

CAMVAP

Canadian Motor Vehicle
Arbitration Plan



Programme d'arbitrage pour
les véhicules automobiles du Canada

PAVAC

(By email to the Law Amendment Committee - allenmo@gov.ns.ca)

November 23, 2010

Honourable Ross Landry
Chair, Law Amendment Committee
Nova Scotia Legislature
PO Box 1116
Halifax NS B3T 2X1

Dear Mr. Landry,

Bill 94, Motor Vehicle Act (Amended)

Response from the Canadian Motor Vehicle Arbitration Plan (CAMVAP)

Background

The Canadian Motor Vehicle Arbitration Plan is a dispute resolution plan where consumers and the manufacturers of their vehicles can resolve disputes about defects in the vehicle's assembly or materials or how the manufacturer is applying or administering its new vehicle warranty. Disputes regarding these issues are resolved at no cost to the consumer through binding arbitration.

CAMVAP is available to consumers who are the owners or lessees of vehicles that are eligible for the program. The program is governed by a board of directors that includes representatives of the provincial and territorial governments, consumers, motor vehicle manufacturers and motor vehicle dealers. While the program is mandated through a series of agreements between the governments, consumer representatives, motor vehicle manufacturers and motor vehicle dealers, the arbitrations are conducted in accordance with an agreement for arbitration between the parties to the arbitration and under the rules set out in Nova Scotia's Arbitration Act. The program operates in the same manner in all of the provinces and territories.

The Government of Nova Scotia, through the Service Nova Scotia, is a member of CAMVAP and participates in the governance of the program. The program is administered for the Atlantic Provinces by the Better Business Bureau of the Maritime Provinces located in Halifax and CAMVAP uses the services of independent arbitrators from Nova Scotia to hear the cases.

CAMVAP's operating statistics for 1994 to 2009 are attached. Most notably with respect to Bill 94, there have been 38 vehicles repurchased by the manufacturers in Nova Scotia for a total of \$672,552 reimbursed to consumers. In addition, there have been 76 repair orders and 29 orders for the manufacturer to reimburse the consumer for repairs.

CAMVAP is fully paid for by the members of the Association of International Automobile Manufacturers of Canada and the Canadian Vehicle Manufacturers' Association. These two associations collectively represent virtually all manufacturers and distributors of light duty vehicles in Canada. Their member manufacturers are fully supportive of the CAMVAP program and were instrumental in the program being developed and implemented in 1994. The manufacturers have supported the program as a viable and cost effective alternative to cases being heard in court for more than sixteen years. The industry's continued support for this dispute resolution program is impressive and demonstrates their commitment to ensure that consumers have effective and easy access to CAMVAP.

Specific Comments with Respect to Bill 94

Comments Regarding Identification for Branding:

CAMVAP does not support inclusion of the amendment to clause (w) that includes vehicles bought back through CAMVAP under the definition of a 'lemon'.

CAMVAP recommends that reference to CAMVAP be removed from this section.

CAMVAP bought back vehicles are repurchased for many reasons other than those that impair the use, value or safety of the new vehicle. The test used for a buyback under CAMVAP arbitration is much less rigorous than that used for lemon laws in other jurisdictions. For most lemon law jurisdictions a prescriptive test is applied, such that if after three or four attempts to repair the vehicle for the same problem is unsuccessful, the vehicle is deemed a lemon and it is up to the manufacturer to prove that it is not. The reality is that many CAMVAP buybacks would not meet the eligibility threshold for cases in lemon law jurisdictions.

It is therefore CAMVAP's position that removal of CAMVAP buybacks from clause (w) which seeks to define a 'lemon' for the purpose of branding the vehicle, is warranted because the eligibility test is significantly different from U.S. lemon law jurisdictions.

Comments Regarding the Disclosure Requirements:

Consumers interests with respect to CAMVAP buybacks are well served through the provisions of Sections 44 A (1) (a) and 3 (b) as proposed. Under these clauses, full disclosure of CAMVAP buybacks is required at the time the consumer is considering the purchase or lease of the vehicle.

The information to operationalize these clauses is readily accessible on the CAMVAP website at www.camvap.ca. It should be noted that CAMVAP has proactively disclosed buybacks under the CAMVAP program since 2002. There are currently 1,071 vehicle records in that file.

Regarding the proposed provisions of 44B (g) it needs to be understood that the vehicle being covered under warranty has no relation to whether or not the vehicle is eligible for CAMVAP. As such, it is recommended that “*where the vehicle is covered under warranty*” be removed from section 44B (g).

With respect to clause 44B (k), we are assuming that this is the written confirmation from clause 44A (3) (b) that must be provided with the sales agreement. If this is the intention we would suggest that 44B (k) is redundant in light of 44B (b), which says that the sales agreement must include an acknowledgment from the purchaser that the purchaser has received the information required by Section 44A.

General Comments:

We also would suggest that sections 44B (b), (j), and (k) are problematic for new vehicle sales.

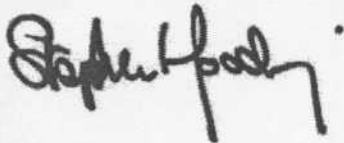
Section 44B does not distinguish between a new and used vehicle with respect to what needs to be included in the sales agreement. This should be remedied to avoid significant confusion as to the requirements for sales agreements.

With the changes we have suggested we believe Bill 94 will assist the consumer in making an informed purchase decision with the full knowledge of the vehicle's history and the availability of CAMVAP as a dispute resolution program.

Due to the speed at which this Bill has moved from second reading to the Committee, CAMVAP representatives are unable to attend in person to present this brief. Should additional questions be raised during the Committee's deliberations CAMVAP would be quite willing to respond and if needed to meet with Committee staff in Halifax.

On behalf of CAMVAP I thank the Committee for its time and consideration of our brief.

Yours truly,
CANADIAN MOTOR VEHICLE ARBITRATION PLAN

A handwritten signature in black ink, appearing to read "Stephen Moody".

Stephen Moody
General Manager

Nova Scotia**1994 to 2002 Statistics**

	1994	1995	1996	1997	1998	1999	2000	2001	2002
General Inquiries	25	72	107	89	102	255	264	189	167
Hearings Held	11	15	11	16	20	22	24	36	36
Vehicles Bought Back	2	0	3	0	3	2	0	3	5
Buy Back Amount	\$18,077	\$0	\$49,427	\$0	\$84,847	\$52,430	\$0	\$18,639	\$122,721
Repair Orders	0	5	4	5	4	2	6	10	7
Reimburse Repairs	0	1	2	1	3	2	6	2	4
Reimbursement Amount	\$0	\$500	\$5,417	\$32	\$819	\$2,144	\$5,510	\$529	\$1,350

Nova Scotia**2003 to 2009 Statistics**

	2003	2004	2005	2006	2007	2008	2009	Total
General Inquiries	154	174	183	171	140	120	86	2,298
Hearings Held	27	17	27	10	11	10	11	304
Vehicles Bought Back	5	2	4	1	1	6	1	38
Buy Back Amount	\$14,979	\$60,493	\$97,281	\$1,058	\$29,964	\$120,616	\$0	\$670,532
Repair Orders	6	5	9	3	4	3	3	76
Reimburse Repairs	2	4	2	0	0	0	0	29
Reimbursement Amount	\$1,719	\$2,257	\$3,623	\$0	\$0	\$0	\$0	\$23,901

Note: When an "owned" vehicle is repurchased through CAMVAP the full cost of the buyback is included in the chart. When a 'leased' vehicle is repurchased, only the amount owing to the consumer for any security deposit is paid to the consumer. The manufacturer terminates the lease with the lessor. In a case such as the one noted in 2009, the consumer would not have paid any funds up front at the time the vehicle was leased, hence the \$0 as the buyback amount. The consumer's lease was terminated at the time the buyback took place with the consumer having no further obligations with respect to the lease or the vehicle.



**SUBMISSION TO THE LAW AMENDMENTS COMMITTEE
REGARDING BILL 94 - AN AMENDMENT TO THE MOTOR VEHICLE ACT
- The Lemon Law -**

11:00 AM Wednesday, November 24, 2010

**Presented by John Sutherland, Executive Vice President,
Nova Scotia Automobile Dealers' Association**

Good Morning Mr. Chairman and members of the Committee. My name is John Sutherland; I am the Executive Vice President of the Nova Scotia Automobile Dealers' Association. Our Association represents 105 of the 120 new car franchised dealers in Nova Scotia. Our dealerships are privately owned by Nova Scotians who have a franchise from the manufacturer to sell and service that manufacturer's vehicles. The investment in real estate, buildings, inventory and staff is entirely Nova Scotian, as new car manufacturers do not own the dealerships that represent them here in Nova Scotia. As new car franchise dealers, our members, in addition to the sale of new cars, rely heavily on the sale of used cars and all our dealerships have used car departments. Many of the vehicles sold in used car departments are taken in on trade by our member dealers as customers move to another new or used vehicle.

Our Association has been consulted by the Registry of Motor Vehicles concerning the proposed amendments to the Motor Vehicle Act, known as Bill 94 or the Lemon Law. We are grateful today to be able to provide information for your consideration and we hope you will be able to use that information to improve the Bill.

The Board of the Nova Scotia Automobile Dealers' Association supports this legislation in principle. Bill 94 raises the bar on standards related to used vehicle sales in this province and its measures serve to protect the public who are in the market for a used car in Nova Scotia. However, there will be a significant element of the public that will not be protected by this legislation and we argue that the legislation needs to be broadened so that all Nova

Scotians in the market for a used vehicle can have the benefit of the measures this Bill proposes.

On Friday, November 19, Minister Jennex moved second reading of this Bill commenting that this Bill would, and I quote "help all Nova Scotians purchasing a used vehicle and protect that person who is purchasing a used vehicle". Unfortunately, Bill 94 falls short of this goal and that is the area I want to address.

We know, according to the Registry of Motor Vehicles in Nova Scotia, that there are 200,000 used vehicle transactions per year in this province. Of those, 82,000 are dealer transactions and presently those transactions will be governed by Bill 94. This leaves 118,000 unprotected transactions. A significantly large number and we know that many of these transactions are, in fact, done by unlicensed dealers who chose to sell in the underground economy. They do not take the title of the vehicle into their names nor do they seek to become registered dealers in this province. They, in effect, shoulder no responsibility for the vehicles they sell and their actions are not subject to this legislation and the consumers who buy vehicles as a result are not protected.

The Registry of Motor Vehicles confirms that dealer transactions in this province account for 82,000 used vehicles, however, we need to better understand what comprises those 82,000 transactions. Approximately 35% or 29,000 of those transactions are 'dealer to dealer' transactions leaving 53,000 'dealer to consumer' transactions which, in effect, the Bill will seek to protect.

In essence, Bill 94 will not protect all Nova Scotians buying used cars. It will protect 53,000 retail transactions out of a total of 200,000 used retail transactions.

We submit that this Legislation needs to be strengthened. We suggest that the Bill be amended by changing the word 'dealer' to the word 'seller' in the Legislation, in order to ensure that anyone selling a vehicle will be held accountable and it will provide a true

measure of protection to the public.

While I understand that this measure may have been considered and rejected because of a concern that we could not police all retail sales of used vehicles, let me remind the Committee that the key element here is to make sure that our Legislation protects all purchasers of used vehicles. It gives them the option to proceed to Small Claims Court by having a firm legal basis on which to seek a conviction in the event that lack of disclosure can be proved in a used sale.

The other key aspect of this process is to ensure that dealers and consumers have access to check the pedigree of a used vehicle. Presently, services such as CarProof and Car Fax exist and are available to all Nova Scotians. A third service, which operates nationally in Canada and throughout the United States is a company by the name of Experian. Experian has been denied access to Nova Scotia's Vehicle Database. In fact, Nova Scotia is the only province in Canada that denies access to Experian. Experian has been seeking access for 10 years and would be prepared to pay for access to that information on a similar basis to companies such as Car Fax. In our view, it would simply be a matter of the province sending a duplicate of the information to Experian at the same time it is sent to Car Fax. I attach letters from Experian and from our Minister that seem to indicate that access on the part of Experian to our database here in Nova Scotia will continue to be denied. This is simply not acceptable nor is it in the interest of the protection of the public. Mr. Chairman, with this I conclude my remarks and stand ready to answer any questions the Committee may have. Thank you.

John K. Sutherland
Executive Vice President
Nova Scotia Automobile Dealers' Association
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APPENDIX A

BILL 94 - THE UNPROTECTED PUBLIC

Issue Date: November 22, 2010

	200,000	Used vehicle transactions in Nova Scotia per year (source Registry of Motor Vehicles)
Less	<u>82,000</u>	Used vehicle transactions done by dealers (source Registry of Motor Vehicles)
Equals	118,000	Unprotected consumers used vehicle transactions

BUT

	82,000	Used vehicle transactions done by dealers include 29,000 'dealer to dealer' sales, leaving 53,000 consumer protected transactions
Less	<u>29,000</u>	
	53,000	

SO

Bill 94, as it stands, protects approximately 53,000 or ¼ of the 200,000 used vehicle transactions done annually in Nova Scotia

Experian Automotive
955 American Lane [#1600]
Schaumburg, IL 60173-4983

Honourable Ramona Jennex, Minister
Department of Service Nova Scotia and Municipal Relations
14th Floor North, Maritime Centre
1505 Barrington Street P.O. Box 216
Halifax, Nova Scotia, B3J 2M4

Re: Access to and use of motor vehicle data

September 23, 2010

Dear Minister Jennex:

In April of this year I wrote asking for your assistance in gaining access to motor vehicle registration data on a continual basis. Your response at the time was that you were not able to accommodate our request. You stated that I can expect an update in the fall of this year.

Can you please advise if your agency is any closer to providing Experian with the service requested? If not now can you please advise when we might expect this situation to turn around?

Experian's lack of Nova Scotia vehicle data has reached the critical stage for our clients. We have been at a significant disadvantage from the beginning. Our competitors have had access for many years and they are able to service their customers in a manner that we cannot.

Please understand that all we are asking for is equal treatment. We lack an understanding as to why others have access and Experian does not. The services we could otherwise provide are highly beneficial to the auto industry in general and individual consumers in particular.

It is impossible to over stress the importance of this matter. I would appreciate an update as to when we can expect the circumstances to change.

Thank you for your consideration.

Respectfully,

Theodore "Ted" Hotham
Regulatory Affairs
Experian Information Solutions

Cc: Mr. Paul Arsenault, Registrar
1505 Barrington Street, 8th Floor North
P.O. Box 2734
Halifax, NS B3J 3P7

Cc: John Sutherland
Nova Scotia Auto Dealers Association
P.O. Box 9410, Station A
Halifax, NS B3K 5S3



Service Nova Scotia and Municipal Relations
Office of the Minister

Appendix C

PO Box 216, Halifax, Nova Scotia, Canada B3J 2M4 • Telephone 902 424-5550 Fax 902 424-0581 • www.gov.ns.ca

2010

Mr. Theodore "Ted" Hotham
Regulatory Affairs
Experian Information Solutions
955 American Lane [#1600]
Schaumburg, IL 60173-4983

Dear Mr. Hotham

I have received your September 23, 2010, letter asking the status of your request for access to motor vehicle information.

As per my April 27, 2010, response to you, the Registrar of Motor Vehicles will provide an update to you within the next two months.

Sincerely,

Ramona Jennex

CARRIED

**Bill #94
Motor Vehicle Act (amended)**

CHANGES RECOMMENDED TO THE
LAW AMENDMENTS COMMITTEE BY THE
MINISTER OF SERVICE NOVA SCOTIA
AND MUNICIPAL RELATIONS

PAGE 1, paragraph 1(b), proposed subclause 2(w)(iii), line 1 - delete "voluntarily".

PAGE 3, Clause 3, proposed Section 44B -

- (a) **line 1** - add "used" before "vehicle";
- (b) **clause (g), line 2** - delete "whether vehicle is eligible for arbitration under" and substitute "the existence of".

PAGE 3, Clause 3, proposed Section 44C, line 1 - add "used" before "vehicle".

PAGE 4, subclause 4(1), proposed subsections 99A(5A) and (5B) - delete and substitute:

(5A) Where a vehicle has suffered serious damage and an insurance claim has not been paid out to the owner in respect of such damage, the owner shall report the particulars of the damage to the Registrar within thirty days of the vehicle sustaining such damage.

(5B) Where a vehicle has suffered serious damage and the owner has engaged a qualified appraiser to appraise the vehicle, the qualified appraiser shall report to the Registrar if the vehicle is non-repairable or a salvage vehicle and the Registrar shall brand the vehicle in accordance with the report of the qualified appraiser.

PAGE 5, subclause 4(1), proposed subsection 99A (5F), line 3 - add "and issue a brand the Registrar determines is appropriate".

PAGE 5 - add the following:

5 Section 295 of Chapter 293, as enacted by Chapter 10 of the Acts of 2002, and amended by Chapter 8 of the Acts of 2005 and Chapter 45 of Acts of 2007, is further amended by striking out "99A," in the third line.

PAGE 5, Clause 5 - renumber as 6.

PAGE 5 - add the following:

7 Section 298 of Chapter 293, as enacted by Chapter 10 of the Acts of 2002, and amended by Chapter 8 of the Acts of 2005, Chapter 45 of the Acts of 2007 and Chapter 21 of the Acts of 2008, is further amended by adding " , Section 99A" immediately after "98" in the third line.

PAGE 5, Clauses 6 and 7 - renumber as 8 and 9.
