



The Manitoba Used Car Dealers Association

Discussion paper
on a proposed regulation under
The Business Practices Amendment Act
(*Disclosing Motor Vehicle Information*),
SM 2008, c. 30

May 15 2009

The Used Car Dealers Association of Manitoba
Box 53023 - 1631 St Mary's Road
Winnipeg, Manitoba R2N 1Z0
Telephone: (204) 254-1891
Fax: (204) 254-4972
Website: www.mucda.mb.ca
E-mail: mucda@shaw.ca

Discussion paper on a proposed regulation under *The Business Practices Amendment Act (Disclosing Motor Vehicle Information)*, S.M. 2008, c. 30

The Manitoba Government has invited comments on a discussion paper that it has circulated about a proposed regulation under *The Business Practices Amendment Act (Disclosing Motor Vehicle Information)*, S.M. 2008, c. 30.

The Used Car Dealers Association of Manitoba has carefully reviewed and considered that discussion paper, and the Association offers the comments that follow.

1. About the Association

Established in 1991, the Used Car Dealers Association of Manitoba works to improve the automobile industry in Manitoba for the benefit of the province's consumers. It does this through regular participation in, and contribution to, the decision-making process on public policy issues that relate to the Association's mandate.

As the official voice of used car dealers in Manitoba, the Association offers an informed and influential perspective on the issues that arise in the discussion paper that the Manitoba Government has distributed.

2. The nature of consumer protection legislation in general

Legislation that protects consumers in all areas of commerce is a welcome and necessary evolution of the historical rules of contract law. Developed on the assumption that a seller and buyer were on an equal footing when it came to bargaining and negotiation, the traditional law simply did not recognize the reality that, in today's world, consumers often lack the sophistication, information, and business sense that many



Discussion paper on a proposed regulation under *The Business Practices Amendment Act (Disclosing Motor Vehicle Information)*, S.M. 2008, c. 30

vendors possess. Consumer protection legislation, therefore and appropriately, seeks to redress this imbalance.

The usual statutory provisions include rules that preclude deceptive advertising to lure customers, misrepresentation during negotiations preceding purchase, protections against unduly broad exclusions of seller liability, and remedies for consumers after the close of a sale. To almost all business owners, such a list of prohibited business practices matches the rules of good customer service. Indeed, every business with an eye on long-term viability and success will already have implemented the provisions that appear in consumer protection legislation.

By its nature, therefore, consumer protection legislation targets only a very small and transient group of sellers who have no regard for the proven and sound principles of customer relations. Against such rogue businesses, consumers need the oversight and support of the state.

The enactment of consumer protection legislation therefore requires the striking of a balance. On the one hand, buyers need to be shielded against the improper business practices of a very few number of sellers, while, on the other hand, the great majority of respectable vendors must not be unduly harmed through the imposition of onerous requirements that, in their circumstances, are unnecessary to the protection of their customers.

Turning now to the specific suggestions that appear in the Manitoba Government's discussion paper, this feedback document will test those proposals against the balance that all consumer protection legislation must preserve.

3. Consumer protection in the context of the sale of lemons

Discussion paper on a proposed regulation under *The Business Practices Amendment Act (Disclosing Motor Vehicle Information)*, S.M. 2008, c. 30

The Manitoba Government's discussion paper sets out a number of specific regulatory questions and issues on which feedback is invited.

3.1 Assumptions that underlie the discussion paper

The discussion paper's proposals rest upon assumptions that could, if unfounded, undermine the effectiveness of the consumer protection framework that the eventual regulation seeks to erect.

3.1.1 Assumption: Dealers are able to identify lemons

Sellers of motor vehicles are expected to show due diligence in the identification of lemons. However, there is no reasonable, reliable, and comprehensive way by which any such seller could know whether or not some vehicles are lemons.

Section 2 of *The Business Practices Amendment Act (Disclosing Motor Vehicle Information)* defines a "lemon" as "a motor vehicle that was returned to the manufacturer under the laws of another jurisdiction" for reasons that the definition goes on to particularize. The definition assumes that there is a comprehensive tracking system of lemons from other jurisdictions and that, once labelled as a lemon elsewhere, a vehicle's dubious past history would be knowable in Manitoba. In fact, it is not only impossible to identify lemons from other jurisdictions, but it is even possible to lose the "lemon tag" as a vehicle moves from one jurisdiction to another.

The problem arises out of the fact that, as of this writing, there are few jurisdictions in which laws are in force that would require or authorize the return of a motor vehicle to its manufacturer and thus brand the vehicle to be a lemon. Outside of Manitoba, none exists in Canada, and only 19 American states have such legislation. Whenever a lemon moves from one jurisdiction with "lemon laws" to another without such

Discussion paper on a proposed regulation under *The Business Practices Amendment Act (Disclosing Motor Vehicle Information)*, S.M. 2008, c. 30

protections, the history of that vehicle may be expunged. The National Motor Vehicle Title Information System, which is an initiative of the United States Department of Justice, estimates that, in the first half of 2008 alone, more than 185,000 vehicles were moved out of jurisdictions with "lemon laws" to other states, simply to "wash the title" of those dubious vehicles.¹ Even the most careful inspection and title search will not enable a Manitoba seller to track such evasion.

This loophole seriously undermines the viability of the consumer protection framework around which are built *The Business Practices Amendment Act (Disclosing Motor Vehicle Information)* and its subordinate legislation. Rogue sellers of motor vehicles in Manitoba could escape their obligations, simply by pointing to the relatively low standard of due diligence conducted in the absence of a universal registry that tags and follows lemons as they move from one jurisdiction to another. Meanwhile, well-intentioned sellers in Manitoba might, despite their best efforts, unknowingly sell a lemon that has exploited the loophole. Such innocent sellers must then incur the cost and effort needed to defend against consumer disappointment unduly arising out of the impossible expectations that Manitoba's legislation have created.

The Government's discussion paper is radically flawed, relying upon the entirely-baseless assumption that it is easy to identify a lemon and that only the rogue seller would pass on such a dubious vehicle to Manitoba buyers. Because the label of "lemon" is so easily removed, all consumer protections proposed by *The Business Practices Amendment Act (Disclosing Motor Vehicle Information)* and its subordinate legislation may be unworkable or, in the event of a civil claim or quasi-criminal prosecution against a seller, too easily defended.

¹ United States Department of Justice, *National Motor Vehicle Title Information System*, online at www.nmvtis.gov (last accessed on 13 May 2009).

Discussion paper on a proposed regulation under *The Business Practices Amendment Act (Disclosing Motor Vehicle Information)*, S.M. 2008, c. 30

3.1.2 Assumption 2: The standard of conduct expected of dealers is clear

The proposed legislative framework entirely relies upon the expectation that a Manitoba dealer will have undertaken due diligence to learn about the history of any vehicle now being sold.

As this feedback document has previously explained, there are no consistent or universal registries or other information sources for a Manitoba dealer to consult. From this, it follows that the expected standard of due diligence is necessarily low - indeed, the standard is so low that it makes unenforceable the entire framework around which the consumer protection legislation is built. Because this standard derives from a statutory requirement, its creation effectively dislodges the application of the usual common law standard of due diligence, which would otherwise apply and whose application would greatly reduce defences that rogue sellers might advance under the proposed legislation.

3.1.3 Assumption 3: Existing and established consumer protection provisions are inadequate

The Manitoba Government's discussion paper begins with the premise that, because the purchase of a motor vehicle is a significant transaction for most buyers, it requires specific rules to protect consumers.

The discussion paper entirely omits any consideration of existing and established laws, and the paper further fails to explain why the "lemon" designation is itself so deserving of the special attention that the proposed legislative framework would extend.

In short, the knowing failure of a seller to disclose a material and fundamental defect amounts to misrepresentation, where a reasonable buyer could not have detected that defect.

Discussion paper on a proposed regulation under *The Business Practices Amendment Act (Disclosing Motor Vehicle Information)*, S.M. 2008, c. 30

Such a fundamental breach of the terms of the sale contract gives the buyer a right to escape the agreement and return the misrepresented good. The courts of Manitoba have long enforced this established principle of the common law. The same rule has found its way into *The Sale of Goods Act*, C.C.S.M. c. S10, and *The Consumer Protection Act*, C.C.S.M. c. C200. Even *The Business Practices Act*, C.C.S.M. c. B120, included such protections, long before the enactment of *The Business Practices Amendment Act (Disclosing Motor Vehicle Information)*, S.M. 2008, c. 30.

Absent from the discussion paper and the issues as the Government has framed them is a testing of the assumption that there is something particularly special about the purchase of a motor vehicle that requires supplementary or dedicated legislation. Of course, there are political advantages to any government that would appease the public clamour against lemons, but, until otherwise considered, all should realize that existing common law and statutory provisions adequately protect Manitoba consumers.

Some might respond, arguing that special protections for the purchasers of motor vehicles would enhance the involvement of the Government's Consumers' Bureau, allowing it to intervene more readily in disputes between dealers and buyers and even authorizing it to pursue prosecutions against offenders. Of course, the reality is that the Consumers' Bureau largely is ineffective, because any mediation between disputing parties is voluntary and prosecutions are rare - and, given the above analysis relating to the low standard of due diligence, even rarer under the proposed regulation. The reality is that, for the wronged consumer, the courts remain the most effective forum by which to seek relief, because participation in litigation is not voluntary and outcomes are binding and enforceable. Recent increases in the claims limit for Small Claims Court make that judicial office especially suited for those who would choose to represent themselves in an expedited procedure.

Discussion paper on a proposed regulation under *The Business Practices Amendment Act (Disclosing Motor Vehicle Information)*, S.M. 2008, c. 30

3.2 Specific issues on which feedback is requested

The Government's discussion paper sets out a number of proposals on which comments are invited. This feedback document will focus upon some issues, as follows.

3.2.1 Discussion Paper Question 1: What should an ad set out?

If the ad indicates a price for the vehicle, it must include the amount the consumer would have to pay, plus all other charges related to purchase or lease of the vehicle including any charges or fees for freight, documentation, transportation, pre-delivery, inspection, and optional items that are physically attached.

For whatever historical reason, consumers treat the listed price of a car, especially a used car, as a starting point from which to negotiate a lower price. The practice is long-standing and wide-spread. Consumers therefore would not treat any price listed in an advertisement as fixed or final. Instead, it would create expectations or, after a dealer refused to lower the price during negotiations, resentment and poor customer relations.

3.2.2 Discussion Paper Question 1: Should an ad disclose previous use

If the ad is for a vehicle that was previously leased or used as a rental, used as an emergency services or police vehicle, used as taxi or limousine, or used for organized racing, the ad must disclose this previous use.

Dealers acquire used vehicles from many sources. Some are other dealers within Manitoba, and, pursuant to the proposed legislative framework, such transactions would require disclosure of any dubious vehicle's past. However, many other

Discussion paper on a proposed regulation under *The Business Practices Amendment Act (Disclosing Motor Vehicle Information)*, S.M. 2008, c. 30

sources of vehicles are outside the disclosure requirements that the proposed legislation would impose. For example, *The Drivers and Vehicle Act*, C.C.S.M. c. D104, anticipates a long list of those who are not considered to be dealers, and s. 2(2) of its subordinate regulation *Dealers, Salespersons and Recyclers Regulation*, Man. Reg. 40/2006, goes on at length about those who are not dealers, including manufacturers and creditors enforcing security agreements through the sale of vehicles. In addition, Manitoba dealers often acquire vehicles for resale from individual car owners, who are trading in or otherwise disposing of their former vehicles.

While the legislative framework would require dealers to make known a vehicle's "lemon" status, none of these above-mentioned sources of used vehicles would be under a similar obligation. The problem then compounds when a dealer who has unknowingly acquired a lemon in the above-described way then resells it to a consumer.

In the context of the specific question that the discussion paper poses, it is unlikely that a dealer would always know of the previous uses to which a vehicle has been put. Unless disclosure rules extended to all suppliers of motor vehicles, any required statement of previous use would prejudice and disadvantage dealers.

3.2.3 Discussion Paper Question 1: Redundant provisions

Ads cannot indicate the price of a vehicle unless the vehicle is available from the supplier during the time the ad applies.

If the ad indicates the price of a vehicle, and there are a limited number of vehicles at that price, the ad must indicate the number of vehicles available.

The existing provisions of *The Business Practices Act* already require such advertising standards.

Discussion paper on a proposed regulation under *The Business Practices Amendment Act (Disclosing Motor Vehicle Information)*, S.M. 2008, c. 30

3.2.4 Discussion Paper Question 1: Should an ad set out terms of a warranty

If the ad indicates that an extended warranty is included with the purchase, the ad must indicate the term of the warranty and the maximum claim limits, if any.

The specific warranty that a consumer might purchase usually is the result of negotiation, not only as to price but especially as to the terms of that warranty. For example, a consumer may wish to purchase a warranty of a longer term than advertised. In addition, as explained above, many consumers treat warranties as a sales negotiation tool, seeking to include or exclude such coverage in order to reduce the purchase price of the overall vehicle. It is also important to remember that the provider of a warranty coverage usually is a third party to the sale, and the warranty provider will have its own set of sale documents relating to the warranty itself, where a consumer will find all of the particulars relating to the purchased warranty.

3.2.5 Discussion Paper Question 2: Disclosure of other jurisdiction

Has the vehicle been previously registered or sold/leased in another jurisdiction? If so when and where?

As already set out above, it is not likely that a dealer in Manitoba would have - or even could have - a full history of vehicles. The sources of vehicles include a long list of those who are exempt as dealers. In addition, in many cases, it would not interest a consumer to know that a vehicle had been in another jurisdiction.

3.2.6 Discussion Paper Question 2: Qualify for CAMVAP

Discussion paper on a proposed regulation under *The Business Practices Amendment Act (Disclosing Motor Vehicle Information)*, S.M. 2008, c. 30

Does the vehicle qualify for the CAMVAP?

First, CAMVAP does not apply to used vehicles, because no manufacturer would likely accept a recommended buy-back outcome. Secondly, participation in the CAMVAP mediation process is voluntary, and a statement of eligibility would mislead consumers, who might then expect a manufacturer would necessarily agree to participate.

3.2.7 Discussion Paper Question 2: CAMVAP buy-back

Has the vehicle been the subject of a CAMVAP buyback?

A dealer would not necessarily know that a vehicle had been a CAMVAP buy-back, because manufacturers are not required to disclose such a history.

3.2.8 Discussion Paper Question 2: History of repairs

What is the history of repairs on the vehicle?

- Presumably you are talking about accident damage repairs, not mechanical. There is no reliable registry that records repairs to vehicles, including CarFax and MPI. The question is also vague in its scope and does not define "repair". The term could depend upon who made the repairs, the value of the repairs, the extent of the repairs, and when the repairs were made. None of this information is easily available, if at all, to dealers or any other party.

- Dealers are responsible for the condition of all vehicles they sell. The extent of mechanical repairs necessary to bring a vehicle into acceptable condition is not the

Discussion paper on a proposed regulation under *The Business Practices Amendment Act (Disclosing Motor Vehicle Information)*, S.M. 2008, c. 30

important matter. What is important is that the purchaser receives a safe and road worthy vehicle, not the records of any mechanical repairs that may have been required to put the vehicle into that condition. Any vehicle that is sold with a valid Certificate of Inspection covers any and all repairs done while in the dealers' possession.

3.2.9 Discussion Paper Question 2: Vehicle use - fleet

Has the vehicle been used for any of the following purposes? As a fleet vehicle?

The question implies that a fleet vehicle has a negative connotation, when in fact they usually are one-driver vehicles that undergo regular maintenance.

3.2.10 Discussion Paper Question 2: Vehicle use - rental

Has the vehicle been used for any of the following purposes? As a lease or rental?

A leased vehicle is a one-driver vehicle that is usually well maintained, if only to preserve end-of-lease value. Rental cars that dealers know to be such could be disclosed under two circumstances:

1. It is properly disclosed to the dealer from the supplier.
2. Only if a consumer hasn't owned it since it was a rental.

3.2.11 Discussion Paper Question 2: Vehicle use - taxi

Discussion paper on a proposed regulation under *The Business Practices Amendment Act (Disclosing Motor Vehicle Information)*, S.M. 2008, c. 30

Has the vehicle been used for any of the following purposes? As a taxi cab or limousine?

Where the dealer knows of a previous use as a taxi cab or limousine, the dealer should disclose that fact to a consumer.

3.2.12 Discussion Paper Question 2: Vehicle use - racing

Has the vehicle been used for any of the following purposes? For organized racing?

Where the dealer knows of such a previous use, the dealer should disclose that fact to a consumer. It does, however, seem unlikely that the dealer would have such knowledge or could be reasonably expected to know such a previous use.

3.2.13 Discussion Paper Question 2: Labeling

Are any labels or stickers on the vehicle for parts or components that have been added to a base model?

The question likely refers to "rebadging" or changing trim levels of motor vehicles. As a matter of fact, the Used Car Dealers Association of Manitoba has never received a consumer complaint about such a practice over the past 18 years. More to the point, it would be almost impossible for the due diligence of a dealer to detect such changes, because vehicle owners themselves will make the changes. In the unlikely event that a dealer had knowingly misrepresented a vehicle, existing common law and consumer protection legislation already addresses the remedies of any victim.

3.2.14 Discussion Paper Question 2: Fire or flood damage

Has the vehicle sustained any damage by fire or flooding?

Discussion paper on a proposed regulation under *The Business Practices Amendment Act (Disclosing Motor Vehicle Information)*, S.M. 2008, c. 30

In Canada, there is a nationwide Stolen and Wrecked Vehicle Monitoring Program (SWVMP), which captures vehicles that have suffered fire or flood damage or that have been otherwise written-off. Of course, the completeness of that database entirely relies upon the reports from insurers. There is no such comparable system in the United States. Accordingly, it is likely that, despite the careful inquiries of a dealer, not all fire- or flood-damaged vehicles would be identified.

3.2.15 Discussion Paper Question 2: Structural damage

Has the vehicle suffered any structural damage?

The existing Private Vehicle Inspection Program (PVIP) in Manitoba would address vehicles with structural damage. It is likely that a vehicle with existing frame damage would not pass inspection. Under that program, a dealer would be required to repair the vehicle up to inspection standards. Accordingly, no dealer would knowingly overlook mention to a consumer of structural damage.

3.2.16 Discussion Paper Question 2: Odometer

Has the odometer been replaced or repaired? Is the odometer accurate?

The Driver and Vehicle Act, C.C.S.M. c. D104, already provides that, where a vehicle's odometer has exceeded its mechanical limits or has stopped functioning or if there is a discrepancy in the mileage, the dealer must make a declaration and sell the vehicle with a declaration of mileage unknown.

3.2.17 Discussion Paper Question 2: Missing - air bags

Any of the following features missing, defective, or non-operational? Airbags?

Discussion paper on a proposed regulation under *The Business Practices Amendment Act (Disclosing Motor Vehicle Information)*, S.M. 2008, c. 30

Air bags are not currently required in Manitoba vehicles.

3.2.18 Discussion Paper Question 2: Missing - anti-lock brakes

Any of the following features missing, defective, or non-operational? Anti-lock braking system?

As discussed above, the existing Private Vehicle Inspection Program (PVIP) in Manitoba would address vehicles with missing or defective anti-lock brakes.

3.2.19 Discussion Paper Question 2: Defects - engine

Does the vehicle have any defect in the following areas that require repair? The engine, transmission or power train?

Given that a misrepresentation as to a critical component would allow a consumer to set aside the contract, it is unlikely that a dealer would deliberately omit disclosure of such a defect. However, it would be unreasonable to expect sellers of a used vehicle, especially where that vehicle already is outside the manufacturer's warranty, to guarantee themselves the future quality of the vehicle. In such circumstances, an extended warranty is available to protect the consumer.

3.2.20 Discussion Paper Question 2: Defects - suspension

Does the vehicle have any defect in the following areas that require repair? The sub-frame or suspension?

As discussed above, the existing Private Vehicle Inspection Program (PVIP) in Manitoba would address vehicles with such defects.

Discussion paper on a proposed regulation under *The Business Practices Amendment Act (Disclosing Motor Vehicle Information)*, S.M. 2008, c. 30

3.2.21 Discussion Paper Question 2: Defects - assorted

Does the vehicle have any defect in the following areas that require repair? The computer equipment? The electrical system? The fuel operating system? The air-conditioning system?

As discussed above, consumers may purchase an extended warranty to cover such defects.

3.2.22 Discussion Paper Question 3: Defects - VIN

Does the vehicle have any defect in the following areas that require repair? Serial number or VIN and the make and model?

As discussed above, *The Driver and Vehicle Act*, C.C.S.M. c. D104, already addresses vehicles with such defects.

3.2.23 Discussion Paper Question 3: Providing information

The price at which it is offered for sale, including accessories and optional items that are physically attached to it, and any transportation, pre-delivery, or inspection charges. Should the information required in this question be provided to consumers: On a sheet affixed to each vehicle.

For new vehicles, the information would already be disclosed in a sticker applied to each vehicle that shows the manufacturer's suggested retail price (MSRP). Of course, sellers are not obligated to sell at that price, and there is no comparable sticker for the sale of used vehicles.

3.2.24 Discussion Paper Question 3: Information in sale agreement

Discussion paper on a proposed regulation under *The Business Practices Amendment Act (Disclosing Motor Vehicle Information)*, S.M. 2008, c. 30

What information must be in every agreement between a consumer and supplier for the sale or lease of a vehicle? The name and address of the purchaser? The name and address of the supplier? If the supplier is a dealer under the DVA, the permit number of the dealer? The date of sale? The colour of the vehicle? The body type? The vehicle identification number? The total distance on the odometer? Whether the odometer is broken, faulty, has been rolled back, or is in miles? Whether there has been structural damage to the vehicle?

The Driver and Vehicle Act, C.C.S.M. c. D104, already sets out extensive requirements, including those listed in the question.

3.2.25 Discussion Paper Question 3: Information in sale agreement

What information must be in every agreement between a consumer and supplier for the sale or lease of a vehicle? The date of delivery of the vehicle? An itemized list of charges that the purchaser is required to pay including charges for transportation, delivery, documentation, administration, etc.? The total sale price, including all fees and charges? The down payment or deposit, if any? A list of any other charges the consumer will have to pay at the time of delivery?

Our MUCDA bills of sale (see reference material) that dealers use would already include this information.

3.2.26 Discussion Paper Question 3: Information in sale agreement

What information must be in every agreement between a consumer and supplier for the sale or lease of a vehicle? Whether the vehicle has been damaged by fire or flood?

Discussion paper on a proposed regulation under *The Business Practices Amendment Act (Disclosing Motor Vehicle Information)*, S.M. 2008, c. 30

In the case of a write-off, the existing Stolen and Wrecked Vehicle Monitoring Program (SWVMP) in Manitoba would cover this.

3.2.27 Discussion Paper Question 3: Information in sale agreement

What information must be in every agreement between a consumer and supplier for the sale or lease of a vehicle? Whether the vehicle requires repairs to major components such as the engine, transmission, electrical system, air conditioning, etc. Whether the vehicle is materially different from the original or advertised product specifications?

Given that a misrepresentation as to a critical component would allow a consumer to set aside the contract, it is unlikely that a dealer would deliberately omit disclosure of such a defect. Moreover, *The Business Practices Act* already requires such disclosure.

3.2.28 Discussion Paper Question 3: Information in sale agreement

What information must be in every agreement between a consumer and supplier for the sale or lease of a vehicle? An itemized list of all repairs that the supplier has made, or will make to the vehicle and the cost of the repairs?

The existing Private Vehicle Inspection Program (PVIP) in Manitoba requires a valid certificate of inspection to mark any items that were repaired. For vehicles sold without such a certificate, s. 107(1) of *The Drivers and Vehicle Act* requires a seller to provide the buyer with an inspection that identifies safety-related concerns. Accordingly, any further provision of such a list of repairs would be redundant.

Discussion paper on a proposed regulation under *The Business Practices Amendment Act (Disclosing Motor Vehicle Information)*, S.M. 2008, c. 30

3.2.29 Discussion Paper Question 3: Information in sale agreement

What information must be in every agreement between a consumer and supplier for the sale or lease of a vehicle? The manufacturer's suggested retail price, excluding the price of extra equipment or options?

Given the expectation of consumers that the MSRP is only the starting point in negotiations for the price of a vehicle, the inclusion of this information would have little relevance to the actual sale.

3.2.30 Discussion Paper Question 3: Information in sale agreement

What information must be in every agreement between a consumer and supplier for the sale or lease of a vehicle? A list of any inducement, for example service plans that the supplier has agreed to provide without charge, and the retail value of each item?

Items or services provided without charge do not appear on a bill of sale, because they are not properly part of the sale. Collateral items or services may be separately documented, but the extent and fixed value are specious.

3.2.31 Discussion Paper Question 3: Information in sale agreement

What information must be in every agreement between a consumer and supplier for the sale or lease of a vehicle? A statement indicating whether the vehicle qualifies or does not qualify for the CAMVAP? If the vehicle qualifies for the CAMVAP, a brochure or information sheet describing how the consumer may access the CAMVAP process?

Discussion paper on a proposed regulation under *The Business Practices Amendment Act (Disclosing Motor Vehicle Information)*, S.M. 2008, c. 30

We recommend that CAMVAP and the manufacturers who fund it should be responsible for its promotion, not dealers, most of whom are selling vehicles for which CAMVAP has no relevance. CAMVAP has no application to the sale of used vehicles. A statement as to the qualification of the vehicle for CAMVAP already appears in the owner's manual. It is unduly burdensome that a dealer should be required to promote CAMVAP when the sponsoring manufacturers actually do little to inform consumers about the program.

3.2.32 Discussion Paper Question 3: Information in sale agreement

What information must be in every agreement between a consumer and supplier for the sale or lease of a vehicle? Detailed information on extended warranties, if purchased by the consumer?

Information about extended warranties is already set out in separate documentation relating to the separate contract for the purchase of such warranties. The separate paperwork stems from the fact that the providers of extended warranties usually are third parties to the sale of the vehicle itself.

3.2.33 Discussion Paper Question 3: Information in sale agreement

What information must be in every agreement between a consumer and supplier for the sale or lease of a vehicle? A statement advising the consumer to read the complete agreement? A statement advising the consumer that the sale is final, or if not, the terms and conditions to amend or cancel the contract?

The suggested wording is: "SALES FINAL Please review the entire contract, including all attached statements, before signing. This contract is final and binding once you have signed it."

Discussion paper on a proposed regulation under *The Business Practices Amendment Act (Disclosing Motor Vehicle Information)*, S.M. 2008, c. 30

3.2.34 Discussion Paper Question 3: Information in sale agreement

What information must be in every agreement between a consumer and supplier for the sale or lease of a vehicle? A statement providing the name and contact information for the Consumers' Bureau should the consumer have any questions or concerns about the transaction?

While such a provision might justify the tax money that supports the Consumers' Bureau, the inclusion of such a reference on a bill of sale is particularly offensive. Because it singles out the sellers of motor vehicles, the provision suggests that consumers are especially in need of government protection and oversight when it comes to the purchase of a vehicle. Unless it is the Government's intention to cause every bill of sale in every industry and service to include contact information for the Consumers' Bureau, the proposed requirement reflects especially poor consideration.

3.2.35 Discussion Paper Question 3: Further information in sale agreement

What information must be in every agreement between a consumer and supplier for the sale or lease of a vehicle? Other requirements could include: A separate contract for each vehicle that is leased or purchased?

Except in dealer-to-dealer sales, it is extremely unlikely that the sale or lease of more than one vehicle would be recorded on the same contract. Neither Driver and Vehicle Licensing nor MPI have reported this to be an issue.

3.2.36 Discussion Paper Question 3: Further information in sale agreement

Discussion paper on a proposed regulation under *The Business Practices Amendment Act (Disclosing Motor Vehicle Information)*, S.M. 2008, c. 30

What information must be in every agreement between a consumer and supplier for the sale or lease of a vehicle? Other requirements could include: Blank lines in the contract must be marked void and must be initialed by the consumer? The consumer must be given a copy of the contract immediately after signing it?

Given that contracts are executed in duplicate and usually through the use of carbon copies, the existence of blank lines on a contract cannot give rise to the possibility of additions by one party after the contract has been signed, unless all copies of the contract are still in the hands of the party that proposes the addition. *The Drivers and Vehicle Act* already requires that a copy of the executed contract should be given to each signatory upon execution. Accordingly, there is no need to note and void blank lines in the form of contract.

3.2.37 Discussion Paper Question 4: Further disclosure

Are there other types of information that must be disclosed, or are there other times when a supplier should disclose certain information to a consumer? For example, should there be disclosure requirements for directly connected goods and services such as extended warranties or service plans? If so, what your recommendations for when and how such information is to be disclosed?

Contracts that relate to extended warranties include full information, and these are usually between the consumer and a third party to the sale who happens only to provide extended warranty coverage.

3.3 Closing remarks

It is a misguided exercise to focus consumer protection concerns upon the sale by established dealers to Manitoba buyers. This feedback document opened with the accurate

Discussion paper on a proposed regulation under *The Business Practices Amendment Act (Disclosing Motor Vehicle Information)*, S.M. 2008, c. 30

observation that good customer relations already implements the protective measures that any suggested legislative framework would seek to impose. In that respect, the proposed regulation is unneeded. Moreover, as this feedback document has also set out, the statute and its subordinate legislation proceed upon unfounded assumptions that effectively undermine the enforcement of any of the provisions that might be implemented.

The real problem that should concern the Manitoba Government is not the established dealers, but the "curbsiders"; that is, those who are not primarily in the business of selling motor vehicles but who do so from time to time. Under the proposed legislative framework, such curbsiders would entirely escape regulation, and consumers acquiring vehicles from such sellers would enjoy no protections. Indeed, even the Consumers' Bureau cannot pursue curbsiders, who operate entirely outside the regulation of expected commerce.

Given that established dealers already comply with the rules of contract law and the statutory provisions that are set out in many of the acts discussed above in this feedback document, the informed public perception is that the proposed regulation is more a political act than an effective regulatory instrument.

With all the appearance of protecting consumer interest but without any need or effective tools to do so, the result will be nothing more than a form of "consumer protection theatre".