

**The Motor Vehicle Sales Authority  
(VSA)  
(Incorporated as the Motor Dealer  
Council)**

**Program Review**

Prepared for the

**Ministry of Public Safety and Solicitor  
General**

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## Introduction

For many years motor vehicle dealers operating in British Columbia have been subject to government regulations that included statutes relating to licensing, business practices and consumer regulation. Despite these measures the motor dealer industry has continually suffered from a poor reputation attributed, by the industry, to the unethical and sometimes criminal behaviours of a minority of dealers.

In early 1999 the industry established the Motor Dealers Standards Association with the intent of commencing the clean up of the industry. It made important progress, but its voluntary mandate meant that it had limited success in changing the behaviours of the less ethical dealers who were considered to be the major contributors to the industry's poor reputation. Consequently, as a result of consultations with industry and consumer groups, the provincial government decided to create a delegated legislative authority to regulate all dealers and their salespeople.

The Motor Dealer Council (MDC) was established on April 1, 2004. Its powers are conferred through the revised *Motor Dealer Act*, the new *Business Practices and Consumer Protection Act*, and an administrative agreement with the Ministry of Public Safety and Solicitor General. It effectively absorbed the operations of the licensing branch within the provincial government that had previously held responsibility for the regulation of the motor dealer industry.

During 2006/07, the MDC changed its name to the Motor Vehicle Sales Authority (VSA) to better represent its intended role within the industry and to recognize the concept of operating as an independent authority responsible for the regulation of the industry.

The Administrative Agreement allows for the Minister to undertake a review of the Authority's operations after the third year of the Authority's delegated administration. Goodburn & Co. was retained to perform that review.

## Scope and Purpose

The overall scope of this project was to perform a review of the Authority's operations and evaluate the effectiveness of the delegation of administrative authority. The intent of this review was to evaluate and report on the Authority's effectiveness in the following areas:

### **1. Licensing processes, to determine whether:**

- these processes provide assurance that all affected motor dealers and salespeople comply with the requirement to become licensed;
- processes exist to ensure that licensees meet licensing qualifications and comply with licensing conditions;
- licensing processes are prompt and efficient.

### **2. Business inspection processes, to determine whether;**

- decisions to inspect specific businesses and inspection procedures used fall under the MDA, consider the level of consumer risk, are consistent, and efficient;

- hearing processes clearly define the issue or contravention and fall under the legislative authority of the MDA;
- applicants and licensees subject to a hearing are provided with an opportunity to be heard and receive a timely decision;
- identified compliance concerns are followed up and addressed on a timely basis, using appropriate progressive enforcement tools that fall under the legislative authority of the MDA.

**3. Complaint and dispute resolution processes, to determine whether:**

- investigation and mediation of complaints and disputes is impartial, competent, consistent, complete, timely, and efficient;
- specified remedies are reasonable in the circumstances, and identified compliance concerns are followed up and addressed on a timely basis, using progressive enforcement tools.

**4. Communication and public information process, to determine whether:**

- the Authority has developed and implemented a communication plan identifying all the intended audiences, communicating clear, appropriate, and consistent messages for each audience, and uses effective methods of communication;
- there are effective processes for assessing whether the intended audiences are receiving and understanding the communication;

**5. Financial operations processes, to determine whether:**

- all moneys collected for the Motor Dealer Customer Compensation Fund (MDCCF) are credited to the funds;
- there are effective processes for assessing claims for compensation and that disbursements from the MDCCF are properly supported and consistent with the purpose of the fund.

**6. Roles and responsibilities of the Authority's management and Board of Directors related to management and governance to determine whether they:**

- are clearly defined, are in compliance with the MDA, and are followed;
- provide management and governance succession;
- include all significant areas of responsibility required for an effective control and regulatory environment.

**7. Roles and responsibilities of the Authority's management and members of the MDCCF Board related to management and governance to determine whether they:**

- are clearly defined, are in compliance with the MDA, and are followed;
- provide management and governance succession;
- include all significant areas of responsibility required for an effective control and regulatory environment.

The review covered the time period from the commencement of operations by the Authority on April 1, 2004, to the date of the completion of our field work in July 2008. This report incorporates additional information and explanations provided by the Authority since the completion of the fieldwork.

A review of the legislative authority in the Motor Dealer Act did not form part of the terms of reference of this non-legal review. We understand that the Ministry and the VSA are in the process of reviewing the legislation and the regulations, including examining the proposed changes identified by the VSA's Legislation Review Committee.

In preparing this report we have relied on information and documentation provided to us by the Authority. We have not audited any of this information. The assignment was not structured as an audit.

## **Progress**

Since its inception, the VSA has established a solid foundation upon which it can carry out its operations and fulfill its regulatory mandate. It has established a working governance model and recruited excellent and experienced Board members from a broad range of relevant stakeholder groups.

Internally, it has recruited an exceptional team of managers and employees who have established processes and policies in most areas (operational, financial and administrative). They have also developed a sound IT system, and a data base to collect all licensing and investigation information

These steps have allowed the VSA to tighten the pre-existing regulatory processes and establish a working dealer inspection program performed on a bi-annual basis. As well, salespeople are now covered by a new licensing process and a mandatory training program. The VSA also issues directives and guidelines to motor dealers and salespersons.

Unregistered dealers (most notably "curbers") and unregistered salespeople represent a continuing challenge to the VSA and the industry. The extent of this unregistered component of the industry, operating outside of the law, is very difficult to quantify and will be difficult to ever entirely eliminate. The VSA employs a variety of techniques to detect unlicensed dealers and also receives tips from registered dealers. Improved cooperation from dealers in ensuring that all of their salespeople are properly registered would largely eliminate the problem of unregistered salespeople. The VSA is troubled that some registered dealers, who are extremely concerned about competition from unregistered dealers, are not concerned if some of their own salespeople do not register.

The VSA has also initiated new processes to investigate possible non-compliance by dealers and salespeople, and to hear complaints. More recently the VSA has taken steps to improve the operation and efficiency of the Motor Dealer Customer Compensation Fund.

The VSA has focused on regulating the industry through educating, rather than penalizing dealers and salespeople, applying a progressive suite of enforcement tools. However, the VSA has found it necessary to revoke the licences of certain sub-standard

dealers and salespeople when other measures have not been effective. Except as noted below there have been few complaints about how the VSA has operated, suggesting possible broad support for the VSA from the industry.

The VSA’s Legislative Review Committee has identified areas within the *Motor Dealer Act* that require clarification or strengthening. Without these legislative changes, the VSA will continue to be hampered in its ability to fully carry out its regulatory function and to deal with non-compliant dealers and salespeople.

Most importantly the VSA has recognized that its mandate is not just limited to consumer protection and the regulation of dealers and salespeople. Its real goal is to create a successful marketplace comprising a respected motor dealer industry serving an informed and a confident public, where both sides understand each other’s rights and obligations. While it has provided a new medium for consumer complaints and enquiries, most of its achievements to date have been focused on industry professionalism rather than on consumer awareness.

## Early Challenges

As with any new entity, the VSA faced a number of early difficulties. For example:

Challenges	Current Status
Overcoming an early cash flow deficit as on its formation the VSA did not receive the prepaid dealer licence fees.	The VSA implemented a fee structure which enabled them to achieve break-even early in 2008. This will allow them to now utilize resources more effectively and enable them to better focus on operational priorities.
Initial resourcing requirements were underestimated.	The VSA has expanded its organization to 35 FTE’s.
Updating and improving record keeping.	The VSA implemented a database which is able to collect all pertinent records and allows for easier access to required data.
Backlog in registrations.	The VSA has been up-to date with its licensing process for several years.
Delays in responding and following up on complaints received from the public.	As part of its reorganization the VSA established a new section to deal specifically with enquiries and complaints received from consumers about the conduct of licensed dealers and salespeople. Most enquiries and complaints are dealt with very quickly. Those requiring an investigation do take longer to resolve.
Clarification of legal authority, including the mandate of the Customer Compensation Fund.	The VSA is waiting for their authority (and that of the Customer Compensation Fund) to be clarified through the Legislation Review process.

Perceived concern by some industry members regarding a lack of a right of appeal to the decisions made by the Registrar; and workload of the Registrar.	The VSA hired a Deputy Registrar to alleviate some of the pressure and allow an opportunity for certain decisions to be reconsidered by the Registrar.
Dealing with the perception of “heavy-handedness” by some dealers as it initially undertook some of its regulatory responsibilities.	The VSA discontinued certain controversial activities that were perceived as heavy-handed by the industry and has now adopted a more consultative process with industry associations.
Overcoming some initial resistance and challenges to their authority by certain industry members.	Some dealers still do not fully understand nor accept the VSA and its current role. The VSA has initiated a series of regular meetings with the motor dealer associations in order to continue to foster good relationships and provide a forum for better communication and cooperation with industry.

## Complying with the Administrative Agreement

Meeting all of the requirements of the Administrative Agreement has been an ongoing process and management has kept the Ministry informed of its progress. There have been regular communications as to how the few remaining areas of possible non-compliance should be addressed. It is quite possible that future amendments to the Agreement will eliminate some of these areas, particularly where the VSA has implemented an alternative plan to that originally proposed in the Agreement. For instance, after discussions with Ministry officials, it was decided not to establish a code of conduct for Motor Dealers as required in the agreement, but instead to promote standards of conducts by clarifying and updating its directives and guidelines.

As a result of cost constraints dealer and consumer surveys have not been conducted, but may be carried out in the future. However, the VSA does receive informal feedback particularly from industry associations, as well as from individual dealers and consumers. It has also formed various advisory committees, which include members from industry. In particular, the Salesperson Advisory Committee is providing valuable feedback. Survey data and feedback will be of critical importance as the Authority enhances its existing performance measures with external outcome based measures.

The Ministry’s exact communication planning requirements are currently under discussion. It is the VSA’s position that these have been fulfilled.

## Moving Forward

The VSA has implemented various initiatives in order to achieve its vision of creating a respected motor vehicle sales industry serving an informed and confident public. Through its strategic planning process, it has developed a clear sense of its medium-term strategic objectives and is working on clarifying its longer-term objectives. Such clarity should enable the Authority to enhance its annual Strategic Plan, which currently

includes a planning overview for the subsequent two years. Other suggestions for improving the Strategic Plan are contained in section 6.

Internally, the VSA is continuing to enhance and revise its complement of policies and procedures, e.g. those surrounding the *Freedom of Information and Protection of Privacy Act* have been revised since we completed our fieldwork.

To ensure appropriate Board succession the VSA is in the process of amending its by-laws to allow new Board members to be appointed on a staggered basis. The Ministry has indicated that it is likely to approve such amendments.

Weaknesses in the *Motor Dealer Act* have been identified by the Legislation Review Committee. Until those recommended changes are made the VSA will have difficulty completely fulfilling its mandate. These recommendations were passed to the Government in early 2007.

The VSA will continue to promote clear and transparent buying processes with improved dealer standards. The use of standardized forms for sales agreements and for customer deposits, etc, as currently being discussed with the industry, will help achieve this goal.

The VSA has a low profile with consumers, a majority of whom are probably unaware of its existence. Enhancing the profile of the VSA is the first step in improving consumer education and awareness. The VSA has initiated an advertising campaign which it plans to expand in the coming year. It will also need to direct effort at increasing consumer awareness of both their responsibilities when purchasing a vehicle, as well as their rights if a problem occurs as a result of the purchase.

Increased consumer awareness of the VSA's existence and role will likely be accompanied by increases in consumer complaints and enquiries, as well as consequent investigations. Further personnel increases may be necessary to handle the increased activity and the funding source for such increases will likely be an issue.

The VSA's future success will depend on the continuing support of the industry, consumer groups and the government and the VSA must continue to develop methods of demonstrating and communicating its value to all parties. The development of meaningful external, outcome based performance measures, to enhance its existing internal measures, will help the VSA assess its performance and demonstrate its value.

## ***Detailed Conclusions, Comments and Recommendations***

### **1. Licensing**

#### ***Is the Authority effective in ensuring that motor dealers and salespeople comply with the licensing requirements of the Motor Dealer Act (MDA)?***

Overall the VSA is meeting the challenge of ensuring that known motor dealers and salespeople are properly licensed and complying with the licensing requirements of the *Motor Dealer Act*, through its regular inspection program and monitoring of dealerships. However, it is harder to measure its success with respect to those dealerships which are not known or which operate in a covert manner. This remains one of the larger challenges for the VSA to address – how to identify and catch those dealers and salespersons operating outside of the law.

#### **Records**

When the VSA initially was set up, it inherited a rudimentary system comprising incomplete files and data relating to dealerships. As well, there was no requirement for salespersons to be licensed, so there were no corresponding salesperson records. Since that time, the VSA has implemented a new database (PHOENIX) to record all transactions and information relating to both dealerships and salespersons. The system has a good cross-referencing facility to enable search and confirmation between registered salespersons and their corresponding dealership and vice versa. We did not find any significant deviations between the database and the hard copy files in the sample of files we reviewed. Examples of deficiencies included:

- On one file there was no confirmation that a criminal record check had been received.
- An inspection report had not been placed in the hard copy file

#### **Dealerships**

For new dealerships, the VSA requires a business plan to be submitted at the time of application. New dealers are also subject to criminal and credit checks to ensure their credibility and credit rating are acceptable.

For dealers already in business, but applying for a second motor dealer license, there are fewer financial or other checks carried out. The onus is placed on the dealership to declare that there has been no criminal convictions of the principals since the submission of their last criminal record check. The applicant must provide a new criminal record check if the original check is more than five years old.

The VSA conducts a new dealer inspection to ensure that the dealership is complying with all requirements. Follow-up visits are scheduled within six months, with emphasis placed on those areas where the dealership was found previously to be delinquent. Thereafter, routine inspections are scheduled to occur every two years. As the VSA has evolved, new procedures have been added to the program. For example, business licenses had not been requested by the previous administration and about a year ago the

VSA commenced requesting copies of these licences. This revealed that a number of dealerships did not have a business license. This became a matter for follow-up to ensure subsequent compliance.

### **Salespeople**

The VSA has implemented a rigorous application process for new salespeople that includes a criminal records check. Applicants with no prior criminal record are then issued a conditional license until the 2-day training (certification) course has been completed.

Upon renewal the onus is placed on the registrant to declare that there has been no criminal activity since the previous license was granted.

During dealer inspections, the VSA carries out checks of the sales staff to ensure they are working only at the dealership for which they are licensed. It has also implemented a reasonable process for monitoring the activity of salespersons when they leave a dealership.

When the VSA was initially established, there were some problems with the amount of time taken to issue salesperson licenses. Our review of a sample of files and discussions with staff in this area indicated that licenses are now being issued promptly, providing the application form has been fully and accurately completed.

During our interviews we found widespread support for the educational program, but there were some dealers, particularly those with long-term well established sales staff, who felt that for their experienced staff, the training material could have been covered in a much shorter time period (e.g. ½ day). The VSA is considering the possibility of allowing individuals with extensive recent industry experience in British Columbia to challenge the exam as an alternative to participating in the two day program.

### **Unregistered Dealers and Salespeople**

Unregistered dealers (most notably “curbers”) and unregistered salespeople represent a continuing challenge to the VSA and the industry. The extent of this unregistered component of the industry, operating outside of the law, is very difficult to quantify and will be difficult to entirely eliminate, particularly as the industry has very high employee turnover. The VSA employs a variety of techniques to detect unlicensed dealers and also receives tips from registered dealers. Improved cooperation from dealers in ensuring that all of their salespeople are properly registered would largely eliminate the problem of unregistered salespeople. The VSA is troubled that some registered dealers, who are extremely concerned about competition from unregistered dealers, are not concerned if some of their own salespeople do not register.

### **Looking Forward**

The VSA is currently piloting a second tier of salesperson training for experienced salespersons who were not required to complete the 2-day certification course. The results of the pilot program are not yet available.

## 2. Inspections

### ***Has the Authority established an efficient inspection program that is effective in addressing consumer risks?***

The VSA has established an efficient inspection program that helps to mitigate the immediate risks facing consumers.

#### **Consumer Risks**

The VSA has done a reasonable job of identifying the consumer risks and periodically revisits them to ensure they are still relevant and appropriately prioritized. It has developed its inspection program to ensure that areas of identified risk are checked during each inspection visit.

#### **Inspection Program**

As the VSA was establishing its presence, a few dealers were concerned with the approach being taken by the inspectors and the perceived “heavy-handed” attitude and manner in which the inspections were being carried out. In particular, the VSA had introduced a pilot project, which required dealers to submit their payroll records for examination to allow the inspectors to confirm the sales staff were appropriately identified and licensed. This approach met with resistance from the dealers as it was felt to be too intrusive. The VSA abandoned this procedure and is exploring alternative methods of ascertaining the existence of sales staff in dealerships.

Since these earlier problems, the VSA has established an inspection program that is relatively straightforward and non-intrusive. Further, the VSA has changed the manner in which inspections are carried out. Its Compliance Officers now have identified geographic areas in which they operate, allowing them to build up relationships with the dealerships, leading to a more collaborative approach to compliance.

Routine inspections are carried out at least every two years. The Compliance Officers have the power to issue tickets if warranted (i.e. for serious or repeat offences), but more often, they will verbally warn the dealer and then follow up with a further inspection within six months to ensure the dealer has corrected the problem.

#### **Looking Forward**

One area that has historically caused concern for consumers and has been identified as an issue during inspections, is the use of sales documents that are incomplete or incorrectly completed. The VSA, in conjunction with the motor dealer associations, is leading the implementation of standard sales documents that will be recommended for use within all dealerships. This will help provide some assurance that the forms contain all the required language making it easier for consumers to identify those areas which are incomplete or inaccurate. It will also help make the dealers more accountable for ensuring that sales documents are completed appropriately. In addition, it will help to clarify the intent of customer deposits, which has been an ongoing source of dispute between consumers and

motor vehicle dealers, and has been the subject of several Customer Compensation Fund decisions. The goal is for the standard sale agreement to be finalized by the end of 2008.

### 3. Investigations

#### ***Is the Authority carrying out its investigative function appropriately?***

Overall, the VSA has implemented an investigative function that effectively gathers the appropriate amount of information and evidence from the parties involved, so that fair and reasonable decisions can be reached and a resolution of the matter can be achieved.

To date, the VSA has not taken any steps to monitor satisfaction with its investigatory processes.

#### **Investigation Process**

The VSA has two primary sources for their investigations

- Consumer complaints
- Referrals from the inspection process

The Authority receives approximately 4,000 consumer enquiries each year. These range from simple enquiries where consumers are looking for information, to specific complaints about the behavior of a dealership. Generally, the VSA follows up and resolves simple enquiries quickly, either providing an answer to the query on the spot, or directing the complainant to the appropriate agency (e.g. the Better Business Bureau).

For the more serious complaints, or where a serious transgression has been identified during an inspection, considerably more time is required to investigate the matter. This includes interviewing and gathering evidence from all parties involved to ensure there is a full understanding of the issue.

The Compliance Officers believe that one of their roles is to uphold the *Business Practices and Consumer Protection* and *Motor Dealer Acts*. They request cooperation from the dealers in obtaining information and will press the issue if needed. The VSA has significant authority through these Acts to obtain records and other information and they have not experienced problems obtaining the information they require.

The VSA has taken the approach that it is better to resolve complaints outside of the Registrar's hearing or Customer Compensation Fund processes if possible and appropriate. Whenever possible, Consumer Service Officers (CSOs) are involved to assist in conciliation between the parties. However, on occasion, situations proceed directly to hearing if it is considered a serious breach of the legislation or licensing requirements.

The quality of documentation has improved as the Authority's investigatory processes have evolved.

## 4. Hearings

### ***Are hearing processes fair and equitable?***

From our review of a sample of files and from discussions with management and various stakeholders, we believe the hearing process is carried out in a fair and unbiased manner. One concern raised has been the limited appeal processes. Common law allows for a judicial review, although this is a time-consuming and expensive process, and the VSA is under no obligation to inform the dealer / salesperson of their right to such a review. The *Business Practices and Consumer Protection Act* does allow for a reconsideration by the Registrar if new evidence becomes available. The recent appointment of the Deputy Registrar should strengthen the reconsideration process.

### **Hearing Process**

The Registrar maintains a strict independence from the investigation process with the intention that when conducting a hearing, he hears the evidence for the first time without any bias. The hearing generally consists of the Manager of Compliance and Investigations or a Compliance Officer presenting the position of the VSA and the dealer presenting their case in defence of the complaint. Complainants are also encouraged to attend and participate in hearings. This ensures that all parties have the right to be heard and put forward their positions so that the decision reflects all of the available evidence.

In reviewing a sample of files, we found they contained good documentary evidence. The minor documentary deficiencies identified related to the earlier files reviewed. Where the file contained a written transcript of the proceedings, the decisions appeared to provide reasonable resolution. The permanent record would be improved if written transcripts were always obtained.

A recent procedural change involves the provision of all documentation to the dealer / salesperson and complainant prior to the hearing, attached to an affidavit.

Generally, the hearing process is carried out in a timely manner, recognizing the nature of the issues that are to be heard. One concern that has been raised is that the majority of hearings are in the Lower Mainland, which means that any dealers / salesperson from the outlying regions may have to incur significant time and travel expenses in order to be heard and to present their case in person. The advantage of the regular monthly hearings in Burnaby is that they provide all parties with very timely decisions, which can be critical, as these decisions can impact the livelihoods of dealers, their employees and salespersons. It should also be noted that the vast majority of hearings concern dealers and salespeople located in the Lower Mainland. Dealers and salespeople from elsewhere in the Province have the option of waiting for a hearing to be held in their region or receiving a timely hearing in the Lower Mainland. It is difficult to see how the Authority could improve upon this aspect of the hearing process, while maintaining efficient, effective and timely decisions.

## **Authority for Decisions**

Initially, the Registrar conducted hearings primarily under the authority of the *Motor Dealer Act*. More recently, the hearings have been conducted under the authority provided to the Registrar by the *Business Practices and Consumer Protection Act* which provides for a wider range of penalties and sanctions. Remedies that have been imposed include:

- Awards under BPCPA
- Administrative penalties
- Investigation costs
- Compliance orders
- Suspension or cancellation of licenses
- Undertakings from the dealer or salesperson

## **Satisfaction with the Process**

To date, the VSA has not initiated any survey or other feedback mechanism of either dealers or consumers to ascertain whether they perceive the hearing process to be fair and impartial or to otherwise assess their satisfaction with the process. Understandably management has some reservations about the quality of any feedback that might be obtained given the adversarial nature of the process perceived by some parties. As part of this review we contacted some participants and actually found several of them quite willing to provide constructive feedback.

To date, according to VSA management, there have been very few complaints about the decisions. There has been only one judicial review of a decision by the Registrar. The Court upheld that decision.

## 5. Complaints from Consumers against Licenced Dealers and Salespersons

***Are complaints, disputes and compliance concerns being properly addressed and followed up in a fair, impartial and effective manner?***

The VSA has implemented a process for following up on consumer complaints, enquiries, disputes and compliance concerns, which provides prompt advice to consumers and where appropriate is referred for further investigation. The VSA is currently developing feedback mechanisms.

### **Complaints Procedures**

The Authority has developed a comprehensive complaints process, which is outlined in the Enquiry Process section of the VSA Process Manual. Extensive additional procedures are currently being drafted for inclusion in the Compliance Services Investigations Policy and Procedures manual. All complaints, once they have passed the enquiry or advice stage, are logged into Phoenix system and any updates or subsequent correspondence or contact are entered into the system so that the status of the complaint can always be readily ascertained.

### **Timeliness of Process**

During the initial period, some concerns were raised about the VSA's ability to respond to all of the complaints received, as a far larger than anticipated number of enquiries were received and insufficient resources were available to respond them. As a result, a significant backlog arose making it increasingly difficult for the Authority to respond to the complaints or even to determine which enquiries warranted follow up and which should be routed elsewhere for resolution. The VSA has taken steps to improve its processes and reorganize the staff to reduce the backlog and believes it has significantly improved upon the systems being used by the predecessor administration.

## 6. Management and Governance

### ***Is the Authority's management and governance plan, compliant and effective?***

Over the four years since its creation the VSA management plan has evolved to produce an organizational structure that operates effectively, with a Board that understands and effectively demonstrates its governance role.

While VSA has implemented a series of internal performance measures, its annual strategic plan could be improved by adding specific aspects covering: deliverables; targets; timeframes; and outcome based performance measures.

### **Board of Directors**

The VSA initially established a Board of Directors comprising five members who saw the Authority through its creation and startup. The Board was then expanded to 11 members in accordance with the VSA by-laws. While there have been a couple of changes in the past year, the make-up has remained consistent with the planned representation from the key stakeholder groups:

- 3 members from the New Car Dealers Association
- 2 from the Automotive Retailers Association
- 1 from the Recreational Vehicle Dealers Association
- 2 members representing government
- 3 members at large.

Each member has brought their own broad experience and perspective to the Board and together they have helped to guide the VSA in the appropriate direction that meets the established mandate.

A Governance and Operating Manual was developed at the time that the VSA was created and contained the majority of the required elements of a governance plan. For example:

- Guidelines for the Board of Directors
- Terms of Reference for the Chair and Directors, and the Board itself
- Code of Conduct
- Levels of Authority
- Guidelines for the various Board Committees

Additional information has been added to the manual since its inception such as a Director's Calendar to identify the key dates for meetings, reports, strategy sessions, etc to help the Board members prepare for their expected role. It is now essentially complete.

Another document was developed in 2007 entitled *The Duty, Responsibilities and Rights of Board Directors*, which further describes the expectations placed on the Board and on individual Directors.

### **Management**

Since its inception, the VSA has built an organization that is capable of fulfilling its regulatory mandate with several key changes having taken place. For example, the positions of Inspector and Investigator were merged into one position several years ago – and last year, the name was changed to that of Compliance Officer – to better reflect the nature of both functions. This combined function has enabled a more streamlined process when dealerships are found to be operating in contravention of legislation or their license during a routine inspection, with the same person conducting both the inspection and the investigation, avoiding duplication of effort.

The position of Deputy Registrar has also been created providing the opportunity for a review of Registrar’s decisions as a separate process. This position also lightens the burden placed on the Registrar wherein previously that position was expected to perform the tasks of the Chief Executive Officer of the VSA as well as conduct hearings and carry out the judicial function of the Authority.

The Consumer Services and Professional Development function has been created to help increase the profile of consumer service aspect of the VSA, as well as the education program provided to salespersons.

The resulting structure provides the VSA with an organization that should be able to deliver on the regulatory side of its mandate. However, some Board members expressed concern that there may be insufficient resources to deliver on the consumer awareness side of the mandate.

### **Growth**

The VSA has grown into an organization comprising 35 people at the time of our review. While there is doubtless been a need for the VSA to grow to meet regulatory demands and to effectively carry out its mandate, some concern has been raised by the industry to suggest that it is growing faster and larger than warranted. The VSA will need to be able to properly justify its future growth plans if those plans are to continue to receive widespread industry and stakeholder support.

### **Succession Planning**

Succession for Board members has, for some time, been identified by the VSA Governance Committee as a priority area as all Board members’ terms expire over the next two years. This has created a situation where potentially all of the Board members will have to be replaced between now and April 2010. To ensure appropriate Board succession the VSA is in the process of amending its by-laws to allow new Board members to be appointed on a staggered basis. The Ministry has indicated that it is likely to approve such amendments.

There have been several key organizational changes to facilitate effective management succession. A management succession plan is also under development to address future needs.

### **Strategic Planning**

The VSA prepares a Strategic Plan each year, with a planning overview for the subsequent two years, however the main focus of the plan is on the immediate year and the references to the future are more related to the financial forecast. While the plan identifies objectives, there are no longer-term strategies that are linked directly to them to indicate the long-term plan of achieving these objectives. The strategic priorities that are

identified are generally focused on the current year and could be improved by adding some specific aspects such as: deliverables; targets; timeframes; and external, outcome based performance measures; all of which allow for greater accountability to be built into operations. To date, VSA have concentrated on ensuring their internal measures are in place and they are collecting relevant data to support the results of their internal procedures. VSA management intends to develop such external measures once its long-term strategic objectives are clarified.

## 7. Communications

### ***Is the VSA communicating effectively with its intended audience?***

The Administration Agreement requires that a communications strategy be developed to help guide the Authority's communications so that they proceed in an organized and coordinated manner. The VSA has introduced certain elements of such a plan, and they feel that these represent the appropriate level of planning. The VSA and the Ministry have been discussing whether it meets the Ministry's specific requirements.

As part of developing on-going industry awareness, the VSA has met regularly with various industry associations – both formally and informally. However, it is only recently that the VSA has commenced regular formal meetings with the three industry associations at the same time, which provides even more effective communication.

Also, due to funding constraints and the priorities of focusing on the regulatory side of the business, it is only in the past year that the VSA has aired some initial public advertisements through creative leveraging of their resources. The VSA is currently in the process of identifying the best way to connect with consumers.

### **Communications Plan**

VSA's Annual Strategic Business Plans contain the Authority's communication plan for the ensuing year, and the VSA believes that it provides the most meaningful level of planning that can be laid out. Consequently, the VSA and the Ministry have been discussing whether it meets the Ministry's specific requirements.

The VSA reports out on progress against the plan in its Annual Report. Both the Annual Strategic Business Plan and the Annual Report are widely distributed among registered dealers and interested parties and are available on the VSA website. As such, they form a major part of the communications strategy of the Authority, along with various bulletins (directives and guidelines) which are distributed as specific matters come to light and the VSA believes their audiences will benefit from their distribution.

The VSA conducted an environmental scan in 2007 to help identify demographic and economic trends; as well as compile data about the motor vehicle industry; and internal licensing, consumer and compliance programs and the education program. The intent is to repeat the process and update the information again this year. One of the outcomes of the scan is the identification of the segments of society which are most vulnerable and are most in need of the VSA's intervention or assistance, either by way of education or through follow up of complaints. The Authority has taken that information and used it in developing its most current Strategic Business Plan (2008/09).

To date the VSA has focused on consumer complaints and the industry's poor reputation by prioritizing its regulatory function rather than the consumer awareness side of its mandate. This has limited the available funding for advertising and communications. However, it has taken advantage of some creative strategies to obtain excellent terms with the media that has stretched its scarce advertising and communications dollars. This

has allowed the Authority to start its advertising campaign during 2007/08 and they intend to build on that base in the coming years.

### **Release of Information**

The VSA is extremely diligent about confirming the accuracy and messaging contained in communications material prior to distribution. All such material is subject to a comprehensive review by the management team to ensure the correct message is being conveyed and it is reaching the target audience.

The VSA has recently revised its policies and procedures surrounding the *Freedom of Information and Protection of Privacy Act*. It has also made staff aware of their responsibilities regarding the release of information through training and several other internal compliance activities.

### **Success of Communications**

To date, within their limited resources, the VSA has introduced several important communications initiatives to begin the process of enhancing consumer awareness. However, as the VSA strategic plan does not include a corresponding external measurement system, there is no means of assessing the progress that is being made with respect to the success of its communications strategy. Consequently, it is not possible to determine whether the VSA is meeting its communications goals, although the current initiatives are likely moving it in the right direction.

## 8. Enforcement Tools

### ***Are the Authority's enforcement tools reasonable and effective?***

The Registrar is currently using the *Business Practices and Consumer Protection Act* as the primary legislation for enforcement. These are applied in a progressive manner depending on the circumstances of each case.

We understand that the Ministry and the VSA are in the process of reviewing the legislation and the regulations, including examining the proposed changes identified by the VSA's Legislative Review Committee. It is hoped that this process will result in the strengthening of the enforcement tools available to the Registrar.

The Registrar has used the *Motor Dealer Act* as authority for his decisions, but is primarily using the powers available to him under the *Business Practices and Consumer Protection Act*.

In order to achieve compliance the Registrar makes every effort to render decisions as quickly as possible, so that the poor behaviour that the Authority is trying to change can be addressed in a timely manner.

Compliance Officers can issue tickets in accordance with the *Violation Ticket Administration and Fines Regulation*, although in practice few are issued as the penalties are not considered to be high enough to represent an effective deterrent. The investigation flow chart indicates the VSA follows a progressive discipline process which includes ticketing, written warnings, an undertaking signed by the dealer, a hearing (where the decision to cancel a license would occur) and finally prosecution.

The VSA is primarily interested in working with dealers / salespeople and modifying behaviour through training and education. The cancellation of a licence is seen as a last resort.

Overall, the VSA attempts to deal with matters in a reasonable manner, using the more serious sanctions as a means of targeting those dealers who are repeat offenders or who have committed serious offences.

## 9. Motor Dealer Customer Compensation Fund

### ***Is the Motor Dealer Customer Compensation Fund (the Fund) operating effectively?***

Historically the fund was used only to compensate consumers in the event that a dealership was inactive, bankrupt or otherwise had gone out of business. However the new *Motor Dealer Act* does not differentiate between active and inactive dealerships, thus the Fund began hearing cases involving active dealers. This resulted in concerns within the motor dealer industry that the Fund was operating beyond its perceived legislated mandate. Recent procedural changes will result in the Fund reverting back to its traditional role of only hearing claims against inactive dealers, with the Registrar hearing most other matters.

After some early concerns being raised, the Fund has improved its documentation including providing more comprehensive explanations of its decisions.

The Fund fully and accurately accounts for revenues and expenditures in accordance with the *Motor Dealer Act* and its Regulations.

### **Management of the Fund**

In the Administrative Agreement, Schedule C was to have been developed which would have seen the transfer of the Fund administration to the VSA from the provincial government. Although, this has not yet occurred, it remains the VSA's intention to take over the administration of the fund.

The VSA's current involvement in managing the Fund is the receipt of an account update prior to the Compensation Fund Board meetings. Investment decisions for the Compensation fund are made by the Provincial Treasury with no input from the VSA and interest revenue is credited to the fund at a rate of 1.9% below prime. It should be noted that for the VSA to take over the management of the Fund, it would require a change in the legislation, which is not expected in the near future.

### **Recommendation**

The Compensation Fund Board should request monthly statements of the account and with the help of VSA staff confirm the activity that takes place to ensure transactions are properly recorded and the fund is being managed in accordance with the agreed upon criteria. We understand that this recommendation has been implemented.

### **Fees and Other Revenue**

Annual contributions to the Compensation fund of \$300 are required from new dealers for the initial three years of operations, thereafter the Registrar has the authority to waive annual contributions. The VSA has several mechanisms to ensure that dealers make appropriate payments to the fund including:

- Withholding their dealership license
- In cooperation with municipalities, withholding business licenses
- In cooperation with ICBC, withholding dealer plates.

When a dealer is found at fault and has had a judgment made against them, the Fund pays the complainant and then collects the funds from the dealer. To encourage payment, the dealers are advised that they must repay the fund or face a hearing. For dealers who are no longer in business, the former principal is sent a similar letter advising them that they will not be issued a new license until the old debt is settled.

### **Expenditures**

The *Motor Dealer Act* specifies that the costs of administering the Fund must be paid from the Fund. Our review of the financial records indicated that only actual costs related to the Fund are recovered. Specifically, these include:

- Salary and benefit cost for the Manager of the Fund
- 25% of the Director of Licensing salary & benefits
- Salary & benefit costs of the investigator(s) working on specific cases (time is recorded on the Phoenix Investigation Cover Sheets)
- Direct costs of administration of the Fund (e.g. courier charges, investigation costs, office supplies, etc.)
- Per diems and travel costs for board members
- Costs directly related to board meetings

However, there are only a few written accounting policies that specifically address fund transactions. Replacement policies are currently being developed. Nevertheless the number and type of transactions appear to be well understood by staff involved and the invoices reviewed were well supported.

### **Authority for the Fund to function**

Historically the fund was intended to compensate consumers for certain specified losses in the event of a dealership going out of business, and there is a concern in the dealership community that the Fund should not be deciding cases where the dealer is still active. However the Act does not differentiate between active and inactive dealerships, thus allowing the Fund to hear cases involving active dealers.

The Registrar has recently introduced a new procedure where the Registrar will hold hearings under the *Business Practices and Consumer Protection Act* for active dealer situations. This will address nearly all complaint situations. There are some additional benefits of hearings under the *Business Practices and Consumer Protection Act*:

- They are more efficient (one person rather than 5 hearing the case)
- The *Business Practices and Consumer Protection Act* has broader application and more powerful authority, and
- The capital of the Compensation Fund can be preserved for its original intent.

The VSA will shortly commence the search for a new Chairperson to replace the Registrar who has been temporarily acting in that position. It is also developing new operating guidelines. To avoid any perception of a conflict of interest we suggest that the Chairperson should not be a motor dealer.

Recognizing the legislation allows for broad inclusiveness of complaints, our review of a sample of files indicated that, from our perspective, all cases heard fell within the jurisdiction of the Fund.

### **Customer Compensation Fund Process**

The Fund application package provided to all complainants includes specific descriptions of what is and is not claimable through the fund. The Fund Manager evaluates the applications for appropriateness and may reject any deemed as not fitting the criteria at that point. If the complainant is unhappy with the decision of the Fund Manager they may request to have it heard by the Fund Board and the board may reject or overrule the manager and hear the matter.

Generally, the Fund Board considers matters based on the information provided and does not provide an opportunity for either the complainant or the dealer to be heard. Once a decision is reached, the Fund Board makes its judgment in writing and sends award / denial letters to both parties (dealer / complainant). If an award is granted, the Fund makes restitution to the consumer and requests reimbursement from the dealer. Dealers not reimbursing the fund for decisions against them have 30 days to repay or risk a hearing / possible loss of license (to date, only one active dealer has formerly objected to repaying the fund and this matter was resolved separately by the Registrar.)

Concerns were raised regarding the quality of the information contained in earlier award / denial letters, but more recently, there is a noticeable improvement in the explanations provided and rationales for the amounts awarded.