration. They should do so right away and not wait until it's time to renew.

Dealers must notify OMVIC in writing within five days of:

- Change of dealer address
- Changes of officers or directors (for corporations or partnerships)
- Hiring a salesperson, including their start date
- A salesperson leaving the dealership, including the date and reason
- Any event that destroys records the dealer is required to keep, or makes them unavailable (e.g. theft, fire, flood; see Chapter 3 for more information)

Salespeople must notify OMVIC in writing within five days of:

- Change of address
- Starting to work for a dealer, including the start date
- Leaving a dealership, including the date

Dealers and salespeople must notify OMVIC in writing within five days of:

- Any changes to information they gave OMVIC for registration purposes
- Change to a dealer's agreement that a salesperson can work for more than one dealer

2.16 Summary

All motor vehicle dealers and salespeople in Ontario must register with OMVIC. Registration is valid for two years for salespeople and one year for dealers, then they have to renew.

OMVIC does background checks to make sure people entering the industry will do business with honesty, integrity and in a financially responsible way. Applicants must complete the Automotive Certification Course to register. OMVIC decides who is qualified to register, or whether dealers and salespeople continue to be qualified.

Dealers must list all their business locations on their registration. Salespeople must be registered to a dealer. A salesperson can work for more than one dealer if all the dealers involved sign a written agreement.

OMVIC must give written notice (called a proposal) if the Registrar intends to refuse or revoke (cancel) someone's registration. The person can appeal the decision to the Licence Appeal Tribunal (LAT). The LAT can tell the Registrar to go ahead with the proposal, change it or set it aside.

A dealer or salesperson whose registration or renewal was refused and/or revoked can reapply after two years if there is proof that the circumstances have changed.

The minimum fine for an unregistered dealer (also called a curbsider) is \$5,000.



Registered dealers and salespeople must notify OMVIC within 5 days if any of their registration information changes.

2.17 Definitions

consumer: a customer acting for personal, family or household purposes, not business purposes. A consumer doesn't include a corporation.

corporation: a legal entity created by or under the authority of the laws of a province or of Canada. The corporation is separate from its shareholders.

curbsider: an illegal, unlicensed seller who poses as a private seller to sell vehicles. Often the vehicles they sell are misrepresented, accident-damaged, odometer-tampered, stolen or have liens.

employ (under the MVDA): to appoint, authorize or otherwise arrange to have another person act on one's behalf, including as an independent contractor.

independent contractor: someone working for themselves who contracts to provide specific services to someone else.

lease: a secured arrangement where possession of the goods goes to the lessee, while title to the goods remains with the lessor.

officer (under the MVDA): includes the chair and vice-chair of the board of directors, president and vice-president, secretary and assistant secretary, treasurer and assistant treasurer, general manager and assistant general manager of the corporation; partner or general manager and assistant general manager of a partnership; any other person designated as an officer by bylaw or resolution or any other person who performs functions normally performed by a person occupying one of the listed offices.

sole proprietorship: a person carrying on business alone.

trade (under the MVDA): includes buying, selling, leasing, advertising or exchanging an interest in a vehicle or negotiating or inducing or trying to induce the buying, selling, leasing or exchanging of an interest in a vehicle.

Registration of dealers and salespeople

The following are exempt from registering with OMVIC:

- **bus or commercial vehicle dealer**
- **car rental agency:** rents vehicles they do not own or sell, and rents for no more than 120 consecutive days.
- **company buying vehicles for business or employee use,** as long as the company isn't also in the business of buying, selling or repairing vehicles.
- **creditors and their agents:** those who legally take possession of a vehicle from a debtor (someone who owes money) and sell it to or through a registered dealer.
- **heavy truck dealer:** a dealer who buys, sells or trades in vehicles that carry more than 21 tons (19,050 kg) fully loaded (gross vehicle weight), including a trailer if it has one.
- **insurance company:** buying or selling vehicles related to an insurance claim, registering the vehicles in the insurance company's name and selling them to or through a registered dealer.
- **lawyer**
- **liquidator, receiver, trustee in bankruptcy or executor (trustee) of an estate**
- **not-for-profit corporation giving consumers information to help with buying or selling,** as long as the corporation has no property interest in the vehicle; no conflict of interest with a registered person or insurer; discloses what they get for providing the help; doesn't handle any payments and reports to the Registrar each year.
- **manufacturer or authorized distributor,** as long as they notify the Registrar and only buy or sell vehicles with dealers in the General Dealer – New and Used vehicles subclass.
- **person selling a power-assisted bicycle**
- **person selling for family or sole proprietorship purposes**
- **registered charity**
- **wholesale auction:** an auction that has no property interest in the vehicles being sold, where only registered dealers or people exempt from registration can sell vehicles and only registered dealers can buy them.
- **wrecker:** vehicles bought to be wrecked or taken apart, and reported to the Ministry of Transportation as "wreck."

 NOTES

CHAPTER 2

2.18 Test yourself

Check the answers in Appendix 1. If you get a question wrong, review that section in the chapter.

1. What is the minimum age required to be a dealer?
2. List three requirements to be a salesperson.
3. True or false: All dealers and salespeople go through a Canada-wide criminal record search as part of the registration application process.
4. Which of the following must be registered with OMVIC (choose all that apply):
 - a. Dealers
 - b. Salespeople
 - c. Business managers
 - d. Finance managers
 - e. Service managers
5. List two reasons why OMVIC might refuse a dealer or salesperson's registration.
6. If someone's registration has been refused, what is one condition that has to be met before they can reapply?
7. If OMVIC issues a proposal to refuse or revoke someone's registration, who can the person appeal to?
8. List four classes of dealers.
9. List three examples of people or businesses that are exempt from registration.
10. Name one change in information that a dealer must notify OMVIC about.
11. In a large dealership, who should the dealer make responsible for ensuring all salespeople are registered? Choose the most correct answer:
 - a. Bookkeeper
 - b. Salesperson
 - c. Sales manager
 - d. Payroll supervisor

12. OMVIC can refuse, revoke or suspend registration of a dealer, salesperson or corporation if the financial responsibility or past actions of an "interested person" gives them reason to. Who does OMVIC consider an "interested person?"
13. Where must the dealer keep their certificate of registration?
14. True or false: A salesperson must show their registration certificate to a customer if the customer asks to see it.
15. Describe:
 - a. Both classes of General Dealer
 - b. Three other dealer classes

