

Chapter 7

Financial and Consumer Affairs Authority—Regulating Vehicle Dealers to Protect Consumers

1.0 MAIN POINTS

The Financial and Consumer Affairs Authority is responsible to regulate Saskatchewan's financial and consumer marketplace, including motor vehicle dealers.

The Authority had, other than in the following areas, effective processes for regulating motor vehicle dealers to protect consumers. The Authority needs to:

- Select motor vehicle dealers for inspection based on a formal analysis of key risks for non-compliance.

Using clearly defined risk factors to select motor vehicle dealers for inspection can help the Authority ensure it focuses inspection resources on dealers at higher risk of non-compliance. In addition, it can help the Authority plan for investigating unlicensed motor vehicle dealers. Having documented rationale for selecting dealers would also help demonstrate the use of a fair and consistent regulatory approach.

- Formally analyze the results of its enforcement activities so it can determine whether those activities achieve their intended impact.

Analyzing enforcement activity results (such as non-compliance trends) can help focus enforcement resources on areas that can best promote compliance. A well-defined risk-informed approach can help build Saskatchewan motor vehicle consumers' confidence in the Government's ability to protect their consumer rights.

2.0 INTRODUCTION

The Authority is responsible to regulate Saskatchewan's financial and consumer marketplace to protect Saskatchewan consumers, public interests, and businesses.¹ It is specifically responsible for regulating financial securities and services, insurance and real estate, pensions, and consumer-related businesses, including motor vehicle dealers.

The Authority is based in Regina, Saskatchewan, and employs staff in about 60 full-time equivalent positions.²

The Consumer Protection Division is responsible for regulating consumer protection in Saskatchewan. This includes licensing and registration across nine industries, including motor vehicle dealers.³ The Division consists of individuals in about ten full-time equivalent

¹ Financial and Consumer Affairs Authority of Saskatchewan, *Annual Report 2018/2019*, p. 5.

² *Ibid.*, p.11.

³ *Ibid.*, p.11.



positions comprised of a Director, a Deputy Director, two licensing officers, four investigators, and two administrative support.

The Authority funds its activities primarily through fees and taxes. As **Figure 1** shows, in 2018–19, it had a surplus of \$19.7 million. The Authority pays its annual surplus to the General Revenue Fund.⁴

Figure 1—2019 and 2018 Actual Revenue and Expense by Division

	2018-19	2017-18
	(in millions)	
Securities Division	\$ 21.7	\$ 24.2
Consumer Credit Division	2.1	2.1
Insurance and Real Estate Division	1.7	2.6
Consumer Protection Division ^A	1.2	1.1
Pensions Division	0.6	0.6
Chair's Office/Administration	0.3	0.2
Legal Branch	--	--
Total Revenue ^B	27.6	30.8
Securities Division	\$ 2.6	\$ 2.5
Consumer Credit Division	0.6	0.6
Insurance and Real Estate Division	0.7	0.7
Consumer Protection Division	1.3	1.2
Pension Division	0.6	0.6
Chair's Office/Administration	1.2	1.1
Legal Branch	0.9	1.0
Total Expense	\$ 7.9	\$ 7.7
Annual Surplus	\$ 19.7	\$ 23.1
Dividend to General Revenue Fund	\$ 20.1	\$ 22.7

Source: Adapted from Financial and Consumers Affairs Authority of Saskatchewan, *Annual Report 2018/2019*, pp. 33 and 41-42. Grey shaded rows reflect revenue and expense of the Consumer Protection Division, which includes motor vehicle dealers.

^A Each year, about one-third of the revenue of the Consumer Protection Division is from motor vehicle fees (2018–19: \$0.4 million; 2017–18: \$0.3 million).

^B Revenue includes fees of \$24.9 million in 2018–19 and \$28.3 million in 2017–18.

2.1 Protecting Motor Vehicle Consumers

The Consumer Protection and Business Practices Act and related regulations make the Authority responsible for:

- Administering and enforcing consumer protection policies and legislation
- Informing consumers and vehicle dealers on their rights and responsibilities under legislation

⁴ The General Revenue Fund is a special purpose fund into which public monies (such as provincial taxes) are deposited, and from which monies are available through appropriation.

- Assessing licence applications for suitability of an applicant
- Conducting inspections or investigations and taking enforcement action if deemed appropriate

The Act also makes the Authority's Director of Consumer Protection responsible for licensing motor vehicle dealers and enforcing related consumer protection provisions such as disclosure requirements, fair practices, and record keeping requirements.⁵ **Figure 2** provides examples of requirements *The Consumer Protection and Business Practices Regulations* (Subdivision 3) places on motor vehicle dealers to protect consumers buying vehicles in Saskatchewan.

Figure 2—Examples of Regulatory Requirements Placed on Motor Vehicle Dealers

- Advertising by a dealer must not misrepresent, through statements or omissions, a vehicle's mechanical or structural condition, and not imply a warranty exists with respect to a vehicle or a repair or service unless that warranty exists and is available at the price advertised.
- If a vehicle is displayed for sale at a dealer's premises and a vehicle price is displayed, the price displayed must be the drive-away price.
- A dealer who advertises a periodic payment for a vehicle to be financed on approved credit must include, in the advertised price, the total charges a consumer would pay if credit is approved, not including taxes payable pursuant to *The Provincial Sales Tax Act* and Part IX of the *Excise Tax Act* (Canada).
- A dealer must disclose all material facts, as the dealer knows or should reasonably be expected to know at the time a vehicle contract is entered into; it must make this disclosure, in writing, to a prospective purchaser or lessee before entering into a contract of sale or lease.

Source: Adapted from *The Consumer Protection and Business Practices Regulations* (Subdivision 3).

In 2018, retail trade made up 4.5 percent of Saskatchewan's gross domestic product.⁶ Motor vehicles and parts represent 26.6 percent (\$5.2 billion) of the \$19.5 billion Saskatchewan retail trade.⁷ About \$2.3 billion relates to new vehicle sales.⁸

Since 2016–17, the Authority licenses about 840 motor vehicle dealers each year. In addition, unlicensed vehicle dealers (sometimes referred to as "curbers") may be unlawfully selling vehicles in Saskatchewan.

Without effective processes to regulate vehicle dealers, the Authority may not effectively meet its legislated mandate to protect Saskatchewan consumers, public interests, and businesses. Consumer protection enhances consumer confidence and trust, which in turn, boosts trade and strengthens economies.⁹ A loss of Saskatchewan consumers' confidence in the Government's ability to protect their consumer rights could weaken Saskatchewan's economy.

3.0 AUDIT CONCLUSION

We concluded, for the 12-month period ended December 6, 2019, the Financial and Consumer Affairs Authority had, except as follows, effective processes for regulating motor vehicle dealers to protect consumers.

⁵ Financial and Consumer Affairs Authority of Saskatchewan, *Annual Report 2018/2019*, p. 5.

⁶ www.statista.com/statistics/608347/gdp-distribution-of-saskatchewan-canada-by-industry/ (6 February 2020).

⁷ Government of Saskatchewan, *2018 Economic Review*, (2018), p. 5.

⁸ *Ibid.*, p. 16.

⁹ United Nations General Assembly, *Resolution 70/186*, (2015), p. 4.



The Authority needs a well-defined risk-informed motor vehicle dealer inspection plan to support this core regulatory activity. It needs to formally analyze the results of its enforcement activities so it can determine whether those activities achieve their intended impact. Furthermore, it needs to update and implement a policy and procedures manual for inspections.

Figure 3—Audit Objective, Criteria, and Approach

Audit Objective: to assess the effectiveness of the Financial and Consumer Affairs Authority's processes, for the 12-month period ended December 6, 2019, for regulating motor vehicle dealers to protect consumers.

For the purposes of our audit, a motor vehicle dealer means a person or entity that is in the business of selling or leasing vehicles or takes vehicles on consignment.^A A motor vehicle dealer does not include:

- A person, other than a dealer, who only sells vehicles to dealers
- An auction sales company, licensed under *The Auctioneers Act*, who does not sell its own vehicles rather it only auctions vehicles owned by others at its auctions
- Saskatchewan Government Insurance or an insurer licensed pursuant to *The Saskatchewan Insurance Act* who sells vehicles as a result of administering an insurance claim
- A person who trades in vehicles to provide or facilitate financing of a vehicle or whose dealings in vehicles are incidental to the ordinary business of lending money or dealing in financial contracts or instruments
- A credit grantor who directly sells its inventory of repossessed or seized vehicles to a dealer

Audit Criteria:

Processes to:

1. Have a risk-informed strategy to regulate vehicle dealers
 - 1.1 Reflect legal requirements and responsibilities (e.g., enforcement powers) and constraints
 - 1.2 Outline key risks and concerns
 - 1.3 Describe risk-based approach to prioritizing compliance activities and resources
 - 1.4 Plan to educate vehicle dealers and the public
2. Determine dealers that can sell vehicles to the public
 - 2.1 Set requirements for vehicle dealers to operate (legislation, policies)
 - 2.2 Assess potential vehicle dealers against requirements
 - 2.3 License only vehicle dealers that meet requirements to operate
3. Enforce vehicle dealers' compliance with regulatory requirements
 - 3.1 Educate vehicle dealers and the public about their rights and responsibilities
 - 3.2 Assess vehicle dealers for compliance with requirements
 - 3.3 Respond to complaints about vehicle dealers
 - 3.4 Address vehicle dealer non-compliance promptly
4. Monitor overall results of enforcement activities
 - 4.1 Collect reliable compliance information
 - 4.2 Assess results (e.g., identify extent and common areas of non-compliance, cost efficiency)
 - 4.3 Recommend key actions (e.g., change to strategy, regulatory changes)

Audit Approach:

To conduct this audit, we followed the standards for assurance engagements published in the *CPA Canada Handbook—Assurance* (CSAE 3001). To evaluate the Authority's processes, we used the above criteria based on our related work, reviews of literature including reports of other auditors, and consultation with management. The Authority's management agreed with the above criteria.

We examined the Authority's strategies, policies, procedures, and other records relating to processes to regulate motor vehicle dealers to protect consumers. We interviewed employees responsible for regulating motor vehicle dealers. We analyzed inspection data. We tested a sample of licence applications and renewals, inspections, and investigations, and reviewed educational materials.

^A Financial and Consumer Affairs Authority, *A Vehicle Dealer Information Guide*, www.fcaa.gov.sk.ca/regulated-businesses-persons/businesses/vehicle-dealers (6 February 2020).

4.0 KEY FINDINGS AND RECOMMENDATIONS

4.1 Regulatory Strategy Clearly Documented

The Authority clearly documented its strategy to regulate motor vehicle dealers.

The Authority uses two main documents to set out its regulatory approach and its plans for the upcoming year—an internal document, called An Overview of The Fair-Trading Compliance Strategy for the Consumer Protection Division, and an Annual Operational Plan.

We found the Authority last updated the Overview in the fall of 2019. Its strategy set out in the Overview involves a combination of six approaches (see **Figure 4**).

Figure 4—Six Approaches Used in Strategy to Regulate Motor Vehicle Dealers

1. Using research, legislation, policies, and practices that support fair trading practices
2. Seeking out ways to reduce or eliminate unfair or deceitful market place activity
3. Equipping consumers to enhance their abilities to protect their own interests
4. Informing suppliers of their responsibilities
5. Providing options to assist the parties to resolve marketplace disputes
6. Administering licensing regimes

Source: Adapted from Financial and Consumers Affairs Authority, An Overview of The Fair-Trading Compliance Strategy for the Consumer Protection Division.

We found the Overview includes information specific to regulating motor vehicle dealers as follows:

- The Consumer Protection Division is expected to use inspections as its primary way to proactively assess vehicle dealers' compliance with regulatory requirements. The Overview gives guidance on completing inspections.
- The Division is expected to prioritize inspections based on a risk assessment.

We found the 2019–20 Operational Plan states the majority of the Division's staff resources are directed towards four core regulatory activities—information, licensing, complaints/investigations, and responding to enquiries. Investigations include both investigations of complaints and inspections of vehicle dealers.

The 2019–20 Operational Plan also includes targets for a number of these activities. For example, staff are to acknowledge to affected parties receipt of a complaint within seven working days, process licence applications within 15 working days, answer 65 percent of inquiry line calls immediately, and undertake 40 onsite vehicle dealer inspections.

We found the Authority's Overview and Annual Operational Plan clearly described approaches and activities that are generally consistent with good practice.

Having a clear strategy and operational plan helps an organization know where it is going and what it expects to do to get there.



4.2 Staff Objectivity Regularly Confirmed

The Authority systematically confirms the objectivity of staff responsible for motor vehicle regulatory activities.

Each year, the Authority requires its staff to complete training on conflict of interest and declare any potential conflicts of interest using a standard form. Staff must communicate to their supervisor immediately if new conflicts arise during the year.

The Consumer Protection Division management actively considers any existing or potential conflicts of interest when assigning staff to process licences, or conduct inspections and investigations.

For the two Consumer Protection Division staff we tested, staff completed the conflicts of interest form. The Deputy Director told us that he did not identify any conflicts of interest affecting assignment of staff in 2019. Our testing of licences, inspections, and investigations did not identify any indication of conflicts.

Active management of real and perceived conflicts of interest helps protect the integrity of the Authority's regulatory activities.

4.3 Motor Vehicle Dealers and the Public Proactively Informed

The Authority proactively informs motor vehicle dealers and the public about their rights and responsibilities under legislation.

The Authority maintains both a written annual education plan and communication strategy designed to keep vehicle dealers and the public informed.

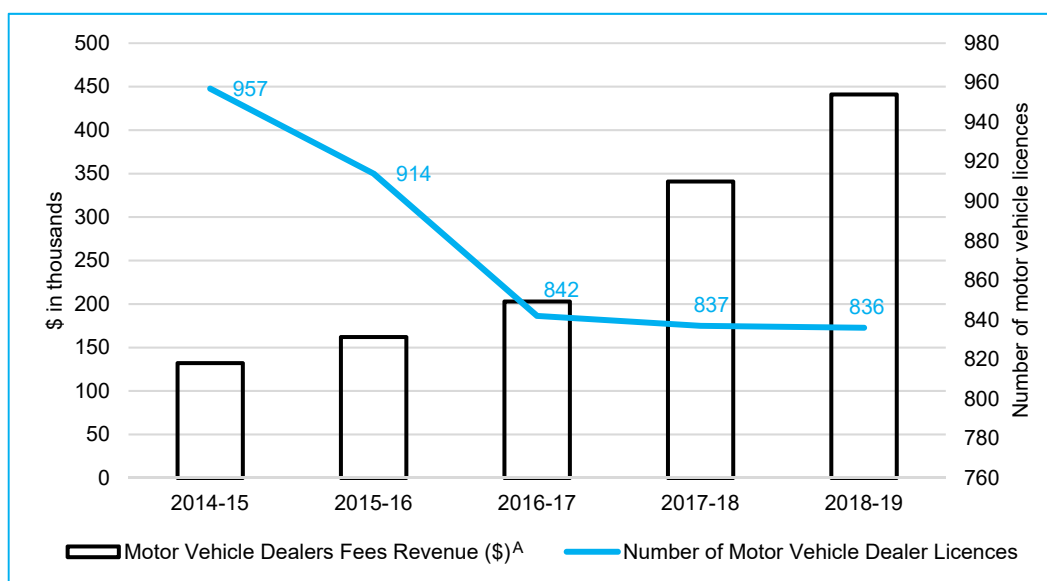
We found its annual education plan clearly set out the key educational needs of dealers and the public. The Authority identified these needs based on its analysis of common complaints (e.g., warranties, vehicle disclosure, pricing), and information from other provincial regulators. We noted the Authority worked with and used analysis from other provincial regulators to identify common non-compliance issues (e.g., negative equity, unlicensed dealers).¹⁰

We found the Authority's communication strategy identified target audiences (e.g., new car buyers) and communication methods. For example, it planned to use webinars, periodic news releases on key topics (e.g., risks of buying vehicles from unlicensed dealers, and negative equity), information guides, and videos. Also, it planned to use online tools such as Google AdWords to help the public readily find its communications.¹¹

We found it carried out each of these plans. Its communications were understandable and easily accessible (e.g., on the Authority's webpage).

¹⁰ Negative equity is when a consumer owes more on a vehicle than it is worth. www.saskatchewan.ca/government/news-and-media/2018/december/18/negative-equity-vehicle-payments. (30 January 2020).

¹¹ Google AdWords is an online advertising platform developed by Google, where advertisers pay to display brief advertisements, service offerings, product listings, video content, and generate mobile application installs within the Google ad network to web users.

**Figure 5—Motor Vehicle Dealer Fees Revenue and Number of Licences**

Source: Adapted from Financial and Consumer Affairs Authority records and audited financial statements.

^A Motor Vehicle Dealer Fees Revenue includes licence fees.

When the Authority approves a new applicant, or rejects a previously approved dealer, the Registration and Licensing System automatically updates the listing of licensed vehicle dealers published on the Authority's website.

For each of the seven new annual licence and ten annual renewal applications we tested, the Authority followed its established licensing processes, and accurately updated the Registration and Licensing System.

Appropriately licensing motor vehicle dealers enhances consumer confidence when purchasing vehicles in Saskatchewan.

4.6 Customer Complaints About Motor Vehicle Dealers Tracked and Appropriately Investigated

The Authority tracks and appropriately investigates consumer complaints.

As shown in **Figure 6**, over each of the last five years, a significant portion of the Authority's Consumer Protection complaints relate to vehicle dealers, as compared to the other eight industries it regulates.¹⁴ The percentage of complaints related to vehicle dealers, compared to complaints for all nine industries, has grown from about 15 percent in 2014–15 to about 46 percent in 2018–19.

¹⁴ The eight other industries include: auction sales companies and auctioneers; cemeteries; charitable fundraising businesses; collection agencies; credit reporting agencies; direct and door-to-door sellers; film and/or video theatres; and distributors or retailers.

Furthermore, the Authority periodically performed media scans to monitor how effectively it reached its audiences, and adjusted its plans as needed during the year (e.g., added additional news releases for areas of increased risk such as unlicensed dealers). This helps it focus its communication resources in the right places.

4.4 Clear Guidance About Motor Vehicle Licensing Requirements

The Authority gives motor vehicle dealer applicants and its staff clear guidance about licensing requirements.

We found it communicates requirements (e.g., financial security of at least \$25,000, appropriate standard vehicle contract, and criminal record checks) to current vehicle dealers and new applicants using in-person conferences, webinars, online guides, and standard application forms readily available online.¹²

The Authority uses an IT system, the Registration and Licensing System, to maintain key information about each licence applicant and approved vehicle dealer. The system automatically reminds dealers (via email) about the need to renew their annual licences.

We found the Authority used various ways and documents to give its licensing staff guidance. It used job descriptions, detailed licensing procedure documents, standard licensing forms and checklists, and discussions at weekly team meetings. The Authority has plans to give staff additional guidance through a manual containing policies and procedures specific to licensing. We found its draft Licensing Policy and Procedure Manual (drafted in 2019 and not in use at time of audit) largely reflects current licensing practices. Management advised us it expects to finalize and obtain approval of this manual in 2020.

In general, the Authority requires its staff, within 15 business days of receipt of licensing applications, to verify the completeness of the application, assess whether the dealer meets licensing requirements, and decide whether to approve the licence.¹³

Clear guidance to staff supports consistent and fair licensing of motor vehicle dealers by the Authority.

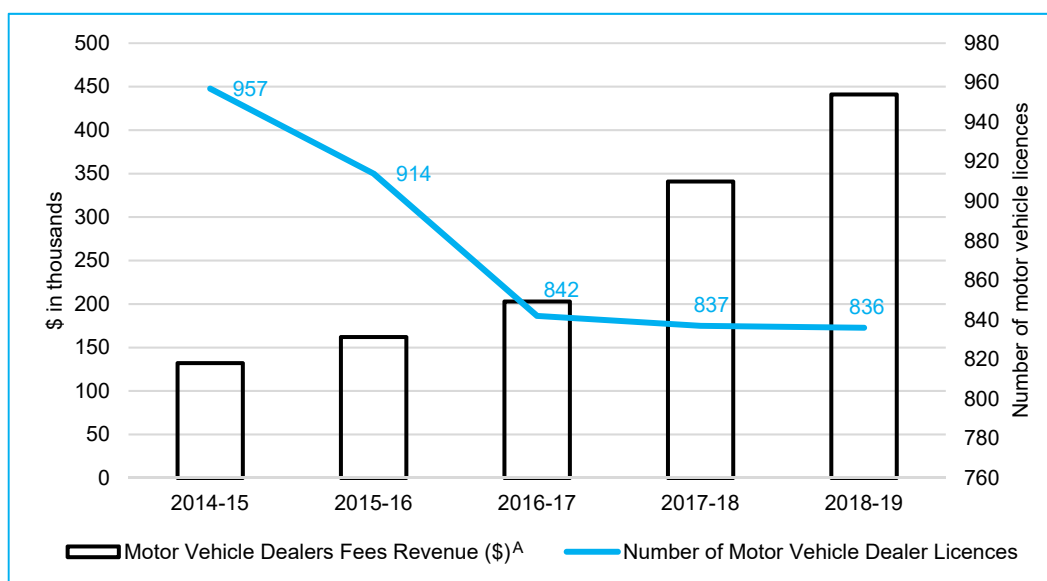
4.5 Motor Vehicle Dealers Appropriately Licensed

The Authority appropriately licenses motor vehicle dealers following established processes.

As shown in **Figure 5**, in 2018–19, the Authority collected \$441,000 in motor vehicle dealer fees from 836 licensed motor vehicle dealers in Saskatchewan. The Authority made changes to the fee structure in 2016-17 to achieve cost-recovery related to regulating vehicle dealers.

¹² The requirements are set out in *The Consumer Protection and Business Practices Act* and *The Consumer Protection and Business Practices Regulations*.

¹³ By law, unsuccessful applicants can appeal licensing decisions in writing or in person at a formal hearing, if unsatisfied with the decision.

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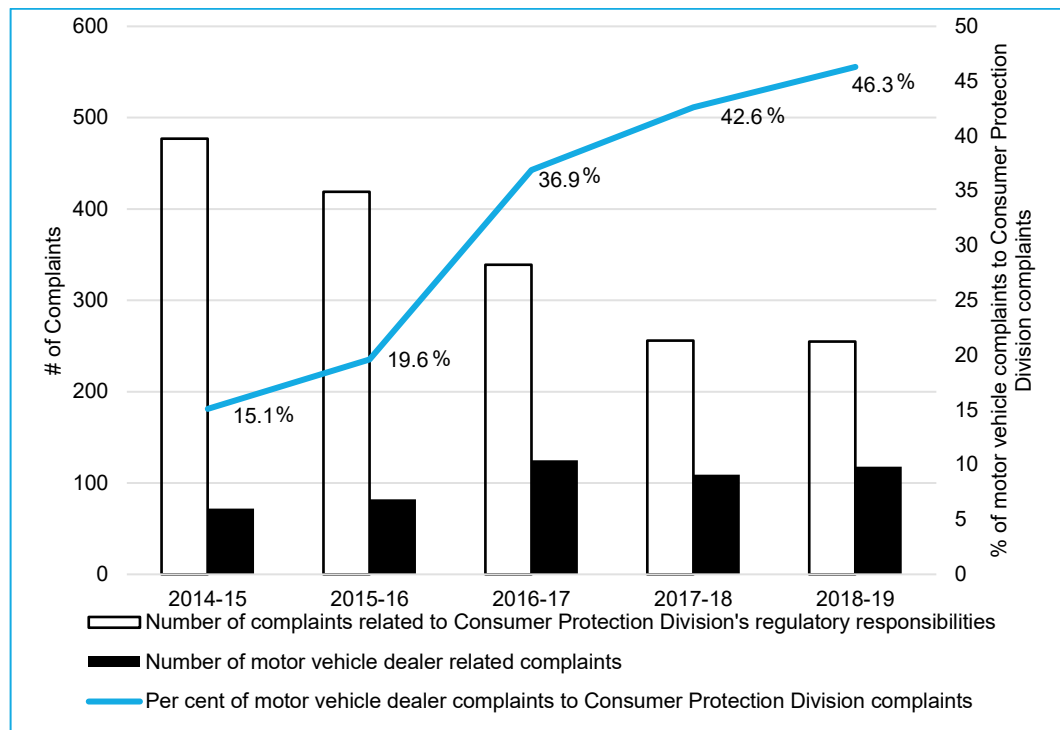
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Figure 6—2014–15 to 2018–19 Complaints that the Consumer Protection Division Received

Source: Financial and Consumer Affairs Authority records.

We found the Authority appropriately gives consumers a range of methods to submit complaints about licensed and unlicensed vehicle dealers (i.e., by phone, email, mail, or in person). The Authority requires a complainant to complete a standard form in writing.

We found the standard form requests key information necessary to understand and investigate a complaint. Key information required includes the date of purchase, description of the problem, actions taken by the consumer and vehicle dealer to resolve the issue, and copies of relevant documents (e.g., contract).

The Consumer Protection Division's four investigators are located in Regina (three) and Saskatoon (one). The investigators are responsible for investigating all consumer complaints for nine industries, including those about vehicle dealers. Typically, the Division investigates about 100 complaints each year related to licensed motor vehicle dealers.

The Division assigns investigations of complaints based on an investigator's knowledge, workload, and location.

Although not all expectations were formally documented, we found investigators had a clear understanding of the Division's expectations of them. The Division expects investigators to:

- Acknowledge the complaint within seven days of receipt
- Complete investigations within a reasonable timeframe (timeframes vary depending upon complexity)



- Document results of the investigation and recommended actions including potential enforcement actions (e.g., written warning, licence suspension) in a written report
- Communicate investigation results to the consumer and vehicle dealer

The Authority does not give investigators written guidance to help them recommend the appropriate enforcement action; rather it relies on their experience.

We found three of the four investigators had extensive experience in doing investigations (in excess of 30 years). We also found management of the Consumer Protection Division primarily uses weekly meetings with its staff to monitor the status of investigations.

We found investigators completed investigations as expected, and Division management sufficiently monitored the status of investigations.

For the 12 investigation files on complaints about motor vehicle dealers we tested:

- For each, management reviewed complaints received and assigned the complaints to an investigator, the assigned investigator acknowledged receipt of the complaint within seven days as expected, the assigned investigator obtained information from the consumer and vehicle dealer as needed to assess if a possible breach of legislation occurred, and the investigator and management considered both the remedy for the consumer as well as broader issues to the public
- The time to complete each investigation seemed reasonable and consistent with the complexity of the complaint, taking, on average, almost 63 days to complete (time for individual investigations ranged between 10 and 149 days)
- For all six with enforcement actions, the file sufficiently documented rationale for the enforcement action, and the Authority undertook the documented action (e.g., written warning, voluntary compliance order, licence cancellation)
- For each, the investigator communicated the conclusion of the inspection to the vehicle dealer and the consumer, including any enforcement actions
- Management reviewed the investigation conclusions within a reasonable timeframe

We found the Division tracks and monitors the number of investigations outstanding for each investigator. In addition, Division management reviews completed investigation reports for appropriateness, giving staff feedback as necessary.

Appropriate tracking and investigation of complaints supports the Authority in focusing resources in areas with higher risk of non-compliance. Investigating and resolving issues experienced by consumers increases public confidence when buying vehicles in Saskatchewan.

4.7 Well-defined Risk-informed Plan for Investigating Unlicensed Motor Vehicle Dealers Needed

The Authority does not have a well-defined plan for investigating unlicensed motor vehicle dealers based on a formal risk assessment.

The Authority used several sources to search for potential unlicensed motor vehicle dealers. We found it had appropriately used information from several external sources, consumer complaints, and the review of online sale sites to identify potential unlicensed dealers. In fall 2019, the Authority began receiving more information about potential unlicensed dealers from its sources, which significantly increased the number of potential unlicensed dealers to investigate.

We found the Authority did not have a documented risk-based process to plan when to investigate unlicensed dealers.

Without a formal risk assessment to inform plans for investigating (or inspecting) potential unlicensed dealers, the Authority may not effectively protect Saskatchewan consumers. See **Recommendation 1** about selecting motor vehicle dealers for inspection based on a formal analysis of key risks for non-compliance.

4.8 Well-defined Risk-informed Annual Inspection Plan for Licensed Motor Vehicle Dealers Needed

The Authority does not have a well-defined, risk-informed plan for inspecting licensed motor vehicle dealers.

We found the Authority documented its licensed motor vehicle dealer inspection plan across various documents. For example, the Overview of The Fair-Trading Compliance Strategy for the Consumer Protection Division (referred to in **Section 4.1**) included the plan to prioritize motor vehicle dealer inspections based on a risk assessment. The 2019–20 Operational Plan states the Division was to carry out 40 inspections of motor vehicle dealers (2018–19: 40 inspections).

The Authority's draft Compliance Policy and Procedure Manual (drafted in 2019 and not in use at the time of the audit) would require investigators to use models to assess each dealer's risk to inform the frequency and content of inspections. In addition, the Manual contemplates inspections other than the currently scheduled in-person inspections (e.g., telephone inspections, and unannounced inspections). Management advised us it expects to finalize and obtain approval of the Manual in 2020.

However, we found the Authority did not document key aspects of the inspection planning process. For example, the Authority had not set out how the Division is to assess a dealer's risk of non-compliance, or which types of risks to consider when determining how many and which dealers to inspect in any given year. Also, it did not have a well-defined process to assess the risk (likelihood and impact) of a vehicle dealer not complying with relevant consumer protection laws (e.g., a risk model, or scoring tool).



In addition, the Authority did not require or document its rationale for selecting the licensed vehicle dealers it inspected. Rather, Division management only retained the emails noting the names of the 40 dealers selected for inspection in the upcoming year.

We found, in practice for the last two years, the Authority used the following process to select dealers for inspection.

- Each inspector suggested, for management's approval, licensed motor vehicle dealers to inspect. They typically make these suggestions in May or June each year via email. The emails list the dealers' names, but not the basis for selection (e.g., factors considered or assessment thereof).
- Division management used weekly team meetings to discuss the suggestions, and decide which 40 dealers to inspect in the upcoming year. It did not document those discussions. This made it unclear whether each inspector used a consistent process to suggest dealers for inspection.
- Management advised us the Division informally considered the following factors when selecting licensed motor vehicle dealers for inspection:
 - Whether the dealer is newly licensed
 - History of complaints (frequency and severity) about a dealer
 - Previous enforcement action against the dealer
 - Geographical location of the dealership for more efficient use of inspection resources.

While the factors the Division considered are reasonable, we found they are not fully reflective of good practice. For example, good practice suggests consideration of size of dealership, number of individuals impacted by past incidents, and location of dealership (beyond more efficient use of resources).

Good practice recognizes inspections may, at times, be used to promote compliance. As previously noted, the Authority uses inspections as one of its core regulatory activities, and to proactively assess a dealer's compliance with regulatory requirements.

Not having clearly defined risk factors to consider when selecting licensed motor vehicle dealers for inspection increases the risk of not selecting dealers using a consistent process, and not focusing inspection resources on dealers at higher risk of non-compliance. Documenting the rationale for selecting dealers helps to demonstrate the use of a fair and consistent regulatory approach.

1. **We recommend the Financial and Consumer Affairs Authority select motor vehicle dealers for inspection based on a formal analysis of key risks for non-compliance.**

4.9 Changes to Motor Vehicle Dealers Inspection Plan Need to be Risk-informed

When the Authority changes its annual inspection plan for licensed motor vehicle dealers, it does not use a consistent process based on key risks of non-compliance to assist in its decision-making.

We found the Division adjusted its inspection plans in both 2019-20 and 2018-19. It did not complete about 15 of 27 inspections initially planned for 2019-20 based on results for inspections completed at December 6, 2019 (in 2018-19, eight of 40 inspections planned were not completed). Management indicated it made the adjustments to inspect more vehicle dealers in specific areas because the Authority had received more complaints and many vehicle dealers in those areas had never been inspected.

We found the Division did not use the same process to select these additional vehicle dealers for inspections as it did to select the initial 40 inspections in its annual plan. Management advised us that it verbally approved changes to the additional vehicle dealers selected, but it did not document this approval.

Our review of 10 additional vehicle dealers selected for inspection found none of them had complaints against them during 2019-20. Rather, inspectors appeared to use their travel efficiency as a key factor to adjusting the annual inspection plan. Our review of enforcement actions the Authority took during the year did not identify any significant deficiencies for the inspections done that were not included in the original inspection plan.

Our review of 39 motor vehicle dealer inspections completed or expected to be completed in 2019-20 found:

- All were licensed dealers.
- Three related to dealers previously inspected within the past five years, and each had no history of complaints or enforcement action.
- Nearly half were not inspected at all during the past five years. We noted that in 2019 the Authority inspected for the first time one vehicle dealer it had licensed in 1996 (about 23 years after licensing). In addition, the Authority keeps mostly manual inspection records of individual licensed dealers so we could not readily determine the average period of time between inspections.

Not formally assessing and documenting the risk of non-compliance of each licensed motor vehicle dealer increases the risk of the Authority not selecting dealers for inspection using a consistent process. In addition, it may not be focusing its inspection resources on vehicle dealers at higher risk of non-compliance. A documented risk assessment process would help the Authority develop and show it selects dealers for inspection using a fair and consistent regulatory strategy. See **Recommendation 1** about basing the selection of dealers for inspection on a formal analysis of risks.

4.10 Finalized Guidance for Motor Vehicle Dealer Inspections Needed

The Authority does not give inspectors of motor vehicle dealers written guidance about standard timeframes in which to communicate inspection results to dealers, or about appropriate and suitable methods of enforcement.

The Authority gave inspectors reasonable guidance about conducting inspections in their job description and in the Overview of The Fair-Trading Compliance Strategy for the Consumer Protection Division. The Authority also provides standard template inspection



reports and checklists. This guidance includes a clear description of responsibilities, objectivity requirements, steps to initiate inspections, and templates showing expected requirements for vehicle contracts. The Authority keeps manual inspection files of individual licensed vehicle dealers. It posts, on its website, enforcement actions taken (e.g., issued compliance orders, suspended licences) where it has identified significant issues with dealers.

We found the guidance in use was not complete in the following areas. It does not:

- Include a standard timeframe to communicate inspection results to licensed vehicle dealers after the completion of an inspection. Management advised us the Authority expects inspectors to communicate results to vehicle dealers within a couple weeks of the inspection.
- Set out criteria or expectations for determining appropriate and suitable enforcement actions (e.g., when it is appropriate for inspectors to recommend warning letters, temporary suspension of licences, or cancellation of licences). The Authority expects inspectors to recommend enforcement actions for management's approval.

At December 2019, management makes all enforcement decisions resulting from inspections. The Authority relies on the experience and expertise of the Consumer Protection Division to make appropriate and suitable enforcement decisions.

- Require management to leave evidence of review of inspection files. The Authority expects management to independently review and regularly monitor inspection files.

The Authority plans to augment its guidance with the Authority's draft Compliance Policy and Procedure Manual. As noted in **Section 4.8**, the Manual was not finalized or in use at time of audit (December 2019); management expects to finalize, obtain approval of, and implement the Manual in 2020.

We found the Manual outlines, in an understandable way and in reasonable detail, the current practice for doing inspections, and planned improvements such as the inclusion of a section on progressive enforcement. It sets out general enforcement measures like discussions with licensed dealers, issuing formal written warnings and compliance orders, making licences conditional, and suspending or cancelling licences. Not providing timely guidance about appropriate and suitable enforcement actions increases the risk of different enforcement taken on similar situations, such as during periods of staff turnover.

The Manual does not, as yet, provide a standard timeframe for reporting the results of motor vehicle dealer inspections. Not providing written guidance about timeliness of reporting results increases the risk of not giving dealers results within a reasonable timeframe, and, if enforcement actions are necessary, causing delays in taking enforcement actions.

In addition, the manual does not require management to leave evidence of its review of inspection reports. Not requiring management to leave evidence of reviews of motor vehicle dealer inspection reports diminishes their ability to show they properly carried out their supervisory and monitoring role. Appropriate supervision and monitoring helps ensure the Authority takes appropriate enforcement action and provides timely coaching to employees to support quality inspections.

Not having finalized and approved guidance can impede the Authority's ability to efficiently and effectively train and support staff in the event of planned or unplanned turnover. This risk is greater given the modest staff size of ten in the Consumer Protection Division, which is responsible for regulating over 800 licensed motor vehicle dealers. In addition, three of four Consumer Protection Division inspectors and a key member of management are nearing retirement.

2. We recommend the Financial and Consumer Affairs Authority update and implement a policy and procedures manual for inspections of motor vehicle dealers.

4.11 Inspection Results Not Always Reported Timely

The Authority followed its established processes to inspect motor vehicle dealers, but did not consistently report the results of inspections within a reasonable timeframe, and management did not leave evidence of its review of inspection reports.

Inspectors completed 45 inspections of licensed motor vehicle dealers for the 12-month period ending December 6, 2019 (the audit period).

For each of the five inspections we tested, the Authority completed the inspection checklist and documented the inspection results as expected.

For two of five inspections tested, the Authority communicated the results of the inspection more than 280 days after the inspection. For the other three, it communicated the results within 14 days (consistent with management's verbal expectations).

None of the five inspections tested had evidence of management's review of the inspection reports.

None of the five inspections tested identified problems or issues.

In addition, for 16 percent of 45 motor vehicle dealer inspections completed during the twelve-month period ending December 6, 2019 (the audit period), the Authority did not communicate the results of the inspection to the vehicle dealer within a reasonable timeframe. For six inspections, it communicated the results to the vehicle dealers about ten months after it completed the inspections. Management advised us this was the result of a personnel matter.

Not consistently issuing the results of inspections within a reasonable time period after an inspection can delay enforcement actions exposing consumers to risk, and may result in not treating dealers equitably. Not leaving evidence of management review of inspection files makes demonstrating appropriate monitoring difficult. See **Recommendation 2** about updating and implementing a policy and procedures manual for inspections of motor-vehicle dealers.

Management advised us of planned changes to its IT systems in 2020; it expects these changes will enable it to document its review of inspections electronically.



4.12 Better Monitoring of Annual Inspection Plan Completion Needed

The Authority does not have robust processes for monitoring the completion of its annual inspection plan of licensed motor vehicle dealers. Rather, the Authority relies primarily on informal processes to monitor the completion of inspections.

The Authority maintains a spreadsheet of inspections completed each year. The spreadsheet lists the dealer business name, licence number, city, date of inspection, and name of inspector. It does not list inspection results (e.g., types of findings), enforcement activities undertaken, or timeframe between inspections.

While it monitors how many inspections it does in total each year, we found the Authority does not document its comparison of completed inspections to its various emails of dealers approved for planned inspections to determine whether they were done, and if not, why not.

In our comparison of the 42 dealers in the 2018-19 annual inspection plan to the 40 dealers inspected during the year, we found the Authority completed 32 inspections as initially planned. For the eight-month period ending November 2019, it completed only 12 of the 27 dealers inspections as initially planned. As noted in **Section 4.9**, the Authority advised us it decided to change its plan, during each year, to inspect other dealers.

As previously noted, the Authority keeps primarily manual files of its inspections of individual dealers.

Not formally monitoring the completion of its annual inspection plan increases the risk of the Authority not effectively using inspections as a proactive enforcement activity. This could lead to a loss of confidence in the Government's ability to protect consumer rights.

3. **We recommend the Financial and Consumer Affairs Authority formally monitor the completion of motor vehicle dealer inspections compared to inspection plans.**

4.13 Analysis of Enforcement Activity Results Needed

The Authority did not formally analyze identified non-compliance to help evaluate if its motor vehicle dealer enforcement activities and annual inspection plan focus on the highest-risk areas of non-compliance.

We found the Authority sufficiently tracks and monitors the timeliness of its processing of motor vehicle dealer applications and responsiveness to complaints. In addition, it periodically monitors how effectively its educational and communication activities reach audiences, and adjusts its plans as needed.

We found it sufficiently reports to senior management and the Board on licensing, complaints, education, and enforcement actions. Each year, it reports the number of new motor vehicle dealer licences issued and the timeliness of processing licence applications. It also sufficiently reports on education campaigns and its public inquiry line response rates. It includes some of this data in its annual report. For example, its 2018–19 Annual Report

reports 100 percent of inquiry line calls were answered within three business days and 99 percent of application reviews were completed with 15 business days as expected.¹⁵ The Authority also publishes enforcement actions taken on individual dealers (e.g., issued compliance orders, suspended licences).

However, the Authority did not document its analysis of the nature and types of non-compliance identified in its investigations of complaints or inspections of licensed motor vehicle dealers (its core enforcement activities), or trends therein. It did not assess whether motor vehicle dealer inspections completed provided it with sufficient coverage of dealers to promote compliance or sufficiently addressed its identified risks of non-compliance.

Without such analysis, the Authority does not know if resources it is expending on enforcement and compliance activities make a difference, and whether it is focusing its efforts in the right areas.

Also, the Authority does not report information about the results of its enforcement activities to its Board. Rather, it only reports information about the volume of its motor vehicle dealer enforcement activities (e.g., the number of inspections and investigations completed).

Lack of formal analysis of motor vehicle dealer enforcement activity results (such as non-compliance trends) increases the risk of not focusing enforcement resources on the highest risk areas of non-compliance or areas that can best promote compliance. Not taking a well-defined risk-informed approach may not best protect Saskatchewan purchasers of motor vehicles and could result in a loss of Saskatchewan consumers' confidence in the Government's ability to protect their consumer rights. This, in turn, could weaken Saskatchewan's economy.

4. We recommend the Financial and Consumer Affairs Authority formally analyze the results of its enforcement activities for motor vehicle dealers to support a risk-informed enforcement approach.

Management advised us it does not document and report its analysis on the results of its enforcement activities because it manually stores the results of its investigations and inspections. Its IT systems track licensing information (e.g., dealer name, location, licence number, and restrictions), but does not store results of its investigations and inspections to allow for easy or effective data analysis. It notes analysis of manually stored information is time consuming. Management further notes the Authority is in the process of updating its key IT systems to help support better analysis of information.

We encourage the Authority to give careful consideration of the types of analysis needed and ensure it is capturing the necessary data when it modifies its existing IT systems.

5.0 SELECTED REFERENCES

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¹⁵ Financial and Consumer Affairs Authority of Saskatchewan, *Annual Report 2018/2019*, p. 21.



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